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Our Ref: 07/0042
Your Ref: DA37503

1 February 2010

The General Manager
Gosford City Council
PO Box 21
Gosford NSW 2250

Attention Fred Dobbs

Dear Sir

5365 Wisemans Ferry Road Spencer – Development Application

Further to our letter of 15 December 2009 and the meeting held on 13 January 2010 at Council offices, you are advised as follows in relation to the matters raised.

1. Engineering Issues

- (a) All features are shown on the enclosed amended plan No. 02084-DA6 as requested.
- (b) Amended sheets 1B, 2B and 3B are enclosed.
- (c) The proposed accessways for Lots 2 & 3 have been redesigned to comply with Council's maximum grade of 25%. Refer to the enclosed amended plans.

2. Waste Services / Effluent Issues

The area of land associated with the existing dwelling on lot 1 DP 779387 will be increased from 16.48 to 20.5 hectares. The boundary adjustment therefore does not "result in a significant loss of land availability for on-site sewage management" as stated in your letter of 11 November 2009.

Notwithstanding, the existing on-site disposal system is licensed under the council's sewage management facility program and the owners of the land have received a licence renewal in the last few weeks, following inspection by a council officer. The proposed boundary adjustment does not change the status or the effect the operation of the existing system.

As noted above in paragraph 1, a further plan will be provided showing the location of the mapped watercourse and 100 year flood zone. The ecologically endangered communities are identified in the various maps contained within the flora and fauna impact statement prepared by Wildthing Environmental Consultants in August 2009.

It is noted that you confirmed that the effluent disposal area for the existing dwellings is no longer an issue at our meeting on 13 January.



INNOVATION IN TOWN PLANNING

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Kurmond NSW 2757

3. Environmental Issues

No trees are required to be removed for the purposes of the subdivision/boundary adjustment. However, Figures 14 & 15 of the flora and fauna impact statement prepared by Wildthing Environmental Consultants in August 2009 identify the trees which are required to be removed in the future for dwelling and driveway construction.

The environmental impact statement considers the objectives of the 7(a) zone and comments that the proposal will have minimal impact. The following additional comments are provided.

(b) the preservation and rehabilitation of areas of high visual and scenic quality in the natural landscape;

The topography of the land is generally flat across the floodplain from the river, rising to the north towards Wisemans ferry Road. With the exception of the small portion of land to the north of Wisemans Ferry Road, the site is substantially cleared and has been used for livestock grazing for many years. Slashing/mowing of the land in association with grazing has resulted in pasture vegetation occupying the majority of the site with no shrub layer beneath the remaining scattered trees.

The most important views of the land are from the Hawkesbury River. Most of the land is generally not visible from the river due to the thick band of mangroves which run continuously along the river bank.

The proposed dwelling envelope on proposed lot 2 is located some 400m from the river bank, while on proposed lot 3 it is between 400m and 550m. The dwelling envelope on proposed lot 5 is a minimum of 500m the river bank. Given these distances and the effect of the mangroves along the riverbank, it is concluded that dwellings on the proposed lots will not be readily visible from the river.

The proposed dwelling envelopes are all located within 40 metres of Wisemans Ferry Road. For proposed lot 2, the dwelling envelope is a minimum of 15 metres below the level of the road in elevation. For proposed lot 3 the dwelling envelope is a minimum of 16 metres below the level of the road. Proposed Lot 5 has a height difference of at least 5m between the road and the building envelope. The vegetation between the road and the dwelling envelopes prevents any view of the river from Wisemans Ferry Road. The proposed dwellings will not be readily visible from Wisemans Ferry Road, although glimpses may be available through the vegetation.

It is considered that access construction as shown on the attached plans will result in minimal disturbance to vegetation. Given that only three accessways are required over a total road frontage of approximately 600m, the impact on scenic quality as viewed from Wisemans Ferry Road will be negligible.

(g) the minimisation or prohibition of development so that the environmental and visual qualities of the natural areas are not eroded by the cumulative impact of incremental, individually minor developments;

As the environmental and visual qualities will, in our view, not be eroded by the proposal, Council should consider the proposal on the merits of the application.

The land is identified by Gosford DCP 89 – Scenic Quality as the “Wisemans Ferry to Spencer” landscape unit within the “Upper Hawkesbury” geographic unit. The DCP states that the major issue is to preserve the existing character of these areas and to control

development on unsuitable sites. It is also stated that “the breadth and scale of the landscape would permit additional development in carefully selected places”. The development objectives are listed below with comments relevant to the proposal.

