

**JRPP Ref No.** 2010HCC004  
**Application No.** 37972/2009 Part 1  
**Proposal:** Staged Development (3 stages) Demolition of Existing Commercial Building and Erection of a Seniors Housing Development Comprising 61 Self-Contained Dwellings and Communal Facilities as part of "The Cove" Retirement Village  
**Location:** LOT: 9 DP: 261583, LOT: 224 DP: 771755, LOT: 104 DP: 771785, LOT: 105 DP: 771785, nos. 24 to 26, 30 to 34 Empire Bay Drive DALEYS POINT  
**Applicant:** Aevum Ltd  
**Report By:** Gosford City Council

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*The following item is defined as a planning matter pursuant to the Local Government Act, 1993 & Environmental Planning & Assessment Act, 1979.*

## **EXECUTIVE SUMMARY**

### **Reason for Referral to Joint Regional Planning Panel**

The proposal is regional development (i.e. development that has a capital investment value over \$10M) under clause 13B (1)(a) of SEPP (Major Development) 2005.

### **Assessment Officer**

D Spithill

### **Reviewing By**

Independent Development & Environment Panel (IDEP)  
Director Environment and Planning  
General Manager

### **Application Received**

24/12/2009 Amended Plans Received 04/06/2010 and 28/06/2010.

### **Proposal**

Staged Development involving demolition of existing commercial building and erection of a Seniors Housing Development comprising 61 self-contained dwellings and communal facilities which will form part of "The Cove" retirement village. (JRPP)

### **Zone**

Part Residential 2(a) and Part 3(a) General Business pursuant to the GPSO.

### **Area**

Lot 104 in DP 771785 - 4,749m<sup>2</sup>  
Lot 105 DP 771785 - 21,800m<sup>2</sup>  
Lot 9 DP 261583 - 750m<sup>2</sup>  
Lot 224 DP 771755 - 3,128m<sup>2</sup>  
Total Site Area: 30,427m<sup>2</sup>

## **City Vision 2025**

Although not a statutory Plan, the proposal is consistent with the City Vision.

## **Public Submissions**

Three (3)

## **Pre-DA Meeting**

A Pre-DA Meeting was held 19 November 2009

## **Political Donations**

None Declared

## **Relevant Statutory Provisions**

- 1 Environmental Planning & Assessment Act, 1979 – Section 79C
- 2 Rural Fires Act 1997 - s100B
- 3 Water Management Act 2000
- 4 Local Government Act 1993 – Section 89
- 5 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
- 6 State Environmental Planning Policy (Infrastructure) 2007
- 7 State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development
- 8 State Environmental Planning Policy No 71 - Coastal Protection
- 9 State Environmental Planning Policy No 1 - Development Standards
- 10 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- 11 State Environmental Planning Policy (Major Development) 2005
- 12 State Environmental Planning Policy 55 - Remediation of Land
- 13 Gosford Planning Scheme Ordinance
- 14 Draft Gosford Local Environmental Plan 2009
- 15 DCP 165 - Water Cycle Management Amendment 1 and WCM guidelines
- 16 DCP 159 - Character
- 17 DCP 89 - Scenic Quality
- 18 DCP 106- Site Waste
- 19 DCP 122- Cut and Fill Restrictions
- 20 DCP 163 - Geotechnical Requirements
- 21 DCP 115 - Building in Flood Area

## **Key Issues**

- 1 Summary of Proposal
- 2 Permissibility
- 3 Site Description
- 4 State Environmental Planning Policy (Major Development) 2005
- 5 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
- 6 Building Height - SEPP 1 Objection
- 7 Accessibility and Useability
- 8 Car Parking
- 9 Gosford Planning Scheme Ordinance - Relevant Provisions
- 10 Character
- 11 State Environmental Planning Policy 65 - Design Quality of Residential Flat Development

- Comments from SEPP 65 Panel
- Comments from Council's Architect
- 12 Amenity Impacts: Privacy, Solar Access & Overshadowing, View Loss, Noise Impact
- 13 Scenic Quality / Visual Impact
- 14 Environmental Impact - Environment Officers Comments
- 15 Tree Management - Tree Management Officer's Comments
- 16 Integrated Development Controlled Activity Approval - NSW Office Of Water
- 17 Comments - Department of Environment, Climate Change and Water
- 18 State Environmental Planning Policy No 71 - Coastal Protection
- 19 Climate change and sea level rise
- 20 Flooding and Drainage
- 21 Geotechnical Requirements
- 22 Integrated Development Bush Fire Safety Authority - NSW Rural Fire Service
- 23 Safer by Design Crime Risk Evaluation Comments - NSW Police
- 24 Draft Gosford Local Environmental Plan 2009
- 25 Traffic Impact - Relevant Provisions SEPP (Infrastructure) 2007/ RTA Comments
- 26 Public Submissions

## **Recommendation**

Approval

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## **REPORT**

### **Background**

The existing retirement village comprises various residential buildings in the form of single storey dwellings, row housing and two to three storey apartment buildings on several unconsolidated allotments of land. Various approvals were granted pursuant to the former SEPP 5 - Housing for Older People or People with a Disability for buildings, alterations and additions between 1982 and 2002. However some of the existing buildings were established in the early 1970s.

The commercial building was granted consent under Development Consent 2743 on 3 August 1982. Since this time, various development applications for establishment and change of use have been granted consent. The shopping centre was originally established on the subject land to fulfil the siting requirements for the retirement village approved under the provisions of the former SEPP 5. The centre proved to be economically unviable and was sold by the owners of the retirement village at that time. A child care centre, swimming school and real estate agency currently occupy the premises with a number of vacant shops. The current owner of the retirement village has since purchased the shopping centre site.

### **Assessment**

This application has been assessed using the heads of consideration specified under Section 79C of the Environmental Planning & Assessment Act 1979, Council policies and adopted Management Plans. The assessment supports approval of the application and has identified the following key issues which are elaborated upon for Council's information.

### **Summary of Proposal**

The development application is made under *SEPP (Housing for Seniors or People with a Disability) 2004* and the proposal is for a staged seniors housing development involving the following works:

- Demolition of an existing commercial building and associated car park;

- Construction of additional Seniors Housing comprising 61 self-contained dwellings comprising 6 x 1-bedroom units, 33 x 2-bedroom units and 22 x 3- bedroom units;
- communal facilities providing social and personal facilities for residents at The Cove;
- basement car parks and at grade resident and visitor parking (total 81 spaces comprising 67 resident and 14 visitor spaces);
- Improved pedestrian and vehicle access for the existing surrounding buildings including traffic signals at Peridon Avenue and Empire Bay Drive
- Additional Landscaping including street tree plantings

**Refer Attachment 3 - Figure 1: Architect's elevations and Figure 2: Streetscape view of proposed development**

The proposal will form part of the planned redevelopment of the "Cove Retirement Village"(eastern side). The proposed development will be a staged development which will be carried out over three (3) stages in accordance with the Staging Plan Drawing No.100826.

An overall masterplan has been submitted for the whole retirement village site to demonstrate the architect's vision for additional development across the site. This DA however relates to a portion of the high side of the Cove (i.e. land to the east of Empire Bay Drive) and consent is not sought for the masterplan as part of this application only Buildings L1, L2 and L3.

Proposed Building L2 has a height which exceeds the development standard contained in Clause 40(4)(a) of the Seniors Housing SEPP on land where residential flat buildings are prohibited. The maximum height permitted for a building is 8 metres. Accordingly, a SEPP No.1 Objection has been prepared in relation to this non-compliance.

- The proposal is an integrated development under Section 91 of the Environmental Planning and Assessment Act 1979 requiring the following approvals:
  - A Bush Fire Safety Authority issued by the NSW Rural Fire Service under S100B of the *Rural Fires Act 199*; and
  - A Controlled Activity Approval issued by the NSW Office of Water under the *Water Management Act 2000*, as the development includes the creation of a riparian zone within the northern side of a natural creekline at the southern end of the site.

The application has also been referred to the RTA under SEPP (Infrastructure) 2007.

The proposal is regional development (i.e. development that has a capital investment value over \$10M) under the *SEPP (Major Development) 2005* and the application will be determined by the Joint Regional Planning Panel.

### **Permissibility**

The use of the site for the purpose of seniors housing is permissible with consent under *SEPP (Housing for Seniors or People with a Disability) 2004*.

### **Site**

"The Cove" retirement village is located on the eastern and western sides of Empire Bay Drive at Daleys Point and currently contains 104 self care dwellings and a range of communal facilities on 4.22 hectares of land. The Cove has a direct water frontage to Brisbane Water (low side of Empire Bay Drive to the west) and extends across the road to the east, towards the lower slopes of a heavily treed ridgeline which contains Bouddi National Park. Yugari Crescent to the rear separates the retirement village from the national park/crown reserve land.

The development site comprises No 24 to 26 and 30 to 34 Empire Bay Daleys Point at the high side of Empire Bay Drive to the east. The site is situated at the southern corner of Empire Bay Drive and Peridon Avenue. The land is immediately surrounded by existing seniors housing within "the Cove" retirement village. The general locality is characterised by low density residential development comprised generally of detached housing.

Existing improvements on the development site include a single storey commercial building and associated car park which will be demolished to accommodate the development and self contained dwellings in the form of 9 apartment blocks and 12 villas which will remain.

The topography surrounding the commercial development is relatively flat with the land having previously been excavated and filled. The remainder of the site falls from the east (Yugari Crescent ) to the west (Empire Bay Drive) at slopes ranging from 5 to 20 degrees.

The site is identified as bushfire prone land and a natural creek line is located at the southern end of the site. Vegetation on the site comprises predominantly cleared and mown grass with scattered trees.

**Refer Attachment 3 - Figure 3: Existing Streetscape, Empire Bay Drive and Figure 4 - Aerial Photograph showing location of subject site.**

### **State Environmental Planning Policy (Major Development) 2005**

The proposal is identified as being development to which Part 3, Division 2, Regional Development provisions apply under the Major Development SEPP (i.e. clause 13B(1)(a) - development that has a capital investment value of more than \$10 million).

### **State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004**

The application has been assessed against the requirements of SEPP (Housing for Seniors or People with a Disability) 2004 and is generally compliant with the requirements of the SEPP, **(Refer Attachment 4 - Table 1)** with the exception of the following:

#### **1. Building Height - SEPP 1 Objection**

Clause 40 of the SEPP (Housing for Seniors or People with a Disability) 2004 stipulates development standards to control minimum sizes and building heights and Clause 40(4) provides height standards for development which is located in zones where residential flat buildings are not permitted.

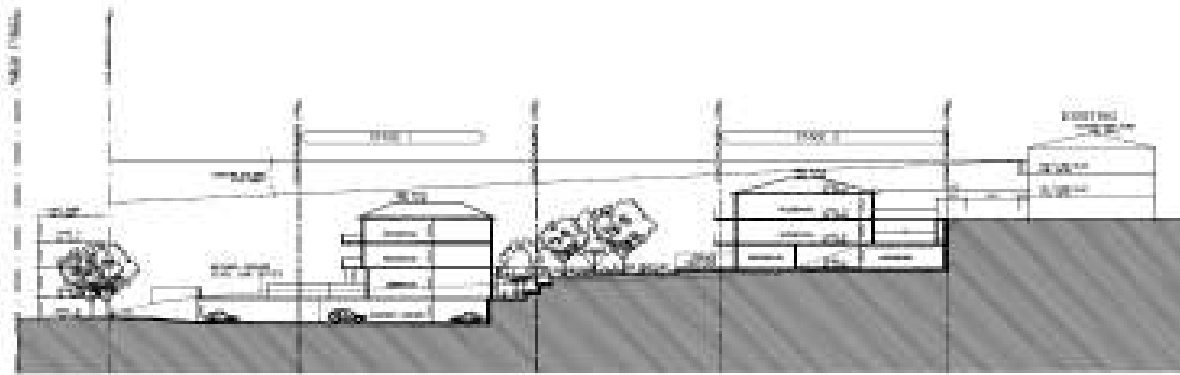
Under the provisions of the Gosford Planning Scheme Ordinance, residential flat buildings are not permitted on that part of the site zoned 2(a) Residential and the provisions of Clause 40(4) are thus relevant to the proposed development. The remainder of the site area subject to redevelopment is zoned 3(a) Business and residential flat buildings are permissible with consent on that land.

Clause 40(4)(a) of the Seniors Housing SEPP states:

*(a) the height of all buildings in the proposed development must be 8 metres or less". Height is defined under the SEPP as "the distance measured vertically from any point of the ceiling of the topmost floor of the building to the ground level immediately below that point."*

Building L2 (Stage 2) has a maximum height of 9.6m with ceiling RL of 22.5m AHD with approximately 42% of the building (NW elevation) for a depth of 7m exceeding the height limit to varying degrees.

**Refer Section AA below**



**Building L2**

The applicant has advised that: *"There is a minor non-compliance for Building L2 associated with the batter at the boundary between the commercial zone and the residential zone. In this regard, the natural ground level at the edge of the commercial zone is significantly lower than the ground level within the residential zone due to past excavation and the formation of retaining walls. Where the batter of the slope rises is where non-compliances with the height standard are found. However, at the top of the batter Building L2 complies with the height standard."*

#### **Applicant's SEPP 1 Objection**

The applicant has submitted a detailed SEPP 1 objection which is attached to the report as **Attachment 5**.

#### **Assessment Comment**

State Environmental Planning Policy No 1 - Development Standards provides that a development standard contained within an environmental planning instrument may be varied where objection is well founded and where strict compliance with those standards would in a particular case be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979.

In deciding whether to consent to the variation of development standards in a particular case, the consent authority should examine whether the proposed development is consistent with the State, regional or local planning objectives for the locality, and in particular whether the underlying purpose of the development standard will be achieved despite the proposed variation.

Assessment of the SEPP 1 objection to the maximum height development standard as stipulated under Clause 40 (4) (a) of the SEPP (Housing for Seniors or People with a Disability) 2004 has been assessed applying the *"underlying object test"* using the 5 part test suggested in *Winten Property Group Limited v North Sydney Council* (2001) 130 LGERA 79 as follows:

1. *"Is the planning control in question a development standard"?*

Clause 40 (4) (a) of the SEPP (Housing for Seniors or People with a Disability) 2004 is a numerical development standard for the purposes of SEPP 1- Development Standards, and may be varied by the consent authority pursuant to the provisions of the Policy.

2. *"What is the underlying objective or purpose of the development standard"?*

The SEPP does not contain stated objectives for the development standard. Nevertheless, it is considered that the underlying intent of the maximum height requirement is to control the height

scale and visual bulk of development consistent with the desired character and zone objectives for the immediate locality and minimise adverse amenity impacts on adjoining low density residential development in terms of loss of privacy, views and solar access.

