

JRPP NO:	2010HCC022
DA NO:	37986/2009 Part 1
PROPOSED DEVELOPMENT:	Demolition & Commercial and Residential Development (JRPP) on LOT: 13 DP: 746757, LOT: 14 DP: 746757, 44 Terrigal Esplanade TERRIGAL, 42 Terrigal Esplanade TERRIGAL
APPLICANT:	Howard Leslie & Assoc
REPORT BY:	Jim Bruton

Assessment Report and Recommendation

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)

Part 3, Division 2 Clause 13C (b) Major Projects SEPP.

Assessing Officer

J A Bruton

Reviewing By

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

Date Application Received

30/12/2009

JRPP Preview Comments

At the preliminary review of this application the panel identified the following matters requiring consideration by the applicant:

- The usefulness and amenity of the courtyards to the rear corner of the development.
- Issues with fire rating of windows to the rooms adjacent to the abovementioned courtyards.
- Whether the respective owners of the adjoining sites had been approached with a view to developing all the sites in a consolidated manner.

The applicant has removed the south-western balcony at level 1. The upper south-western balconies have been slightly modified to create better amenity.

It is incumbent upon the applicant to comply with the 'deemed to satisfy' provisions of the Building Code Australia with respect to protection of openings in external walls of the building within 3 metres of the boundaries of the site adjoining other properties. Otherwise a

performance based solution can be explored. This may or may not result in the construction of enclosing walls on the boundaries adjacent to the rear landward corner of the site. Re-development of these other sites could also result in construction that encloses the proposed balconies.

This issue has been considered in the assessment of the application. As a consequence the applicant has removed the balcony from level 1 and modified the balconies of levels 2 and 3. It is considered that a reasonable level of natural light and natural ventilation will be available to the adjacent bedrooms should those balconies be enclosed by solid construction. Also a reasonable level of cross-ventilation through the residential units will be retained. Whilst this is not the most desirable outcome it only impacts two bedrooms in the development and a good level of amenity is achieved for all other habitable rooms in the proposal.

The applicant has advised that the respective owners of the adjoining sites have been approached with a view to pursuing a consolidated development, however, no agreement could be reached.

Proposal

It is proposed to demolish the existing buildings and to erect a four (4) storey building comprising:

- Basement parking for six (6) vehicles;
- Ground floor containing four (4) commercial tenancies;
- First floor containing four (4) commercial office tenancies;
- Second floor containing two (2) commercial tenancies and the lower level of two (2) residential apartments; and
- Third floor containing upper level of the two residential apartments.

Zone

Business General 3(a)-GPSO

Area

167.8m²

City Vision 2025

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

Public Submissions

One (1) Public submission

Pre-DA Meeting

Not Held

Political Donations

None declared

During the assessment of this application contact was made with the applicant. No issues of political donations as a consequence to these contacts were declared.

Relevant Statutory Provisions

- 1 Environmental Planning & Assessment Act, 1979 – Section 79C
- 2 Local Government Act 1993 – Section 89
- 3 Gosford Planning Scheme Ordinance
- 4 SEPP 71
- 5 SEPP - Major Projects
- 6 SEPP 1 - Development Standards
- 7 LEP 442
- 8 DCP 55 - Amendment No 1 (Terrigal Town Centre)
- 9 DCP 106 - Site Waste Management
- 10 DCP 111 - Car Parking
- 11 DCP 128 - Public Notification of Development Applications
- 12 DCP 159 - Character
- 13 DCP 165 - Water Cycle Management

Key Issues

- 1 SEPP 71
- 2 GPSO Clause 49S
- 3 DCP 55 - Terrigal Town Centre
- 4 DCP 111 - Car Parking
- 5 Building Surveyor's Comments
- 6 Development Assessment Engineer's Comments
- 7 Environmental Assessment Officer's Comments
- 8 Waste Services Officer's Comments
- 9 Architectural Assessment
- 10 S94 Contributions
- 11 Public Submission

Recommendation

Approval

REPORT

The Site

The subject site comprises two allotments being Lots 13 and 14 DP: 746757 No 42 and 44 Terrigal Esplanade Terrigal.

The combined lots are generally rectangular in shape with the exception of a splay of approximately 1.5m x 1.5m to the western corner of the site.

The overall site dimensions are approximately 27.4m x 11.6m and the site has a total area of 344.0m².

The site levels vary from an approximate average 4.5m AHD at The Terrigal Esplanade to an approximate average of 3.5m AHD at the site's south western boundary. Maximum fall across the site is therefore approximately 1.0m.

The existing development at the site comprises single - storey commercial buildings of approximately 50 years of age. The facades are typical face brickwork with traditional glazed shopfronts. The premises currently operate as several shops including a noodle bar, pizza inn, seafood shop, confectionery shop and ladies fashion shop.

