

## **REPORT TO HUNTER & CENTRAL COAST JOINT REGIONAL PLANNING PANEL**

**DEVELOPMENT APPLICATION NO. 38134/2010 PART 1**

**APPLICANT: HUNDARE PTY LTD**

**PROPOSED: DEMOLITION OF MOTEL AND CONSTRUCTION OF SIXTY-FIVE (65) UNITS IN A RESIDENTIAL FLAT BUILDING ON LOT: 2 DP: 588831, LOT: 115 DP: 12020, LOT: B DP: 341177 NO 156, 158, 160 TERRIGAL DRIVE TERRIGAL. JRPP REF NO: 2010HCC006**

Directorate: Environment and Planning

Business Unit: Development

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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 (JRPP)**

Value \$15.2 million

#### **Assessing Officer**

R A Eyre

#### **Reviewing Officer**

P Pegg/S Goodworth

#### **Application Received**

08/02/2010. Amended plans received 24/03/2010

#### **Proposal**

It is proposed to demolish the existing Motel and erect sixty-five (65) Residential Units.

#### **Zone**

2(b) Residential

#### **Area**

10,059m<sup>2</sup>

#### **City Vision 2025**

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

#### **Public Submissions**

13 original plans, 3 amended plans

**Pre-DA Meeting**

Not Held

**Political Donations**

No issues of political donations were declared.

**Relevant Statutory Provisions**

- 1 Environmental Planning & Assessment Act, 1979 – Section 79C
- 2 Local Government Act 1993 – Section 89
- 3 Draft Gosford Local Environmental Plan 2009
- 4 SEPP No 1 Development Standards
- 5 SEPP 71 - Coastal Protection
- 6 DCP 89 - Scenic Quality
- 7 DCP 128 - Public Notification of Development Applications
- 8 DCP 159 - Character
- 9 DCP 100 - Medium Density Residential Development
- 10 DCP 106 - Controls for Site Waste Management
- 11 SEPP (Infrastructure) 2007
- 12 DCP 111 - Car Parking
- 13 DCP 165 - Water Cycle Management
- 14 CP47A Terrigal
- 15 SEPP 65 - Design Quality of Residential Flat Buildings
- 16 SEPP (Buildings Sustainability Index: BASIX) 2004
- 17 SEPP 55 - Remediation of Land

**Key Issues**

- 1 Gosford Planning Scheme Ordinance
- 2 Draft Gosford Local Environmental Plan 2009
- 3 Climate change and sea level rise
- 4 SEPP 71
- 5 Statutory Provisions
- 6 Heritage
- 7 Environmental Assessment
- 8 Central Coast Design Review Panel Comments
- 9 Architectural Assessment
- 10 Tree Assessment
- 11 View Impact Assessment
- 12 Waste Storage/Collection
- 13 Roadworks, Access and Traffic
- 14 Flooding and Drainage
- 15 Water and Sewer
- 16 Public Submissions

**Recommendation**

Refusal

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**REPORT**

## History

The application was lodged on 8 February 2010. The proposal included a café on the site and the applicant contended that the site has existing use rights for a restaurant. This was not agreed with in the initial assessment of the proposal and Council's research of the history of the site.

Therefore as a café/restaurant is a prohibited use under the 2(b) zone, Council was going to return the application as an invalid application. However before Council could return the application, the applicant submitted amended plans which deleted the café.

The original application was advertised and **13** Submissions were received.

The amended application was advertised and **3** Submissions were received.

## The Site

The site is located on the western side of Terrigal Drive between Havenview Road and Ena Street.

The site is composed of three (3) lots being:

- (a) Lot B DP 341177 has an area of 354.1m<sup>2</sup>. This lot is vacant but previously was used for a service station with underground fuel tanks still existing.

The site has a concrete slab and is used for parking by the motel.

This lot has an 18.29m frontage to Terrigal Drive.

- (b) Lot 115 DP 12020 has an area of 101.2m<sup>2</sup> and a frontage of 15.57m to Terrigal Drive. This lot is vacant and was previously used for a service station with Lot B above, and has a concrete slab used for parking by the motel.

- (c) Lot 2 DP 588831 which has an area of 9604m<sup>2</sup> and a 43.15m frontage to Terrigal Drive. This lot currently contains a 48 unit motel, restaurant and convention centre.

The site has a southern side boundary of 163.355m, a rear western boundary of 88.195m and a northern side boundary of 145.49m.

A two storey building containing reception, restaurant and convention centre is located in the front south-east corner of the site. The 3 buildings containing the motel units are located behind the reception/restaurant building in an 'L' shape.

The motel units are located in 2 storey buildings along the southern side of the site and a 3 storey building across the rear of the site.

A swimming pool is located in the centre of the site and a tennis court at the rear of the site.

Internal access driveways and car parking are located around the buildings with the majority of parking spaces along the northern side of the site.

Three Norfolk Island Pines exist on the site.

Access to the site is from Terrigal Drive.

The site varies from about RL5.83m AHD in the in the north-east corner, RL11.34m AHD in the south-east corner, RL5.01m AHD in the south-west corner and RL4.48 AHD in the north-west corner.

A 1m wide drainage easement benefits the site over the adjoining public school land.

### **The Locality and Adjoining Development**

To the east of the site is Terrigal Lagoon and Terrigal Beach.

On the southern side, the site adjoins a restaurant, residential units and dwelling houses.

To the west , the site adjoins playing fields of Terrigal Public School.

To the north, the site adjoins dwelling-houses (including a Heritage building ("Gunyah") and residential units.

The site is located within walking distance (about 500m and greater) of the Terrigal CBD and Terrigal Beach.

The area has a mix of dwelling houses, flats, restaurants and shops, with Terrigal Hotel in close proximity on the corner of Havenview Street and Terrigal Drive.

The area has a mix of old and new development and is an area experiencing change for both residential and tourist uses of varying heights. (See Attachment 1)

### **The Proposal**

It is proposed to demolish the existing motel and buildings on the site and erect residential flat buildings containing 65 apartments in six (6) separate buildings.

The proposal will include:

- (a) 65 Apartments comprising of:
  - 12 x 1 bedroom apartments
  - 31 x 2 bedroom apartments
  - 16 x 3 bedroom apartments
  - 6 x 4 bedroom apartments.
- (b) Parking in a basement car parking area and garage for 109 vehicles.
- (c) Landscaping communal areas including a swimming pool with shower and change room, barbecue, seating.
- (d) Rainwater tanks, services etc, drainage etc.
- (e) Metal roofing with masonry wall, aluminium windows and timber screens.
- (f) One combined entry/exit driveway to Terrigal Drive.

### **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 refusal of the application and has identified the following key issues which are elaborated upon for Council's information.

### **Gosford Planning Scheme Ordinance**

#### **a     Permissibility/Zoning**

The site is zoned 2(b) Residential under the Gosford Planning Scheme Ordinance. A residential flat building is permissible with consent on land zoned 2(b) Residential. (See Attachment 2)

#### **b     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.

*The objectives of Zone No 2(b) are:*

- (a) to make provision for the orderly and economic development of suitable land in appropriate locations for a variety of housing forms at medium density; and*
- (b) to provide for other uses which:*
  - (i) are compatible with a medium density residential environment and afford services to residents at a local level; and*
  - (ii) are unlikely to adversely affect residential amenity or place demands on services beyond the level reasonably required for medium density residential uses.*

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

#### **c     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.

The subject land is located within "Terrigal 9 - Mixed Use Corridor" of DCP 159 - Character.

The desired character for this locality is:

*"This should remain a ribbon of residential and low-impact retail activities, where the scenic-and-urban design qualities of prominent backdrops to Gosford City's major tourist routes are enhanced by the "greening" of road frontages, and developments surrounded by leafy garden settings.*

*Maintain the informal scenic qualities of hillside properties and road verges by retaining existing natural slopes and conserving all trees that are visually-prominent, particularly bushland remnants standing along street verges and front yards. Ensure that gardens provide space for*

*new plantings, and avoid higher-intensity development that would require extensive driveways or large levelled footprints.*

*Surround developments with leafy gardens to avoid the appearance of long continuous buildings or extensive pavements. Retain natural slopes along all boundaries and provide space for new screen-plantings that complement the established tree canopy. In areas that have been cleared substantially, plant a combination of trees and shrubs that are mostly-indigenous along property boundaries and street verges as well as around each building. Along street frontages, use hedges or fences that are low or see-through rather than tall and opaque.*

*Minimise the scale of buildings by using strongly-articulated forms, including floor levels that are stepped to follow natural slopes, plus facades that vary in shape and height. For example, divide floor space into individual pavilions with a varied form or orientation, separated by landscaped courtyards, verandahs or parking structures. 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 open carports or basements, rather than in wide garages that would accentuate building bulk or dominate visible facades.*

*Minimise the scale of all facades that would be visible from the street, incorporating extensive windows shaded by lightly-framed balconies or verandahs plus exterior sunscreens, plus some painted finishes and sheet or board cladding rather than expanses of plain masonry. Where dwellings face a street or common access-way, provide a traditional "street address" with visible verandahs, living rooms and front doors, and for any retail or commercial tenancy, incorporate traditional shopfronts that are sheltered by awnings.*

*Civic presentation of road frontages should be supported by the co-ordination of building colour schemes and commercial signs. Signs should be limited in both size and number, attached to buildings in consistent locations but limited in height to create continuous horizontal bands along awnings or parapets, rather than covering an entire facade. Pylon signs at the street frontage should complement the design of landscaped areas, and should be limited to one per property."*

In this instance, the proposal does not detract from the character of the immediate locality.

### **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 site is proposed to be zoned R1 General Residential under the draft LEP.

Residential flat buildings are permissible with consent on land zoned R1 General Residential.

The proposal complies with the maximum FSR under the draft LEP which is 0.7:1 and the proposed FSR is 0.66:1.

The proposal is inconsistent with the draft LEP in that the proposed maximum building height is 8.5 metres, and the proposed height is 10.3m.

The draft LEP has completed public exhibition on 5 May 2010 and Council received over 1500 submissions.

In a recent Court case *Bespoke v Gosford City Council* [2009] NSW LEC 108, the Court held (8 March 2010) that: "*there was agreement that the draft local environmental plan could not be seen as imminent or certain and as such no weight is given to this document*".

### 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 on this matter.

### SEPP 71

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 falls within the Coastal Zone.

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

### Statutory Provisions

#### (a) GPSO Clause 28

The following table illustrates the compliance with the requirements of Clause 28.

Issue	Required	Proposal	Compliance/ Variation Y/N
(28(2)) Site Area / Density	10,340m <sup>2</sup>	10,059m <sup>2</sup>	*N - 281m <sup>2</sup> or 2.8%
Building Envelope / Building Height	28(4) All portions of the residential flat building are to comply with the following requirements: (a) planes must be projected at 45 degrees from a height of 3.5	The ventilated roofs over the lift core and the northern corner of building A exceed the height limit.	*N - 0.7m or 7% (See Attachment 3)

	<i>metres above natural ground level at the side and rear boundaries to a maximum height of 10 metres above natural ground level in Zone No 2(b).</i>		
<i>Floor Height</i>	<i>(b) The vertical distance measure from the highest point of the floor of the topmost floor above natural ground level must not exceed 4 metres in Zone No 2(b).</i>	<i>Up to 8.1m</i>	<i>*N - up to 4.1m or 102.5%</i>

\* Refer SEPP 1 objectives

(b) DCP 100 Development Controls

<b>Clause</b>	<b>Control</b>	<b>Proposed</b>	<b>Compliance/ Variation</b>
<i>1.3.3(a) Front Setback</i>	<i>Front setback shall be a minimum of 6m.</i>	<i>The building is setback 6m from Terrigal Drive and Barnhill Road. The southern corner is setback 9m from Barnhill Road.</i>	<i>Yes</i>
<i>1.3.3(b) Building Envelopes</i>	<p><i>1. Planes are to be projected at 45 degrees from a height of 3.5m above natural ground level at the side and rear boundaries, to a maximum height of 10m in 2(b) zones: and</i></p> <p><i>2. The vertical distance measured from the highest point of the floor of the topmost floor above ground level is not to exceed 4m in 2(b) zone.</i></p>	<p><i>The ventilated roofs over the lift core and the northern corner of building A exceed the height limit by 0.3m.</i></p> <p><i>8.1m</i></p>	<p><i>No - up to 0.7m or 7% (See Attachment 3)</i></p> <p><i>No - up to 4.1m or 102.5%</i></p>
<i>1.3.3(b) Side and Rear Setback</i>	<i>Side and rear setbacks shall be a minimum of 1m.</i>	<p><i>Southern side - 5m minimum.</i></p> <p><i>Northern side - 5.43m setback.</i></p> <p><i>Western side - 6.27m setback.</i></p> <p><i>Building A to N/W boundary - 1.98m.</i></p> <p><i>Waste Area - 2m setback.</i></p>	<i>Yes</i>
<i>1.3.3(d) Site Coverage</i>	<i>Buildings may occupy up to 50% of the site area.</i>	<i>Buildings occupy 27% of the site area.</i>	<i>Yes</i>
<i>1.3.3(e) Interior Daylight Access</i>	<i>Each habitable room is to have clear windows</i>	<i>All habitable rooms comply.</i>	<i>Yes</i>



	<i>totalling in area at least 10% of the room's floor area, facing an outdoor space open to the sky, or an open verandah or open carport.</i>		
<i>1.4 Open Space Area</i>	<i>At least 40% of the site should incorporate open space areas.</i>	<i>69% of the site is incorporated as open space.</i>	<i>Yes</i>
<i>1.4.3(a) Private Open Space</i>	<ul style="list-style-type: none"> <li><i>• Ground-level area totalling 40m<sup>2</sup> (with or part at the side or rear and adjacent to a living room) having a minimum contiguous area of 25m<sup>2</sup> with a minimum width of 5m; or</i></li> <li><i>A balcony adjacent to a living room of the dwelling, having an area of 10m<sup>2</sup>, with a minimum width of 1.8m.</i></li> </ul>	<i>Private open spaces exceeds requirements</i>	<i>Yes</i>
<i>1.4.3(b) Sunlight to Private Open Space</i>	<ul style="list-style-type: none"> <li><i>• Where private open space is on the southern side of the building, the southern boundary of the open space is setback from a wall to the north of the space a minimum distance of (3.5 + 0.9h) metres, where h is the height of the wall;</i></li> <li><i>• Where overshadowing may affect adjacent properties, at least 50% (or 40m<sup>2</sup> with minimum dimension 3m, whichever is the lesser area) of the principal private open space of existing adjacent dwellings being able to receive a minimum of 4 hours of sunlight between 9:00am and 3:00pm on 22 March and 22 September.</i></li> </ul>	<p><i>No apartments have private open space exclusively on the southern side of the buildings.</i></p> <p><i>Shadow diagrams submitted indicate compliance.</i></p>	<i>Yes</i>
<i>B1.4.3(c) Communal Open Space</i>	<i>Must be appropriately located, designed to encourage use, cost effect and ensure safety and security.</i>	<i>Communal open space is accessible, and enjoys solar access. Location of the open space allows surveillance from residents.</i>	<i>Yes</i>
<i>B.1.5.3(a) Stormwater</i>	<i>Provision of stormwater</i>	<i>Stormwater will be</i>	<i>Yes</i>

<i>Detention, Nutrient Generation and Management</i>	<i>detention systems onsite.</i>	<i>collected from roofs into 4 x 50,000 litre tanks located throughout the site. Water will be reused for toilets and irrigation.</i>	
<i>B1.6 Recycling and Garbage</i>	<p><i>Bin enclosures are to:</i></p> <ul style="list-style-type: none"> <li><i>• Conceal their contents from public places and adjacent properties;</i></li> <li><i>• Be part of the adjoining landscape;</i></li> <li><i>• Be sited 3m from adjoining residential dwellings;</i></li> <li><i>• Be readily accessible for collection;</i></li> <li><i>• Be of sufficient size.</i></li> </ul>	<i>Bin enclosures are located in the basement for recycling bins and one is located externally for the non-recyclable materials. The external bin enclosure conceals its contents and is located more than 3m away from the adjoining residential dwelling (2m from boundary).</i>	<i>Yes Landscaping, fencing or screening has been provided to protect the adjoining property.</i>
<i>B1.6.3 Waste Management Plan</i>	<p><i>Plan must indicate the location and construction of the bin enclosure, storage capacity, access construction details and bin numbers including recycling bin provision.</i></p> <p><i>Bulk bins are required for larger developments and shall be located adjacent to the driveway and within 20 metres of the serviced boundary. Vehicular access to these bulk bins shall be conforming driveways not steeper than 1 in 12. A clear and level area shall be provided for the loading of bulk bins, having a minimum clear height of 6metres.</i></p> <p><i>The storage provision of bins shall be as follows:</i></p> <ul style="list-style-type: none"> <li><i>• Garbage bin - Provision of space 1500 high 1800 wide and 1500 deep sufficient for a 1.1 cubic metre bulk bin for each set of 14 units, rounded up.</i></li> <li><i>• Recycling Bin (for paper and glass) - provision of a space for 1 Bin per unit of 1200 x 800 wide and 900 deep.</i></li> </ul>	<p><i>The bin pick up area is located approximately 46 metres from the front boundary. Whilst this is further than the 20 metres requirement, it is considered reasonable, given that the current pickup location is in the south-western corner approximately 180 metres from the front boundary.</i></p> <p><i>A reversing area is available so the service vehicles can enter and exit the site in a forward manner.</i></p> <p><i>Five garbage bins and 65 recycling bins to be provided.</i></p>	<i>Yes</i>