It is considered that the proposal is consistent with the underlying objectives of the standard for the following reasons:

- The proposal (Building L2) raises no significant external amenity impacts on adjoining developments in terms of loss of views, privacy, solar access or overshadowing. Amenity impacts are addressed in the report below. The proposal will however, have a significant internal impact on available water views from first floor balcony areas of the lower first floor units of the existing retirement village buildings located behind Building L2. Such impact is considered unavoidable for the lower floor units and would occur with a fully compliant height. View loss to second floor balconies is considered to be within reasonable limits.
- The overall height and scale of the proposed building is not considered excessive and is consistent with existing buildings heights within "The Cove" Retirement Village.
- Building L2 is located on and adjacent to commercially zoned land which is an appropriate location for a greater intensity of development and built form.
- The building will not have any significant adverse impact on the existing streetscape as it largely hidden from view, being sited behind Building L1. Proposed landscaping provision and required street tree planting at the frontage of the site will be consistent with the character of the existing streetscape and bushland backdrop.
- Building bulk is considered acceptable with the massing of the building broken up by variation of the building form, roof form and materials. External colour scheme and finishes will blend with the surrounding natural environment to reduce visual impact.
- Only a portion of building located on land within the 2(a) zone exceeds the 8m height restriction. The extent of the non-compliance with the height standard is minimal and relates to an area around the batter of a retaining wall. The building steps down the existing slope due to the significant fall of the site from east to west and appears as a 1 storey structure from the western side.

3. *"Is compliance with the development standard consistent with the aims of the Policy and in particular does compliance with the development standard tend to hinder the obtainment of the objects specified in Section 5(a)(i)(ii) of the Environmental Planning and Assessment Act?"*

*Clause 9 of the Department of Planning's Circular B1 states:*

*"It is necessary to assess the likelihood of similar applications being made to vary the standard in the locality. Councils should consider whether the cumulative effect of similar approvals will undermine the objective of the standard or the planning objectives for the locality. If the council considers that it will do so, the application should be refused or a decision should be made not to approve others like it."*

In this instance, it is considered that approval of the proposal will not result in a cumulative impact and is unlikely to create pressure for development with increased height and scale or more intensive developments than that anticipated by strategic and character objectives for the locality. The proposal forms part of an existing retirement village and has been assessed on its individual merits having regard to the nature of adjoining developments. The height, bulk, scale and characteristics of the proposal are appropriate and acceptable. Accordingly, approval of the proposed development is unlikely to hinder the attainment of Section 5(a)(i) and (ii) of the EP&A Act 1979.

4. "Is compliance unreasonable and unnecessary in the circumstances?"

It is considered that compliance with the development standard is unreasonable and unnecessary in this instance having regard to the characteristics of the site and surrounding development. The proposed non-compliance does not undermine or frustrate the underlying objective of the standard nor result in any significant adverse environmental impacts. Compliance with the standard would not result in a markedly altered design or result in a better planning outcome.

5 "Is the objection well founded?"

The objection to Clauses 40(4)(a) is well founded for the following reasons:-

- the development has an acceptable bulk height and scale consistent with surrounding development and character of the locality
- the development does not undermine the underlying objectives of the standard; and
- the non-compliance does not result in any significant adverse environmental impacts on the amenity of surrounding residential developments.

Accordingly, the SEPP 1 objection is considered to be well founded.

Assessment of the SEPP 1 objection also includes consideration of the "5 ways of establishing that compliance is unreasonable or unnecessary" under *Wehbe v Pittwater Council*".

In *Wehbe v Pittwater Council* [2007] NSW LEC 827, Chief Justice Preston of the Land and Environment Court, expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

**Assessment comment**

The objectives of the maximum height development standard are still achieved despite non compliance with the numerical standard as discussed above. Points 2 to 5 are not applicable in this instance.

Accordingly, it is considered that the SEPP 1 objection is well founded and strict compliance with Clause 40(4)(a) of the Seniors Housing SEPP is considered to be unreasonable and unnecessary in the circumstances of the case.

## **2. Standards concerning Accessibility and Useability - (Part 4, Division 3, Clause 41 and Schedule 3)**

Minor non compliance issues (Clause 41 Schedule 3 of the SEPP) have been identified in the Accessibility Report, prepared by Morris-Golding Accessibility Consulting, dated 17 November 2009. Such issues include, external pathway width, door latch side clearances of entry doors, pathway lighting, entry door corridors, shower circulation areas (bathrooms) clearance to WM (laundry), lift access. Such issues will be addressed by conditions of consent to ensure compliance with the recommendations of the accessibility report.

**(Refer All Stages: Condition No 2.2)**

## **3. Car Parking**

Part 7 - Development Standards that cannot be used as grounds to refuse an application, Division 4 - Self Contained Dwellings, Clause 50, stipulates a car parking rate of at least 0.5 car spaces for each bedroom. The proposed development does not comply with the requirement under Clause 50 as it comprises 136 bedrooms with provision for 67 resident car spaces, representing shortfall of one resident space. Such shortfall may be addressed by conversion of one of the at grade visitor spaces to rear of Building L2 to a resident space to achieve compliance, with details at CC stage.

**(Refer Condition Stage 2: 2.2)**

The proposed buildings and associated car parking will be built over three stages as follows:

<u>Stage L1:</u>	20 units with 40 bedrooms: 20 resident car spaces in basement Community facilities: 5 car spaces to be shared between visitors and staff on grade car park to the east of the building.
<u>Stage L2:</u>	20 units with 48 bedrooms: 24 resident car spaces in basement, 2 resident spaces on grade and 3 visitor spaces on grade behind building to the west.
<u>Stage L3:</u>	21 units with 48 bedrooms: 17 resident car spaces in basement, 4 resident car spaces on grade and 6 visitor car spaces on grade behind the building to the west
<u>Total:</u>	61 units with 136 bedrooms: 81 car parking spaces, 67 of which are for resident use and the remaining 14 are for visitors and staff.

All of the 61 apartments have at least 1 parking space (some have 2 spaces). The application is accompanied by a traffic report which describes the adequacy of the proposed parking in compliance with the Seniors Housing SEPP and Council's DCP No. 111.

### Private car accommodation

Part 4 - Development Standards to be complied with Division 3 - Hostels and Self Contained Dwellings - Standards concerning accessibility and useability, Clause 40 requires compliance with the standards specified in Schedule 3.

Schedule 3, clause 5 stipulates:

If car parking (not being car parking for employees) is provided:

- (a) *car parking spaces must comply with the requirements for parking for persons with a disability set out in AS 2890, and*
- (b) *5% of the total number of car parking spaces (or at least one space if there are fewer than 20 spaces) must be designed to enable the width of the spaces to be increased to 3.8 metres, and*
- (c) *any garage must have a power-operated door, or there must be a power point and an area for motor or control rods to enable a power-operated door to be installed at a later date.*

The application has been designed to generally comply with the disabled parking requirements under the previous AS 2890.1.1993. (i.e. spaces with minimum dimensions of 3.2m x 6m) with provision for 64 resident disabled spaces (min 3.2m width with over 5% 3.8m in width), vertical

clearance of 2.5m is provided to spaces within the basement car park. Four (4) resident spaces are less than 3.2 metres in width and do not comply with the access requirements however all apartments (61 units) will have access to at least one disabled car parking space with 64 resident disabled spaces provided. The access consultant has also recommended that at least 1 visitor space should be designed as a disabled space. Compliance with this requirement has been incorporated as a condition of consent.

**(Refer All stages Condition No 2.3)**

## **Gosford Planning Scheme Ordinance**

### **Objectives of Zone**

Clause 10(3) of the Gosford Planning Scheme Ordinance stipulates that consent must not be granted for development of land within the prescribed zone, unless the objectives of the zone have been taken into consideration in conjunction with the objectives of the Local Government Act 1993, pertaining to Ecologically Sustainable Development.

In this instance, it is considered that the proposal is consistent with the stated objectives of the Residential 2(a)-GPSO Zone and 3(a) General Business zone as well as being consistent with the principles of Ecologically Sustainable Development, as specified within the Local Government Act 1993.

### **Refer Attachment 3 Figure 5: Zoning Map**

### **Character**

Clause 10(4) of the Gosford Planning Scheme Ordinance stipulates that the Council must not grant consent for development unless it has taken into consideration the character of the development site and the surrounding area, where, for the purpose of this provision, character means the qualities that distinguish each area and the individual properties located within that area.

Development Control Plan 159 - Character, requires development applications to demonstrate consistency or compatibility with the development objectives as defined by the relevant "Statement of Desired Character". The relevant desired character statement - Daleys Point 5: Medium Density Hillside, stipulates a number of development objectives which are reproduced below:

*"These areas should remain medium-density residential hillside where improved standards of amenity and urban design quality are achieved."*

#### Scenic Quality /Landscaping

- *Maintain the existing informal scenic qualities of hillside properties and road verges by site planning that conserves visually-prominent trees.*
- *Surround new developments with leafy gardens that retain natural slopes along all boundaries, providing space for new shady trees and shrubs, and avoiding the appearance of long or continuous buildings.*
- *On the steeper properties, use low-impact construction such as framed structures with suspended floors and decks that are elevated above basement parking, rather than extensive cut-and-fill that requires tall retaining walls or steep driveways.*
- *Plant a combination of trees and shrubs that are mostly indigenous along all property boundaries and through courtyards, and use hedges or front fences that are low or see-through rather than tall and opaque.*

#### Built Form

- *Minimise the scale of new buildings and retain a proportion of the panoramic views that are available from any neighbouring property by using strongly-articulated forms,*

*including floor-levels that are stepped to follow natural slopes plus facades that vary in shape and height.*

- Any facades that are taller or longer than buildings on neighbouring properties should be screened by a combination of extra setbacks and balconies or verandahs.*
- Roofs should be gently-pitched to minimise the height of ridges, and flanked by wide eaves that disguise the scale and bulk of exterior walls.*
- Parking is preferable in basements or open carports, rather than in wide garages that would accentuate building bulk, dominate visible facades or require steep driveways.*
- A "light-weight appearance" is preferable for all visible facades to minimise their scale and bulk, incorporating walls of windows that are shaded by framed balconies or verandahs plus exterior sunscreens, some painted finishes and sheet or board cladding rather than extensive plain masonry. Where dwellings face a street or common access-way, provide a traditional "street address" with visible verandahs, living rooms and front doors.*
- Screen any driveways, terraces, courtyards and balconies to protect the privacy and amenity of neighbouring dwellings."*

### **Assessment Comment**

The proposed development is generally consistent with the desired character objectives set out above. In particular, the buildings are stepped to follow the natural slopes, incorporate basement car parking, have roof forms that are highly varied and gently pitched, retains views and have leafy surrounds with landscaping that retains the natural slopes with appropriate screening. A light weight appearance is achieved by the use of balconies, varied roof forms, fin walls, a varied colour scheme and ground floor porticos.

Initial concerns were raised by Council in relation to the following design issues:

- Appearance of a long and continuous built form of co-joined buildings L2 and L3 over 110m long and lack of physical separation and visual break;
- Landscape provision: opportunity for planting additional mid height trees, native canopy tree plantings and privacy screening to low level courtyards
- Design of community building car park, dominance of car park level and treatment of the front NW corner of site (Empire Bay Drive and Peridon Avenue).

These issues have been adequately addressed by the submission of amended plans which have made the following changes:

#### **1. Building separation and physical break**

*Applicant's response:*

*"The architectural and landscape plans in Attachments 3 and 4 show mature trees to be planted in regular rows of three perpendicular to the street. These are adjacent to the bedrooms of Building L3 at a regular separation distance and around the corner of Peridon Avenue and Empire Bay Drive. Previously the landscape design envisaged smaller scattered trees along the building frontage. The revised landscape design will significantly soften the appearance of Buildings L2 and L3, as can be seen in the Photomontage provided refer attachment To accentuation the middle of Building L1 and the join between Buildings L2 and L3, the blade walls extending from each lift lobby have been extended out from the building to improve the visual break between the two axis of the development."*

#### **2. Building setback and landscape provision**

*Applicant's response:*

*"The revised landscape drawings contained in Attachment 4:-*

- Identify new tree planting to the east of Buildings L2 and L3 to assist in the visual separation of the proposal and the existing buildings;*

- *Identify street tree planting further setback from the street than previously shown and accommodated with the properties boundaries. The proposed trees will be native canopy trees to create an attractive character along Empire Bay Drive; and*
- *Contain a section plan showing the proposed treatment of the cutting behind Buildings L2 and L3. In this regard, there would be a retaining wall between the car parking and the courtyards and there would be internal tree and shrub plantings within each courtyard."*

### 3. Design of community building L1/Car Park - Corner Empire Bay Drive/Peridon Avenue

#### *Applicant's response:*

*"The manner in which the proposed development presents to the corner of Peridon Avenue and Empire Bay Drive has been revised in order to provide a more desirable identify and activation for the development and add visual interest to the streetscape. The improvements are identified in the revised architectural and landscape drawings in Attachments 3 and 4. The improvements to the corner include a reduction and relocation of car parking spaces and the addition of visually prominent stairs at the corner. The staircase and associated landscaping guides pedestrians along two distinct tree-lined axis, a part of which contains outdoor seating, to gain entrance to Building L1.*

*The improvements have resulted in a net reduction of 3 car parking spaces across the development. The development now makes provision for a total of 80 off-street parking spaces. This results in a 'surplus' of 12 parking spaces when assessed under Council's DCP 111 and the Seniors Housing SEPP. It is proposed that these 12 spaces be used by visitors to The Cove."*

Following changes made to the design with the submission of amended plans, it is considered that the proposal does not detract from the character of the immediate locality.

### **State Environmental Planning Policy No. 65 (SEPP 65) - Design Quality of Residential Flat Development**

SEPP 65 applies to the erection of a new residential flat building comprising three or more storeys and four or more self contained dwellings. The proposal comprises residential building of 3 or more storeys containing 61 self contained dwellings. The design and assessment of the proposed development is therefore subject to the provisions under SEPP 65.