The site is adjoined by single-storey shops in Terrigal Esplanade, whilst adjacent to the south western boundary is a two-storey commercial development. The proposal will be in context with other developments approved for Terrigal Esplanade that are consistent with LEP 442 and the theme for development that DCP 55 promotes.

Background

The applicant approached Council in 2009 with a view to having a pre-application meeting. The applicant was advised at that stage that the proposal qualified as a Part 3A development for which the Minister was the consent authority. The applicant made representation to the Minister and in a letter from the Department of Planning dated 22 June 2009 was advised that the Minister had made a determination that the matter was of local planning significance only and that Council could assume responsibility for determination of the proposal.

Following lodgement of the application it became apparent that following amendments to the legislation on 1 July 2009 that the application required referral to the Gosford/Wyong JRRP for determination. A letter dated was forwarded to the Department of Planning to see if their letter of 22 June 2009 could be relied upon. The advice received in response indicated that it could not.

Assessment

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

Gosford Planning Scheme Ordinance

a Objectives Of Zone

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

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

b 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.

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 assessment concluded the proposal is generally consistent with the Draft Plan with the exception of its FSR.

Under the draft LEP the subject site is zoned B2, maximum height allowed is 14.25m and maximum FSR is 1.8:1.

The proposed development is consistent with the permissible uses contained in the DLEP, has a height in excess of the maximum permissible height whilst the FSR of the proposal at approximately 2.52:1 exceeds the maximum FSR of 1.8:1 proposed with the DLEP by approximately 40%.

This proposal generally complies with the current controls and is consistent with other recent approvals in the Terrigal Town Centre.

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 issue.

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.

GPSO Clause 49S

Clause 49S of the Gosford Planning Scheme Ordinance details several requirements that development proposals have to satisfy including the following:

Clause (5) (a) The Council is not to grant consent for the erection of a building where the site frontage would be less than 12m.

Comment

The subject development site has a frontage of 25.93m.

Clause (7) The Council is not to grant consent for the erection of any new building or an addition to any existing building where the number of storeys, or the maximum height of external walls, or the maximum height of the building, would be greater than the limits that are specified by the table below according to the relevant allotment frontage and the area of the development site.

Site frontage	Site area	Maximum number of storeys	Maximum height for external walls	Maximum height for the building
Less than 20m	Less than 2000m ²	3 storeys	10.0m	11.5m
20m or more	Less than 2000m ²	4 storeys	12.75m	14.25m *
20m or more	2000m ² or greater	5 storeys	15.5m	17m

Comment

The proposed development has a frontage (Kurrawyba Avenue) in excess of 20m and a site area of less than 2000m² permitting a maximum of four storeys and maximum heights as specified in the above table. The external wall height and overall building height both exceed the maximum. The applicant has submitted a SEPP 1 Objection to the maximum wall and maximum overall building height requirements. In summary the applicant submits:

"The development standard contained in clause 49S(7) of the Gosford Planning scheme Ordinance states that the Council is not to grant consent for the erection of any new building or the addition of to any existing building where the number of storeys, or the maximum height of the building, would be greater than the limits that are specified by the Table forming part of the clause, according to the relevant allotment frontage and the area of the development site.

In the case of the subject land the relevant controls are:

Site Frontage Height	Site Area	Max. No. of Storeys	Max. Height for External Walls	Max. For Building
20m or more	Less than 2000m	4 storeys	12.75m	14.25m

Clause 49S(12) of the GPSO contains a number of definitions that are relevant to a consideration of the maximum height of external walls and the maximum height of a building, as follows:

External wall means an exterior wall of a building that encloses habitable floor space, but does not include a gable-end or a high level window that is set beneath a pitched roof.

Height means the vertical distance from street level to the topmost point of any building, or of any specified feature of a building.

Street level means the average of existing ground levels measured along the principal street boundary of a development site or, where a flood-free level has been set by the Council, that level.

The "street level" for the subject land is the height determined by averaging the height of the street fronting Kurrawyba Avenue (the principal street boundary). The survey plan of the site indicates that the street has a level of RL 4.44 AHD at the south eastern corner and a flood-free level height of RL 3.82 AHD at its south western corner. Consequently the average street level is determined to be RL 4.13 AHD.

The plans prepared by Howard Leslie and Associates indicate that the maximum height of the external walls is RL 17.25m AHD. Excluding the thickness of the roof the maximum height is therefore approximately RL 17.0 AHD. Thus RL 17.0 maximum wall height minus the average Street RL of 4.13 gives an overall height of 12.87m which results in a minor deviation from the standard.

Equation

Maximum height of external walls = RL 17.00m minus Average street level of RL 4.13m = 12.87m. Therefore, 12.87m minus development standard of 12.75m = 0.12m, which equates to a variation of less than 1% from the standard.