B1.7.3(a) Parking (i) and (ii)	<ul style="list-style-type: none"> <li>• Minimum dimensions shall be 2.6m x 5.4m Tandem parking may be used where two spaces are provided for a specific dwelling.</li> <li>• 1.5 car spaces per dwelling, rounded up to the next whole number.</li> <li>• Visitor parking - 0.2 spaces per dwelling provided on site and clearly marked for visitors only.</li> </ul>	Resident spaces are 2.8m x 5.5m minimum unless allocated as a disabled space (3.2m x 5.5m min).  98 resident spaces and 13 visitor spaces required (Total (111)).	Yes 111 spaces provided In basement area and garage.
Access ways B1.7.3(b)(iii)	Maximum width of access way at the street frontage not to exceed 33% of the frontage length.	The maximum width of the access way represents 7.8% of the frontage.	Yes
(iv) Visual buffers	Between windows and driveways <ul style="list-style-type: none"> <li>• Setback minimum 1.5m from windows to habitable rooms of dwellings; or</li> <li>• The floor level is at least 1m above the driveway at the window opening.</li> </ul>		Yes
B.1.7.3(c) Roadways and ramps	• In accordance with AS 28901.1 Section 2.5		Yes
B1.7.3(d) Bicycle parking	1 space per 12 units rounded up. The form of bicycle parking stalls is to be in accordance with AUSTROADS Pt 14 Section 5	Areas set aside for up to 11 spaces.	Yes
B3.2.3(a) Landscape	Landscape Plan to be prepared in accordance with Council's Landscape Management Policy.	A Landscape Plan has been submitted.	Yes
B.3.2.3(b) Tree Preservation	Shall comply with Council's Tree Preservation Order.	An Arborist Report has been submitted.	Yes
B.3.2.3(c) Street Trees	Street Trees 4.5m high and 8m spacing.	Can be provided as a condition of consent if required.	No
B3.2.3(d) Landscape Access for People with disability or the Aged	Design for access and mobility	Disabled access to all apartments from car park. Disabled access to 31 apartments (47%) from the street. Community facilities are accessible from disabled accessible apartments and street.	Yes
B3.3 External Appearance	Should incorporate a variety of materials such	A variety of materials proposed.	Yes

	<i>as masonry, lightweight wall cladding, glass, recycled materials, timber or treated metal.</i>		
<i>Fences</i>	<i>Maximum height of fencing on the front boundary is 1m. Fencing higher than 1m (max 1.5m) forward of building line is to be setback 1.5m from the front boundary and screened by landscaping. Courtyard fencing forward of the building line should be complementary materials to the development which could include materials such as brick, timber, brushwood and decorative metal.</i>	<i>Screen fencing forward of the building line is visually lightweight in design.</i>	<i>Yes</i>

## SEPP 1 Objections

SEPP No 1 Provides:

*"where development could, but for any development standards, be carried out under the Act, the person intending to carry out that development may make a development application in respect of that development, supported by a written objection that compliance with that development standard is unreasonable or unnecessary in the circumstances of the cases, and specifying the grounds of that objection.*

*In Hooker Corporation Pty Ltd v Hornsby Shire Council (NSWLEC, 2 June 1986, unreported) and Winten Property Group Limited v North Sydney Council, NSWLEC 46, 6 April 2001, SEPP 1 requires answers to the following assessment:*

- 1 is the planning control in question a development standard?*
- 2 what is the underlying object or purpose of the standard?*
- 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 attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act?*
- 4 is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*
- 5 is the objection well founded?"*

The controls identified in Clause 28 of the GPSO are development standards.

The applicant has submitted objections under SEPP 1 to the Development Standards of Clause 28(2), 28(4)(a) and 28(4)(b) of the GPSO which relate to minimum site area, maximum building envelope/10 m height and top floor height.

a Site Area

i Underlying objective or purpose of the standard.

### Applicant's Submission

*"The applicant contends that this standard appears to be an attempt to regulate the relationship of size of unit and number of units which can be accommodated on the site, and therefore is a form of density control which operates differently to a floor space ratio control under Clause 29B of the GPSO*

*However the Clause does not achieve the zone objectives in providing a variety of housing forms as large units have no upper limit and compliance can be achieved by simply having small or medium units.*

*In any case, the overall floor area is controlled by Clause 29B (FSR)."*

### Assessment Comment

The objective or purpose of the standard is to ensure an adequate site area for the number and size of units. That is, the density.

It is correct that once units exceed 110m<sup>2</sup> in size, there is no upper limit. However, for a wholly residential development Clause 29B (FSR) does not apply. It is considered the proposal complies with the objective or purpose of the standard.

### ii 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 attainment of the objectives specified in Section 5(a)(i) and (ii) of the EPA Act?

*"The aims and objectives of SEPP No 1 are to:*

*'provide flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any 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 Act.'*

*The objects specified in 5(a)(i) and (ii) of the EP&A Act are:*

*'the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment, and  
the promotion and co-ordination of the orderly and economic use and development of land.'*

### Applicant's Submission

*"The applicant contends that strict compliance would not change the design outcome other than achieve a different mix of unit size and numbers. It is considered the proposal has an appropriate mix of units, and design achieves a relatively small building footprint with extensive landscaping which is suitable for this area.*

*The variation is minor and compliance with the standard would not promote the social or economic welfare of the community nor promote the economic use and development of such a large site."*

### Assessment Comment

The site is one of, if not the largest site, in the Terrigal area, being about 2,000m<sup>2</sup> or 25% greater than the "Rapedo" site for which Council prepared a separate LEP to permit an FSR of 2.2:1 and maximum height of RL 23.6m AHD. It is agreed the proposed variation is minor and adherence to the standard would hinder attainment of the objectives of the Act.

iii Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Applicant's Submission

*"The applicant contends that the site well exceeds the 2000m<sup>2</sup> site area needed for the density.*

*The variation to the minimum site area needed is 281m<sup>2</sup> over a total site area of 10,059m<sup>2</sup>. This is a 2.8% variation and adherence is considered unreasonable and unnecessary due to such a large site and complying with the standard would not change the design outcome."*

Assessment Comment

It is agreed the variation is minor and not significant. To achieve compliance would require the deletion of:

- 3 small units, or
- 3 medium units, or
- 2 large units, or
- a combination of the above.

However deletion of units to achieve such a numerical compliance is not considered to be reasonable or necessary.

iv Is the objection well founded:

Applicant's Submission

*"The applicant contends that the objection is well founded for the following reasons:*

- *The Site is the last remaining large development site in Terrigal, and provides an opportunity to make a positive contribution towards achieving the objective of the 2(b) zone by increasing the variety of housing forms available at medium density, compared to what has become a ubiquitous style of two storey townhouses, which are unlikely to be generally suited to an ageing population.*
- *The proposal meets the objectives of DCP 100.*
- *The proposed development proposes only 27% site coverage with generous open space, which will also retain the Norfolk Island Pines and provide opportunities for additional canopy trees throughout the site. This will assist in maximizing the visual green space when viewed from surrounding areas including from the surrounding hillsides.*
- *The building height is in character with other two and three storey buildings in the surrounding area. The building steps down along the front of the site to relate to the height of the "Onda" building to the south and stepping down at the northern boundary to be in context with the adjoining two-storey residential flat building.*

- *Much of the development within the area is three storey and exceeds the development standard relating to upper floor height.*
- *The building footprint is significantly reduced to allow view sharing, solar access, increased opportunities for landscape and minimising the visual impact.*
- *A strictly complying development, which seeks an economic yield, would increase the site coverage, leaving less area for landscape, and would not provide the diversity in housing form sought by the Gosford Planning Scheme Ordinance or DCP 100."*

#### Assessment Comment

It is considered the objection under SEPP No 1 to the development standard of Clause 28(2) is well founded and adherence to this standard is unnecessary and unreasonable in the circumstances of the case.

#### b Building Envelope/Maximum 10m Height

##### i Underlying objective or purpose of the standard.

##### Applicant's Submission

*"The applicant considers the underlying purpose is to ensure adequate building setbacks from rear and side boundaries as the height of the building increases to ensure adequate light and ventilation to adjoin properties and to control bulk and scale."*

#### Assessment Comment

This is correct. As the building increases in height, it should move further away from side and rear boundaries to reduce the impact on adjoining properties and to control the overall height, bulk and scale and to ensure adequate light and ventilation to adjoining properties.

It is considered the proposal complies with the objective/purpose of the standard.

##### ii 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 attainment of the objectives specified in 5(a)(i) and (ii) of the EPA Act?

*"The aims and objectives of SEPP No 1 are to:*

*'provide flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any 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 Act.'*

*The objects specified in 5(a)(i) and (ii) of the EP&A Act are:*

- *'the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment, and*
- *the promotion and co-ordination of the orderly and economic use and development of land.'*

### Applicant's Submission

*"The applicant contends that compliance with the standard is consistent with the objectives of the Policy and in particular would hinder attainment of the objectives of the Act. The variations to the building envelope/10m height are minor and the majority are from skylights over lift and stair wells.*

*To delete these and to comply with the standard would result in the minimization of use of natural daylight, add to energy consumption, and reduce the architectural variety/roof features of such facilities."*

### Assessment Comment

The variation is minor and not significant and only over a small part of the building. Deletion of the skylights etc would not improve the design. Therefore compliance would hinder attainment of the objectives of the Act.

#### iii Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

### Applicant's Submission

*"The applicant contends that compliance in this case is unreasonable and unnecessary for the following reasons:*

*The building generally complies with the building envelope except for:*

- Minor intrusion by the parapet and pergolas in the north west corner of some buildings where the height plane follows the slope of the ground.*
- Part of Building A protrudes through the height plane for a relatively small area. The intrusion varies from 0 to 700mm over an area of roof of approximately 40m<sup>2</sup>. This compares to a total roof area of 2,180m<sup>2</sup>. The north west corner of Building B intrudes to a lesser extent in height and over an area of approximately 30m<sup>2</sup>, compared to the overall roof area of 2,180m<sup>2</sup>.*
- The roof lights to the stair well/lift lobbies, which are in the form of small skillion roofs sitting above the main roof line. These elements contribute to the overall architectural character of the building, creating interest and breaking up the form of the buildings, particularly when viewed from above.*

*Also noted under Clause 1.3.3(c) of the DCP 100 that allowable encroachments to the building envelopes and setbacks include eaves, fascias, cooling or heating appliances or other services and the like. Also light fittings, electricity or gas meters, aerials or antennae, pergolas, screens or sun blinds are not restricted. Arguably the roof lights would fit into this category.*

*Strict compliance with the building height envelope could be achieved by:*

- Reducing/removing the pergolas and using a roof form incorporating no parapets in the areas that penetrate the height envelope, and/or lowering the buildings further into the site.*
- Redesigning part of Building A and incorporating a different form of roof design without parapets.*
- Redesigning the roof lights over the stair/lift lobbies to sit below the roofline.*



*However, the variations are minor in extent compared to the overall compliance with the standard, and particularly that the overall design achieves significant areas of open space between buildings and has a significantly smaller footprint than other forms of medium density development in Terrigal. It is considered that these changes would result in an inferior design, which would potentially be less efficient in terms of passive energy principles by reducing the day light and natural ventilation to the stair well and lift shafts and reduce the extent of shading and sun control provided by the pergolas, and would not have any material benefit in terms of improving the relationship of the buildings with the surrounding area or achieving the stated objectives of DCP 100, or the underlying objectives of the GPSO with respect to the building height envelope.*

*The adjoining "Onda" building approved in 2001 does not comply with the building height control. There are many buildings within Terrigal that do not comply.*

*Accordingly, compliance with the 10m height requirement will lead to an inferior design outcome. Overall, the development is broken up into six buildings to reduce mass and to increase view sharing, solar access, ventilation and extensive landscaped open space. Visual bulk and character is further discussed under Clause 28(4)(b). The non-compliance in relation to the 10m height is minor and can be seen from the Height Plane drawing attached in Appendix 1 of the Statement of Environmental Effects. The non-compliance is generally only in relation to the skylights above the lift and stair wells on each of the buildings."*

#### Assessment Comment

It is agreed that adherence to the development standard is unnecessary and unreasonable due to the minor variation and the impact is not significant.

#### iv Is the objection well founded?

##### Applicant's Submission

*"This SEPP No 1 objection is well founded for the following reasons:*

- The Site is the last remaining large development site in Terrigal, and provides an opportunity to make a positive contribution towards achieving the objective of the 2(b) zone by increasing the variety of housing forms available at medium density, compared to what has become a ubiquitous style of two storey townhouses, which are unlikely to be generally suited to an ageing population.*
- The proposal meets the objectives of DCP 100.*
- The proposed development proposes only 27% site coverage with generous open space, which will also retain the Norfolk Island Pines and provide opportunities for additional canopy trees throughout the site. This will assist in maximizing the visual green space when viewed from surrounding areas including from the surrounding hillsides.*
- The building height is in character with other two and three storey buildings in the surrounding area. The building steps down along the front of the site to relate to the height of the "Onda" building to the south and stepping down at the northern boundary to be in context with the adjoining two-storey residential flat building.*
- Much of the development within the area is three storey and exceeds the development standard relating to upper floor height.*
- The building footprint is significantly reduced to allow view sharing, solar access, increased opportunities for landscape and minimising the visual impact.*

- *A strictly complying development, which seeks an economic yield, would increase the site coverage, leaving less area for landscape, and would not provide the diversity in housing form sought by the Gosford Planning Scheme Ordinance or DCP 100."*

#### Assessment Comment

It is agreed the objection is well founded.

#### *c Maximum Top Floor Height*

##### *i Underlying objective or purpose of the standard.*

#### Applicant's Submission

*"The applicant assumes the objective of the standard is to limit development to 2 storeys above ground level in the 2(b) zone."*

#### Assessment Comment

Although there are no objectives in the GPSO, in Clause B1.3.1 of DCP 100, one of the objectives of the building envelope is: "to ensure that the building frontage, alignment and the height and length of walls to the side and rear boundaries are of appropriate character and visual bulk." This is the purpose of the 4m standard and in the 2(b) zone. In the 2(c) zone (for 3 storey development) the maximum top floor height is 6m.

##### *ii 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 attainment of the objects specified in 5(a)(i) and (ii) of the EP & A Act?*

*"The aims and objectives of SEPP No 1 are to:*

*'provide flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any 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 Act.'*

*The objects specified in 5(a)(i) and (ii) of the EP&A Act are:*

- *the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment, and*
- *the promotion and co-ordination of the orderly and economic use and development of land."*

#### Applicant's Submission

*"The development standard does not provide any flexibility in terms of its application, and in the circumstances of the subject proposal does not take into account the size and shape of the land, the nature of the surrounding development, including the adjoining development on the southern boundary, and other development approved and built in the area.*

*Strict compliance with the standard would result in a different building form with a much higher site coverage and less communal open space and much reduced landscape area,*

*and is unreasonable and unnecessary in this particular case. It would limit the design in achieving the proper use of the site with regard to natural lighting and solar access to internal spaces, and an appropriate built form, which responds to the site and its surrounds.*

*Other developments in the surrounding area exceed the standard, including the approved development on the site, and on the adjoining "Onda" site. Strict compliance with the standard will not necessarily result in a less bulky building that would still comply with the height envelope under Clause 28 (4)(a). Hence strict compliance will limit the best use of the site in relation to objects of section 5(a)(i) and (ii)."*

### Assessment Comment

Compliance with the standard would result in a 2 storey development with greater site coverage and less landscaping and may result in a poorer design outcome.

### iii Is compliance with the development Standard unreasonable or unnecessary in the circumstances of the case?

#### Applicant's Submission

*"Clause 28(4)(b) requires that, in the 2(b) zone, buildings have a maximum vertical dimension of 4 metres measured from the highest point of the floor of the topmost floor of the building above natural ground level. This development standard has the effect of limiting buildings to two-storeys, however the building can still be constructed to a height of 10m if meeting the requirements under Clause 28(4)(a). These non-compliances of up to 4.1m but are generally between 2.6m and 3m for the buildings.*

*The variations to this development standard are partly a result of the three storey elements and partly as a result of the basement carpark being raised out of the ground. With respect to the form of development and the inclusion of three storey buildings over part of the site, this allows the reduction of the overall footprint and achieves worthwhile design outcomes in relation to building separation, reduced site coverage, improved daylight and solar access, and reduces the overall bulk of the floorspace by incorporating into six separate buildings.*

*Accommodation parking within a basement increases the amount of landscaped open space and contributes to the overall site amenity, and enables improved security for residents and access for persons with disabilities. Raising the basement partly above ground level reduces the extent of excavation and provides opportunities for passive ventilation including cross ventilation in the carpark.*

*Compliance with the standard is considered unreasonable and unnecessary and will lead to a building with a larger footprint and site coverage, decrease the opportunity for landscape and limit the potential for passive energy management in the design.*

*There are no specific objectives associated with this development standard. In Bruce Kerr Pty Ltd v Gosford City Council [2007] NSWLEC 501 and David Kettle Consulting Pty Ltd v Gosford Council [2008] NSWLEC 1328 it was accepted that the underlying objective of clause 28(4) of the ordinance was to achieve an appropriate residential character and visual bulk. It was nevertheless recognised that a development standard involving floor levels in a building cannot provide much assistance in dealing with visual bulk. The buildings effectively comply with the applicable building height plane envelopes, these being the more usual and effective means of controlling the bulk and scale of buildings.*

*It is considered that the floor height development standard is of limited assistance in controlling visual bulk because it does not deal with built form and scale above the uppermost floor level nor does it deal with building length.*

*There are no adverse impacts associated with the other standards in terms of character and visual bulk and taking also into account the comfortable compliance with the associated site coverage, landscape area and density standards.*

*The proposed development is zoned 2(b) Residential under the Gosford Planning Scheme Ordinance and the proposed development is permissible with development consent. Land surrounding the site is also zoned 2(b) Residential. The objectives of the 2(b) zone are:*

- (a) to make provision for the orderly and economic development of suitable land in appropriate locations for a variety of housing forms at medium density; and*
- (b) to provide for other uses which:*
  - (i) are compatible with a medium density residential environment and afford services to residents at a local level; and*
  - (ii) are unlikely to adversely affect residential amenity or place demands on services beyond the level reasonably required for medium density residential uses.*

*The development meets all of these zone objectives in that it is:*

- Suitable land in an appropriate location*
- The proposal is medium density and contributes to the variety of housing forms at medium density.*
- It provides for other uses which are compatible with a medium density residential environment by incorporating a small café for residents and the general public.*