The proposal was referred to the Central Coast Design Review Panel on 29 April 2009 a copy of the minutes in relation to the ten SEPP 65 Design Quality Principles is summarised as follows:

#### **SEPP 65 - CCCR Panel Comments**

##### **Panel's Recommendation**

*B Recommend design modifications prior to reconsideration of the Development Application by the Consent Authority based on the following issues:*

##### **Panel's Comments**

*"The Panel acknowledges that there is a master plan for redevelopment for the total Cove Village site west of Empire Bay Drive. Concern is raised that the subject application for approval of buildings L1, L2 and L3 should not prejudice the redevelopment and site planning of building M and in turn building N and in particular that part of the site (rear 25% and associated boundaries) which needs to be single storey to comply with the requirements of the seniors living SEPP and bushfire hazard concerns.*

### Context

- *Despite the concerns regarding the master plan mentioned above, the Panel generally supports the proposal for buildings L1, L2 and L3 as they would reasonably fit within the existing and desirable future context of the locality. This report will focus on issues related to built form, landscape and amenity issues that should be addressed in further development of the design.*
- *The Panel would have preferred to see a contextual massing model for the overall master plan proposal as a design tool and to help explain the total development for assessment.*
- *The design requires modification to ensure that the site development satisfies the desired future character for medium density hillside sites (Daleys Point 5). In particular, the desired future character calls for the conservation of visually prominent trees, avoiding the appearance of long or continuous buildings and that façades should avoid extensive plain masonry and that driveways should be screened.*

### Scale

- *The Panel generally agrees with the proposed three storey forms, however would prefer to see a stepping down to two storeys of the three buildings particularly as they relate to boundaries and future stages.*

### Built Form

- *One of the primary concerns with the proposal is how the development presents to the corner of Empire Bay Drive and Peridon Avenue. A raised car park, blank wall and car park entry is unacceptable as a street presentation on this significant corner.*

*It is suggested that the car park, level B1 and level 1 podium area be redesigned to provide an active frontage to both streets particularly at the corner. This could be achieved by sleeving the car park storey with appropriate related uses (this could include cafe, coffee shop or other appropriate retail usage) fully integrated with the site planning and accessible from the public domain and the development.*

- *The other important issue regarding built form is related to stages 1 and 2 (buildings L2 and L3). It would be desirable to create a physical break within the length of the co-joined buildings L2 and L3 at the point of change of direction of the overall envelope. This would help to relieve the excessive visual length and bulk of the envelope and also ease the building separation concerns at the point where stage 1 envelope converges towards building L2/L3. In addition, such a break will provide improved cross site access, natural breezes, views through and within the site and better safety and security through passive surveillance.*
- *Ground floor units, wherever possible should face the street or primary pedestrian address providing visible entries to individual units.*

### Density

- *It is acknowledged that the numerical density is satisfactory however some modification/reduction in building envelope may be required to satisfy the concerns raised in this report."*

## Architect's Comments

*"The applicant has made a number of amendments to address the issues raised by Council and the SEPP 65 Design Review Panel.*

- 1. The public area on the corner of Empire Bay Drive and Peridon Avenue has been redesigned with a new staircase connecting the street to the community centre. The entry area has also been redesigned to relocate the parking area and increase usable public and landscaped area. (Refer Attachment 3 Figure 2: Architects Streetscape View of Proposal).*
- 2. Landscaping has been amended to add some large trees within the site to screen the main road from the development and improve the streetscape.*
- 3. The continuous appearance of Stages 2 and 3 has been disguised by the addition of extra landscaping including some large trees at the rear of the building and trees located at the front of the building adjacent to bedrooms so as not to block views from the living areas. (Refer Revised Landscaping Plans Attachment 2)*
- 4. The privacy concerns regarding overlooking of lower floor units from the parking area has been addressed by the addition of extra landscaping.*

*The amendments have significantly improved the application and it is considered to satisfy all architectural concerns. "*

## Amenity Impacts

### Privacy

The proposal will not have any external privacy impact on neighbouring properties with proposed buildings contained within the established retirement village and well setback from property boundaries. In general, internal overlooking opportunities have been minimised by building separation avoiding living room windows which face each other, use of fin walls in balconies and landscaping treatment to screen views from the road and access driveways.

Council initially raised concerns in relation to the loss of internal privacy from lower sunken garden courtyards of the lower floor units being overlooked by adjoining roadways and between the pedestrian pathways and some ground floor units. The applicant was advised that such concerns should be addressed with privacy screening or additional landscaping treatment.

In response to this issue, the applicant has advised that: *"In the case of the eastern most courtyards for Buildings L2 and L3, the eastern entries to Buildings L2 and L3 are likely to be used relatively infrequently because of the small number of car parking spaces east of the buildings. The overwhelming majority of residents will be using the basement car parking and therefore using the central lift lobbies. Providing privacy screening or additional landscaping would compromise the solar access of the courtyards. A 1m high wall sits alongside the courtyards to eliminate views from the roadway, but close views would remain as an offset for good solar access. Refer to the revised landscaping plans (Attachment 2) which contain a section of the relevant typical courtyard; and in the case of the western courtyards for Buildings L2 and L3, between each courtyard will be a privacy screen and on the western side of the courtyards will be shrub planting. Views from the adjacent pathway to the courtyards are anticipated, and that is part of creating a friendly and inviting development for seniors with passive surveillance."*

It is considered that the development has no significant adverse impact on privacy of existing or future residents of The Cove.

## **Solar Access and Overshadowing**

The shadow diagrams submitted with the application demonstrate that the proposal will not have any significant overshadowing impacts on the adjoining development or open space areas within the site. A minimum of 93% of the apartments will receive more than 3 hours of solar access in mid winter, which is compliant with the minimum rate specified under the Residential Flat Design Code of 70% of units.

## **View Loss**

The proposal is not compliant with the height (NGL to ceiling topmost floor) development standard under clause 40(4) of SEPP - Housing for Seniors or People with a Disability) 2004. In order to consider whether the height of the proposed buildings is appropriate in terms of amenity impacts, further information was required from the applicant to address potential view loss to immediately adjoining buildings within the development site itself and surrounding dwellings. In particular view loss of Brisbane Water and surrounding natural foreground views from lower and upper balcony areas of the existing apartment buildings and dwelling which may arise as a result of the ridge height of buildings L2 and L3 were required to be addressed.

In response to these requirements the applicant has submitted a view analysis identifying view corridors available from surrounding development and any view loss, lines of sight (standing position). Photographs are provided of the available views from four balconies on the building behind proposed Building L2 where views are affected by the proposed development

The applicant advises that: *"the balconies affected relate to the following units of the building behind:-*

- Unit 145, lower level, south-west corner;
- Unit 153, upper level, south-west corner;
- Unit 151, lower level, north-east corner; and
- Unit 159, upper level, north-east corner.

*Each balcony has an existing view down the hillside to Brisbane Waters, St Huberts Island and the mountains around Kariong, Woy Woy Bay and West Gosford. Views from Units 145 and 151, being the lower levels, are currently obstructed by trees and existing buildings on the lower side of The Cove Retirement Village. Units 145 and 151 do not have land/water interface views of the Daley's Point coastline. They do have partial views of the St Huberts Island coastline. Unit 145 is currently vacant. Being at the lower level behind Building L2, views from Units 145 and 151 would be interrupted by any development greater than a single storey in the foreground. Views from Units 153 and 159 are views above the existing trees and retirement buildings on the lower side of The Cove. These balconies do not have views to the land/water interface of the Daley's Point coastline. However, they do have excellent views of the water and the St Huberts Island coastline."* **(Refer Attachment 7: Applicant's View Impact Photographs)**

The applicant has also provided an analysis of the proposal in accordance with the view sharing and planning principles established by the Land and Environment Court in *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140.

**(Refer Attachment 6: Applicant's View Impact Assessment)**

## **Assessment Comment**

The first floor balcony areas of Units 141 and 145 will completely lose existing available water views as a result of the proposal. However such view loss is unavoidable as any building over single storey in height including a fully complying development would have an impact on the lower level units. The topmost level units 153 and 159 will largely retain water views with minor loss of vegetated foreground view. The extent of view loss to these units is considered to be reasonable.

The units within the development site itself which are impacted by the proposal are leased. The applicant has advised the following in relation to the ownership structure of the Independent Living Units at the Cove Retirement Village.

- *Incoming residents purchase a property (ILU) by way of Leasehold (Loan/Lease) which entitles the resident to exclusive use of their subject ILU and enjoyment of all common facilities at the premises.*
- *The Leasehold is offered over a 99 year period where Aevum maintain full ownership, the resident purchases the right to loan the subject property.*
- *Other ongoing resident costs include weekly recurrent charges and a Deferred Management Fee (DMF) which is a capped % due to be paid at the time of departure.*
- *Currently a number of the existing units are vacant. Where appropriate, these will be leased on the basis that some views will be impacted by the proposed development.*

*Also, whilst the views of some units will be impacted, we do feel that existing residents will benefit from the new common facilities that will form a part of the proposed development."*

The applicant was also advised by Council that available view corridors for future planned stages of the development should not be unreasonably compromised by the current proposal. The Central Coast Design Review Panel also noted that the current proposal should not prejudice the redevelopment and site planning of Building M and in turn Building N. In response, the applicant advises that: *"Views from potential future stages of The Cove redevelopment, relevantly Buildings M and N, will be affected in a minor way by Building L1. However, Building L1 is set on a lower level of the site and may affect only a small number of units at the southern end of future Building M. Buildings M and N are indicative at this stage and will be designed to respond to Building L1's shape (i.e. a shape that activates the corner of Peridon Avenue and Empire Bay Drive). Indicative levels for Buildings M and N relative to levels for Building L1 were included in the Masterplan Drawings in Appendix 5 of the Statement of Environmental Effects and will be further refined as future stages progress."*

Such impact will be assessed when subsequent development applications are lodged for future stages of the development and will be considered on its individual merits.

### **Noise Impact**

The Noise Impact Assessment, prepared by Acoustic Logic Consulting dated 1 December 2009 provides assessment of potential noise impacts on surrounding residents and the future occupants of the proposed development. The report identifies that high levels of traffic noise heard within habitable spaces may be disruptive to general day to day activities and conclude that with the installation of the proposed construction (measures) as detailed in the report, traffic noise levels within the proposed residential apartments will achieve the traffic noise intrusion limits and can comply with relevant standards/project noise goals. The application will be conditioned requiring compliance with the construction recommendations of the Noise Impact Assessment.

**(Refer All Stages: Condition Nos 5.5 and RTA advisory condition No.8.9.)**

### **Scenic Quality / Visual Impact**

#### Visual Impact / Building Height and Bulk (massing)

To enable assessment of the suitability of height, bulk and scale of the development within the context of its surroundings, the applicant was requested to provide additional information to assess the visual impact of the proposed development on the wooded hillside ridgeline

backdrop and surrounding development from public vantage points along the foreshore, Brisbane Water, St Huberts Island and Empire Bay Drive.

From a distance, the massing and long continuous length of buildings L1 and L2 would be more evident as these buildings would tend to visually merge without adequate physical separation or relief by landscaping (canopy tree plantings) to assist in breaking up the building mass and length. While it is recognised that the proposed buildings have a high level of articulation with varied roof form, colour scheme, building material finishes etc., such measures are less effective in minimising building bulk or creating separation when viewed from the water and more distance vantage points. Accordingly, the visual impact of the proposal on the wooded hillside backdrop from public vantage points needs to be addressed in the application.

In response to these concerns, the applicant has provided views from close and distant public vantage points with the proposed development superimposed in outline. Views along Empire Bay Drive are shown in the Photomontage and Elevations within **Attachment 8**. The close views are from St Huberts Island and give an indication of the view from Brisbane Water. The close viewing photos were taken from Rip Bridge to the south-west of the site, the southern end of Long Arm Crescent (in St Huberts Island) to the west of the site and the northern end of Long Arm Crescent to the north-west of the site.

The photomontage with development superimposed show that the development is slightly visible from the west and south-west above the existing foreshore buildings. From the north-west the development is visible above the existing foreshore buildings and trees, but still well below the scale of development further up the hillside.

The applicant advises that: *"the visual impact analysis demonstrates that the development blends with the existing form and height of development on the hillside and does not significantly affect the wooded ridgeline. The proposed building materials and finishes will also assist in blending the development with its surroundings and is a vast improvement on the existing commercial building's materials and finishes (particularly the orange coloured roof and cream coloured walls). The drawings showing the close views show an outline of the proposed development. To assist with providing relief to the form of the proposal, this response includes revised landscaping drawings that include additional tree planting along Empire Bay Drive and Peridon Avenue. The additional trees will further minimise the already minor visual impact of the development when viewed from Brisbane Water and St Huberts Island."*

The distant view photos taken from Ailfields Road and Bowden Road in Woy Woy, demonstrate that the development will not be readily distinguishable within the hillside.

#### DCP 89 - Scenic Quality

DCP 89 - Scenic Quality identifies that the subject site is located in the "East Brisbane Water Geographic Unit" and in the "Cockle Broadwater Landscape Unit". The Cockle Broadwater Unit is dominated by the Daleys Point Ridge and western side of MacMasters Ridge which forms a vegetated backdrop to the development. It is not regarded as visually enclosed and has open space between urban areas. It has a high ability to absorb new development on lower slopes, with screening provided by vegetation. The "visual sensitivity" of the area is described as generally low in all areas but high on the visible slopes, areas viewed from main roads and waterfront areas. The "development objectives" for the geographic unit relevant to the proposed development include maintenance of the broad patterns of land use and provide opportunities for increases in densities and scale in urban areas where appropriate.

"The Cove" development site is visible from Brisbane Waters and Empire Bay Road. However, it is not considered highly visually constrained. The site is zoned Residential 2(a) and Commercial 3(a) and is already developed for a retirement village and commercial building, comprising a number of medium density buildings arranged on the lower slopes. The applicant advises that: *"the proposed development seeks to continue the existing pattern of development on the site by*

*siting the new buildings on the contours and stepping down the slope to the street. The floor space ratio of the existing plus proposed development is substantially below the 0.5:1 standard for the Residential 2(a) Zone. It is noted that part of the development is on land zoned 3(a) where an FSR of 1:1 is otherwise permissible). The result of the proposed development is the addition of new buildings within an underutilised portion of the site within an established urban area partially zoned as a local commercial centre. Focussing development within and adjacent to an existing commercial area with good access and within an existing developed area is consistent with DCP 89 and preferable to other forms of development such as "ribbon development" or an incremental extension to the existing urban area."*

The applicant has adequately demonstrated that the proposal will not have a dominant visual impact which would detract from the bushland hillside backdrop when viewed from public vantage points including Brisbane Water and foreshores.

### **Environmental Impact**

The proposed development includes the removal of trees, the excavation of land and the creation of a riparian and buffer zone from a creekline to the south. The ecological impacts of the development are addressed in the Ecological Assessment report, prepared by Keystone Ecological. The report finds that the development is not likely to have a significant impact upon threatened species and a Species Impact Statement is not required. The Ecological Assessment also addresses the creation of a creekline riparian zone and buffer zone to the natural downward gully at the southern end of the site. The proposed improvements to the gully will involve the management of weed species and will not require the removal of any existing native trees.