1. *Retain and enforce existing provisions contained within instruments and policies relating to the location and appearance of development within this geographic unit.*

The proposal involves no change to the provisions of existing instruments.

2. *Encourage new buildings in all landscape units to blend into existing natural environment with darker colours being preferred.*

No buildings are proposed by the development application, although the restrictive building envelopes have been sited to create minimal impact on the natural environment. Council will have the opportunity to satisfy itself in relation to buildings in assessing subsequent applications for dwellings.

3. *Rezoning proposals should avoid areas of high visual sensitivity and the creation of further detracting elements.*

The proposal is not for rezoning.

4. *Rezoning proposals should consider the current zoning of the subject land in the context of the wider river environment rather than just the applicability of the zoning to the site itself.*

The proposal is not for rezoning.

5. *Development Applications in all landscape units should aim to prevent the creation of further development outcomes which create additional detracting elements.*

It is submitted that the environmental impact statement submitted with the development application demonstrates that further development outcomes created by the subdivision will not create additional detracting elements.

6. *Development proposals located in Baulkham Hills and Hornsby Council areas, where Council is asked to provide comment, should be assessed against the scenic quality guidelines contained in this DCP.*

Not relevant to the proposal.

7. *Proposals for clearing of land should be considered for its scenic quality impacts as well as other issues normally considered for this type of development.*

The proposal does not involve land clearing.

4. Alleged Unauthorised Works

I am instructed by the owner of the land that all six lots have existing access tracks which were constructed in approximately 1958. Also all properties have fire trails along the boundary fences where maintenance is carried out periodically.

Three weeks prior your site inspection, my client hired a Council grader to carry out maintenance on these access tracks and perimeter fire trails as there has been no fire maintenance carried out in the National Park opposite since the bushland was burnt some fourteen years ago.

This type of maintenance is for the purposes of bushfire hazard reduction and does not require authorisation of Council. It is ongoing maintenance of the existing asset protection areas.

My client, Mr Paul Carroll, is an employee of Gosford City Council, with 45 years of service. He feels that he has been treated unfairly by the environmental sections of the council and finds the allegation that he has carried out unauthorised works extremely offensive. He also considers that this apparent vendetta against him has coloured the council's staff attitude towards this application.

5. Dwelling Houses

Your advice re future dwelling applications is noted. It is not practical or cost-effective to prepare plans for dwellings which, in reality, may never be built as approved. The purpose of the building envelopes is to:

- demonstrate that a dwelling can be constructed on each of the proposed lots and so it is impossible to predict a dwelling design for an unknown future land owner. ; and
- place these envelopes as positive restrictions on the title of the lots.

This is common practice for subdivision applications for non-urban land where the physical constraints (ie, effluent disposal, bushfire asset protection, flora & fauna, flooding) of the site dictate the location of any future dwelling. The approach allows the council to assess all of the environmental impacts of a dwelling on the proposed lot, with the exception of the visual impact of the building. In our submission, the visual impact of a particular dwelling design is a minor consideration compared to the impacts of bushfire, effluent disposal, flooding, and flora & fauna, and can be adequately dealt with by Council in any future application for dwellings.

The proposal is to create five lots from the existing six lots. There are two existing dwellings (on two of the lots), therefore there is the capacity under the current lot configuration to construct four new dwellings. This proposal reduces the possible number of new dwellings to three. It is therefore concluded, even in the absence of any assessment, that the erection of three new dwellings will have a lesser impact on the locality than four.

As discussed at our meeting, it is more likely (than not) that a future purchaser would wish to change the design of an approved dwelling to the point where it is not substantially the same as that approved.

It is noted that your letter of 11 November 2009 raises this issue as a courtesy only and does not suggest any statutory requirement to obtain approval for dwellings as part of this application. However, at our meeting on 13 January, Council staff were implying that it is mandatory to include dwelling plans and designs for approval.

There is no statutory requirement to lodge development applications for dwelling houses at the same time as the application for subdivision. It is therefore considered that Council's request for dwelling applications is unreasonable and unnecessary.

6. Statutory Requirements

Originally, my client's intention was to carry out a boundary adjustment which resulted in six allotments. However in a phone conversation in January 2008, Mr Peter Pegg of your office advised that a proposal to reduce the six lots to five would be a better outcome and would be

more favourably received than an application which results in six lots. The advice was accepted and the application and EIS was prepared accordingly.