*The development does meet the existing and proposed future character of the site as outlined in DCP 159. The desired character for this area under DCP No 159 that is relevant to this site are:*

*This should remain a ribbon of residential and low-impact retail activities, where the scenic-and-urban design qualities of prominent backdrops to Gosford City's major tourist routes are enhanced by the "greening" of road frontages, and developments surrounded by leafy garden settings.*

*Surround developments with leafy gardens to avoid the appearance of long continuous buildings or extensive pavements. Retain natural slopes along all boundaries and provide space for new screen-plantings that complement the established tree canopy. In areas that have been cleared substantially, plant a combination of trees and shrubs that are mostly indigenous along property boundaries and street verges as well as around each building. Along street frontages, use hedges or fences that are low or see-through rather than tall and opaque.*

*Minimise the scale of buildings by using strongly-articulated forms, including floor-levels that are stepped to follow natural slopes, plus facades that vary in shape and height. For example, divide floorspace into individual pavilions with a varied form or orientation, separated by landscaped courtyards, verandahs or parking structures. 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 open carports or basements, rather than in wide garages that would accentuate building bulk or dominate visible facades.*

*Minimise the scale of all facades that would be visible from the street, incorporating extensive windows shaded by lightly-framed balconies or verandahs plus exterior sunscreens, plus some painted finishes and sheet or board cladding rather than expanses of plain masonry. Where dwellings face a street or common access-way, provide a traditional "street address" with visible verandahs, living rooms and front doors, and for any retail or commercial tenancy, incorporate traditional shopfronts that are sheltered by awnings.*

*Surrounding development is characterised by a mix of residential flat buildings, single dwellings of varying ages, styles, height, size and condition. Residential uses are interspersed with non residential uses such as the Terrigal Hotel, shops, personal services (hair dressers, TAB, video outlets, surf shops), restaurants and community facilities such as child care and scout hall.*

*The surrounding area comprises numerous examples of buildings which are three storeys above ground level and therefore exceed the upper floor height standard. The contextual analysis (refer the SEPP 65 Design Report) shows that a number of buildings including the site are three or more stories. More recent buildings including apartments, town houses and single dwellings, varying in height but are up to three stories in appearance. Many of the single residences along the beach front are large and appear as three storey buildings.*

*The southern boundary of the site is defined by the rear yards of buildings facing Ena Street. Apart from Onda, the adjoining houses are set well back. Onda extends for one third of the length of the southern boundary, and sits on the boundary with a high blank wall for almost its entire length. This building is built to the boundary on three sides and is three stories high with a very high site coverage. The building encroaches up to 900mm onto the subject land.*

*To the south of "Onda" is Bulwarra, which comprises three and four story holiday accommodation. This building has a steeply sloping skillion roof, which increases its height by almost a storey on the eastern facade. The development has a relatively low site coverage compared to most of the surrounding development.*

*Buildings in Ena Street include older homes, which are potential redevelopment sites. Town house developments on relatively narrow sites with buildings overlooking each other, which appear to maximise yield and consequently rely on a relatively high site coverage and little open space and landscaping.*

*The scheme provides an appropriate transition with the three storey Onda development of the southern boundary, the three to five storey Bulwarra, and three storey developments in Barnhill Road, Whiting Avenue, and further south along Terrigal Drive entering into Terrigal.*

*Strict compliance with the development standard would result in a different form of building but could still result in a building of the same height. A two storey building form that achieved an economic yield would require significantly more site coverage and hence the likelihood of blocking further views from the surrounding area and having much more bulk and scale. Such a form would replicate the two storey town house. This form of development is unlikely to meet the future needs of an ageing population in that it is two storey living compared to single level living serviced by lifts proposed in the subject*

*application. The development also provides a range of types of apartments assisting in meeting the objectives of providing a diversity of dwellings."*

#### Assessment Comment

Prior to August 2003, a number of residential developments were approved in the Terrigal area of more than 2 storeys in the 2(b) zone.

Council inserted the maximum top floor height under LEP 436 which was made on 15 August 2003, to restrict development to 2 storeys on 2(b) zoned land.

Since that time Council has varied the maximum to floor height in many applications but most of these were variations of less than 10%.

Only a handful of applications has the variation exceeded 10%.

One application (DA21849/2003) approved 9/11/2004) varied the top floor height 2m or 50% for a residential flat building in Painters Lane on 2(b) zoned land.

Prior to gazettal of LEP 436 similar variations to the current applications were approved including that on the adjoining Onda site which varied the height by 4 metres.

Whilst the purpose of the maximum top floor height was to restrict development to 2 storeys in the 2(b) zone, no specific objectives were inserted into the Ordinance.

#### iv Is the objection well founded?

##### Applicant's Submission

*"The applicant advised that the SEPP No 1 objection is well founded for the following reasons:*

*The Site is the last remaining large development site in Terrigal, and provides an opportunity to make a positive contribution towards achieving the objective of the 2(b) zone by increasing the variety of housing forms available at medium density, compared to what has become a ubiquitous style of two storey townhouses, which are unlikely to be generally suited to an ageing population.*

- The proposal meets the objectives of DCP 100.*
- The proposed development proposes only 27% site coverage with generous open space, which will also retain the Norfolk Island Pines and provide opportunities for additional canopy trees throughout the site. This will assist in maximizing the visual green space when viewed from surrounding areas including the from surrounding hillsides.*
- The building height is in character with other two and three storey buildings in the surrounding area. The building steps down along the front of the site to relate to the height of the "Onda" building to the south and stepping down at the northern boundary to be in context with the adjoining two-storey residential flat building.*
- Much of the development within the area is three storey and exceeds the development standard relating to upper floor height.*
- The building footprint is significantly reduced to allow view sharing, solar access, increased opportunities for landscape and minimising the visual impact.*
- A strictly complying development, which seeks an economic yield, would increase the site coverage, leaving less area for landscape, and would not provide the diversity in housing form sought by the Gosford Planning Scheme Ordinance or DCP 100."*

### Assessment Comment

The proposal achieves a number of desirable or good design outcomes such as reduced site coverage, generous open space and landscape areas, basement car parking area and quality building design.

However the variation to the maximum top floor height is significant and results in a 3 storey development instead of a 2 storey development.

A 3 storey development is effectively utilising the site equivalent to a 2(c) zone and not a 2(b) zone.

The Department of Planning have advised Council that it would be inappropriate to use SEPP 1 to permit a development which even if of good design, would require rezoning of the site through the LEP process. Therefore the objection is not well founded.

### **Heritage**

*"Council's Heritage Assessment Officer has assessed the impact of the above proposal in accordance with section 79C of the Environmental Planning and Assessment Act 1979 (EP&A Act).*

#### Overview of the Proposal

*This application seeks development consent for Residential Flat Building - 65 Units 3 storeys at LOT: 115 DP: 12020, Lot: B DP: 341177, LOT: 2 DP: 588831. The subject site is located in the vicinity of the heritage listed building "The Gunyah" at 168 Terrigal Drive Terrigal. Lot 115 DP12020 is thought to also contain the unmarked grave of John Kay.*

#### Heritage Status

*"The Gunyah" is listed as a local item of heritage significance on Schedule 8 of the Gosford Planning Scheme Ordinance.*

*The heritage significance of the site was investigated by: Graham Brookes and Associates in 1998 as part of Stage 1 of the Gosford Heritage Review. As outlined in the Heritage Inventory Form for the property the subject property is significant as it has:*

*"Historic and social significance as an early holiday house of the Terrigal district, associated with early tourism and the subdivision of Terrigal in 1900. It has aesthetic significance as a fine and intact example of a holiday cottage of the early twentieth century. Located on a prominent site by Terrigal Lagoon and Beach it is an important feature in the landscape."*

*While not a local heritage site or a registered grave site, Lot 115 DP12020 is thought to also contain the unmarked grave of John Kay. According to information provided in a submission from Leslie James Kay the great-great grandson of John Kay, John Kay was interred on the site on 1st of October 1839. As outlined in the submission:*

*"His grave site in the shape of a triangle can be seen at the northern boundary of the car-parking area attached to the Cobb & Co. Motor Inn, and right beside the road."*

*Leslie James Kay raised no objection to the proposed development subject to the grave being recognised with a small heritage plaque close to the burial site.*

### Heritage Assessment

*The proposed works have also been assessed in accordance with the criteria outlined by the NSW Heritage Office when assessing impact of a development on a heritage item as follows:*

<b>Consideration</b>	<b>Comment</b>
<i>How is the impact of the new development on the heritage significance of the item or area to be minimised?</i>	<i>The closest part of the proposed new building is 27.5m from the Gunyah the neighbouring heritage building. Existing and proposed landscaping is to provide a visual buffer between the Gunyah and proposed development site.</i>
<i>Why is the new development required to be adjacent to a heritage item?</i>	<i>The proposed development is appropriately sited to provide for the redevelopment of the subject site.</i>
<i>How does the curtilage allowed around the heritage item contribute to the retention of its heritage significance?</i>	<i>The Gunyah is located within its own property boundaries. The proposed works are more than 25 metres away from the heritage item with this area forming an adequate curtilage to the heritage listed building.</i>
<i>How does the new development affect views to, and from, the heritage item? What has been done to minimise negative effects?</i>	<i>The most significant view to and from the Gunyah is from Terrigal Drive and Terrigal Lagoon. These views will not be affected by the proposed development.</i>
<i>Is the development sited on any known, or potentially significant archaeological deposits? If so, have alternative sites been considered? Why were they rejected?</i>	<i>The grave of John Kay is thought to be located on Lot 115 DP12020. It is recommended that a deferred commencement condition be imposed to require a thorough investigation into the grave site and recommend mitigation measures should the development work disturb the remains.</i>
<i>Is the new development sympathetic to the heritage item? In what way (e.g. form, siting, proportions, design)?</i>	<i>The proposed development will not have a negative impact on the significance of the heritage item.</i>
<i>Will the additions visually dominate the heritage item? How has this been minimised?</i>	<i>The proposed development is set well back from the neighbouring heritage item the Gunyah with existing and proposed landscaping to buffer the impact visual impact of the new works on the heritage listed building.</i>
<i>Will the public and users of the item still be able to view and appreciate its significance?</i>	<i>Views to and from the Gunyah along with the ability of the public to appreciate its significance will not be affected by the proposed development.</i>

### Conclusion

*Based on the above assessment no objection is raised to the development on heritage grounds subject to the following conditions of development consent.*

### *During Construction*

*Should any relics be uncovered during excavation on site, the applicant must ensure that work ceases in that area and the Heritage Office is immediately notified in accordance with Section 146 of the NSW Heritage Act 1977.*



*Work must not recommence in that area until any necessary Excavation Permit has been obtained from the Heritage Council under Section 140 of the NSW Heritage Act, 1977.*

#### *Prior to Issue of an Occupation Certificate*

*A plaque is to be placed in a publicly accessible location on Lot 115 DP12020 identifying the location of the grave of John Kay who was buried on the property on 1st of October 1839."*

#### **Environmental Assessment**

*"Council's Environmental Assessment Officer has assessed the environmental impact of the above proposal in accordance with section 79C of the Environmental Planning and Assessment Act 1979 (EP&A Act).*

#### *State Environmental Planning Policy No. 55 (Land Contamination)*

*The potential for land contamination exists on the site due to the former use as a service station and workshop. It appears that tank(s) and two dip and fill points are still in position and may contain petroleum products. It has therefore been recommended that a Targeted Phase 2 Contamination Assessment be undertaken and any subsequent remediation and validation works necessary to deem the site suitable for residential land use.*

*The Phase Two Assessment should employ the Douglas Partners recommendations that are contained in their Assessment and include:*

- Lot 115 DP 12020 and Lot B DP341177 where a former garage was identified and at least one in-ground storage tank appeared to be present. The investigation within this area should include assessment of contaminant conditions.*
- The filling which appears to be present within the north-eastern area of the site.*
- The former footprint of the demolished Dilwynia Motel.*
- The limited sampling from the rear of the site which was formerly used as improved pasture.*
- The groundwater conditions should be assessed.*

*As such further investigation is required via a Detailed Site Investigation and Validation Report to verify the site's contamination status.*

#### *Conclusion*

*The objectives of the relevant policies, zoning objectives and potential environmental impacts associated with the proposal have been considered. Council's Environmental Assessment Officer has no objection to the proposal subject to the attached deferred conditions being included within any consent granted.*

- i An Auditor accredited under the Contaminated Land Management Act, 1997, issuing a site audit statement to Council.*
- ii Council approves the remediation works and site validation.*
- iii Council issues a statement that the site is suitable for the proposed use."*

#### **Central Coast Design Review Panel**

The Panel advises:

#### *"Panel's Recommendation*

*A Recommend approval with suggested amendments.*

### Panel's Comments

*The Panel generally supports the proposed development as being appropriate to the site context, particularly in relationship to height, building siting strategy and open space planning. Specifically the Panel supports the proposal's non compliance with Council's general 4 metre height plane to the floor of the highest level. The proposal is well within keeping with the surrounding built context which has a generally 3 storey character of varying quality. The Panel also supports the development's proposed roof height lines including some minor non-compliance issues around the roof of the vertical circulation zones.*

*The inclusion of a café near the front boundary is also strongly supported by the Panel as it would activate the street frontage in this gateway location to Terrigal.*

### Context

- *The Panel commends the level of contextual and site analysis information provided for the proposed development.*

### Scale

- *The scale of the proposed development is appropriate to the site in bulk and height.*

### Built Form

- *Site Planning: The site planning is supported including the central open space access corridor. There is a conflict between pedestrians and vehicles at the top of the ramp down to the car parking area. It would be preferable to avoid this situation by a reconfiguration of the site planning to achieve greater differentiation between the main pedestrian access and the vehicular access.*

### Applicant's Response

*"The apparent conflict between the pedestrian access corridor and the driveway is noted. The ramp in this area will have a gentle gradient since it will also include visitor parking. The pedestrian access route will be a raised threshold across the top of the ramp where it crosses the top of the driveway to clearly delineate as a pedestrian area with lighting bollards on either side to provide further security to pedestrian and identify it as a pedestrian crossing point.*

*Furthermore the sight lines to this part of the site are considered to be appropriate given it will be slow moving traffic. Lastly it is intended that this area will be shown as a shared zone pedestrian / vehicular zone. This is shown on Drawing Number DA-4 Rev B.*

*During the design analysis alternative design arrangements were investigated but the proposed design is a function of the need to accommodate garbage vehicles entering and exiting the site in a forward direction."*

- *Vehicular Access: The present proposal is for the site access driveway to pass beneath Building A providing access to the interior of the site and the underground car park. A better solution to this would be to provide a clear break in Building A above the driveway that is open to the sky. This will improve safety, and visual wayfinding into the development. The free standing building to the north (previously part of block A) could then neatly accommodate a café (if allowed), community centre or other semi-public function.*

### Applicant's Response

*"The panel comments are noted. Separating the building was considered but the location of the accessway is relatively inflexible and has been moved in a westerly direction from the existing accessway to improve the gradient for vehicles entering the site.*

*The area available for development to the west of the accessway is relatively confined and it is considered that developing this part of the site as a separate entity with an open approach to the sky would compromise the continuity of the streetscape. Notwithstanding this, the design has been further adapted to clearly identify the entry way and improve its relationship to the street incorporating other comments by the panel in relation to the location of the letterbox.*

*The proposed café has been deleted from the scheme and therefore this building does not need to be a free standing building to accommodate this type of use."*

- *Balconies: The extent of balconies needs further resolution and refinement. Consider the deletion or a reduction in length of some balconies to less than the space they serve. This may help to provide further variety to the articulation of the facades. It is also questioned whether the protruding balcony to the southern most part of block A is necessary as it encroaches significantly on the setback from the side boundary.*

#### Applicant's Response

*"We note the panel's comments but in our opinion that the gap is a significant problem from the adjoining bulk and scale of the Onda development, and a properly designed articulation by the use of a balcony with the use of screening will assist in addressing this gap of "no mans" land created by the high solid walls and overlooking of the Onda development."*

- *Building Entries: The entries to Buildings B, C and D would be attractive and are commended. It is suggested that the entries to Building E and F be reconfigured to provide more generous dimensions. Ensure adequate privacy to the bedrooms from the common access way to the western entries to Building A.*

#### Applicant's Response

*"The designs have been further developed to address these comments by the panel by making the entry to Building F more generous. Building E has been retained as this has a larger foyer area due to the skylights and the approach to Building E is fairly generous. Refer Drawing number DA-4 Revision A."*

- *Supplementary Structures: It is important that the bin storage structure and waste pickup area and the structure housing the pool amenities be fully integrated with the design character of the development and suitably screened as required.*

#### Applicant's Response

No response provided. The bin collection/storage area needs to be in an accessible location and landscape screening has been provided.