### **Environment Officer's Assessment**

Council's Environment Officer has provided the following assessment advice:

#### "SEPP 55

*A Phase 1 Environmental Site Assessment (ENSR Australia Pty Ltd, 16 January 2009) considers there is low potential for significant contamination to be present at the site. Notwithstanding this low potential, the Phase 1 report recommends that a detailed or Phase 2 Environmental Site Assessment be undertaken to confirm the findings of the Phase 1. Conditions of consent are attached that address this requirement.*

**(Refer All Stages: Condition No 2.11 and 5.17)**

#### Acid Sulphate Soils (ASS)

*The subject site has not been mapped as containing a potential ASS risk although soil sampling undertaken as part of geotechnical investigation has revealed the presence of weak alluvial soils that may have the potential to generate ASS. Based on this additional testing for ASS will be required and a condition addressing this is attached below.*

**(Refer All Stages: Condition No.2.10)**

#### Ecological & Riparian Issues

*No threatened species, populations or ecological communities have been recorded from the subject site. This finding was confirmed during a recent inspection of the site. Given this, I am satisfied that the proposed development is unlikely to lead to a significant impact on threatened species, populations, ecological communities or their habitats and that a Species Impact Statement is not required to support this application.*

*In respect to riparian protection the application proposes to manage a core riparian zone and buffer along the northern side of the drainage channel that adjoins the southern boundary of No. 24. This riparian management zone is referred to as the alternate core riparian zone and vegetated buffer with the core riparian zone covering the gully to the top of bank with a additional 2m buffer of vegetation. All bushfire asset protection will be accommodated outside of the area. The core riparian zone and vegetated buffer area shall be managed under a*

*Vegetation Management Plan (VMP). The main management issue is weed control with the two main weed species identified as Lantana and Black Locust. A condition of consent is provided addressing VMP requirement.*

**(Refer Stage 3 Condition No 2.4)**

#### Conclusion

*The objectives of the relevant policies, zoning objectives and potential environmental impacts associated with the proposal have been considered. No objection is raised to the proposal subject to the attached conditions being included within any consent granted."*

#### **Tree Management**

Vegetation on the site comprises predominantly cleared and mown grass with scattered trees. The proposed development will involve the removal of trees around the existing commercial building and maintenance of a riparian zone, buffer zone and asset protection zone within the bushland setting south of the site. The impacts of the development on the existing trees is considered in the Arboricultural Assessment, prepared by Australian Tree Consultants. A total of 34 trees within the area of the site being redeveloped will require removal.

The report indicates that many of the existing trees and shrubs within the site are in poor to fair condition, some present fall hazards and some have been inappropriately planted or maintained. The report suggests that there is an opportunity to renew and improve the property with staged replanting of the property with more appropriate species, selected to take into account the nuances of the site.

Only 2 trees are considered of "high" retention value. These are two Swamp Mahogany trees (Tree No's 132 and 133) located along Empire Bay Drive. However, the proposed development seeks to remove all trees and create a consistent new landscape character for the site with additional street tree plantings and replacement plantings will be introduced to the site in locations where screening, softening and amenity are required.

#### **Tree Management Officer's Comments**

Council's Tree management officer has reviewed the plans and arborist report and has provided the following assessment:

##### "Tree Removal

*The subject application has been assessed and noted that all existing trees now appear to be nominated for removal. Considering the scale of the development and the opportunity to re-landscape the site, it is considered acceptable that all existing trees would require removal and replacement.*

##### Landscape Plans Replacement Tree Plantings

*The amended landscape plans have been considered and noted that Tuckeroo are proposed along Peridon Avenue and Podocarpus along Empire Bay Drive.*

*Species selection is considered satisfactory as it nominates lower height species (Tuckeroo) for under power wires and the potentially larger species (Podocarpus) which would provide greater screening along Empire Bay Drive.*

*It was noted that tree symbols on the north-west corner of the development have not been labelled, however it is fair to assume that they will continue the avenues of Tuckeroo and Podocarpus.*

*Other smaller native tree species to be used within the development such as Banksia and Lilly pilly are satisfactory."*

## **NSW Office of Water (Integrated Approval Body)**

The development includes the creation of a riparian zone within the northern side of a natural creek line at the southern end of the site. The proposal is an integrated development under Section 91 of the EP&A Act and requires separate approval (Controlled Activity Approval) under the *Water Management Act 2000*.

The NSW Office of Water has provided their General Terms of Approval (GTA) for "works" requiring a Controlled Activity Approval under the *Water Management Act 2000* on 15 February 2010 and has recommended that the following condition be included in the development consent: *"The Construction Certificate will not be issued over any part of the site requiring a Controlled Activity Approval until a copy of the Approval has been provided to Council"*.

**(Refer All Stages: Condition No. 7.8 and Attachment GTA for Controlled Activity Approval)**

## **Comments - Department of Environment, Climate Change and Water**

The Department of Environment, Climate Change and Water were notified as adjoining owners (Bouddi National Park) and the following comments were received during the public submission period:

1. *"Our records show that a number of threatened species are likely to occur in the area including the Bush Stone-curlew, Yellow-bellied Glider and Southern Brown Bandicoot"*
2. *There are a number of Aboriginal sites (particularly shell deposits / middens) near the proposed site. A thorough archaeological assessment will need to occur prior to approval.*
3. *In order to minimise any direct or indirect impacts on Bouddi National Park, it is suggested that GCC consider the attached document which provides guidelines for development applications which adjoin NPWS reserves. "*

## **Assessment Comment**

Further stages of the development as shown on the master plan may necessitate preparation of an archaeological assessment. However the current proposal does not warrant the preparation of such studies as the proposed development which is subject of this application will be confined to previously disturbed areas of the site, located on land which has been significantly disturbed in the past with cut and fill associated with the construction of the existing buildings and driveways. A condition has been imposed requiring consultation with DECCW if aboriginal objects are uncovered during site works.

The proposed development will involve the removal of trees around the existing commercial building and maintenance of a riparian zone, buffer zone and asset protection zone within the bushland setting south of the site. The application is accompanied by a Ecological Report to consider the impact of the proposal on any significant flora and fauna species. The ecological report also addresses the impact of the proposal on the potential for 6 identified threatened species of cockatoo, owls and bats and finds that the proposed development is unlikely to impose a significant adverse impact on any of these species. Council's Environment Officer has advised that a Species Impact Statement is not required to support this application.

The proposal will involve the removal of 34 trees and the application is accompanied by an Arborist report which comments on the health and condition of existing trees and recommendations for removal and management. Council's tree management officer has raised no objection to the removal of these trees and replacement tree plantings.

## **State Environmental Planning Policy (SEPP) No 71- Coastal Protection**

The provisions of State Environmental Planning Policy (SEPP) No 71- Coastal Protection requires Council consider the Aims and Objectives of the SEPP together with the matters for consideration listed in Clause 8 of the SEPP when determining an application within the Coastal Zone. The Coastal Zone is an area defined on maps issued by the Department of Planning NSW. The subject property is classified as being within a coastal zone and is partly within a sensitive coastal location being within 100m of Brisbane Water estuary.

The Aims and Objectives and the matters listed under Clause 8 have been considered and the application complies with the provisions of the SEPP.

### **Climate change and sea level rise**

Climate change and sea level rise have been considered in the assessment of this application.

Climate change and sea level rise will be felt through:

- increases in intensity and frequency of storms, storm surges and coastal flooding;
- increased salinity of rivers, bays and coastal aquifers resulting from saline intrusion;
- increased coastal erosion;
- inundation of low-lying coastal communities and critical infrastructure;
- loss of important mangroves and other wetlands (the exact response will depend on the balance between sedimentation and sea level change); and
- impacts on marine ecosystems.

Internationally there is a lack of knowledge on the specifics of climate change and the likely impact it will have on the subject development. Government action may mitigate the impact of climate change and the question of sea-level rise may be able to be addressed through the construction of containment works or through Council's policies that may be developed over time.

In the absence of any detailed information at the present however, refusal of this application is not warranted.

### **Flooding & Drainage**

The land is identified as being affected by Brisbane Water Foreshore Flooding Study and Council's Flood Management Policy. Council's Development Engineer has advised the following:

*"The proposed development is bounded by a Peridon Avenue (north), Empire Bay Drive (west), existing development (east) and vacant land to the south. South of the vacant land is a watercourse and a basin that drains across Empire Bay Drive. Investigation was carried out by the Applicant's flooding and drainage consulting engineer to determine what impact a blockage of the outlet from the basin would have on the proposed development. It was found that the majority of stormwater will spill across Empire Bay Drive and a small portion of it will remain within the capacity of the kerb and gutter and roadway and be conveyed northward towards Peridon Avenue.*

*It was a concern of the previous flooding and drainage officer that ponding will occur within Peridon Avenue and thus potentially flood the basement car park of the proposed development. The Applicant's consulting engineer also investigated this and determined that ponding will occur and then the water will spill across Empire Bay Drive. A freeboard of 300mm was added to the 1% AEP water level at this location to determine an appropriate crest level for the access ramp to the basement car park. 300mm was considered adequate, since the weir is broadcrested and has ample capacity to convey flows."*

*The 149 certificate messages identifies an easement to drain water on Lot 104. This easement denoted is proposed to be extinguished. This easement currently provides drainage in favour of Lot 105 DP 771785 over Lot 104 DP 771785. Stormwater is managed as part of a site wide strategy and since the development stretches over these two lots, the easement is redundant."*

### **Geotechnical Requirements**

The application is accompanied by a preliminary Geotechnical Assessment report, prepared by Douglas Partners to obtain general subsurface information at the site and to provide preliminary engineering comment on site preparation measures, geotechnical advice for excavation conditions and support, and suitable footing systems. The Geotechnical Report has confirmed the need to support the buildings on suitably solid bedrock, therefore excavation for the structural piles is likely to be deep (up to 5.5m). However, the depth of the remaining excavation will extend only to the depth of the car parking levels. The Geotechnical Report also identifies the presence of groundwater at depths of around 4.5m, therefore the excavation of the development may encounter groundwater and the site may need to be dewatered during the construction process. A detailed geotechnical report prepared in accordance with DCP 163-Geotechnical requirements which addresses the recommendations of the preliminary report will be required once the design of the development has been progressed, prior to the issue of a Construction Certificate.

**(Refer All stages Condition No. 2.12.)**

### **Integrated Development (Bush Fire Safety Authority) - NSW Rural Fire Service Comments**

"The application is accompanied by a *Bushfire Hazard Assessment Report*, prepared by Building Code and Bushfire Hazard Solutions Pty. Ltd., Reference No 80252B, dated 17 December 2009 to address the requirements under *Planning for Bush Fire Protection 2006*.

The land is identified as bush fire prone land on Council's BPL maps containing Category 1 vegetation and the proposal is classified as a special fire protection purpose. The proposal is an integrated development under Section 91 of the EP&A Act and requires separate approval (Bush Fire Safety Authority) under Section 100B of the Rural Fires Act 1979. The NSW Rural Fire Service have provided their General Terms of Approval for a bush fire safety authority, subject to conditions of consent relating to asset protection zones, water and utilities, access, evacuation and emergency management, design and construction and landscaping. The whole site is required to be managed as an Inner Protection Area with Level 1 construction required."

**(Refer All Stages Condition No. 7.1 to 7.7)**

The required APZs will extend across lot boundaries other than those lots containing proposed buildings L1, L2 and L3. In addition, compliance of the proposal with the height development standards related to site boundaries under Seniors SEPP 2004 relies on adjoining allotments which form part of "The Cove" Retirement Village development site. As such, consolidation of these allotments (Lots 9 DP 261583, Lot 224 DP771755, Lot 104 DP771785 and Lot 105 DP 771785) will be required prior to the issue of an Occupation Certificate should the development be approved.

**(Refer Stage 1: Condition No.4.2)**

### **Comments NSW Police - CPTED Assessment and Safer by Design Crime Risk Evaluation**

The proposal comprises a senior living development with over 50 or more dwellings and the application was referred to NSW Police to comment on crime prevention through environmental design (CPTED) and "Safer by Design" principles

Brisbane Water Local Area Command has conducted a *Safer by Design Crime Risk Evaluation* on the proposed development. The assessment has considered the four key strategies of CPTED (surveillance, access control, territorial re-enforcement and space/activity arrangement)

and a number of considerations were identified which relate to lighting, vegetation and landscaping, use of anti graffiti paint, restricted access controls at building entrances and basement car parks. These requirements have been incorporated as a condition of consent **(Refer All Stages Condition No.4.4)**.

### **Draft Gosford Local Environmental Plan 2009**

The application has been assessed under the provisions of Draft Gosford Local Environmental Plan 2009 in respect to zoning, development standards and special provisions. The land containing the retirement village will be zoned part B2 Local Centre and Part R2 Low Density Residential. "Seniors Housing" is permissible with consent in the R2 and B2 zones. The proposal is compliant with the floor space ratio controls which range from 0.5:1 (R2) and 0.75:1 (B2 zone) and is non compliant with maximum height controls applicable to the site (i.e. maximum 8.5m natural ground level to highest point of building).

Although not entirely consistent with the height provisions under the Draft LEP, the proposal is considered to have an appropriate height and scale and is subject to the height development standards under the Seniors SEPP.

### **Traffic Impact: Relevant Provisions SEPP (Infrastructure) 2007**

The proposal is subject to the provisions under SEPP (Infrastructure) 2007 - Division 17- Roads and Traffic Development and Schedule 3 Traffic Generating development as the proposed has access within 90m of a classified road under the control of the RTA and has car parking for more than 50 vehicles. The applicant has submitted a *Traffic and Parking Assessment report*, prepared by Varga Traffic Planning Pty Ltd which provides detailed comments regarding the impacts of the development on the local traffic network, the suitability of the proposed car parking and comments on the geometric design of the parking facilities.

The Traffic Impact Assessment finds that a more than adequate amount of car parking is provided and that the development will not have any significant impact on the efficiency of the local road network. With the introduction of traffic signal control at the corner of Empire Bay Drive and Peridon Avenue, vehicle access and pedestrian access from one side of The Cove to the other will be significantly improved.

The application including traffic report was submitted to the RTA. The traffic report recommended that the intersection between Empire Bay Drive and Peridon Avenue be signalised, to which the RTA has agreed.

### **RTA Comments**

The RTA raise no objections to the current proposal subject to conditions, which have been incorporated as engineering conditions of consent where appropriate.

**(Refer Condition No. All stages 2.8, 2.9, 7.9, 8.9 to 8.12 and Stage 1: Conditions 2.1, 2.2, 3.1 and 4.1)**

### **Public Submissions**

Three (3) public submissions were received in relation to the application. Those issues associated with the key issues have been addressed in the above report. The remaining issues pertaining to various concerns were addressed in the assessment of the application pursuant to the heads of consideration contained within Section 79C of the Environmental Planning and Assessment Act 1979.