The application is made pursuant to Clause 20 (1) (b), which is a savings provision which allows the Council to approve a subdivision for the purposes of:

“(b) making an adjustment to a boundary between allotments, being an adjustment that does not involve the creation of any additional allotment.”

This savings clause allows Council to approve the proposal. Your assertion that the application **must** be made under Clause 20 (1) (c) is therefore incorrect. For completeness of this submission, Clause 20 (1) (c) states:

“(c) enlarging the area of any allotment without reducing the area of any other.”

It is also pointed out that Clause 20 (2) provides:

“A subdivision of land carried out for a purpose specified in subclause (1) does not have the effect of –

- (a) precluding development of the land for any purpose for which it might have been developed immediately prior to the subdivision (except in so far as land has been taken for a road as referred to in paragraph (a) or for use as referred to in paragraph (e); or*
- (b) enabling development of the land for any purpose for which it could not have been developed immediately prior to the subdivision.”*

In other words, the subdivision cannot add or remove any development entitlements which were available immediately before the subdivision occurred. Clearly the existing lots each have a development entitlement for one dwelling, therefore the lots created by subdivision in accordance with Clause 20 (b) would not change this situation.

It is submitted that your suggestion that the DA must include dwelling details to establish a “dwelling right” for future purchasers is incorrect, as Clause 20(2) (b) ensures that this right continues to the newly configured allotments.

I must say that it is extremely disturbing that you have raised the permissibility of the proposal almost as an afterthought. This is a fundamental issue which was not raised in my pre-lodgement discussion with Peter Pegg, not raised upon lodgement of the application, not raised in Council’s letter of 11 November 2009, and not raised in the email sent by Fred Dobbs on 21 December 2009. Rather, this issue was only raised in an email authored by Fred Dobbs on 5 January 2010, some three months after the application was lodged with Council. This situation appears to confirm my client’s concern that he has been singled out for unfair treatment, as the issue was only raised when he made personal contact with council about the application.

7. Wetlands

At our meeting, you mentioned that the EIS had not considered the REP 20 Wetlands. As you pointed out, the proposal is “designated development” due to the provisions of Sydney Regional Environmental Plan No. 20. As required, we obtained the specifications for the EIS from the Director General of the NSW Department of Planning. The EIS has been prepared in accordance with those specifications. As required by those specifications the following government agencies were consulted in preparing the EIS:

- Department of Water & Energy

- NSW Rural Fire Service
- Hunter-Central Rivers Catchment Management Authority
- Department of Agriculture
- Energy Australia
- Heritage Council of NSW
- NSW Department of Planning

None of those agencies suggested any specific assessment of the condition of the wetlands or assessment of impacts beyond that which has been provided in the EIS. I understand that none of these agencies raised objection to the proposal during Council's notification of the DA and EIS.

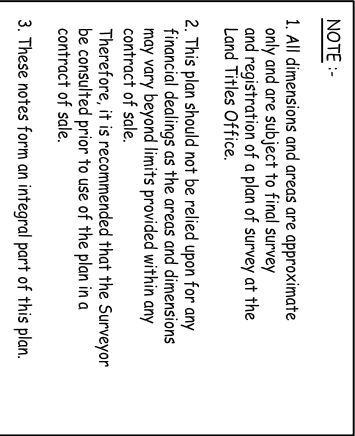
It is clear from the EIS that the proposed building envelopes are located at least 100m – 200m clear of the wetland. The endangered ecological communities and vegetation communities are clearly identified in the flora and fauna report which forms part of the EIS.

Accordingly you are requested to refer the enclosed plans and additional information contained herein to the Joint Regional Planning panel along with your assessment of the application without further delay. Can you please advise when the application will be considered by the Panel and the protocol for addressing the panel on behalf of my client.