#### Density

- *The proposed density is appropriate.*

#### Resource, Energy and Water Efficiency

Ensure that the following are incorporated:

- *passive and active solar design (including solar hot water);*
- *efficient energy systems;*
- *further deep soil zones to retain existing mature vegetation and allow for additional native tree and understorey planting;*
- *capture and reuse of grey and rain water; and*
- *biologically active forms of stormwater management.*

#### Applicant's Response

*"Noted. The building performs well through the BASIX assessment particularly given that the assessment was on a basis of a worse case scenario of air conditioning for all units, which will not be necessary due to the high level of cross ventilation and access to solar orientation. "*

#### Landscape

- *The opportunity to maintain a number of the larger trees along the rear boundary should be further explored. This could possibly be accomplished by removing some car spaces beneath the central open space in this vicinity to allow for a greater deep soil area, and the associated trees, to remain in this location.*

#### Applicant's Response

*"This matter has been further investigated and existing vegetation along the western boundary will be retained where possible. Considerable amendments will be required to the carpark to retain the Brushbox along the western boundary. However, the Brushbox is unlikely to survive due to its root system and construction of the development. However the landscape design proposes additional native species along the western boundary."*

- *It is recommended that an additional Norfolk Island Pine be planted at the driveway entrance to contribute to the established landscape character of Terrigal. The recommended break in Building A would allow for this without compromising resident's views.*

#### Applicant's Response

*"The panel's request has been considered, however giving the restricted deep soil areas at the entry and given paved areas for access coupled with objections from neighbours on loss of views, it was considered that a Norfolk Island Pine would be difficult to achieve due to the hardstand required. The relocation of a Norfolk Island Pine was also considered on the northern boundary, however the adjoining neighbour has already objected to view loss. However, the landscape design does propose a native Kauri Pine behind Building A where there is sufficient space and little impact on views and overshadowing."*

- *The proposed use of the Leightons Green Cypress is not supported as this species is now widely recognised as one that can cause issues with rapid and high growth, leading to view and amenity issues.*

#### Applicant's Response

*"The decision to include and supplement the Leightons Green screen planting was made as it provides a quick and effective privacy screen. However, the panel's comments are noted and the landscape drawing has been amended to substitute syzigina species, which are used in other areas of the landscape treatment. It was noted that the Leightons Green was already existing on the site."*

#### Amenity

- *There are a range of minor privacy and acoustic conflicts between balconies in the standard block design (B, C and D). In multiple cases, on the first floor, the*

*protruding balconies may be able to openly view into adjacent private areas. Ensure that appropriate screens and separations occur to stop this happening.*

**Applicant's Response**

*"This matter was considered in the design. The proposed vertical louvers provide screening for privacy and for light and air. These balconies are secondary balconies."*

- *It would be preferable if the letter box facility be located closer to the frontage and main pedestrian entry.*

**Applicant's Response**

*"The design has been adjusted to accommodate the letter box facility. Refer drawing Number DA-4 Revision B."*

- *Provide bicycle storage/parking according to the Council's requirements, within the car parking area.*

**Applicant's Response**

*"Bicycle storage/parking has been provided in the basement carpark in accordance with Council's requirements. 11 spaces have been provided. Refer to Drawing Number DA-3."*

**Safety & Security**

- *Safety and security appears to be satisfactory subject to effective lighting to the external areas, common access ways, building entries and the basement car parking.*

**Applicant's Response**

*"Noted. A combination of bollard lighting and lighting around building areas is envisaged to provide pedestrian safety and provide ambiance to the development."*

**Social Dimensions**

- *Satisfactory.*

**Aesthetics**

- *Satisfactory in light of the submission at the Panel meeting of further information about external materials, colours and finishes.*

**Architectural Comments**

Council's Architect advises:

**"Context"**

*The design is appropriate in this context. The site is approximately 1 kilometre to Terrigal town centre and beach and it is appropriate to locate a medium density development within walking distance of the centre.*

*The surrounding buildings are a mixture of 2 to 4 storey residential flat buildings, commercial buildings, single residences, and a school and therefore a 3 storey residential development is suitable within this context.*

**Scale**

*The existing motel is a combination of four relatively large buildings of two and three storeys, of little architectural quality and surrounded by driveways and on ground parking. This application creates six smaller three storey pavilions separated by landscaped courtyards. Locating parking underground maximizes landscaping and usable outdoor space and is strongly supported.*

*The design of the buildings is well articulated with balconies and a variety of finishes disguise the scale of the buildings.*

*Minimise the scale of buildings by using strongly-articulated forms, including floor levels that are stepped to follow natural slopes, plus facades that vary in shape and height. For example, divide floor space into individual pavilions with a varied form or orientation, separated by landscaped courtyards, verandahs or parking structures. 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.*

*The application is non-complying in respect to floor heights. Clause 28 (4) requires a maximum height of 4 metres to the topmost floor and a maximum overall height of 10 metres. Apart from some minor encroachments, the application complies with the 10 metre overall height but the upper floors are above the 4 metre maximum floor height.*

*In this case it is considered that the non-compliance with the floor height is consistent with surrounding buildings and has no detrimental impact within the site or on adjoining properties.*

#### **Build Form**

*The built form responds well to the site and adjoining development.*

*Locating parking underground significantly reduces the area devoted to vehicle access and maximizes the area of landscaping and usable open space.*

*The six buildings are located at different levels in response to the topography and are located to preserve several large trees.*

*The current motel is set back from Terrigal Drive and with the empty service station site provides little definition to the public domain. This application improves definition of the street front by introducing a new building to match adjoining setbacks. This is three storeys on the south to match the adjoining units but steps down to two stories on the north where it adjoins the lower buildings. The street elevation is well articulated with balconies and living areas facing the street to provide activation and passive surveillance.*

*Minimise the scale of all facades that would be visible from the street, incorporating extensive windows shaded by lightly-framed balconies or verandahs plus exterior sunscreens, plus some painted finishes and sheet or board cladding rather than expanses of plain masonry. Where dwellings face a street or common access-way, provide a traditional "street address" with visible verandahs, living rooms and front doors, and for any retail or commercial tenancy, incorporate traditional shopfronts that are sheltered by awnings.*

#### **Density**

*The permissible density is 0.6:1 while that proposed is 0.66:1. Because of the large site area, separation between buildings still complies with the recommendations of the RFDC. The use of underground parking permits retention of generous areas of landscaping and usable open space.*

*Because of this the non-compliance is considered minor and has no detrimental impact on the development or on adjoining properties.*

#### **Landscaping**

*The landscaping is generally acceptable but there are a number of large trees on the western edge of the site that should be retained.*

*Surround developments with leafy gardens to avoid the appearance of long continuous buildings or extensive pavements. Retain natural slopes along all boundaries and provide space for new screen-plantings that complement the established tree canopy. In areas that have been cleared substantially, plant a combination of trees and shrubs that are mostly-indigenous along property boundaries and street verges as well as around each building.*

#### Recommendation

*The application complies with all objectives of the DPCs and the RFDC and is supported on architectural and urban design grounds subject to the following recommendations.*

- 1. There are a number of large trees along the western boundary that provide a screen and backdrop for the school. These are a valuable asset to the site should be retained where possible. The car park and building E should be setback further from the western boundary to ensure the retention of these trees.*
- 2. There should be a distinct and clearly separate pedestrian entry that emphasizes the residential scale of the development and creates a desirable residential identity. A path squeezed in besides the driveway is unacceptable.*
- 3. Though there are some planning issues, the provision of a coffee shop will contribute to the pedestrian activity on Terrigal Drive and is strongly recommended."*

#### Assessment Comment

With regard to the above;

- 1 The basement setback from the western boundary varies from 5.3m to 12.4m. The landscape plan proposes to retain the large trees on the western side. Council's Tree Assessment Officer considers the proposal to be satisfactory.
- 2 The vehicle and pedestrian entries to the site adjoin each other but are separate. The driveway and pedestrian pathway will have separate surface treatments and be fenced for safety and paving security purposes.
- 3 The café has been deleted.

#### **Tree Assessment**

Council's Tree Assessment Officer advises:

*"The subject application has been assessed with the accompanying Arboricultural Impact.*

*As stated in the arborist report, the site has no remnant trees, but planted trees which provide amenity.*

*The design has attempted to retain existing trees where possible around the perimeter of the site, and includes Norfolk Island Pine in the centre of the site as a central element to the communal open space.*

*There are at least six (6) existing larger trees nominated for retention and several groups of smaller trees around the perimeter of the site. However the landscape plan doesn't appear to show the smaller groups and it is accepted that the benefits of the new landscape outweigh the good intention of retaining the smaller groups of trees.*

On the amended plans, Council's Tree Assessment Officer further advises;

1. *Some larger trees are being retained along the rear (western) boundary. A row of Brushbox located in the adjoining school grounds (greater than 6m away) should not be affected by the proposal (contrary to the consultants statement that they are unlikely to survive).*
2. *It is agreed that additional planting of NI Pines would be difficult. Not just for the reasons provided but also due to the location of high voltage power wires along the front of the site which would prevent the natural shape of the species to develop.*
3. *I support changing the Cypress plantings with Syzygium.*

*I therefore have no objection to the proposal subject to conditions."*

### **View Impact Assessment**

A number of properties raised the issue about loss of views, the most affected being 162 Terrigal Drive and 1 and 3 Ena Street. (See Attachment 3)

A more detailed view impact assessment is carried out for those sites. For other properties along Ena Street, views, if currently present, will be lost even if a development complying with the top floor height limit or 2 storeys were constructed on the site.

The view assessment has been carried out in accordance with the general principles established in *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSW LEC 140.

The principles are:

- 1 Assessment of views to be affected.
- 2 Consider from what part of the property the views are obtained.
- 3 Assess the extent of the impact.
- 4 Assess the reasonableness of the proposal that is causing the impact.

In respect of the step (2), an expectation to retain side views and sitting views would be unrealistic.

In respect of the step (3), the extent of the impact should be assessed for the whole of the property, not just for the view that is affected. The third step should be qualitatively measures on a scale from negligible to devastating.

In respect of the step (4), a development that affects views may be unreasonable, if it comes about as a result of non-compliance with planning standards.

#### **(a) 162 Terrigal Drive**

This site contains a 2 storey building with 2 dwellings. Garages are located at ground level and living areas on the upper level.

The rear unit has a balcony on the easterly side, and the front unit has a balcony along the eastern side and front of the building.

##### **(i) Front Unit**



The views are from the balcony corner and extend almost 180° from Terrigal Lagoon to partial views of Terrigal/Wamberal Beach at the Lagoon outlet.

The proposed development is setback 6m from the Terrigal drive boundary and views from this balcony will not be significantly affected from the front or main part of the balcony.

(Refer Attachment 5)

(ii) Rear Unit

The view from the existing balcony is across adjoining site over Lot B DP 341177 and Lot 115 DP 12020 which are currently vacant.

The main view from this balcony is that over the adjoining site and Terrigal Drive, with a partial or small view of sand at the end of Terrigal/Wamberal Beach. This view is also disrupted by a large Norfolk Island Pine Tree. (See Attachment 6).

The impact of the proposed development is that there will be a significant reduction in view (about 80%) but a glimpse may remain through the Norfolk Island Pine tree of the sand and water.

However such view loss will occur even with a complying development of 2 storeys. It is unreasonable to expect views across the adjoining site to be retained.

(b) 1 Ena Street

This site contains residential 4 units behind the Onda Restaurant.

The units have balconies on lower and upper living levels.

Views are currently obtained standing on the top level balconies looking to the north over Terrigal Lagoon. Partial ocean views can be obtained looking to the east along the common boundary. That is, views currently exist over the side boundary and across the development site to the north and east. (Refer Attachments 7 and 8)

The proposal may partially retain standing views from the top level balconies towards Terrigal Lagoon or the north. The lower level balconies do not currently have views to the north. However the views of the Ocean along the boundary will be retained. This is considered to be the most important view from the top balconies.

Therefore any view lost as a result of the proposal is not considered to be unreasonable.

(c) 3, 9 and 11 Ena Street

These properties are currently single storey old houses likely to be redeveloped in the near future.

The existing houses do not currently have views across the motel site due to the existing motel.

If these properties in Ena Street were to be developed with 2 storey dwellings, views could still not be obtained even with a development on the motel site which complied with the height controls.

It is unreasonable to expect views to be obtained from the rear of these properties in Ena Street.

## **Waste/Storage Collection**

Council's Waste Management & Emergency Services, advises:

*"Waste and Emergency supports this development Application subject to the following conditions:*

*Drawing DA 2.3 Revision B having drawing title "Turning Circles - 12 m truck" needs to be amended as per the following:*

- The drawing title needs to read "Turning Circles -12.5 m turning radius truck" and given a new date and revision title.*
- The landscaping immediately above level 7,307 needs to be shifted northwards to ensure that the truck traced path doesn't impact on it.*
- The corner kerbing immediately below level 7,135 needs to be replaced with paving ensuring that the truck traced path will satisfactorily negotiate the corner.*
- It is a condition of consent that the Waste Management Plan will be fully complied with in accordance with the agreement signed by WMP P Woodward 2/2/2010.*
- 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 This will be provided prior to the issue of an Occupancy Certificate together with the creation of a s88B instrument under the Conveyancing Act to this effect and at the applicant cost.*
- Warning signage needs to be provided to minimise collisions between the reversing waste truck and car drivers in the ramp.*
- The waste enclosure doors will be widened to at least 2.5m to enable bulk bins to be moved in and out.*
- A written undertaking will be provided to ensure that the transportation of waste bins to and from the collection point would be undertaken by a suitably trained and licensed superintendent. Also that this will be using a motorized lifting device."*

## **Road Works, Access and Traffic**

### External Road Network

The site has a frontage to Terrigal Drive and is located between the intersection of Terrigal Drive with Ocean View Drive and the intersection of Terrigal Drive with Barnhill Road. There is existing kerb and gutter across the frontage of the site in Terrigal Drive. There are three existing vehicular access crossings associated with the subject properties in Terrigal Drive. All these crossings will become redundant as a result of the proposed development. A portion of the footway is fully concreted, whilst the remainder has a 1.2m wide footpath. There is a pedestrian crossing in Terrigal Drive within the site frontage. There is a deceleration lane turning lane arrangement within the frontage of the site that facilitates traffic movements into Barnhill Road.

A traffic report prepared by BJ Bradley & Associates was submitted with the application. This report concludes that the traffic generated by the proposed development will be less than the existing use on this site (Country Comfort inn).

The following works within the road reserve are recommended with this development:

- Removal of the redundant vehicular laybacks and access crossings and replacement new kerb and gutter and reinstatement of the footways.
- Construction of a new heavy duty vehicular access crossing.

#### Internal Access

The development proposes a single access off Terrigal Drive that leads to a garbage servicing area and a basement car park. There are approximately 109 car spaces proposed with the development.

The basement car park generally complies with AS2890.1:2004, and will be conditioned for compliance with such.

It is recommended that the architectural design is amended to relocate the access gate to an alternative location such that in the event that this gate is closed, vehicles entering the site from Terrigal Drive are to be able to turn around and exit the site in a forward direction. This can be conditioned.

Throughout the assessment of the application additional details were submitted to indicate how the waste pick up area will be appropriately serviced. These details also included the swept turning paths into and out of the site from which it was shown that the existing vehicles would not encroach into the turning lane in Terrigal Drive associated with Barnhill Road, nor the concrete central median near the pedestrian crossing (- refer to plan by paa.design sheet DA2.3 Rev C dated 20/5/10 for detail). It is noted however that this detail indicates the swept turning path encroaching in to the landscaping area within the front setback area and in the pedestrian area near the entry to the basement car park. As such these areas will need to be modified and conditioned to enable the truck to turn over these areas. As the additional plan catered for the swept turning paths for a 12.5m vehicle it is assumed that it would also cater for a furniture removalists.

#### Future Setback to Terrigal Drive

Close examination of the location of the kerb line in front of the site in relation to the boundary indicates that the existing footway width narrows down to approximately 1.8m at its narrowest point near the power pole. Although there are no road widening messages indicated on the properties associated with this development, if Council were to seek road widening in the future to what would be a standard 3.5m minimum footway width, the final setback of the building would be reduced to that indicated at present.

#### Roads & Traffic Authority (RTA)

On the basis that the development falls within the guidelines for SEPP Infrastructure for traffic generating developments and is within 90m of a State Road, the application was referred to the Roads & Traffic Authority whom have responded as follows in their correspondence dated 10 March 2010.

*"The RTA is in receipt of Council's correspondence dated 19 February 2010 regarding the subject development application.*

*The RTA has no current proposals that require any part of the property.*

*The RTA's primary interests are in the road network, traffic and broader transport issues, particularly in relation to the efficiency and safety of the classified road system, the security of property assets and the integration of land use and transport.*

*In accordance with the Roads Act 1993, the RTA has powers in relation to road works, traffic control facilities, connections to roads and other works on the classified road network. RTA concurrence is required for works, structures, and disturbances to, in, on, under or over*

*classified roads, under section 138 of the Act, with Council consent. Council is the roads authority for all roads in the area.:*

#### Development Engineer's Response

Noted.

*"The RTA raises no objections to the current proposal subject to the following conditions, which should be incorporated within any future development consent issued by Council.*

- *Appropriate site works are to be constructed across the street frontage so as to comply with the minimum sight distance requirements and minimum sight lines for pedestrian safety set out in the RTA publication "Guide to Traffic Generating Developments" (1993) and AS/NZS 2890.1:2004 Part 1: "Off-Street Car Parking".*

**Note:** *The existing landscaping at the eastern end of the site may require modification to ensure sight lines to pedestrians comply with Australian Standards."*

#### Development Engineer's Response

This could be appropriately conditioned.

- *"In order to minimise impacts on the stormwater drainage system, including associated flooding behaviour and water quality impacts, stormwater generated from the development site must be managed so as to attenuate post-development flows to predevelopment flows for a full range of design rainfall events. The principles of Water Sensitive Urban Design may be applied in order to achieve this goal."*

#### Development Engineer's Response

With due consideration of the drainage information submitted with the application it is noted that the development will not be increasing stormwater flows from the site. Therefore, on-site detention will not be deemed necessary for this development.

- *"Stormwater from the development shall be conveyed by gravity (not a charged or pump system except for basement carparks) to the street kerb or via a direct connection to an on street stormwater gully pit. If the pit option is implemented the pipeline within the footpath area shall have a minimum cover of 300mm."*

#### Development Engineer's Response

This is noted.

- *"Internal accesses and all parking facilities are to be designed and constructed in accordance with Gosford City Councils DCP No. 111 Carparking and AS/NZS 2890.1:2004 Part 1: "Off-Street Car Parking".*

#### Development Engineer's Response

This requirement would be covered by Council's standard conditions for internal access and parking.

- *"The works referred to above are to be undertaken at no cost to the RTA."*

#### Development Engineer's Response

This could be appropriately conditioned.

*"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 that Council apply the following internal noise objectives for all habitable rooms under ventilated conditions complying with the requirements of the Building Code of Australia:*

- All habitable rooms other than sleeping rooms: 45 dB(A)  $L_{eq(15hr)}$  and 40 dB(A)  $L_{eq(9hr)}$ , and*
- Sleeping rooms: 35 dB(A)  $L_{eq(9hr)}$ .*

*Upon Council's determination of this matter, it would be appreciated if Council could forward a copy of the determination to the RTA for record purposes."*

#### Development Engineer's Response

It is recommended this form part of the 'advice' section of the consent.