A summary of the submission is detailed hereunder.

1. **Future extent of development and overcrowding of the site**

Comment

Future development as indicated in the Masterplan is indicative only and may not occur. The proposal has been assessed on its individual merits in accordance with the matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979. Future stages of the development will be subject to further development applications and the cumulative impact of development will be addressed in these future stages.

2. **Use of Yugari Crescent for access, safety for residents**

Comment

Vehicle access to the proposed buildings is via Peridon Avenue.

3. **Density incompatible with low density environment**

Comment

The density and scale of the proposed development is not considered excessive and is compliant with the maximum floor space ratio requirements (i.e. 0.5:1) under the Part 7 Division 4 Clause 50 of SEPP (Housing for Seniors or People with a Disability) 2004.

4. **Visual impact on foreshore**

Comment

The proposal is not considered to be excessive in scale or visual bulk when viewed from public foreshore vantage points (Brisbane Water) as demonstrated by the visual impact analysis and photographs submitted by the applicant. The proposed colour scheme and external finished have been chosen to blend with the natural bushland landscape surrounding the sites.

5. **Out of character in terms of density, limited open space trees and gardens, visual impacts not in keeping with the neighbourhood of Daleys Point the cramming of so many multi-storey buildings on such a small area, with little room for open spaces, trees or gardens would ruin the natural beauty of Daleys Point.**

Comment

The proposal is considered to be consistent with the desired character objectives for the locality under DCP 159, following submission of amended plans. (Refer previous section of report on Character). The design and site planning of the proposal responds to the context of its site and the application demonstrates adequate consideration of the design quality principles under SEPP 65 and Seniors Living Policy Urban Design Guidelines for infill development and requirements under SEPP 2004,

6. **Extent of proposed development, Increase in population, undesirable increase in vehicle traffic and general noise levels for local residents**

Comment

The proposal is compliant with the density controls applicable to the land and is consistent with planned population goals for the locality. The additional residents will not generate any significant adverse traffic and noise impacts.

7. **Strain on infrastructure and utilities place a real strain on present infrastructure and utilities in the Woy Woy area**

Comment

The proposal makes adequate provision for services and infrastructure to service the demands for the proposed residents including water, sewer, telecommunications and electricity.

8. **Lack of infrastructure in the area, no local shopping facilities within walking distance, direct bus transport limited, shortage of medical services/hospital services.**

Comment

There is presently a lack of local shopping facilities within walking distance of the site. However the proposal is serviced by a regular bus service to Woy Woy and Ettalong town centre and facilities at Kincumber. The Cove retirement village also provides a courtesy bus for residents for organised shopping trips.

Residents of the existing retirement village and the proposed development have access to local medical services at Gosford and Wyong hospitals and associated health support services. The proposed development will have a multi-purpose medical consulting room for periodical visits by GPs, chiropractors, physiotherapists and the like.

The proposal satisfies the site related requirements under clause 26 - location and access to facilities of SEPP (Housing for Seniors or People with a Disability) 2004.

9. **Detrimental impact on existing (retirement village unit occupant) loss of water views, outlook over roofs diminished.**

Comment

The proposal will result in a significant view loss (water views) from balcony areas of lower first floor units located immediately behind proposed Building L2 located within the Cove retirement Village. Such view loss is unavoidable as such units would be impacted by any development greater than a single storey and cannot be maintained by a more skilful design without compromising the development potential of the site. The applicant has submitted a view impact assessment which is considered in previous section of the report and attachments.

10. **Traffic hazard entry and exit Empire Bay Drive**

Comment

The Traffic and Parking Impact Assessment prepared for the DA addresses the suitability of the Peridon Avenue access onto Empire Bay Drive. The intersection will be signal controlled and will not have any significant hazards to entry and exit to/from Empire Bay Drive.

**11. Bush Fire Risk**

Comment

The bushfire hazard near the proposed development is addressed in the Bushfire Hazard Assessment prepared by Building Code and Bushfire Hazard Solutions . The NSW Rural Fire Service has issued a deemed Bushfire Safety Authority for the development under Section 100B of the Rural Fires Act 1997.

**12. Type of accommodation and zoning. Is the current zoning for the type of accommodation on this site being changed?**

Comment

The proposal is permissible with consent in the 2(a) and 3(a) zones under the provisions of clause 4 (1) of SEPP (Housing for Seniors or People with a Disability) 2004.

The SEPP applies to *"land within New South Wales that is land zoned primarily for urban purposes or land that adjoins land zoned primarily for urban purposes, but only if:*

*(a) development for the purpose of any of the following is permitted on the land:*

*(i) dwelling-houses,*

*(ii) residential flat buildings,*

*(iii) hospitals,*

*(iv) development of a kind identified in respect of land zoned as special uses, including (but not limited to) churches, convents, educational establishments, schools and seminaries, or*

*(b) the land is being used for the purposes of an existing registered club."*

**13. Why does the accommodation require 3 bedroom units in a complex for seniors housing?**

Comment

The proposal will comprise 8x 1-bedroom units, 31x 2-bedroom units and 22x3bedroom units, providing a range of housing choice for future residents. Additional bedrooms may be used by overnight guests/carers or other purposes study, hobbies etc.

**14. Who will determine or supervise**

**a. eligibility to reside in the housing,**

**b. the number of residents per unit and**

**c. the general management and maintenance of the property?**

Comment

The proposal is required to comply with Clause 18 - Restrictions on occupation of Seniors Housing and is controlled by conditions of consent requiring a Section 88E restriction as to user to be registered against of the subject property limiting the use of any accommodation to which the application relates to the kinds of people referred to in Subclause (1.) - **(Refer Condition No all stages Condition 5.16a.)** The development is owned and operated by Aevum Limited who currently own and manage 21 retirement villages nationally.

**Conclusion**

The proposed development is for additional seniors housing as part of the existing "The Cove" Retirement Village in the form of 61 self-care apartments across three new buildings.

The application has been assessed in accordance with the relevant matters for consideration under Section 79C of the Environmental Planning Assessment Act 1979, relevant provisions of the Gosford Planning Scheme Ordinance, relevant SEPPs and DCPs. The proposal is permissible with consent under the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 and generally complies with the relevant planning and environmental controls relating to the site and is consistent with the desired character and zone objectives for the locality. Strict adherence to the maximum height control under the SEPP is considered to be unreasonable and unnecessary in the circumstances of the case and the SEPP I objection to vary the standard is considered to be well founded.

The proposal is integrated development under Section 91 of the Environmental Planning and Assessment Act. The NSW Rural Fire Service has issued their general terms of approval for a Bush Fire Safety Authority under S100B of the *Rural Fires Act 1997* and the NSW Office of Water have issued their GTAs for a Controlled Activity Approval under the *Water Management Act 2000*. The application has been referred to the RTA under the provisions of SEPP (Infrastructure) 2007, who have raised no objections to the proposal subject to compliance with conditions of consent.

The proposal will improve the existing living environment for senior residents, providing on site community facilities and high quality housing which is consistent with the design quality principles under State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development. The additional units will increase the provision in the region for independent living units for aged persons to respond to the growing demand for such housing within the region.

Having regard to the relevant heads of consideration listed in Section 79C of the Environmental Planning and Assessment Act, 1979, the proposal is considered to be reasonable and appropriate and is recommended for approval.

## **Attachments:**

Attachment 1: Architectural Plans

Attachment 2: Landscape Plans

Attachment 3:

Figure 1: Architect's elevations of proposed development

Figure 2: Architect's streetscape view of proposal, corner Peridon Avenue and Empire Bay Drive

Figure 3: Existing Streetscape - Empire Bay Drive

Figure 4: Aerial Photograph showing location of subject site

Figure 5: Gosford Planning Scheme Ordinance - Zoning Map

Figure 6: Draft LEP - Zoning Map

Attachment 4: Compliance with State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

Attachment 5: SEPP 1 Objection

Attachment 6: View Impact Assessment

Attachment 7: View Loss Photographs

Figure 7: Location of photographs taken from existing retirement building to rear

Figure 8: Existing View Unit 159 balcony (second floor)

Figure 9: Proposed View Unit 159 balcony (second floor)

Figure 10: Existing View Unit 151 (first floor)  
 Figure 11: Proposed View Unit 151 (first floor)  
 Figure 12: Existing View Unit 153 (second floor)  
 Figure 13: Proposed View Unit 153 (second floor)  
 Figure 14: Existing View Unit 153 (second floor)  
 Figure 15: Proposed View Unit 153 (second floor)  
 Figure 16: Existing View Unit 145 (first floor)  
 Figure 17: Proposed View Unit 145 (first floor)  
 Figure 18: Existing View Unit 145 (first floor)  
 Figure 19: Proposed View Unit 145 (first floor)

#### Attachment 8: Visual Impact Photographs

Figure 20: View of proposed development from St Huberts Isle foreshore  
 Figure 21: Distant view of proposed development from Allfield Road Woy Woy  
 Figure 22: Applicant's Photomontage

### RECOMMENDATION

- A The Joint Regional Planning Panel assume the concurrence of the Director, Department of Planning to vary the maximum height development standard as stipulated by Part 4 Division 1 clause 40 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, pursuant to the provisions of State Environmental Planning Policy No 1 - Development Standards, to permit the development.
- B The Joint Regional Planning Panel as consent authority grant consent to Development Application No. 37972 for Demolition of Existing Commercial Building and Erection of a Seniors Housing Development Comprising 61 Self-Contained Dwellings and Communal Facilities (as part of "The Cove Retirement Village") and as a Three Staged Development on LOT: 9 DP: 261583, LOT: 224 DP: 771755, LOT: 104 DP: 771785, LOT: 105 DP: 771785, Nos. 24 to 26 and 30 to 34 Empire Bay Drive, Daleys Point, subject to the conditions attached.
- B In accordance with Section 95(1A) of the Environmental Planning & Assessment Act 1979, this consent shall be valid for a period of five (5) years.
- C The objector(s) be notified of the JRPP's decision.
- D A copy of the notice of determination be referred to integrated approval bodies (NSW Rural Fire Service, NSW Office of Water) in accordance with Section 91A(6) Environmental Planning & Assessment Act 1979, and the RTA in accordance with SEPP (Infrastructure) 2007.

### CONDITIONS

#### **ALL STAGES : THE FOLLOWING CONDITIONS SHALL APPLY TO ALL STAGES OF THE DEVELOPMENT**

#### **1.. PARAMETERS OF THIS CONSENT**

##### **1.1. Approved Plans and Supporting Documents**

The development shall be implemented substantially in accordance with the plans and supporting documents listed below as submitted by the applicant and to which is affixed a Council stamp "*Development Consent*" unless modified by any following condition.

**Architectural Plans by Marchese & Partners International Pty Ltd**  
**Landscape Plans by Sym Studio Landscape Architect**

<b>Drawing</b>	<b>Description</b>	<b>Sheets</b>	<b>Issue</b>	<b>Date</b>
DA 00.00	Cover Sheet	1	B	26.05.2010
DA 01.02	Site Analysis	2	A	16.12.2009
DA 02.01	Plan B1	3	B	26.05.2010
DA 02.02	Plan 1	4	B	03.06.2010
DA 02.03	Plan 2	5	B	03.06.2010
DA 02.04	Plan 3	6	B	03.06.2010
DA 02.05	Plan 4	7	B	03.06.2010
DA 02.06	Plan 5	8	B	03.06.2010
DA 02.07	Plan Roof	9	B	03.06.2010
DA 02.08	Plan Roof (Riparian and asset protection zones)	10	B	03.06.2010
DA 03.01	Elevation 1	11	B	26.05.2010
DA 03.02	Elevation 2	12	B	26.05.2010
DA 03.03	Elevation 3	13	B	26.05.2010
DA 03.04	Elevation 4	14	B	26.05.2010
DA 03.05	Elevation 5	15	B	26.05.2010
DA 03.06	Elevation 6	16	B	26.05.2010
DA 03.07	Elevation 7	17	B	26.05.2010
DA 04.01	Section A-A	18	A	
DA 04.02	Section B-B	19	A	
DA 05.01	Material Board	20	B	26.05.2010
DA 06.01	Shadow Diagram	21	B	26.05.2010
DA 07.01	Street View (Existing)	22	B	26.05.2010
DA 07.02	Street View (Proposal)	23	B	26.05.2010
DA 08.01	Waste Management Details	24	A	26.05.2010
AEV03-DD-101	Landscape Plan	25	E	25.06.2010
AEV03-DD-102	Landscape Detailed Plan	26	E	25.06.2010
AEV03-DD-501	Existing Tree Retention and Removal Plan	27	B	04.06.2010
100826	Staging Plan	28	01	28.08.2010

**Supporting Documentation**

<b>Document</b>	<b>Title</b>	<b>Date</b>
Ref:13435 Sheets:1, 5-12	Survey Plans (Norton Survey Partners)	03.10.2009
Job No.:07-231	Statement of Environmental Effects and SEPP 1 Objection (BBC Consulting Planners)	December 2009
ATC 09-110	Aboricultural Assessment Report and Construction Impact Assessment Report and Addendum (Australian Tree Consultants)	9 December 2009 and 24 May 2010
	Accessibility Review Morris-Golding Accessibility Consultancy	17 November 2009
	BASIX Certificate (AGA Consultants)	
	BCA Statement (BCA Certifiers)	18.12.2009
2009804/1111A/R2/HM	Noise Impact Assessment (Acoustic Logic)	01.12.2009
Ref: 09204	Traffic and Parking Assessment Report (Varga Traffic Planning Pty Ltd)	18.12.2009
Ref: 80252B	Bush Fire Hazard Assessment (Building Code	17.12.2009

	and Bush Fire Hazard Solutions)	
Project No: 41909	Preliminary Geotechnical Investigation (Douglas Partners)	November 2009
	Site Analysis Statement (Marchese & Partners)	15.12.2009
	Indicative Site Masteplan Drawings (Marchese & Partners International) * Subject to future Development Applications	11.11.2009
	Architect's Design Statement and Design Verification Statement (Marchese & Partners)	22.12.2009
	Phase 1 Environmental Site Assessment (ENSR Australia Pty Ltd)	16.01.2009
NL 090090	Stormwater Concept Plans and Stormwater Management Report (Northrop) and Additional Civil works	21.12.2009 and 26.05.2010
Project: 20955-SYD-E-1	Electrical Infrastructure Feasibility (Wood & Grieves Engineers)	16.12.2009
	Illumination Report and Lighting Plan (Wood & Grieves Engineers)	
Ref: GCC 08-209	Ecological Assessment (Keystone Ecological)	December 2008
	Waste Management Plan and Operation Waste Management Plan (JD Macdonald)	27 May 2010
DHB/RH/07-231	View Impact Analysis (BBC Consulting Partners)	04.06.2010
	Visual Analysis ( BBC Consulting Partners)	04.06.2010

## 1.2. Building Code of Australia

All building works must be carried out in accordance with the Building Code of Australia.