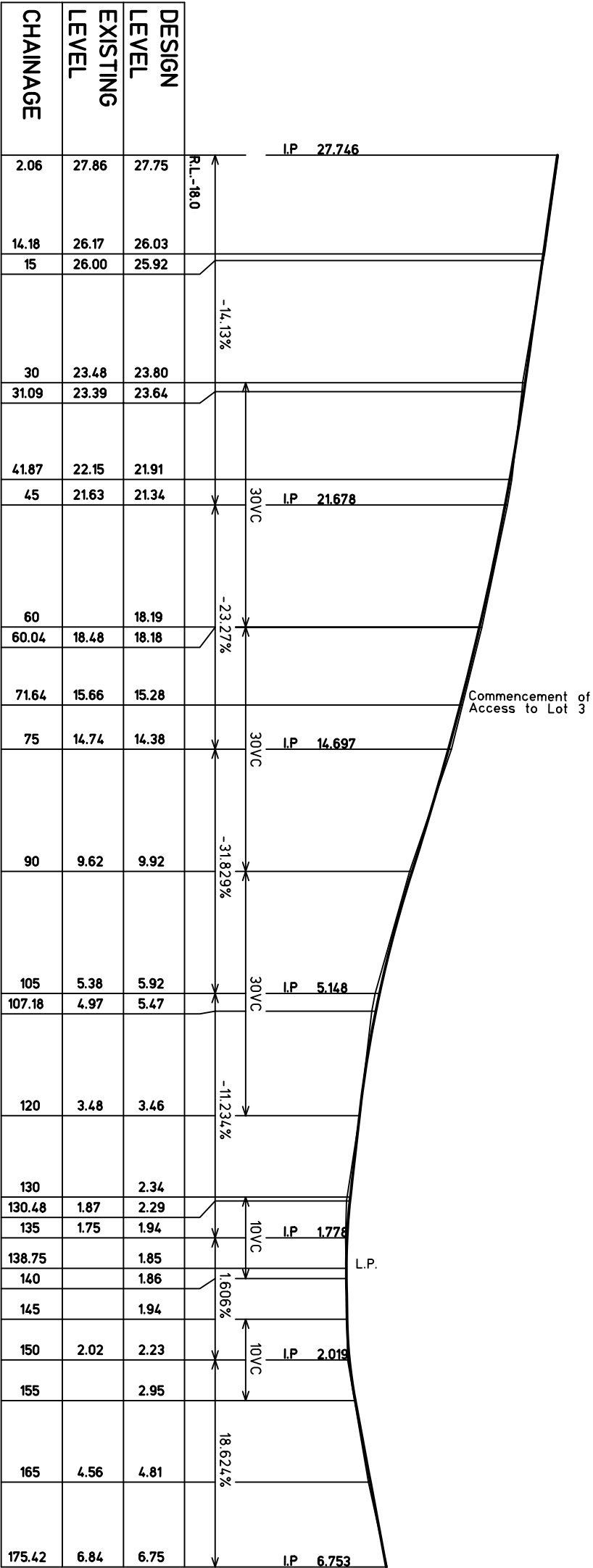
Yours sincerely



Robert Montgomery MPIA, CPP
Principal

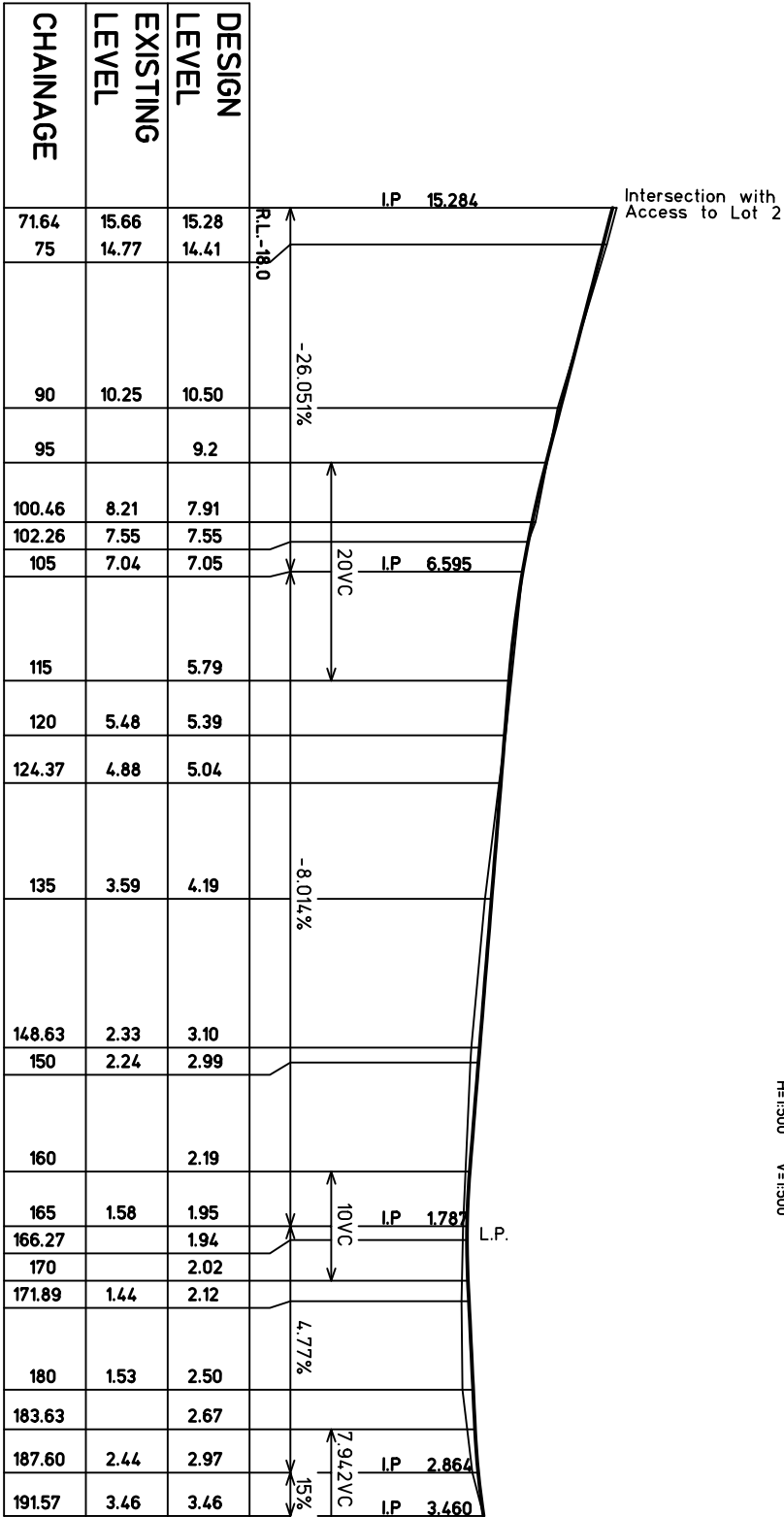


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| 0 | 10 | 20 | 30 | 40 | 50 | Table of mm | | | | | 100 | 110 | 120 | 130 | 140 | 150 |
| Reduction Ratios Plan : 1:4.000 Horiz. : — Vert. : — | | | | | | | | | | Prepared by : G:Monaghan Plan Date : 02-02-2010 Checked : Surveyed by : G:Monaghan Survey Date : 07-01-2010 Signed : | | | | | | |
| Contour Interval : 1m Datum : AHD Origin : SSM19910 (RL 13.685) | | | | | | | | | | LOCALITY : SPENCER PARISH : SPENCER COUNTY : NORTHUMBERLAND Council : GOSFORD Council Ref : — Approval Date : — | | | | | | |
| Client : Mr Paul Carroll | | | | | | | | | | Project : Plan of Proposed Boundary Adjustment of Lot 92 DP755257, Lot 1033 DP1106937, Lot 2 DP543150, Lot 67 DP665348 & Lots 1 & 2 DP779387 No. 5365 Wisemanns Ferry Road | | | | | | |