### **Flooding and Drainage**

#### Flooding

Council's records do not indicate that the site is affected by flooding.

#### Drainage

The site currently drains to Terrigal Drive and to the rear of the site. There is an easement to drain water 1m wide (interallotment drainage (IAD)) that lot 2 DP 588831 benefits from. Council's work as executed (WAE) plans for the twin culverts that traverse the Terrigal Public School in lot 1 DP 588831 indicate that there is a 300mm diameter pipeline connecting into the box culvert. This 300mm pipeline would be that associated with the 1m wide IAD easement. The development is proposed to connect to this 300mm pipeline.

A Stormwater Management Report (SMR) prepared by Cardno, Job No 89022878 dated Feb 2010 indicates that the redevelopment of the site will reduce the stormwater discharge from the site for all storms up to the 1 in 100 year storm event. On this basis it is considered that on-site detention is not required for this development. The SMR indicates the proposal to provide pollution / nutrient controls in accordance with Council's DCP 165 - *Water Cycle Management*. It is recommended that this be appropriately conditioned.

### **Water and Sewer**

The proposed development will require a section 307 certificate under the Water Management Act 2000.

The proposed development is within the zone of influence of Council's water & sewer mains. Therefore, the development will need to comply with Council's guide to "Building Over or Near Council Sewer and Water Mains".

### **Public Submissions**

Thirteen (13) public submissions were received in relation to the original application and three (3) submissions to the amended plans. 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.

- (a) Original Plans - Submissions were received from: 3/1, 5/1, 3, 9, 11 Ena Street, 162 and 172 Terrigal Drive. (See Attachment 4)

**1 Development should be lowered/excavated further into the ground.**

Comment

This may result in residential units below ground level which would be unsatisfactory and not in accordance with the principles of SEPP 65 - Design quality of Residential Flat Buildings. The building does not comply with Council's height requirement.

**2 Adjoining properties on southern side will be overshadowed, the shadow impact should be looked at over the whole year and for longer hours each day. Frosted glass windows should be considered on the southern side.**

Comment

The shadow impact in March/September is not significant and complies with Council's Policy. The shadow impact in winter is greater and covers part of the rear yards in Ena Street properties at 9:00am and 3:00pm but is less at midday.

**3 The proposal will have a greater occupancy and denser population than the existing motel.**

Comment

This is correct. However the site has potential for development greater than the motel which under-utilises the site. The proposal does not comply with the minimum site area required, however the variation is minor, not significant and causes no additional impact.

**4 The height limit is 2 storeys and 3 storeys is not permitted under the current zoning.**

Comment

Agreed.

**5 Compensation should be paid for devaluation of adjoining properties.**

Comment

There is no evidence to support that adjoining properties will be devalued. There is also no requirement to pay compensation even if this was correct.

**6 The proposal will impact privacy and amenity of adjoining properties.**

Comment

The balconies and buildings are setback from the southern boundary well in excess of the minimum setback required. The building setback on the southern side is 5m with only 1 balcony on the southern side at first and second floor level. Therefore privacy is not significantly affected. The general impact on amenity to adjoining properties is considered consistent with a Residential 2(b) zone.

- 7 The lot the Café is to be transferred to does not have existing use rights for a Restaurant. A Café is not needed for 65 residential units.**

The location of the Café and outdoor dining areas will affect the privacy of the adjoining dwellings. There will also be unrestricted access to the Café and affect security and lifestyle of adjoining residents.

The location of the Café and "al fresco" dining area next to any adjoining dwellings will result in noise and odours to the adjoining residents.

The hours of the Café are not specified and it may be "licensed" premises. Licensed premises will impact amenity of residents and it is close to the Terrigal Hotel.

Comment

The applicant has amended the proposal and deleted the Café.

- 8 Lot B DP34177 was previously used as a Service Station and mechanical workshop. Rubbish including asbestos or other construction material, oils etc were disposed of on the site and covered with concrete which remains on the site to-day.**

Comment

This issue could be addressed by remediation of the site under SEPP 55 - Remediation of Land and will be required as a condition of consent with any development of the site.

- 9 The 3 storey building in the north-eastern corner of the site containing the Café will totally block views of the ocean from 162 Terrigal Drive. Landscaping in this part of the site could grow to 14 metres in height and this combined with the raised garden bed would obstruct any remaining ocean view.**

The apartments above the Café will look into the living areas of the adjoining dwellings and affect privacy.

Comment

Landscaping can be restricted in height as a condition of consent .

The Café has been deleted in the amended plans. The building height in this location is 2 storey and has been angled that so partial views are retained.

- 10 Proposed Building A is located 2 metres from the side boundary not 5 metres as stated in the application, 2 metres is too close to preserve the lifestyle of adjoining residents.**

Comment

Building A has a building setback varying from about 1.98m to 5m and greater. The amenity of adjoining residents should not be significantly impacted.

- 11 The waste storage area for the entire 65 units and Café is proposed to be 2 metres from the rear boundary of the adjoining site.**

**This will cause odours, health and vermin problem with so much waste stored in this location. The garbage trucks will also cause more cleaning pickups. The frequency of waste collection should be considered.**

Comment

The bin storage area is only used on pick-up days, is located 2m from the boundary and is orientated away from the side boundary. Landscaping and fencing will be provided along the boundary.

- 12 Exiting from the adjoining 162 Terrigal Drive is currently difficult. The landscaping and associated structures will reduce the visibility and make exiting the adjoining property more difficult and dangerous.**

Comment

The proposed building is setback 6m from Terrigal Drive boundary. The height of landscaping could be restricted to 1m maximum so as not to further reduce sight distance along Terrigal Drive.

- 13 The proposal will significantly increase pedestrian and traffic movements into and out of the site and create additional conflicts. Terrigal Drive is already congested particularly on weekends and public holidays.**

**The additional traffic will have a major impact and affect residential amenity and place additional demand on services which is contrary to the objectives of the 2(b) zone.**

Comment

The traffic report submitted with the application indicates that the proposal will have a lesser impact than the existing motel development. The RTA have not objected to the proposal.

- 14 The problems that would arise during construction have not been addressed.**

Comment

A Construction Management Plan would be required as a condition of consent and prior to the issue of a Construction Certificate and if the application were to be approved.

- 15 The proposal is an overdevelopment of the site and outside Council's standards and guidelines. The SEPP 1 objectives are not minor and in combination represent a major overdevelopment and will severely impact on adjoining amenity and privacy.**

**The proposal should be reduced by 2 units above the Café to comply with Clause 28(2) of the GPSO.**



**The variation to the building envelope and height plane is of concern and should comply with Council's requirements. The impact on adjoining properties is not minor and will affect amenity and privacy.**

**The upper floor height of Clause 28(4)(b) of the GPSO and Clause B1.3 of DCP 100 should be complied with.**

**The front buildings should be reduced to 2 storeys to fit in the streetscape and the adjoining property. The facades do not comply with DCP 159 as taller buildings should be screened by a combination of extra setbacks, balconies and verandahs.**

**Building A is only 1.98m from the side boundary and the waste area is only 2m from the boundary, thereby not complying with DCP 159 for extra setbacks.**

Comment

The Café has been deleted and the development in the north-east corner has been setback from the front and side boundary and is 2 storeys in height.

The matters of site area and height are assessed separately under the SEPP 1 objections. It is agreed that the variation to maximum top floor height is excessive, however impacts are no greater than compliance would achieve.

The variations to the building envelope and 10m height limit are minor and not significant.

The height variations are dealt with in the report under the SEPP 1 objections. The building setback is 6 metres and greater. Building A is also stepped down along the Terrigal Drive frontage and is articulated.

- 16 Variation to the FSR should not be supported and the proposal reduced in size so as to reduce the impact of adjoining properties.**

Comment

There are no FSR controls for a wholly residential development. That is, Clause 29B of the GPSO does not apply as the Café has been deleted.

- 17 If the proposal is approved, then:**
- a the Café should be deleted,**
  - b apartments above the Café should be lowered to a maximum of 2 storeys,**
  - c the mature trees should be removed from the front corner of the Café site.**
  - d planting along Terrigal Drive should be restricted to a maximum 1m height so as not to impede sight lines.**
  - e the waste storage area moved further away from the boundary with 162 Terrigal Drive.**

Comment

a-d above have been complied with in the amended plans or can be complied with as a condition of consent. The waste storage area has been located an adequate distance from the boundary with no opening towards the boundary.

- 18 The plans do not provide enough details on setbacks, heights, shadow diagram, site analysis, car park levels, external air conditioning, lighting and clothes drying.**

Comment

Adequate information has been submitted to assess these issues.

- 19 There are serious concerns with the bulk and scale of the proposal, particularly in view of the adjoining "Onda" development which is built to the common boundary with No 3 Ena Street.**

**The proposal will have a detrimental impact on privacy, solar access, amenity, views, breezes and land value.**

Comment

The proposal does not have significant impacts on privacy, solar access, amenity etc to the properties along Ena Street.

The existing "Onda" restaurant is built to the eastern boundary of No 3 Ena Street, which has a greater shadow impact on No 3 than this proposal.

- 20 The proposal will be on the back fence line of properties in Ena Street and will look into the rear yards of these properties.**

Comment

The proposed buildings are setback 5m from the southern boundary with Ena Street and units on the first and second floor only have one balcony on the southern side.

- 21 The site contains John Kays' grave (believed to be on Lot 115 DP120202).**

**It is requested builders be informed of its presence and recognise this with a small heritage plaque close to the burial site.**

Comment

The applicant is willing to provide a plaque and this can be required as a condition of consent.

- 22 The caveat restricting the height on the site has been ignored.**

Comment

Council is not aware of any private caveat restricting height. In addition, private caveats do not override the planning instrument and are not enforced by Council.

- 23 The impact during demolition and construction in such a small area will be detrimental to the quality of life and health of adjoining residents, particularly due to dust, noise, traffic etc over the lengthy time it will take.**

Comment

A Construction Management Plan would be required prior to the issue of a Construction Certificate to identify how these issues can be controlled or mitigated for the period of construction.

- 24 The adjoining units will lose value due to the large nature of the development.**

Comment

There is no evidence to support such a claim.

- 25 The units in the Onda site will lose financial value and rent due to the loss of coast, water/lake and distant country views to the north. The units will be looking at a blank wall about 5 metres away.**

Comment

The units on the top floor of the Onda building will retain partial views over the proposed development and to the east due to the angled design of the Onda building. Balconies on the ground or bottom floor could not reasonably be expected to retain views over the site.

- 26 Views from units on the Onda site may only be achieved by standing and looking over the roof of the proposal. Looking at the flat metal roof will cause glare and the roof should be stepped or sloped.**

Comment

The proposed colour scheme of the roof is Colorbond "Windspray" or dark grey and should reduce glare. Views are assessed from a standing position and not a sitting position. Views of the ocean will still be retained. (See separate view impact assessment).

- 27 The properties to the south will lose sunlight and warming, particularly in the winter time. Energy bills will rise accordingly.**

Comment

The shadow impact on the southern properties complies with Council's Policy and is reduced due to the 5m building setback and the properties in Ena Street having a higher elevation.

- 28 An engineering report on the impacts on the Onda site should be submitted by the applicant. The retaining wall on the boundary has failed and the proposal may cause further failure. Details should be submitted on what measures are proposed to stabilise the Onda site.**

Comment

Any damage caused as a result of the proposal must be rectified by the developer. The future of the existing retaining wall would be addressed in the Construction Certificate and structural details. Dilapidation reports regarding existing adjoining buildings and structures could be required as conditions of consent.

- 29 Height poles should be erected to accurately assess the effects on adjoining properties.**

Comment

This has not been required and the impacts can be assessed from the information provided.

- 30 The applicant should guarantee that adjoining buildings will be washed and cleaned upon completion of construction. The exterior of the Onda building is cleaned every few years by the owner.**

Comment

This can only be required if the exterior of the Onda building is damaged by dust from construction work. The need to clean the Onda building every four years indicates that there is an existing problem not caused by this proposal but probably the sea side atmosphere.

- 31 The overall smaller building footprint and generous landscaping is supported, however Building A may present too much of a solid wall and might benefit from a greater setback from the road.**

Comment

Building A is setback 6m and greater which is the setback required under DCP 100.

- 32 Building B is located 5 metres from the boundary of 3 Ena Street. The bulk and scale of the proposal will be imposing, particularly with the Onda development on the other boundary of the site. The current motel is located about 20 metres from the boundary.**

Comment

It is unreasonable to expect redevelopment of the site to retain the current 20m building setback of the existing motel. The 5m proposed setback exceeds that required by council's Policy.

- 33 No 3 Ena Street already suffers from significant overshadowing from the Onda building. This was accepted when the site was purchased due to the increased setback of the motel. The shadow diagrams indicate that No 3 will be overshadowed for the whole of the day in winter on the limited northern part of No 3.**

Comment

No 3 Ena Street is located on the western side of the Onda building and significantly affected by shadow impacts from the Onda building particularly in the morning period. A greater setback of the motel cannot be required due to the impact caused by the Onda development.

- 34 The proposal will result in the loss of current filtered lagoon views from the potential second storey of No 3 Ena Street. The property value therefore will decrease.**

Comment

This is likely to occur even with a 2 storey development on the site. Retaining views from the rear or side of a property is difficult to achieve and not in accordance with the principles of view impact assessment established by the Land and Environment Court.

- 35 The proposal will impact the amenity of No 3 Ena Street due to increased density, height, lighting, spill, shadow impact.**

Comment

The proposed building is setback 5m from the boundary and shadow impact is not significant in March/September. No 3 Ena is more greatly impacted by the adjoining Onda development at Ena Steet.

**36 Access to the site is very close to the pedestrian crossing and creates potential danger.**

Comment

The proposal was referred to the RTA and no traffic safety problems were identified.

**37 The shadow impact on No 11 Ena Street. The accuracy of the shadow diagrams is questionable. The buildings should be reduced in height.**

Comment

The shadow diagrams indicate that the impact on the properties along Ena Street are not significant. The shadow impacts are related to the building height, not the top floor height.

**38 It is unclear what type of fence will be erected on the boundary of the site.**

Comment

This could be resolved as a condition of consent or agreement between owners under the Dividing Fences Act.

**39 Dilapidation studies of adjoining properties should be carried out pre and post construction due to the basement excavation.**

Comment

The applicant has indicated that this can be provided and could be required as a condition of consent.

**40 There appears to be inadequate car parking provided on site.**

Comment

The number of car parking spaces meet Council's requirements.

(b) Amended Plans

Three (3) public submissions were received in relation to the amended plans. 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 submissions is detailed hereunder.

(i) 3/1 Ena Street

**1 The proposal is still objected to as per previous submission.**

Comment

See part (a) as above.

**2 The proposal is closer to 3/1 Ena Street than the other units/properties in the block.**

**The 3 storey building should be set further away from the southern boundary and is an overdevelopment of the site and will affect privacy.**

Comment

Building A and other buildings are setback 5m from the southern boundary. The site at this location has previously been excavated and is about 2 metres below the ground level of 1 Ena Street. Therefore the impact of the proposed height is greatly reduced in this location.

**3 In the winter months, the downstairs outdoor and indoor living areas would be in shadow most of the day. The proposal should be set back further to preserve sunlight and amenity to 3/1 Ena Street.**

Comment

Requiring the proposed building to be setback in excess of the 5 metres proposed would be unreasonable to provide sunlight to the lower level of Unit 3/1 Ena Street. Unit 3/1 has an upper floor balcony which may be impacted in the winter time, but will receive sunlight in March/September periods.

(ii) 5/11 Ena Street

**4 The height of the building is not in keeping with the local area. There would be no objection to the 2 storey development and the 3 storey would block sunlight to 5/1 Ena Street.**

Comment

The development is contrary to the numerical height development standard for the top floor. However, a 2 storey building with a pitched roof would make minimal difference to the shadow impact.

(iii) 162 Terrigal Drive

**5 The proposed 3 storey building adjoining 162 Terrigal Drive will:**

- Result in loss of privacy by being able to look directly into living rooms.
- Block ocean views and (as well as landscaping).
- Result in pedestrian access near the boundary and increased views from foot traffic near living and bedroom areas.
- Have building A less than 2 metres from the side boundary.
- Have waste storage 2 metres from the back boundary and near the living area of Unit 2 and associated problems of vehicle noise, odour, vermin and disease.

- **Have outdoor car parking near the boundary which is totally unacceptable.**

Comment

Building A is setback 1.98m and greater from the side boundary with Terrigal Drive. The building is also splayed in this corner which reduces the impact on the adjoining site. There is no significant privacy impact as there are no living rooms directly facing No 162. The proposal has a balcony in this location which has a planter box along the side with No 162. This together with building separation is considered to be adequate to preserve reasonable privacy.

The waste storage area and parking is located 2 metres from the boundary and 3 metres from the building on 162 Terrigal Drive. This is considered to be adequate. There is no significant view loss from the front balcony of 162 Terrigal Drive, but there will be significant view loss from the rear balcony. This is unavoidable and would occur with a complying 2 storey development.

- 6 The proposal will reduce sight distance for the driveway at 162 Terrigal Drive which is currently dangerous due to trees and traffic speed down the road. The proposed trees/planting should be limited to 1m in height.**

Comment

A restriction on height of landscaping is reasonable and could be required as a condition of consent.

- 7 The area currently has a long volume of vehicle and pedestrian traffic. The proposal will create greater increase in traffic movements than the current motel does. This will affect the residential amenity and is not in accordance with the objectives of the 2(b) zone.**

Comment

The traffic report submitted and accepted by the RTA indicates that the proposal generates less or similar traffic movements than the existing motel.

In any case the volume of traffic generated by this proposal, even if it was greater than the existing motel, is not significant when compared to the total volume of traffic already using Terrigal Drive.