## 1.3. Staging

The proposed development shall be staged over three stages in accordance with the staging plan Drawing No 100826, Issue 01, dated 28.08.2010, submitted by EDM.

Stage 1: shall comprise the following works:

- Construction of Building L1 with frontage to Peridon Avenue and empire Bay Drive containing, resident community facilities and residential apartments;
- 20 resident car parking spaces within the basement
- 5 visitor car parking spaces on grade area in front of Building L1
- Associated landscaping to the east and west of Building L1 , pathways, entry steps, internal driveways and vehicle access.
- Required roadworks and Signalised Traffic Lights
- Street Tree Planting
- Garbage bin storage enclosure

Stage 2: shall comprise the following works:

- Construction of Building L2;
- Basement Car Parking for 24 vehicles,
- Remaining landscaping between Building L2 and Building L1 and to the east of building L2;
- 2 on grade resident car parking spaces and 3 on grade visitor car parking spaces to the east of building L2;

- Access driveway and pathways.

Stage 3: shall comprise the following works:

- Construction of Building L3 to the south
- Basement Car Parking for 17 Resident Vehicles
- Associated landscaping and pathways between Building L3 and Empire Bay Drive and to the east of the building,
- 4 on grade resident car parking spaces and 6 on grade visitor car parking spaces to the east of Building L3 and all remaining works.

- 1.4. Construction works associated with Stage 1 shall be completed prior to the commencement of works for stage 2. Stage 2 construction works shall be completed prior to commencement of works for Stage 3. Each stage should be stand alone and not rely upon works in other stages which may not proceed.

## 2.. PRIOR TO ISSUE OF THE CONSTRUCTION CERTIFICATE

- 2.1. No activity is to be carried out on site until a Construction Certificate has been issued. Other than:
  - a Site investigation for the preparation of the construction, and/or
  - b Implementation of environmental protection measures, such as erosion control etc that are required by this consent.
- 2.2. The development shall comply with the access and useability standards outlined in Schedule 3 of State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004. Amended Plans and a schedule of compliance to be submitted prior to the issue of a Construction Certificate, addressing areas of non compliance with Clause 41 Schedule 3 of the SEPP and AS1428.1 requirements which have been identified in the *Accessibility Report*, prepared by Morris-Golding Accessibility Consulting, dated 17 November 2009. Such issues include design of internal pathway widths, door latch side clearances, pathway lighting, entry door corridors, bathroom shower circulation areas and fixtures, laundry areas and fixtures, kitchen and living fixtures, lift access and private car accommodation.
- 2.3. The design and provision of resident car parking spaces shall comply with the requirements for parking for persons with a disability set out in AS2890 and 5% of the total number of car parking spaces must be designed to enable the width of the spaces to be increased to 3.8 metres. Power operated garage doors to be provided to basement car parks. A minimum of one visitor space is to be designed as an accessible car space, 3.2 metres in width in accordance with AS2890.1.
- 2.4. The finished surface material, colours and texture of any building, roof and/or hard paved areas must be non-glare and shall be generally in accordance with the Material Board Plan No DA05.01 Issue B Dated 26.05.2010. The proposed colorbond roof is to be finished in a non-reflective colour of a darker hue. White, off white and light coloured roof finishes shall not be used to minimise glare to surrounding properties located on higher land overlooking the site. The details of the materials are to be submitted to and approved by Council prior to the issue of a Construction Certificate.
- 2.5. Surface water collected on driveways, parking areas and other impervious areas are to be treated so as to control pollution in accordance with one or more of the methods detailed in Section 10 of the Water Cycle Management Guidelines referenced by DCP 165 - Water Cycle Management.

- 2.6. A dilapidation report must be submitted to Council prior to issue of a Construction Certificate and/or approval of engineering plans under the Roads Act. The report must document and provide photographs that clearly depict any existing damage to the road, kerb, gutter, footpath, driveways, street trees, street signs or any other Council assets in the vicinity of the development.
- 2.7. Satisfactory arrangements must be made for the provision of water and sewer services to the land. A copy of the Certificate of Compliance under Section 307 of the Water Management Act 2000, must be obtained from the Water Authority (Council) prior to the issue of a Construction Certificate. Contributions may be applicable to the Section 307 Certificate.
- 2.8. Design of the following engineering works within private property:
  - a. Driveways/ramps and car parking areas must be designed according to the requirements of the current Australian Standard AS2890 for the geometric designs, and industry Standards for pavement designs.
  - b. A stormwater detention system must be designed in accordance with Council's DCP165 - Water Cycle Management and Council's 'GCC Design Specification for Survey, Road and Drainage Works'. The stormwater detention system shall limit post development flows from the proposed development to less than or equal to predevelopment flows for all storms up to and including the 1%AEP storm event. A runoff routing method is to be used. An on-site stormwater detention report including an operation and maintenance plan shall accompany the design. On-site stormwater detention is not permitted within private courtyards, drainage easements, and/or secondary flowpaths.
  - c. Nutrient/pollution control measures must be designed in accordance with Council's DCP165 - Water Cycle Management. A nutrient/pollution control report including an operation and maintenance plan shall accompany the design.

The design of these details and any associated reports shall be included in the construction certificate.

- 2.9. Piping of all stormwater from impervious areas within the site via an on-site stormwater detention structure to Council's drainage system.
- 2.10. Further investigations are required to ascertain the presence of Acid Sulphate Soils (ASS) or alternatively an ASS Management Plan may be submitted.

In the absence of further investigations, the proponent may agree that ASS are present and proceed to preparing an ASS Management Plan. Alternatively, the proponent may engage an appropriately qualified person to undertake soil and water analysis to determine whether ASS are present and if they occur in such concentrations as to warrant the preparation of a management plan.

- 2.11. A detailed Environmental Site Assessment is to be undertaken to validate the findings of the Phase 1 Environmental Site Assessment (ENSR AECOM, 16 January 2009). If contamination is discovered and remediation is required then a Remediation Action Plan is to be prepared and implemented in accordance with SEPP 55 guidelines.
- 2.12. Submission of a detailed geotechnical report prepared in accordance with the requirements of DCP 163 - Geotechnical Requirements, prior to the issue of a Construction Certificate. Such report is to address the recommendations of the "Preliminary Geotechnical Investigation" report, prepared by Douglas Partners Project No. 41909 dated November 2009 and shall be prepared by a suitably qualified "geotechnical engineer". In this context a "**Geotechnical Engineer**" means any geotechnical engineer and/or engineering geologist who is listed on the National

Professional Engineer's Register, Level 3 (NPER-3), or a current Member or Fellow of the Australian Institute of Geoscientists, with a minimum of five years practice as a geotechnical engineer, or engineering geologist, advising on building works in regions of the Sydney Basin underlain by the Hawkesbury Sandstone and Narabeen Group [in particular the Terrigal Formation & Patonga Claystone] geological strata, or who is able to demonstrate considerable relevant experience with similar geology.

The Geotechnical Engineer shall also be covered by appropriate professional indemnity insurance with a cover of at least \$2,000,000 and provide the Council with proof of the currency of such insurance policy[s] as and when required by Council. Where the Geotechnical Engineer is employed by a company, or other corporate entity, the signatory of the report shall be deemed to be the Geotechnical Engineer defined above.

### 3.. PRIOR TO COMMENCEMENT OF ANY WORKS

- 3.1. A construction certificate for the building work is to be issued and the person having the benefit of the development consent must appoint a principal certifying authority prior to the commencement of any building works.

The principal certifying authority (if not the Council) is to notify Council of their appointment and notify the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work no later than 2 days before the building work commences.

- 3.2. A copy of the stamped approved plans must be kept on site for the duration of site works and be made available upon request to either the Principal Certifying Authority or an officer of the Council.
- 3.3. Site works are not to commence until the sediment control measures have been installed in accordance with the approved plans.
- 3.4. A sign is required to be erected in a prominent position on any work site on which building or demolition work is being carried out. The sign shall indicate:
- a) The name, address and telephone number of the principal certifying authority for the work; and
  - b) The name of the principal contractor and a telephone number at which that person may be contacted outside of working hours; and
  - c) That unauthorised entry to the work site is prohibited.

The sign is to be removed when the work has been completed.

- 3.5. Temporary closet accommodation being provided throughout the course of building operations by means of a chemical closet complying with the requirements of the Department of Environment and Climate Change or temporary connections to Council's sewer where available, such connections to be carried out by a licensed plumber and drainer.
- 3.6. Public access to the construction site is to be prevented, when building work is not in progress or the site is unoccupied.

These prevention measures must be in accordance with the NSW WorkCover publication titled, '*Site Security and Public Access onto Housing Construction Sites*' and installed prior to the commencement of any demolition, excavation or building works and be maintained throughout construction. The use of barbed wire and/or electric fencing is not to form part of the protective fencing to construction sites.

- 3.7. A suitable hoarding or fence is to be erected between the building or site of the proposed building and any public place to prevent any materials from or in connection with the work, falling onto the public place.

If it is intended or proposed to erect the hoarding or fence on the road reserve or public place a separate application made under the *Roads Act 1993* will need to be lodged with Council together with the associated fee.

- 3.8. Prior to commencement of any demolition work, the property's sewer connection must be disconnected at the Inspection Shaft and capped.
- 3.9. The Structural Engineer's details are to be certified that they have been prepared in accordance with the details and recommendations of the Preliminary Geotechnical Investigation 41909 prepared by Douglas Partners and dated November 2009 and subsequent detailed geotechnical report prepared in accordance with the requirements of DCP 163 - Geotechnical Requirements.
- 3.10. Separate application for a vehicular access crossing, accompanied by the current fee as prescribed in Council's Schedule of Fees and Charges shall be submitted to Council. The application form can be obtained by contacting Council's Customer Service Staff or visit Council's web site [www.gosford.nsw.gov.au](http://www.gosford.nsw.gov.au)
- 3.11. The submission to and approval by Council prior to the commencement of any works, of details for the disposal of any spoil gained from the site and /or details of the source of fill, heavy construction materials and proposed routes to and from the site. Details shall be provided prior to the commencement of works and at latter stages of construction if details change.

#### 4.. DURING WORKS

- 4.1. Clearing of land, excavation, and/or earthworks, building works, and the delivery of building materials shall be carried out between the following hours:

Mondays to Fridays - 7:00am to 6:00pm

Saturdays - 8:00am to 4:00pm except as noted in Clause 'b'

a No work is permitted on Sundays and Public Holidays

b No work is permitted on:

- Saturdays when a public holiday is adjacent to that weekend.
- Construction industry awarded rostered days off.
- Construction industry shutdown long weekends.

Clause b does not apply to works of a domestic residential nature as below:

- i Minor renovation or refurbishments to single dwelling construction.
- ii Owner occupied renovations or refurbishments to single dwelling construction.
- iii Owner builder construction of single dwelling construction; and/or
- iv Any cottage constructions, single dwellings or housing estates consisting of predominantly unoccupied single dwellings.

- 4.2. Erosion and Siltation control measures must be undertaken and maintained in respect to any part of the land where the natural surface is disturbed or earthworks are carried out. The controls shall comply with Council's Code of Practice of Erosion and Sedimentation Control.
- 4.3. Should any Aboriginal objects or artefacts be uncovered during works on the site, all works shall cease. The Department of Environment and Climate Change shall be contacted immediately an any directions or requirements complied with.

- 4.4. To minimize the opportunity for crime, the development must incorporate the following:
- a Adequate lighting to AS1158 is to be provided to common areas. Pathway lighting to be a minimum of 20 lux. All lighting should ensure the area is open to natural surveillance particularly in the car parks and around the building during the hours of darkness. Lighting should also be of material suitable for use in this environment, vandal resistant, at an appropriate height and location to prevent concealment spots, malicious damage and deter criminal activity. In particular appropriate lighting should be considered near the courtyard area. Consideration should be given to the installation of high quality, vandal resistant lamps and are less likely to require replacement or maintenance.
  - b The ceiling of the car park must be painted white.
  - c Any vegetation and landscaping throughout the development should be of an appropriate height to allow for open sight lines and therefore provide natural surveillance, contain non obstructive landscaping features and unobstructed pathways to prevent any entrapment positions. Landscaping adjacent to mailboxes and footpaths must not provide for the concealment opportunities for criminal activity.
  - d The development must be designed to avoid foot holes or natural ladders so as to minimize unlawful access to the premises.
  - e Adequate signage within the development to identify facilities, entry/exit points and direct movement within the development.
  - f Restricted access controls shall be provided to the basement car parking areas and building entry points.
- 4.5. Building materials must not be stored nor construction work carried out on the road reserve unless associated with a separate approval under the *Roads Act 1993*.
- 4.6. If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made is responsible to notify the neighbour and responsible for the protection and preservation of the adjoining allotment of land.
- 4.7. This development is subject to Council's DCP106 – Controls for Site Waste Management. The Waste Management Plan submitted as supporting documentation with this development consent is required to be implemented during all stages of demolition and construction.
- 4.8. Buildings are to be demolished in a safe and systematic manner in accordance with the requirements of Australian Standard *AS 2601-2001 - Demolition of Structures*, and disposed of in an approved manner.
- 4.9. The engineering works within private property that formed part of the Construction Certificate shall be constructed in accordance with Council's 'Civil Construction Specification', 'GCC Design Specification for Survey, Road and Drainage Works' and Policy 'D6.46 Erosion Sedimentation Control'.
- 4.10. Filling or debris must not be placed within any watercourse or drain.
- 4.11. Arrangements must be made with Energy Australia, Australian Gas Light Company and Telstra for the supply of services concurrent with the engineering work. Arrangements must include any relocation of existing mains and services and dedication of easements for mains and services.
- 4.12. The internal road strength used by the waste trucks must be sufficiently strong enough to withstand a truck loading of 22.5 tonnes.