| Approved : | | | | | | | | | | SHEET No. 1 OF 1 SHEETS | | | | | | |
| Computer Ref : 02084-DA7.dwg | | | | | | | | | | Proj. Name : Carroll | | | | | | |
| REF : | | | | | | | | | | 02084-DA7 | | | | | | |




Accessway to Lot 2

H=1:500 V=1:500



Accessway to Lot 3

H=1:500 V=1:500



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Reduction Ratios
Plan : 1:500
Hortz. : 1:500
Vert. : 1:500

Contour Interval : -
Datum : AHD
Origin : SSM19910 (RL 13.685)

Prepared by : G.Monaghan
Plan Date : 02-02-2010
Checked by : G.Monaghan
Surveyed by : P.Moy & G.Monaghan
Survey Date : 29-05-2009
Signed :

LOCALITY : SPENCER
PARISH : SPENCER
COUNTY : NORTHUMBERLAND

Council : GOSFORD
Council Ref : -
Approval Date : -

Client : Mr Paul Carroll

Project : Proposed Accessways to Lots 2 & 3
Longitudinal Sections
in the Proposed Subdivision of
No. 5365 Wisemans Ferry Road, SPENCER
Version C

Approved :
SHEET No. 2
OF
3 SHEETS

Computer Ref : 02084-A(2C)
Proj. Name : Carroll
REF : 02084-A(2C)