- 8 The issue of construction traffic has not been addressed. This will affect local residents and visitors.**

Comment

A Construction Management Plan could be required as a condition of consent. The plan would be required to address construction traffic routes, times/days of work, materials storage etc.

- 9 The proposal is a gross overdevelopment of the site and the variations to the development standards of site area and height are not minor and severely impacts adjoining amenity, privacy and visual bulk.**

Comment

The variations to the site area and building envelope/10m height limit do not significantly impact adjoining properties. The variation to the top floor height is significant.

- 10 DCP 159 states that facades that are taller or longer than buildings on neighbouring properties should be screened by a combination of extra setbacks, balconies or verandahs.**

Comment

Building A is a minimum of 1.98m from the boundary of 162 Terrigal Drive and is 2 storeys high, the same as the adjoining development. The proposal does provide extra setbacks on side boundaries.

The units fronting Terrigal Drive have been stepped down along the road frontage and varying balconies/articulation along the road frontage.

- 11 The former building on Lot B was a Service Station and workshop. When demolished, the sump pits were used as rubbish collectors and filled with debris, including asbestos, oils etc and covered with concrete.**

Comment

A condition of (deferred commencement) consent would require remediation in accordance with the provisions of SEPP 55 - Remediation of Land.

- 12 If the application were to be approved, the following changes should be made:**

- **Building A lowered to 2 storeys.**
- **The mature tree removed from the front corner of Building A.**
- **Planting Terrigal drive frontage limited to 1 metre or less in height, so is not to impede the sight-line of oncoming traffic.**
- **The waste storage area be moved further away from the boundary with 16 Terrigal Drive.**

Comment

The above have been provided for in the amended plans or could be addressed as conditions of consent, except for the bin storage area.

The bin storage area will be used on collection days, is located 2m from the side boundary, and does not have access/opening on the side of No 162 Terrigal Drive.

It is considered the location on the side of the site is appropriate to enable access by waste collection vehicles.

Landscaping and fencing has been provided to screen the enclosure and to reduce the impact of the storage area.

## **Conclusion**

The proposal complies with the requirements of the GPSO and DCP except for the minimum site area, maximum 10m building height and maximum 4m top floor height. The variations to the minimum site area and maximum building height are minor and not significant and the objections lodged under SEPP No 1 are well founded as adherence to these standards is considered unreasonable and unnecessary in this case.



However the variation to the minimum top floor height is significant, being a variation up to 4.1 metres (102.5%) which is equivalent to one additional storey. This results in a 3 storey development in the 2(b) zone instead of a 2 storey development.

Although the proposal has been supported by the Design Review Panel and Council's Architect, the variation to the top floor height is numerically substantial and beyond the purpose of SEPP No 1 and therefore not well founded.

If the Panel considers that the objection under SEPP 1 to the maximum top floor height is well founded, Attachment 11 includes a list of draft conditions, without prejudice.

**Attachments:** Attachments 1 - Aerial Photograph  
Attachment 2 - Zone Map  
Attachment 3 - Variation to Building Envelope/10m Height  
Attachment 4 - Location Plan of Public Submissions  
Attachment 5 - Photograph standing on balcony of front unit at 162 Terrigal Drive looking south-easterly  
Attachment 6 - Standing on balcony of rear unit at 162 Terrigal Drive looking south-easterly  
Attachment 7 - Photograph standing next to top balcony of unit 5/1 Ena Street looking north across adjoining site  
Attachment 8 - Photograph standing next to top balcony of unit 5/1 Ena Street looking easterly  
Attachment 9 - Photograph submitted by objector of view of site from opposite side of Terrigal Lagoon  
Attachment 10 - Plans  
Attachment 11 - Draft Conditions without prejudice

**Tabled Items:** Nil

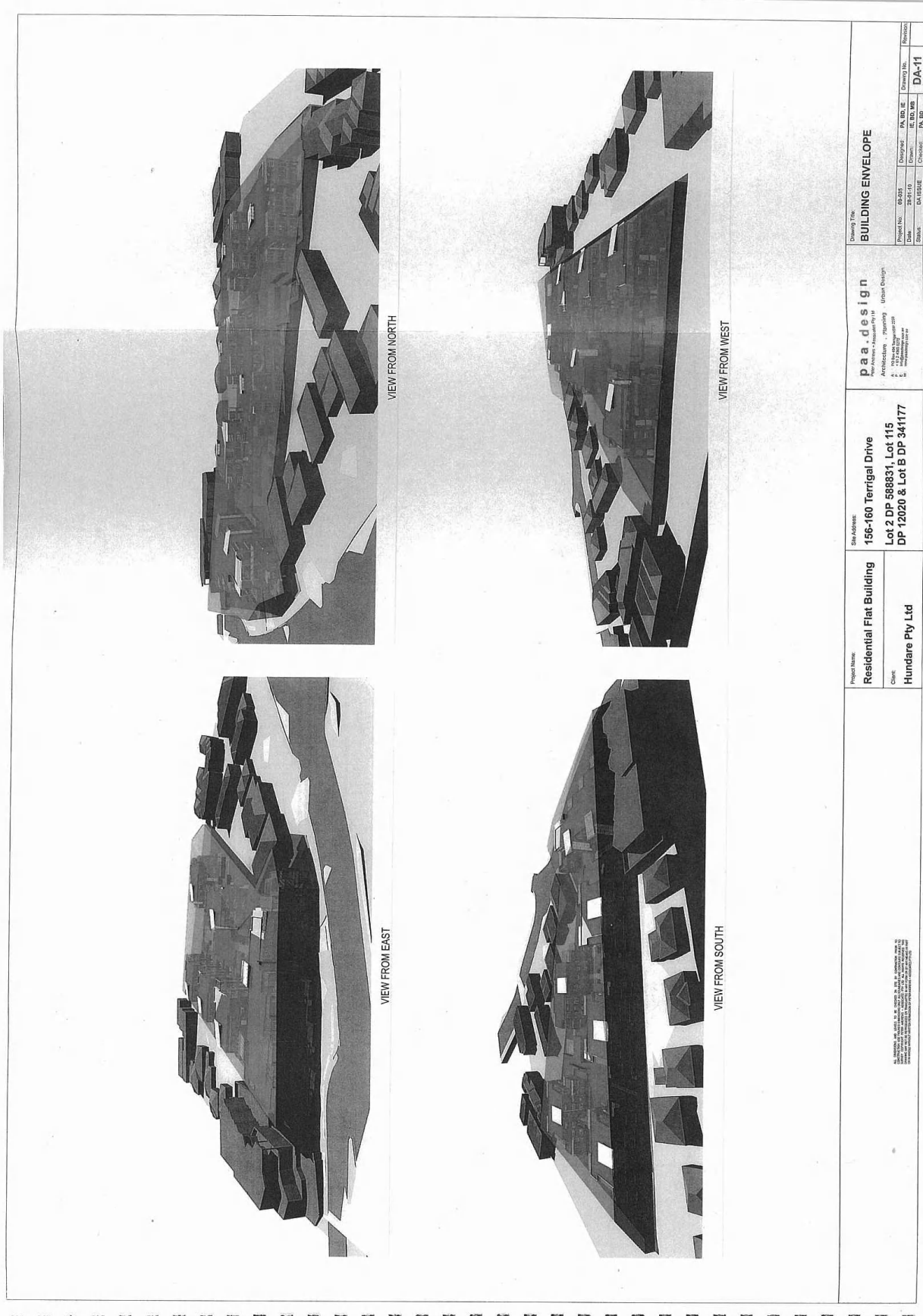
## RECOMMENDATION

- A The Joint Regional Planning Panel as consent authority refuse Development Application No. No. 38134/2010 for Demolition of Motel and Construction of Sixty-five (65) Units in a Residential Flat Building on LOT: 2 DP: 588831, LOT: 115 DP: 12020, Lot: B DP: 341177, 156, 158, 160 Terrigal Drive, for the following reasons:
- 1 The proposal does not comply with the maximum top floor height required under Clause 28(4)(b) of the Gosford Planning Scheme Ordinance.
  - 2 The objection under SEPP 1 to the development standard of Clause 28(4)(b) is not well founded.
- B The applicant be advised of the JRPP's decision and of their right to appeal to the Land & Environment Court within 12 months after the date of determination.
- C The RTA and objector(s) be notified of the JRPP's decision.

**ATTACHMENT 1****AERIAL PHOTOGRAPH**

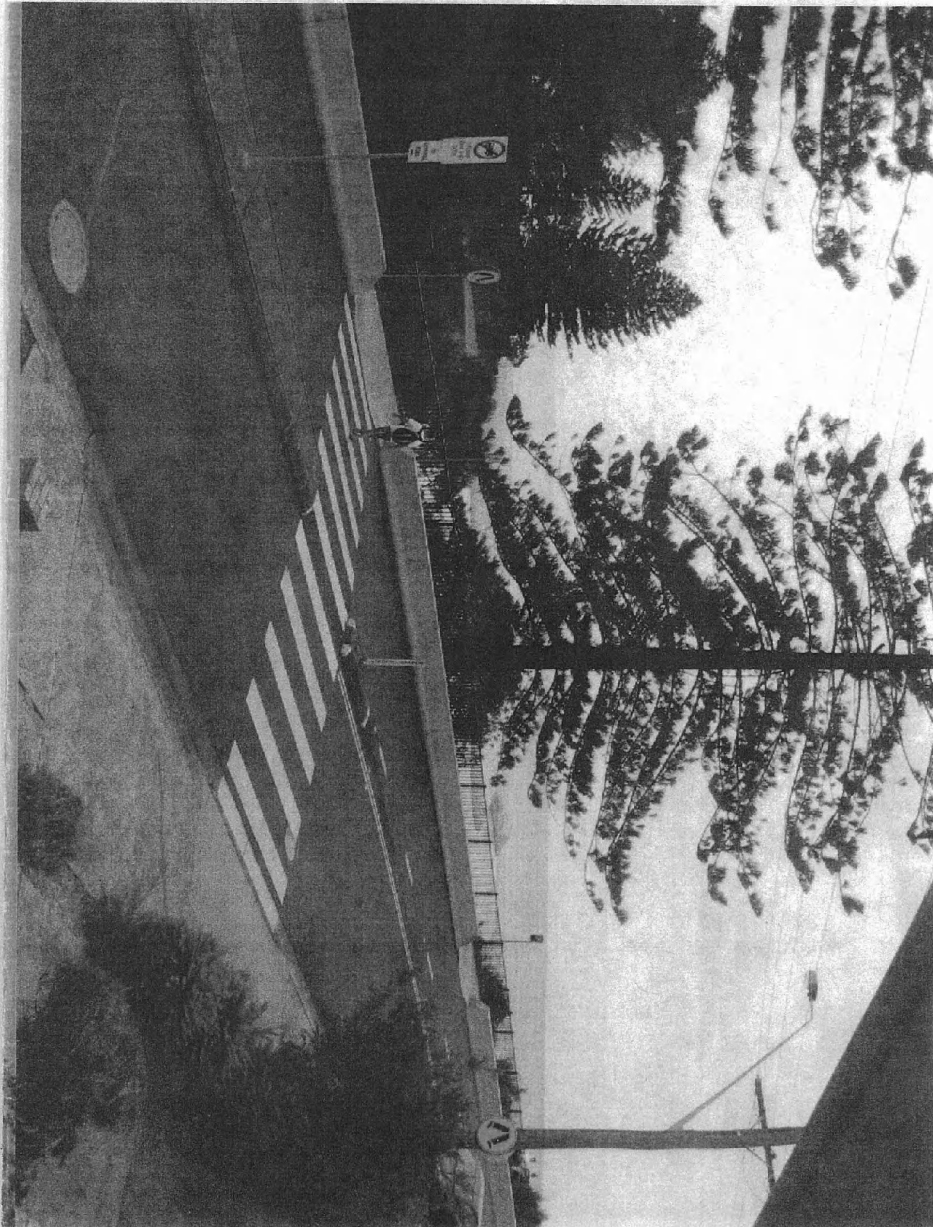
**ATTACHMENT 2****ZONE MAP**

### VARIATION TO BUILDING ENVELOPE/10m HEIGHT



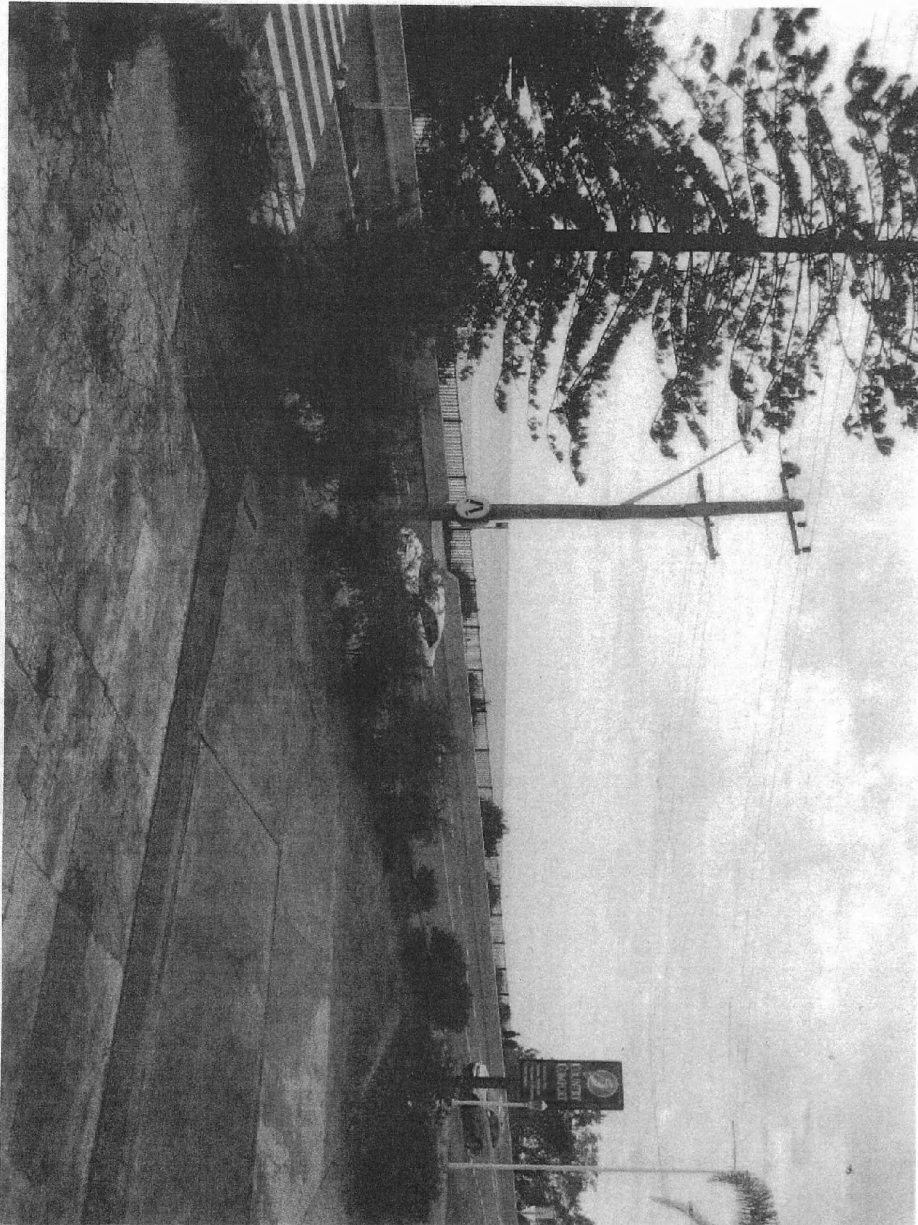
**ATTACHMENT 4****LOCATION PLAN OF PUBLIC SUBMISSIONS**