- 4.13. The road surface used by the waste trucks must be constructed of reinforced concrete.
- 4.14. No obstructions to the wheel out of the waste bins being permitted including grills, speed humps, barrier kerbs etc.
- 4.15. The driveway design and loading area layout is to be designed in accordance with AS 2890.2-2002 Parking Facilities - Off Street Commercial Vehicle Facilities.
- 4.16. The waste truck servicing grade is to be 3% or less for the following areas:
- Within the enclosure
  - For bulk bin roll out pads
  - Within the 13m bulk bin and truck service area

## 5.. PRIOR TO ISSUE OF THE OCCUPATION CERTIFICATE

- 5.1. Application for an Occupation Certificate must be submitted to and approved by the Principal Certifying Authority prior to occupation of the building.
- 5.2. The premises not being occupied until an occupation certificate has been issued.
- 5.3. A concrete kerb, or alternative of similar standard, must be provided to the driveways and around areas of landscaping to prevent encroachment of vehicles.
- 5.4. The architect/building designer must provide certification that the development complies with the access and usability standards outlined in Schedule 3 of State Environmental Planning Policy - (Housing for Seniors and People with a Disability) 2004. The certification of compliance is to be provided to the PCA prior to the issue of an Occupation Certificate.
- 5.5. Compliance with the construction recommendations contained within Section 5 of the Noise Impact Assessment report prepared by Acoustic Logic Consultancy, dated 1 December 2009, Reference: 2009804/1111A/R2/HM., to minimise the impact of traffic noise intrusion into the proposed development.
- 5.6. The driveway, vehicle manoeuvring area and car parking spaces as shown on the approved plan must be properly constructed, graded, drained, sealed and line marked including directional arrows with impervious paving material, in accordance with Australian Standard 2890.1-2004 Off Street Parking.
- 5.7. The street number is to be at least 100mm high and be clearly visible from the street frontage.
- 5.8. Mail receptacles shall be provided and appropriately numbered for each dwelling unit in the development, as well as for the managing body, in consultation with Australia Post.
- 5.9. The requirements of the BASIX certificate for development and shown on the approved plans must be complied with prior to the issue of an occupation certificate.
- 5.10. Mechanical ventilation systems comprising water cooling, evaporative cooling, or warm water systems must be registered with Council on completion of the installation.
- 5.11. Impervious surface areas including pathways and driveways are to be graded and drained to prevent water run-off affecting adjoining properties.

- 5.12. Any damage not shown in the dilapidation report submitted to Council before site works had commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense, prior to release of the Occupation Certificate.
- 5.13. The internal engineering works within private property that formed part of the Construction Certificate shall be completed in accordance with Council's 'Civil Construction Specification', 'GCC Design Specification for Survey, Road and Drainage Works' and Policy 'D6.46 Erosion Sedimentation Control', prior to the issue of an Occupation Certificate.
- 5.14. Fencing, Structures, or landscaping with a mature height greater than 300mm shall not be located within a 4m x 4m splay corner located at the road intersection.
- 5.15. Prior to the issue of an Occupation Certificate the Deposited Plan must be amended to include a Section 88B Instrument under the Conveyancing Act 1919 for the following restrictive covenants; with the Council having the benefit of these covenants and having sole authority to release and modify. Wherever possible, the extent of land affected by these covenants shall be defined by bearings and distances shown on the plan of subdivision.
- a To create a Restriction as to User over all lots containing an on-site stormwater detention system restricting any alteration to such a facility or the erection of any structure over the facility or the placement of any obstruction over the facility.
  - b To create a Restriction as to User over all lots containing a nutrient/pollution facility restricting any alteration to such a facility or the erection of any structure over the facility or the placement of any obstruction over the facility.
- 5.16. A Section 88E instrument under the Conveyancing Act 1919 must establish the following positive covenants; with the Council having the benefit of these covenants and having sole authority to release and modify. Contact Council for wording of the covenant(s).
- a To ensure that in accordance with the provisions of State Environmental Planning Policy - Housing for Seniors or People with a Disability 2004 the approved development is only occupied by:
    - (i) Senior people over 55 years of age or people with a disability.
    - (ii) People who live within the same household with seniors or people who have a disability,
    - (iii) Staff who are employed to assist in the administration of and the provision of services to the Seniors housing provided.
  - b To ensure on any lot containing an on-site stormwater detention system that;
    - The facility will remain in place and fully operational,
    - The facility is maintained in accordance with the operation and maintenance plan so that it operates in a safe and efficient manner,
    - Council staff are permitted to inspect and repair the facility at the owners cost,
    - Council is indemnified against all claims of compensation caused by the facility.
  - c To ensure on any lot containing a nutrient/pollution control facility that:
    - The facility will remain in place and fully operational,
    - The facility is maintained in accordance with the operation and maintenance plan so that it operates in a safe and efficient manner,
    - Council staff are permitted to inspect and repair the facility at the owners cost,
    - Council is indemnified against all claims of compensation caused by the facility.
- 5.17. If a Remediation Action Plan is required to remediate any contamination of the site, then a Validation Report is to be submitted to the issuing authority prior to the release of the

occupation certificate. The Validation Report shall be undertaken in accordance with SEPP 55 guidelines.

- 5.18. Council will require an indemnity against claims for loss or damage to the pavement or other driving surface and against liabilities losses, damages and any other demands arising from any on-site collection service prior to the issue of an Occupation Certificate together with the creation of a S88B instrument under the Conveyancing Act to this effect and at the applicant's cost.

## 6.. ONGOING OPERATION

- 6.1. The sound level output from the community facilities building shall not exceed 5dBA above the ambient noise level measured at the boundary of the property.
- 6.2. No materials, waste matter or products shall be stored outside the building or the approved waste storage area, at any time.
- 6.3. All external lights shall be operated and maintained in accordance with the Australian Standard AS4282 - Control of the Obtrusive Effects of Outdoor Lighting so as not to cause a nuisance or adverse impact on the amenity of residents of the surrounding area or to motorists on nearby roads.
- 6.4. Pathway lighting shall be designed and located so as to avoid glare for pedestrians and adjacent dwellings and provide at least 20 lux at ground level in compliance with Schedule 3 Part 1 Clause 3: standards concerning accessibility and useability for self contained dwellings of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, to ensure adequate security for residents.
- 6.5. The consent of Council must be obtained prior to any change of use of the premises as defined in the planning instrument.
- 6.6. All loading and unloading of goods are to be conducted wholly within the site. Loading facilities, internal docks or goods handling areas are to be maintained free of obstruction for the sole use of delivery vehicles.
- 6.7. Visitor car parking spaces are to be physically identified on site, and maintained free of obstruction. Under no circumstances are these spaces to be used for the storage of goods or waste products.
- 6.8. The operation of all mechanical plant equipment and machinery (i.e. air conditioning unit and/or heat pump) shall not give rise to offensive noise as defined in the Protection of the Environment Operation Act 1997.
- 6.9. The recommendations for construction contained in Section 5.3 of the Noise Impact Report undertaken by Acoustic Logic Consultancy dated December 2009 (ref: 2009804/1111A/R2/HM) being fully complied with.
- 6.10. Maintenance of the on-site stormwater detention facility in accordance with the operation & maintenance plan.
- 6.11. Maintenance of the nutrient/pollution control facilities in accordance with the operation & maintenance plan.

## 7.. OTHER APPROVALS

## **NSW Rural Fire Service**

- 7.1. Compliance with the following general terms of approval issued by the NSW Rural Fire Service for a Bush Fire Safety Authority under section 100B of the Rural Fires Act 1997. The Construction Certificate will not be issued over any part of the site requiring a Bush Fire Safety Authority until a copy of the Approval has been provided to Council.
- 7.2. At the commencement of building works and in perpetuity the entire site as depicted in Figure 2A of the Statement of Environmental Effects prepared by BBC Consulting Planners numbered 07-231 and dated December 2009 shall be managed as an inner protection area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.
- 7.3. Water, electricity and gas are to comply with sections 4.1.3 and 4.2.7 of 'Planning for Bush Fire Protection 2006'.
- 7.4. The proposed upgrading of the internal road servicing the southernmost Independent Living Unit shall comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.
- 7.5. Arrangements for emergency and evacuation are to comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.
- 7.6. New construction shall comply with Australian Standard AS3959-1999 'Construction of buildings in bush fire-prone areas' Level 1.
- 7.7. Landscaping to the site is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.

### **General Advice:**

No requirement for access to the proposed Community Facility and Independent Living Unit has been provided based on the recommendations contained within the *Bushfire Hazard Assessment Report* prepared by Building Code & Bushfire Hazard Solutions numbered 80252B and dated 17th December 2009.

## **NSW Office of Water**

- 7.8. Compliance with the attached general terms of approval issued by the NSW Office of Water for a Controlled Activity Approval under the Water Management Act 2000. The Construction Certificate will not be issued over any part of the site requiring a Controlled Activity Approval until a copy of the Approval has been provided to Council.

## **RTA**

- 7.9. Landscape trees shown between the footpath and kerb on Empire Bay Drive are not permitted as they obscure sight lines and have the potential to cause root damage to the road pavement.

## **8.. ADVICE**

- 8.1. The public authorities may have separate requirements and should be consulted in the following aspects:
  - a *Australia Post* for the positioning and dimensions of mail boxes in new commercial and residential developments;
  - b *Jemena Asset Management* for any change or alteration to the gas line infrastructure;

- c *Energy Australia* for any change or alteration to electricity infrastructure or encroachment within transmission line easements;
  - d *Telstra, Optus* or other telecommunication carriers for access to their telecommunications infrastructure.
  - e *Gosford City Council* in respect to the location of water, sewerage and drainage services.
- 8.2. All work carried out under this Consent should be done in accordance with WorkCover requirements including the Occupational Health and Safety Act 2000 No 40 and subordinate regulations, codes of practice and guidelines that control and regulate the development industry.
- 8.3. Separate application being made for connection to Council's sewerage system.
- 8.4. It is the sole responsibility of the owner, builder and developer, to ensure that the proposed building or works complies with the requirements of the *Disability Discrimination Act*.  
 NOTE: The *Disability Discrimination Act* (DDA) is a Federal anti-discrimination law. The DDA covers a wide range of areas including employment, education, sport and recreation, the provision of goods, services and facilities, accommodation and access to premises. The DDA seeks to stop discrimination against people with any form of disability including physical, intellectual, sensory, psychiatric, neurological, learning, disfigurement or presence in the body of a disease-causing organism. Whilst this development consent issued by Council is in accordance with the relevant provisions of the current *Building Code of Australia*, it does not indicate nor confirm that the application complies with the requirements of the DDA.
- 8.5. Developers should make early application for a Section 307 Certificate under the Water Management Act 2000 from the Water Authority (Council). For a copy of the application form 'Application for Certificate under Section 305' contact Customer Service on (02) 4325 8200 or visit Councils web site [www.gosford.nsw.gov.au](http://www.gosford.nsw.gov.au) to download a form from the Water & Sewerage forms index.
- 8.6. No structures, such as stairs, are permitted to be constructed within the public road reserve.
- 8.7. The development shall comply with BASIX Certificate number 290016M dated 5 January 2010 - schedule of commitments and ABSA Assessor Certificate No 35345593, prepared by AGA Consultants, dated 29 December 2009
- 8.8. Compliance with the Waste Management Plan, dated 27 May 2010 and Operational Waste Management Plan, dated May 2010 prepared by JD Macdonald and Waste Management Details - Drawing DA 08.01 Issue A dated 26.05.2010. Garbage Room doors need to be either roller shutter doors or open outwards.

**Advice: NSW Road Traffic Authority**

- 8.9. The proposed development should be designed such that the road traffic noise from Classified roads is mitigated by durable materials, in accordance with EPA criteria for new residential developments (The Environmental Criteria for Road Traffic Noise, May 1999).

The RTA's Environmental Noise Management Manual provides practical advice in selecting noise mitigation treatments. Where the EPA external noise criteria would not feasibly or reasonably be met, the RTA recommends compliance with the following internal noise objectives for all habitable rooms under ventilated conditions in accordance with the requirements of the Building Code of Australia:

All habitable rooms other than sleeping rooms: 45 dB(A) L(1shr) and 40 dB(A) Lcq9hr), and Sleeping rooms: 35 db(A) L(9hr).

- 8.10. No reliance is to be given to on-street parking in Empire Bay Drive in the determination of parking needs relating to the proposed development.
- 8.11. Conditions of development consent set by Council do not guarantee the RTA's final consent to the specific road work, traffic control facilities and other works on the classified road network. The RTA must provide a final consent for each specific change to the state road network prior to the commencement of any work.

In this regard the applicant is required to submit detailed design plans, environmental assessment and all relevant additional information, as may be required in the RTA's Works Authorisation Deed documentation, for each specific change to the State road network for the RTA's assessment and final decision concerning the work.

- 8.12. The applicant will be required to enter into a formal agreement with the RTA prior to commencing any works on a State road. This agreement includes processes for approval of plans, road occupancy approval requirements, insurance requirements, any maintenance arrangements or fees, RTA fees and Occupational Health and Safety requirements. A financial guarantee to the value of the works will be required on

## 9.. PENALTIES

Failure to comply with this development consent and any condition of this consent may be a ***criminal offence***. Failure to comply with other environmental laws may also be a ***criminal offence***.

Where there is any breach Council may without any further warning:

- Issue Penalty Infringement Notices (On-the-spot fines);
- Issue notices and orders;
- Prosecute any person breaching this consent, and/or
- Seek injunctions/orders before the courts to retain and remedy any breach.

### **Warnings as to Potential Maximum Penalties**

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

## 10.. RIGHT OF APPEAL

- 10.1. Sections 96(6) or 97 of the Act, where applicable, confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court exercisable within 60 days or 12 months respectively, from the date of determination.
- 10.2. To ascertain the date upon which the determination becomes effective refer to Section 83 of the Act.

The following additional conditions shall apply to Stage 1:

## STAGE 1

### 1.. PARAMETERS OF THIS CONSENT

STAGE 1 shall comprise the following works:

- Construction of Building L1 with frontage to Peridon Avenue and empire Bay Drive containing, resident community facilities and residential apartments;
- 20 resident car parking spaces within the basement
- 5 visitor car parking spaces on grade area in front of Building L1
- Associated landscaping to the east and west of Building L1 , pathways, entry steps, internal driveways and vehicle access.
- Required roadworks and Signalised Traffic Lights
- Street Tree Planting
- Garbage bin storage enclosure

### 2.. PRIOR TO ISSUE OF THE CONSTRUCTION CERTIFICATE

- 2.1. All work required to be carried out within a public road reserve must be separately approved by Council, under Section 138 of the Roads Act 1993.

Engineering plans for the required work within a public road must be prepared and designed by a suitably qualified professional, in accordance with Council's "Civil Construction Specification", "GCC Design Specification for Survey, Road and Drainage Works" and "Policy 'D6.46 Erosion Sedimentation Control".