**ATTACHMENT 5 - PHOTOGRAPH STANDING ON BALCONY OF FRONT UNIT AT 162 TERRIGAL DRIVE LOOKING SOUTH-EASTERLY**

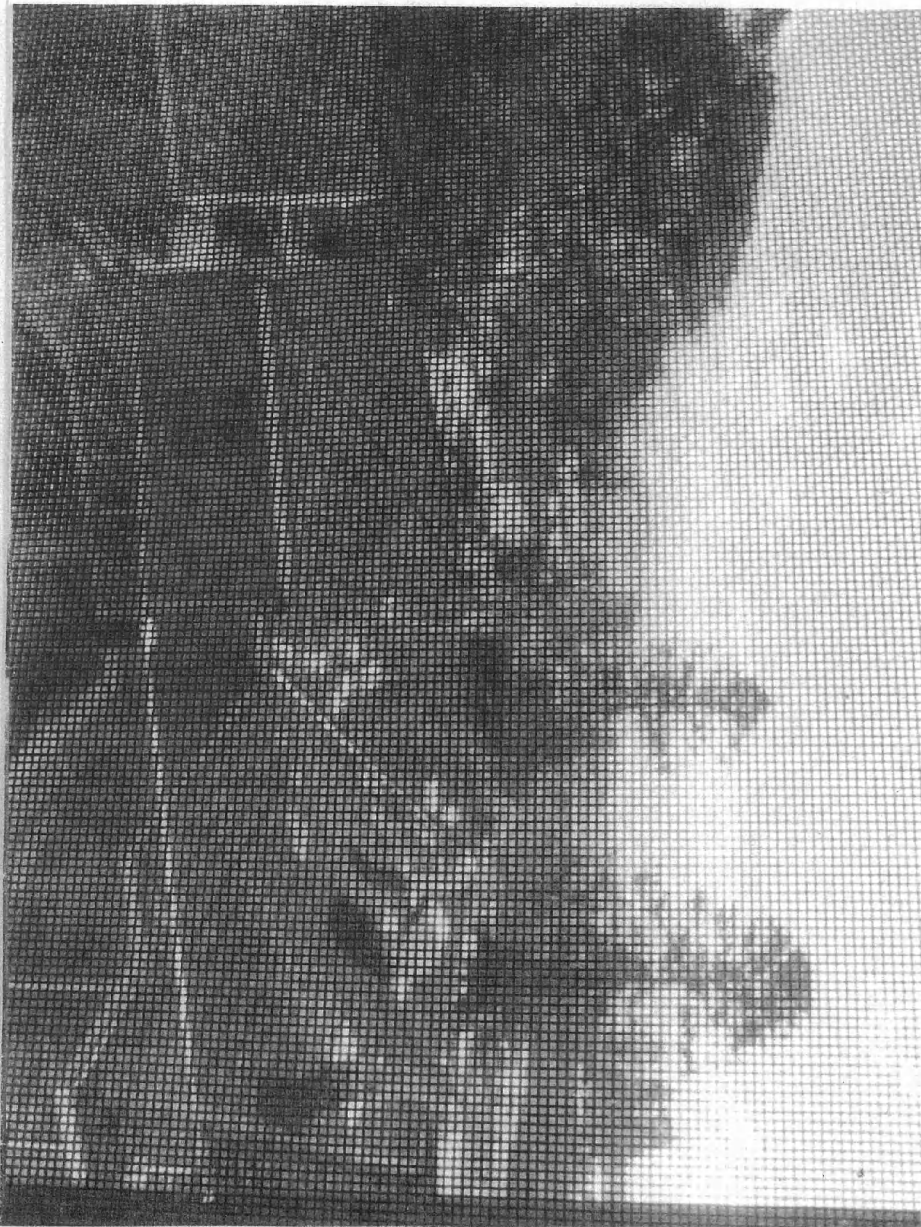




**ATTACHMENT 6 - STANDING ON BALCONY OF REAR UNIT AT 162 TERRIGAL DRIVE  
LOOKING SOUTH-EASTERLY**



**ATTACHMENT 7 - PHOTOGRAPH STANDING NEXT TO TOP BALCONY OF UNIT 5/1 ENA STREET LOOKING NORTH ACROSS ADJOINING SITE**



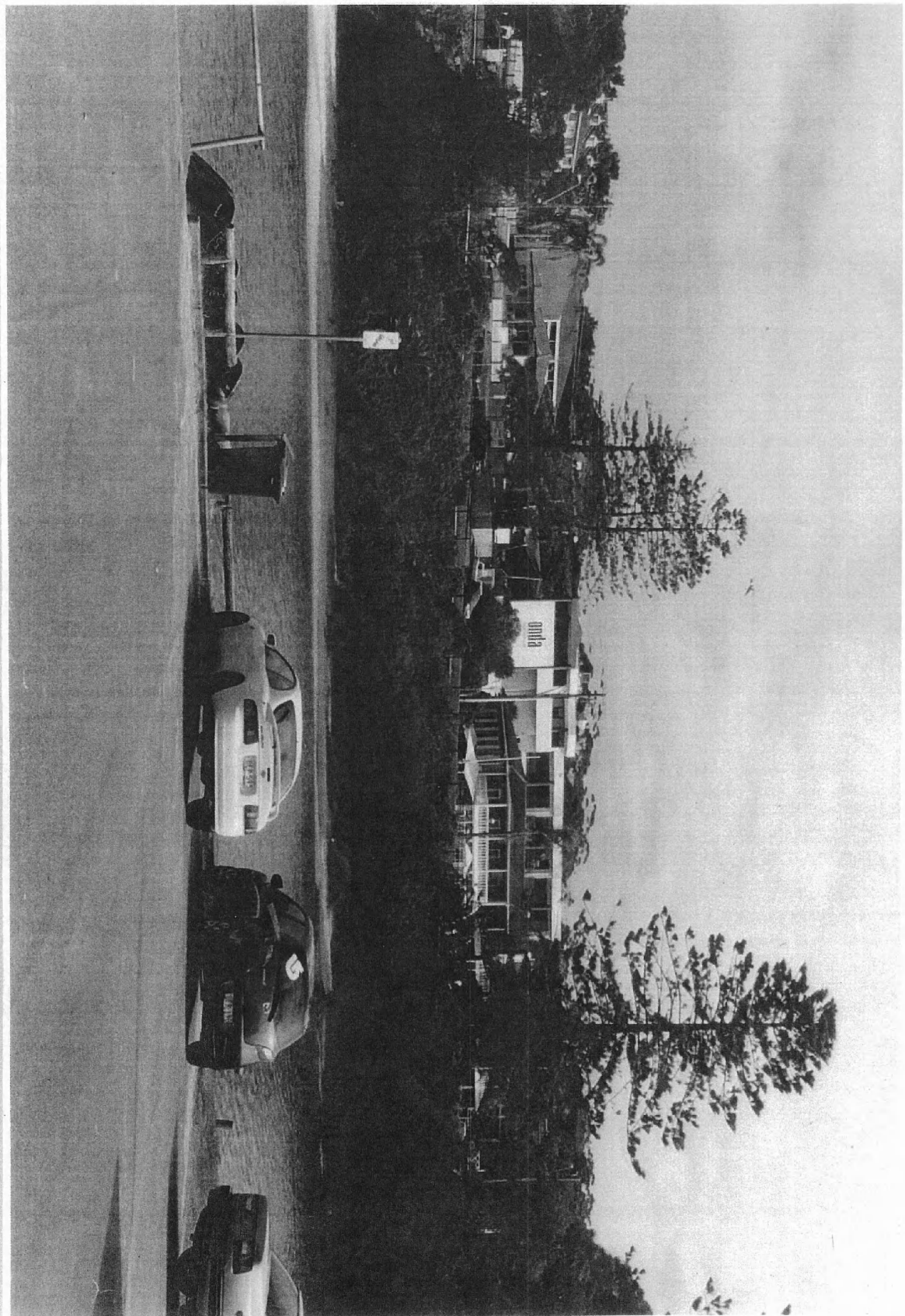


**ATTACHMENT 8 - PHOTOGRAPH STANDING NEXT TO TOP BALCONY OF UNIT 5/1 ENA STREET LOOKING EASTERLY**

Top balcony, standing, 5/1 Ena Street,  
Terrigal 27/5/2010, 10.30am.

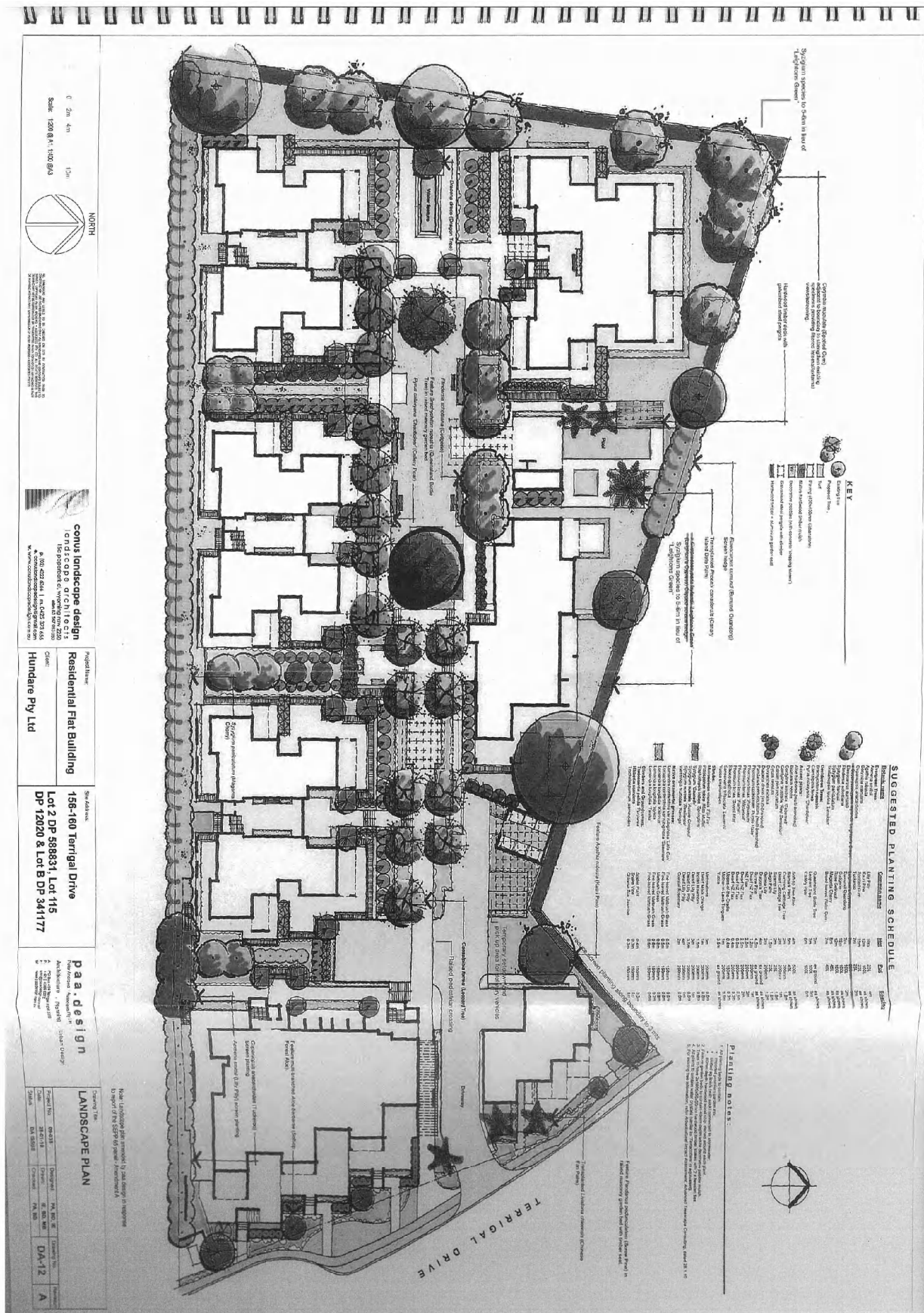


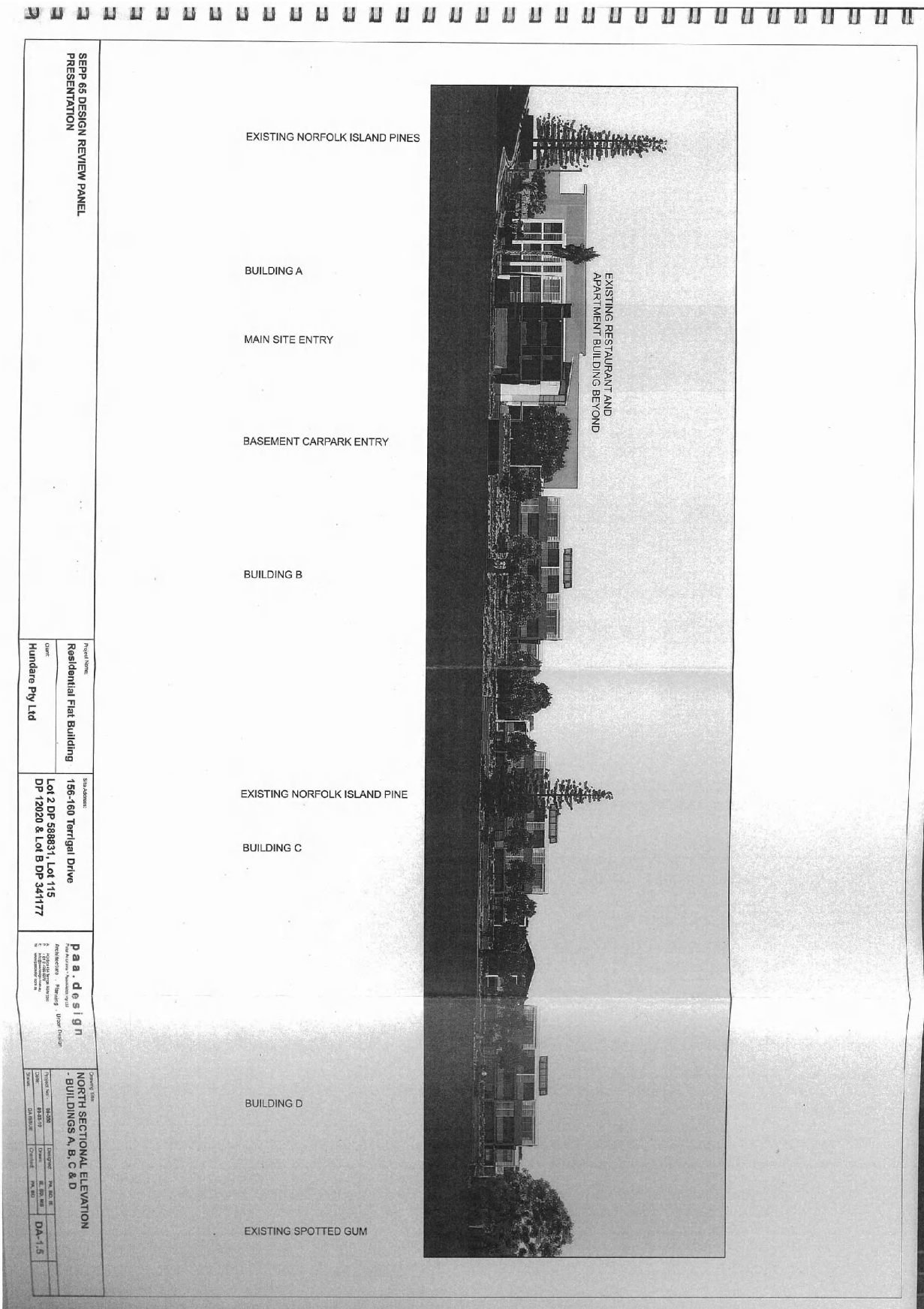
**ATTACHMENT 9 - PHOTOGRAPH SUBMITTED BY OBJECTOR OF VIEW OF SITE  
FROM OPPOSITE SIDE OF TERRIGAL LAGOON**



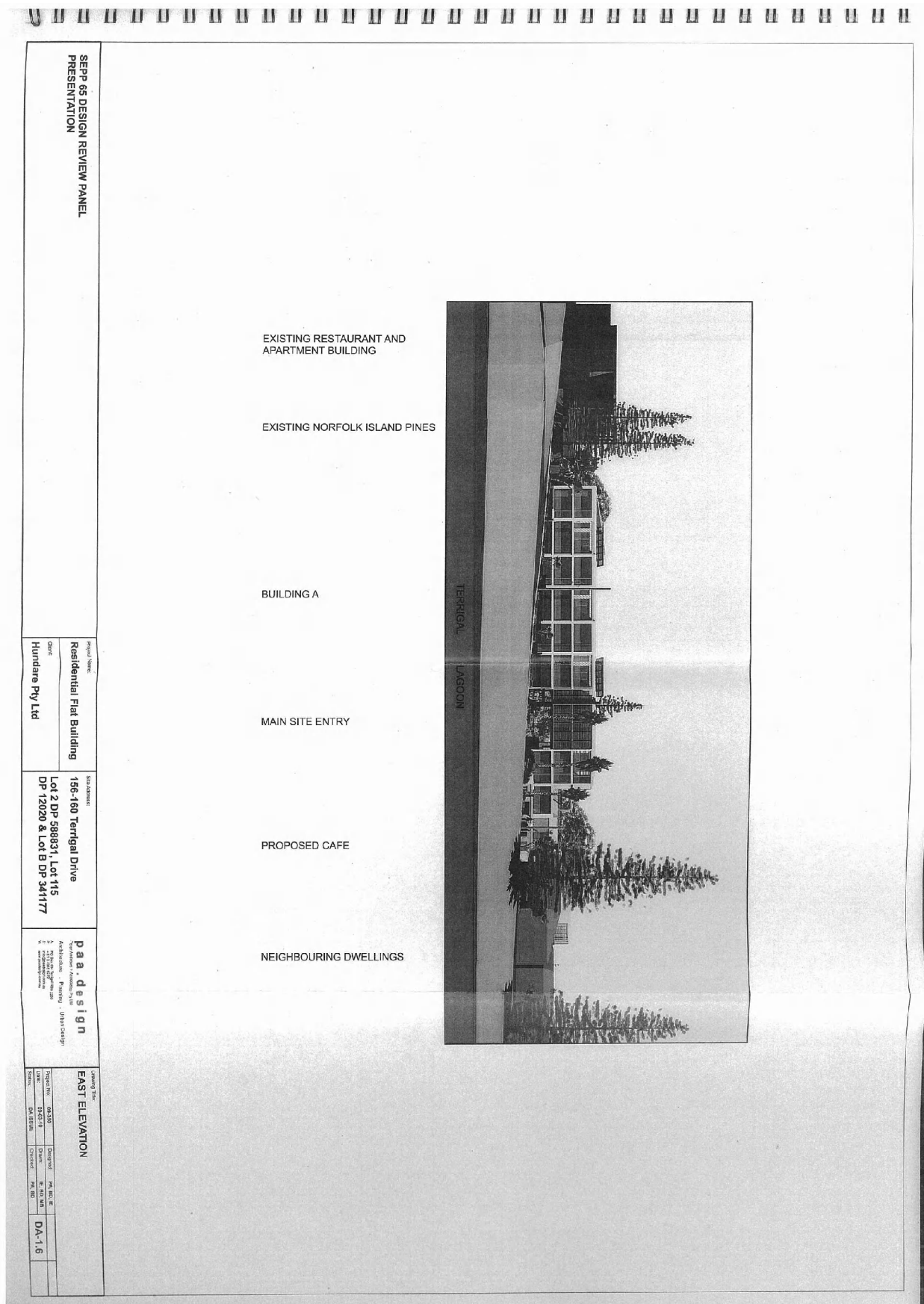
## ATTACHMENT 10

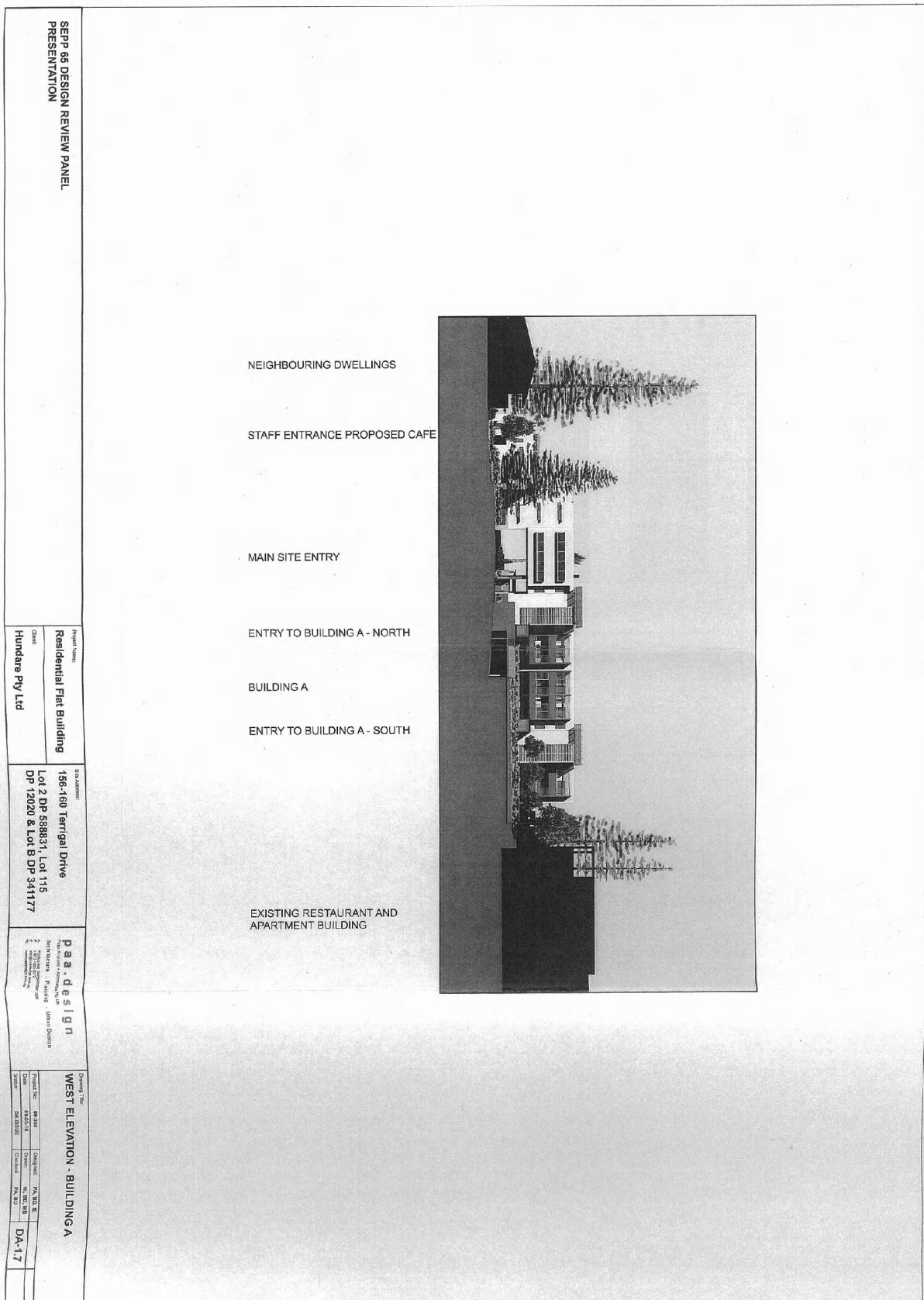
## PLANS











**ATTACHMENT 11 - DRAFT CONDITIONS (WITHOUT PREJUDICE)****DEFERRED COMMENCEMENT**

- A This consent shall not operate until the following have been satisfied
- i An Auditor accredited under the Contaminated Land Management Act, 1997, issuing a site audit statement to Council.
  - ii Council approves the remediation works and site validation.
  - iii Council issues a statement that the site is suitable for the proposed use
- Evidence must be produced to the consent authority sufficient to enable it to be satisfied that above conditions have been complied within thirty-six (36) months of the date of this approval, otherwise this consent will lapse.
- B Upon compliance with the conditions of deferred commencement Council will issue an operative consent (including stamped plans) that is subject to the attached conditions:

**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 Peter Andrew & Associates Pty Ltd**

<b>Drawing</b>	<b>Description</b>	<b>Sheets</b>	<b>Issue</b>	<b>Date</b>
DA-1	Cover Sheets & Drawing Schedule	1	B	28/1/10
DA-2	Site Plan	1	B	28/1/10
DA-2.3	Turning Circles 12m truck	1	C	20/5/10
DA-3	Basement Plan	1	A	28/1/10
DA-4	Ground Floor Plan	1	B	28/1/10
DA-5	First Floor Plan	1	B	28/1/10
DA-6	Second Floor Plan	1	A	28/1/10
DA-7	Roof Plan	1	B	28/1/10
DA-8	Street & Side Elevations	1	B	28/1/10
DA-9	Elevations & Sections	1	B	28/1/10
DA-10	Shadow Diagrams	1		28/1/10
DA-11	Building Envelope Diagrams	1		28/1/10
DA-12	Landscape Plan	1	A	28/1/10
DA-1.5	North Sectional Elevation & Buildings A, B, C & D	1		9/3/10
DA-1.6	East Elevation	1		9/3/10
DA-1.7	West Elevation	1		9/3/10
DA-1.8	Colour Chart	1		9/3/10

## Supporting Documentation

Document	Title	Date
	Statement of Environmental Effects Vol 1 & 2	February 2010
	Supporting Information requested by Council	February 2010

1.2. Drawing DA 2.3 Revision B having drawing title "Turning Circles - 12 m truck" shall be amended by:

- a The drawing title needs to read "Turning Circles -12.5 m turning radius truck" and given a new date and revision title.
- b The landscaping immediately above level 7, 307 shall be shifted northwards to ensure that the truck traced path doesn't impact on it.
- c The corner kerbing immediately below level 7, 135 shall be replaced with paving ensuring that the truck traced path will satisfactorily negotiate the corner.

## 1.3. Building Code of Australia

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

## 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 submission to and approval by council of a construction management plan. The plan shall address; construction traffic and routes; hours of deliveries and work; storage of building materials; workers amenities location and parking; notification to neighbours; contact details both during and outside work hours; noise and dust controls; site security and fencing; any other relevant matters.

2.3. 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. Heavy-duty vehicle crossing that has a width of 8.5m at the boundary and splayed to 16 at the kerb line and constructed with 200mm thick concrete reinforced with 1 layer of SL72 steel fabric top and bottom. The access configuration is to permit the AS2890.2:2002 12.5m HRV service vehicle to enter and exit the site, including from the westbound kerbside lane.
- b. All redundant dish crossings and laybacks in the kerb and gutter are to be removed and replaced with new kerb and gutter.



- c. All redundant vehicular crossings to be removed and the footway formation reinstated with full width footpath reinforced (SL72 steel fabric, 100mm thick) concrete footpath in an approved location.
- d. The piping of any stormwater from within the site to Council's drainage system located in Terrigal Drive.

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

- 2.4. 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.
- 2.5. A security deposit of \$50,000 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.
- 2.6. 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.
- 2.7. 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.
- 2.8. 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. The internal access is to also be amended to accommodate the swept turning path of the AS2890.2:2002 12.5m HRV:
    - i. at the turning path encroachment at the intersection with the basement access as indicated in the plan by paa.design project no 09-350 sheet DA-2.3 rev C dated 20/5/10;
    - ii. at the turning path encroachment with the landscaping area on the northern side access driveway within the front setback area as indicated in the plan by paa.design project no 09-350 sheet DA-2.3 rev C dated 20/5/10;
    - iii. as would be required to accommodate the vehicle entering the site from a westbound direction from the kerbside lane.
  - b. Nutrient/pollution control measures being designed in accordance with Council's DCP165 - Water Cycle Management and generally in accordance with Stormwater Management Report prepared by Cardno, Job No 89022878 dated Feb 2010. 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 to the interallotment drainage system and associated easement within lot 1 DP 588831 and Council's drainage system located in Terrigal Drive as generally indicated in the Stormwater Management Report prepared by Cardno, Job No 89022878 dated Feb 2010.
- 2.10. Appropriate site works are to be design across the street frontage so as to comply with the minimum sight distance requirements and minimum sight lines for pedestrian safety set out in the RTA publication "Guide to Traffic Generating Developments" (1993) and AS/NZS 2890.1:2004 Part 1: "Off-Street Car Parking".  
**Note:** The existing landscaping at the eastern end of the site may require modification to ensure sight lines to pedestrians comply with Australian Standards.
- 2.11. The design being amended to relocate the security access gate to a location that will permit vehicles entering and exiting the site in a forward direction in the event that this gate is closed.
- 2.12. Landscaping in the north eastern corner of the site adjoining 162 Terrigal Drive, and within the proposed 6m building setback shall not exceed 1m in height.
- 2.13. A dilapidation report is to be prepared by a practising structural engineer at no cost to Council or adjoining property owners, detailing the structural adequacy of adjoining properties, including Council's property, and their ability to withstand the proposed excavation. This report must include any measures required to be incorporated to ensure that no damage will occur during the course of works. The report must be submitted to Council and relevant adjoining property owners prior to the issue of a construction certificate.
- 2.14. The following contributions are payable under Section 94 of the Environmental Planning and Assessment Act 1979 in accordance with the relevant Council Contribution Plan No 47A – **Terrigal** as amended and are subject to quarterly review as detailed in the Contribution Plan.

Open Space - Embellishment	A	(Key No 804)	\$10,641.00
Footpaths - Capital	A	(Key No 805)	\$27,685.00
Town Centre / Foreshore Improvements	A	(Key No 835)	\$365,694.00
Stormwater & Flood Mitigation	A	(Key No 836)	\$246,075.00
<b>TOTAL AMOUNT</b>			<b>\$650,095.00</b>

The total contribution amount of \$650,095.00 is to be paid prior to the issue of a Construction Certificate.

The basis of the calculation and the total contribution amount is subject to quarterly review. An adjustment amount will become payable if the contribution is not paid prior to the next review.

A Construction/Subdivision Certificate is not to be issued by a certifying authority until the developer has provided the certifying authority with a copy of a receipt issued by Council that verifies that the section 94 contributions have been paid in accordance with the wording of this condition. A copy of this receipt is to accompany the documents required to be submitted by the certifying authority to Council under Clause 104 of the Environmental Planning and Assessment Regulation 2000.

A copy of the Contribution Plan may be inspected at the office of Gosford City Council, 49 Mann Street, Gosford or on Council's website

[www.gosford.nsw.gov.au/customer/document\\_gallery/contribution\\_plans](http://www.gosford.nsw.gov.au/customer/document_gallery/contribution_plans)

### 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. Tree Protection is to concur with the recommendations stated within the Arboricultural Impact Assessment prepared by R Kingdom 28/1/10.
- 3.6. 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.
- 3.7. 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.
- 3.8. 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.

- 3.9. 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.

- 3.10. Prior to commencement of any demolition work, the property's sewer connection must be disconnected at the Inspection Shaft and capped.
- 3.11. 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)

#### 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. (a) 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 and any directions or requirements complied with.
- (b) Should any relics be uncovered during excavation on site, the applicant must ensure that work ceases in that area and the Heritage Office is immediately notified in accordance with Section 146 of the NSW Heritage Act 1977.

Work must not recommence in that area until any necessary Excavation Permit has been obtained from the Heritage Council under Section 140 of the NSW Heritage Act, 1977.

- 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.
  - b The ceiling of the car park must be painted white.
  - c 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.
- 4.5. Trees to be removed shown on the approved plan and listed within the Arboricultural Impact Assessment must be removed in a manner so as to prevent damage to those trees that are to be retained.
- 4.6. (a) 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.
- (b) The Waste Management Plan will be fully complied with in accordance with the agreement signed by WMP P Woodward 2/2/2010.
- 4.7. 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'.
- 4.8. 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'.
- 4.9. 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*.
- 4.10. 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.
- 4.11. 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.
- 4.12. Hazardous waste such as asbestos cement sheeting being handled, conveyed and disposed of in accordance with guidelines and requirements of Workcover New South Wales. Disposal of asbestos material at Council's Waste Depot requires prior arrangement for immediate land filling.
- 4.13. All works to be at no cost to the RTA.

## 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 1.8 metre high fence must be erected along the length of the side and rear boundaries behind the building line.
- 5.4. Lot 115 DP 12020, lot B DP 341177 and lot 2 DP 588831 must be consolidated into a single allotment under one Certificate of Title prior to the issue of an Occupation Certificate.
- 5.5. The driveway, vehicle manoeuvring area and {number} 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.
- 5.6. The street number is to be at least 100mm high and be clearly visible from the street frontage.
- 5.7. 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.
- 5.8. A plaque is to be placed in a publicly accessible location on Lot 115 DP12020 identifying the location of the grave of John Kay who was buried on the property on 1st of October 1839.
- 5.9. 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 This will be provided prior to the issue of an Occupancy Certificate together with the creation of a s88B instrument under the Conveyancing Act to this effect and at the applicant cost.
- 5.10. Warning signage needs to be provided to minimise collisions between the reversing waste truck and car drivers in the ramp.
- 5.11. The waste enclosure doors will be widened to at least 2.5m to enable bulk bins to be moved in and out.
- 5.12. 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' and Policy 'D6.46 Erosion Sedimentation Control', 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'.

- 5.13. 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.
- 5.14. 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.

- 5.15. 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 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 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. Landscaping shall be completed and established.
- 5.18. 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.
- 5.19. An occupation certificate is to be issued by a consent authority, the council or an accredited certifier for the change of building use prior to the occupation of the building.
- 5.20. A warning notice is to be erected in a prominent position in the immediate vicinity of the swimming pool. The notice must be erected and contain the necessary information in accordance with Clause 10 of the Swimming Pools Regulation 2008.
- 5.21. The boundary fence to comply with all requirements of Australian Standard AS 1926.1-2007 *Swimming Pool Safety, Part 1: Safety barriers for swimming pools*.
- 5.22. The swimming pool is to be fenced in accordance with the *Swimming Pools Act 1992* and prior to the pool being filled with water a satisfactory inspection being carried out by the principal certifying authority.
- 5.23. The backwash from the pool filter and overflow system is to be disposed of to the sewer and where the sewer is not available in such a manner so as not to create a nuisance.
- 5.24. The development shall incorporate a stormwater retention system consisting of either rainwater tanks and/or stormwater tanks (as defined in DCP 165 -Water Cycle Management) with a minimum total capacity of 200,000 litres, capturing water from at least 90% of the total roof area. The water collected is to be suitably treated and connected to an external tap, all toilet cisterns and cold washing machine tap(s). Overflow from the rainwater tanks and/or stormwater tanks are to be directed by a piped drainage line to interallotment drainage.
- Note:

Internal stormwater infiltration trench details are to be designed by a practising engineer experienced in hydraulics. The design details are to cater for a 1 in 20 year AEP storm event.

## 6.. ONGOING OPERATION

- 6.1. No materials, waste matter or products shall be stored outside the building or the approved waste storage area, at any time.
- 6.2. Provision must be made for illumination of the common areas in the front of the site, throughout the hours of darkness.
- 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. All car parking areas and spaces required by this consent are to be maintained and periodically reline-marked. Such spaces are to be made available to all users of the site at all times during trading hours.
- 6.5. 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.
- 6.6. 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.
- 6.7. To ensure the survival and establishment of the landscaping, all works associated with the approved Landscape Plans are to be maintained for a period of 12 months from the date of the issue of an Occupation Certificate.
- 6.8. At the completion of the landscaping maintenance period any areas of lawn and plantings, including adjoining road reserve areas that are in a state of decline, damage or missing are to be replaced or restored to a healthy and vigorous condition and compliant with the approved detailed Landscape Plans and Development Consent Conditions.
- 6.9. A written undertaking will be provided to ensure that the transportation of waste bins to and from the collection point would be undertaken by a suitably trained and licenced superintendent. Also that this will be using a motorized lifting device.
- 6.10. Maintenance of the nutrient/pollution control facilities in accordance with the operation & maintenance plan.
- 6.11. The motor, filter, pump and all sound producing equipment or fitting associated with or forming part of the pool filtering system is to be sound insulated and/or isolated so as not to create an offensive noise to the occupants of the adjoining premises as defined in the *Protection of the Environment Operations Act 1997*.
- 6.12. 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*.



## 7.. ADVICE

- 7.1. The public authorities may have separate requirements and should be consulted in the following aspects:
- Australia Post* for the positioning and dimensions of mail boxes in new commercial and residential developments;
  - Jemena Asset Management* for any change or alteration to the gas line infrastructure;
  - Energy Australia* for any change or alteration to electricity infrastructure or encroachment within transmission line easements;
  - Telstra, Optus* or other telecommunication carriers for access to their telecommunications infrastructure.
  - Gosford City Council* in respect to the location of water, sewerage and drainage services.
- 7.2. 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.
- 7.3. It is an offence under the National Parks and Wildlife Act 1974 to knowingly disturb an Aboriginal object or artifact without consent.
- 7.4. 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.
- 7.5. The inspection fee for works associated with approvals under the Roads Act is calculated in accordance with Council's current fees and charges policy.
- 7.6. 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 Council's web site [www.gosford.nsw.gov.au](http://www.gosford.nsw.gov.au) to download a form from the Water & Sewerage forms index.
- 7.7. 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 that Council apply the following internal noise objectives for all habitable rooms under ventilated conditions complying with the requirements of the Building Code of Australia:

- All habitable rooms other than sleeping rooms: 45 dB(A)  $L_{eq(15hr)}$  and 40 dB(A)  $L_{eq(9hr)}$ , and
- Sleeping rooms: 35 dB(A)  $L_{eq(9hr)}$ .

- 7.8. 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.. 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.

## 9.. REVIEW OF DETERMINATION

- 9.1. Subject to provisions of Section 82A of the Act the applicant may make an application seeking a review of this determination, providing it is made in time for Council to determine the review within twelve (12) months of this determination.

## 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.

<<Insert Attachment Link/s Here >>