The required works to be designed are as follows:

- a. Footway formation graded at +2% from the top of kerb to the property boundary, across the full frontage of the site in Peridon Avenue.
- b. Heavy-duty vehicle crossing to the basement car park entry, that has a minimum width of 7.5m and constructed with 200mm thick concrete reinforced with 1 layer of SL72 steel fabric top and bottom.
- c. Tapered heavy-duty vehicle crossing located at the southern side of the cul-de-sac. The vehicle crossing shall have a minimum width of 8.5m at the rear of the gutter crossing and a minimum width of 6.5m at the property boundary, and be constructed with 200mm thick concrete reinforced with 1 layer of SL72 steel fabric top and bottom.
- d. All redundant vehicular crossings to be removed and the footway formation reinstated with turf and a 1.2m wide reinforced (SL72 steel fabric, 100mm thick) concrete footpath in an approved location.
- e. The piping of stormwater from within the site to Council's drainage system.

The engineering plans must be approved by Council prior to the issuing of a Construction Certificate required under this consent.

- 2.2. All work required to be carried out within the road reserve for Empire Bay Drive together with the intersection between Empire Bay Drive and Peridon Avenue, must be separately approved by Council and the RTA, under Section 138 of the Roads Act 1993.

Engineering plans for the required work within a public road must be prepared and designed by a suitably qualified professional, in accordance with RTA relevant guidelines and specifications.

The required works to be designed are as follows:

- a. The intersection of Empire Bay Drive & Peridon Avenue shall be signalised. Works shall include but not be limited to the installation of traffic lights, line marking and signage, pedestrian crossing facilities, kerb ramps, and the connection by a footpath to the bus bay in front of 71 Empire Bay Drive. These work shall be undertaken at no cost to the RTA or Gosford City Council
- b. Footway formation graded at +2% from the top of kerb to the property boundary, across the full frontage of the site in Empire Bay Drive.
- c. 1.2m wide reinforced (SL72 steel fabric, 100mm thick) concrete footpath in an approved location across the full frontage of the site in Empire Bay Drive.
- d. 1.2m wide reinforced (SL72 steel fabric, 100mm thick) concrete footpath in an approved location to link the pedestrian crossing facility at the signalised intersection with the bus bay in front of 71 Empire Bay Drive.
- e. All redundant vehicular crossings to be removed and the footway formation reinstated with turf and a 1.2m wide reinforced (SL72 steel fabric, 100mm thick) concrete footpath in an approved location.

The engineering plans must be approved by Council and the RTA prior to the issuing of a Construction Certificate required under this consent.

- 2.3. A security deposit of \$30,000.00 must be paid into Council's trust fund prior to the issue of a Construction Certificate. The payment of the security deposit is required to cover the cost of repairing damage to Council's assets that may be caused as a result of the development. The security deposit will be refunded upon the completion of the project if no damage was caused to Council's assets as a result of the development.
- 2.4. Development constructed near or over the sewer main and/or adjacent to Council's water main must comply with Council's guidelines for "Building Over or Near Council Sewer and Water Mains". Details prepared by a practising structural engineer must be submitted to and approved by the Water Authority (Council) in accordance with the Water Management Act 2000 prior to the issue of a Construction Certificate.
- 2.5. The minimum crest level of the driveway to the basement car park must be RL 7.9m AHD.
- 2.6. Provision to be made for a minimum of twenty (20) resident car parking spaces, which shall comply with the requirements for parking for persons with a disability set out in AS2890 and 5% of the total number of car parking spaces must be designed to enable the width of the spaces to be increased to 3.8 metres. Power operated garage doors to be provided to basement car parks.
- 2.7. Five (5) visitor car parking spaces are to be physically identified on site, and maintained free of obstruction. These spaces are not to be used for the storage of goods or waste products. A minimum of one visitor space is to be designed as an accessible car space, 3.2 metres in width in accordance with AS2890.1.

### **3.. DURING WORKS**

- 3.1. The works within the road reserve that required approval under the Roads Act shall be constructed in accordance with Council's 'Civil Construction Specification', 'GCC Design Specification for Survey, Road and Drainage Works' and Policy 'D6.46 Erosion Sedimentation Control', and RTA standards and specifications where applicable.

### **4.. PRIOR TO ISSUE OF THE OCCUPATION CERTIFICATE**

- 4.1. Works within the road reserve that required approval under the Roads Act are to be completed in accordance with Council's 'Civil Construction Specification', 'GCC Design Specification for Survey, Road and Drainage Works', Policy 'D6.46 Erosion Sedimentation Control' and RTA standards and specifications where applicable, and documentary evidence for the acceptance of such works obtained from the Roads Authority prior to the issue of an Occupation Certificate.

Note 1: A maintenance bond shall be paid on completion of the works in accordance with Section 1.07 Maintenance of the 'Civil Construction Specification'.

- 4.2. Lots 9 DP 261583, Lot 224 DP771755, Lot 104 DP771785 and Lot 105 DP 771785 must be consolidated into a single allotment under one Certificate of Title prior to the issue of an Occupation Certificate.

## **5.. ONGOING OPERATION**

- 5.1. The hairdressing salon fit out being in accordance with the Part 2, Schedule 2 of the Local Government (General) Regulation 2005 and the Guidelines for the Construction and Operation of Hairdressing, Beauty and Skin Penetration premises published by the Hunter Regional Health Education Committee.
- 5.2. The hairdressing salon being registered with Council prior to commencement of trade.
- 5.3. The kitchen within the community building is not to be utilised for commercial food preparation unless further consent is obtained from Council.

## **6.. ADVICE**

- 6.1. A fee for the approval of engineering plans under the Roads Act 1993 applies. The amount of this fee can be obtained by contacting Council's Customer Services on (02) 4325 8222.
- 6.2. The inspection fee for works associated with approvals under the Roads Act is calculated in accordance with Council's current fees and charges policy.

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**The following additional conditions shall apply to Stage 2:**

## **STAGE 2**

### **1.. PARAMETERS OF THIS CONSENT**

STAGE 2 shall comprise the following works:

- Construction of Building L2;
- Basement Car Parking for 24 vehicles,
- Remaining landscaping between Building L2 and Building L1 and to the east of building L2;
- 2 on grade resident car parking spaces and 3 on grade visitor car parking spaces to the east of building L2;
- Access driveway and pathways.

### **2.. PRIOR TO ISSUE OF THE CONSTRUCTION CERTIFICATE**

- 2.1. A security deposit of \$30,000.00 must be paid into Council's trust fund prior to the issue of a Construction Certificate. The payment of the security deposit is required to cover the cost of repairing damage to Council's assets that may be caused as a result of the development. The security deposit will be refunded upon the completion of the project if no damage was caused to Council's assets as a result of the development.
- 2.2. Provision to be made for a minimum of twenty - six (26) resident car parking spaces, which shall comply with the requirements for parking for persons with a disability set out in AS2890 and 5% of the total number of car parking spaces must be designed to enable the width of the spaces to be increased to 3.8 metres. Power operated garage doors to be provided to basement car parks. A minimum of one visitor space is to be designed as an accessible car space, 3.2 metres in width in accordance with AS2890.1.
- 2.3. Three (3) visitor car parking spaces are to be physically identified on site, and maintained free of obstruction. These spaces are not to be used for the storage of goods or waste products.

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**The following additional conditions shall apply to Stage 3:**

## **STAGE 3**

### **1.. PARAMETERS OF THIS CONSENT**

STAGE 3 shall comprise the following works:

- Construction of Building L3 to the south
- Basement Car Parking for 17 Resident Vehicles
- Associated landscaping and pathways between Building L3 and Empire Bay Drive and to the east of the building,
- 4 on grade resident car parking spaces and 6 on grade visitor car parking spaces to the east of Building L3 and all remaining works

### **2.. PRIOR TO ISSUE OF THE CONSTRUCTION CERTIFICATE**

- 2.1. A security deposit of \$31,500.00 must be paid into Council's trust fund prior to the issue of a Construction Certificate. The payment of the security deposit is required to cover the cost of repairing damage to Council's assets that may be caused as a result of the development. The security deposit will be refunded upon the completion of the project if no damage was caused to Council's assets as a result of the development.
- 2.2. Provision to be made for a minimum of twenty-two (22) resident car parking spaces, which shall comply with the requirements for parking for persons with a disability set out in AS2890 and 5% of the total number of car parking spaces must be designed to enable the width of the spaces to be increased to 3.8 metres. Power operated garage doors to be provided to basement car parks. Such car parking provision will necessitate the designation and conversion of one (1) on grade visitor car parking space to a resident car parking space to the east of Building L3.
- 2.3. Five (5) visitor car parking spaces are to be physically identified on site, and maintained free of obstruction. These spaces are not to be used for the storage of goods or waste products.
- 2.4. Prior to the issue of a Construction Certificate, a Vegetation Management Plan (VMP) is to be submitted to and approved by Certifying Authority for the management of the core

riparian zone and vegetation buffer as shown on Figure 3 of the Ecological Assessment (Keystone Ecological, Ref: GCC 08-209, December 2009).

The VMP must be prepared by an appropriately qualified professional. The plan must be in accordance with Guidelines for controlled activities Vegetation Management Plans (DWE, February 2008). The primary objective of the plan is weed management, regeneration of the native vegetation and supplementary native plantings.



## NSW Office of Water

### General Terms of Approval – for works requiring a Controlled Activity Approval under the Water Management Act 2000

Number	Condition	File No:
Site Address	24, 26, 30, 32 & 34 Empire Bay Drive, Daleys Point. Lot 9 DP 261583, Lot 224 DP771755 & Lots 104 & 105 DP 771785.	
DA Number	DA 37972/2009	
LGA	Gosford City Council	
Plans, standards and guidelines		
1	These General Terms of Approval (GTA) only apply to the controlled activities described in the plans and associated documentation provided by Council to NSW Office of Water.  Any amendments or modifications to the proposed controlled activities may render these GTA invalid. If the proposed controlled activities are amended or modified the NSW Office of Water must be notified to determine if any variations to these GTA will be required.	
2	Prior to the commencement of any controlled activity (works) on waterfront land, the consent holder must obtain a Controlled Activity Approval (CAA) under the Water Management Act from the NSW Office of Water. Waterfront land for the purposes of this DA is land and material in or within 40 metres of the top of the bank or shore of the river/identified.	
3	An application for a CAA must include the following supporting documentation to the satisfaction of the NSW Office of Water:  (i) Vegetation Management Plan (ii) Works Schedule (iii) Erosion and Sediment Control Plan (iv) Soil and Water Management Plan	
4	All plans must be prepared by a suitably qualified person and submitted to the NSW Office of Water for approval prior to any controlled activity commencing. The following plans must be prepared in accordance with the NSW Office of Water guidelines located at <a href="http://www.dwe.nsw.gov.au/water_trades/rights_controlled.shtml">www.dwe.nsw.gov.au/water_trades/rights_controlled.shtml</a>  (i) Vegetation Management Plans (ii) Laying pipes and cables in watercourses (iii) Riparian Corridors (iv) In-stream works (v) Outlet structures	

3/437 Main Street, Gosford - PO Box 340, Gosford 2250 - 4342 9334  
[signatures@nsw.gov.au](mailto:signatures@nsw.gov.au) - [www.water.nsw.gov.au](http://www.water.nsw.gov.au) - 1800 30 341 387 211



## NSW Office of Water

Number	Condition	File No:
Site Address	24, 26, 30, 32 & 34 Empire Bay Drive, Deleys Point, Lot 9 DP 261583, Lot 224 DP771755 & Lots 104 & 105 DP 771785.	
DA Number:	DA 37972/2009	
LGA	Gosford City Council	
	(vi) Watercourse crossings	
5	The consent holder must (i) carry out any controlled activity in accordance with approved plans and (ii) construct and/or implement any controlled activity by or under the direct supervision of a suitably qualified professional and (iii) when required, provide a certificate of completion to the NSW Office of Water.	
Rehabilitation and maintenance		
6	The consent holder must carry out a maintenance period of two (2) years after practical completion of all controlled activities, rehabilitation and vegetation management in accordance with a plan approved by the NSW Office of Water.	
7	The consent holder must reinstote waterfront land affected by the carrying out of any controlled activity in accordance with a plan or design approved by the NSW Office of Water.	
Reporting requirements		
8	The consent holder must use a suitably qualified person to monitor the progress, completion, performance of works, rehabilitation and maintenance and report to the NSW Office of Water as required.	
Security deposits		
9	The consent holder may be required to provide a security deposit (bank guarantee or cash bond) - equal to the sum of the cost of complying with the obligations under any approval - to the NSW Office of Water as and when required.	
Access-ways		
10	N/A	
11	The consent holder must not locate ramps, stairs, access ways, cycle paths, pedestrian paths or any other non-vehicular form of access way in a riparian corridor other than in accordance with a plan approved by the NSW Office of Water.	
Bridge, causeway, culverts, and crossing		
12	N/A	
13	N/A	
Disposal		
14	The consent holder must ensure that no materials or cleared vegetation that may (i) obstruct flow, (ii) wash into the water body, or (iii) cause damage to river banks, are left on waterfront land other than in accordance with a plan approved by the NSW Office of Water.	
Drainage and Stormwater		

3-117 Mann Street, Gosford - PO Box 340, Gosford, NSW 2250 - 4348 9214  
[water@ofwat.nsw.gov.au](mailto:water@ofwat.nsw.gov.au) - [www.water.nsw.gov.au](http://www.water.nsw.gov.au) - 1800 30 3611 367 371



## NSW Office of Water

Number	Condition	File No:
Site Address	24, 26, 30, 32 & 34 Empire Bay Drive, Daleys Point, Lot 9 DP 261583, Lot 224 DP771755 & Lots 104 & 105 DP 771785.	
DA Number	DA 37972/2009	
LGA	Gosford City Council	
15	The consent holder is to ensure that all drainage works (i) capture and convey runoff, discharges and flood flows to low flow water level in accordance with a plan approved by the NSW Office of Water; and (ii) do not obstruct the flow of water other than in accordance with a plan approved by the NSW Office of Water.	
16	The consent holder must stabilise drain discharge points to prevent erosion in accordance with a plan approved by the NSW Office of Water.	
Erosion control		
17	The consent holder must establish all erosion and sediment control works and water diversion structures to the satisfaction of the NSW Office of Water.	
Excavation		
18	The consent holder must ensure that no excavation is undertaken on waterfront land other than in accordance with a plan approved by the NSW Office of Water.	
19	The consent holder must ensure that any excavation does not result in (i) diversion of any river (ii) bed or bank instability or (iii) damage to native vegetation within the area where a controlled activity has been authorised, other than in accordance with a plan approved by the NSW Office of Water.	
Maintaining river		
20	N/A	
21	N/A	
River bed and bank protection		
22	N/A	
23	The consent holder must establish a riparian corridor in accordance with a plan approved by the NSW Office of Water.	
Plans, standards and guidelines		
24	N/A	
25	N/A	
26	N/A	
27	N/A	
END OF CONDITIONS		