Note that the average street level has been determined by using the NS RL 4.42 (north) and RL 3.82 (flood level) as evident from the survey.

In the case of the Maximum Height of the building, the plans indicate a maximum height of RL 19.7m AHD (lift over-run/pergola). The maximum height of the building exceeds the development standard by an amount of 1.32m based on the following:

Maximum height of the building = RL 19.70 minus average street level 4.13m = 15.57m minus development standard of 14.25m = 1.32m which equates to a variation of 9.1% from the standard.

Note that this variation to the standard is over a small area and consists of predominantly open structures with minimal bulk and only completely visible from afar.

3A Development Standard for Maximum Height of External Walls

Compliance with the development standard relating to the maximum height of the external walls in the case of this proposed development is unreasonable and unnecessary for the following reasons:

- a. The underlying objects for the development standard are satisfactorily met as the proposed building does not dominate the foreshore backdrop with an excessive scale or bulk having regard to the recently approved five storey building towards the northern end of Terrigal Esplanade, which has external walls of a greater height than in the currently proposed development.
- b. The wall height exceeds the maximum height only by 0.12m. Such a minor encroachment does not have any significant impact on the views between the subject development and the hillsides surrounding the Terrigal Town Centre.
- c. The minor non-compliance with the maximum external wall height does not have any significant effects on solar access to the adjoining public streets.

- d. Adverse impact created to view corridors is considered to be minimal due to the narrow east/west frontage.

The reasons set out above demonstrate that strict compliance with the development standard for the maximum height of the external walls of the building is unnecessary to achieve the objectives of the planning control and it would therefore be unreasonable to require compliance.

Strict compliance with the development standard would also tend to hinder the attainment of the urban design principles that are specified in clause 49S(3) of the GPSO.

Strict compliance with the development standard would also tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979*, which provide, relevantly:

- (i) *the proper management, development and conservation of natural and artificial resources, including cities, towns and villages of the purpose of promoting the social and economic welfare of the community and a better environment.*
- (ii) *the promotion and co-ordination of the orderly and economic use and development of land.*

3B Development standard for Maximum Height for the Building

Compliance with the development standard relating to the maximum height for the building in the case of this proposed development is unreasonable and unnecessary for the following reasons:

- e. The underlying objects for the development standard are satisfactorily met as the proposed building does not dominate the foreshore backdrop with an excessive scale or bulk having regard to the recently approved five storey building towards the northern end of Terrigal Esplanade, which has a greater building height than the currently proposed development.
- f. The proposed maximum building height exceeds the maximum height by 1.32m only in respect of the lift overrun and stairwell providing access to the roof terrace. Such an encroachment does not have any significant impact on the views between the subject development and the hillsides surrounding the Terrigal Town Centre.
- g. The non-compliance with the maximum building height does not have any significant effects on solar access to the adjoining public streets, as it applies only to a very small section of the roof area.

The reasons set out above demonstrate that strict compliance with the development standard for the maximum building height is unnecessary to achieve the objectives of the planning control and it would therefore be unreasonable to require compliance.

Strict compliance with the development standard would also tend to hinder the attainment of the urban design principles that are specified in Clause 49S(3) of the GPSO

Strict compliance with the development standard would also tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979*, which provide, relevantly:

- (i) *the proper management, development and conservation of natural and artificial resources, including cities, towns and villages of the purpose of*

- promoting the social and economic welfare of the community and a better environment.*
- (ii) *the promotion and co-ordination of the orderly and economic use and development of land.*

Comment

Neither the external wall height or the overall building height are considered excessive in this instance. It is considered that the development achieves the stated objectives, does not create excessive bulk or scale and does not adversely affect the views from other development in the locality. The development generally complies with the stated development standards and is consistent with other development approved in the locality.

In this instance the SEPP 1 Objection to the requirements of Clause 49S(7) as it applies to maximum height for external walls and maximum height for the building is supported.

DCP 55 - Terrigal Town Centre (Relevant matters)

DCP Clause	Required	Provided	Compliance
2.2 Desired character of the public domain	2.2a - maximise visible retail activity - preserve existing levels of sunlight during middle of day 2.2b - incorporate awnings/balconies that provide continuous shelter/shade along shopfronts	Generally complies with DCP 55	Yes
2.3 Desired character of buildings	2.3a - diversify range of uses at street and first floor level, locate residential flats above street level 2.3c - enhance level and diversity of retail activity - promote pedestrian friendly scale 2.3d - provide well articulated designs that step back after two storeys and include roofed terraces and decks. Provide lightweight appearance including framed balconies with wide roof overhangs and sunscreens 2.3f - vehicle/delivery access not to dominate retail frontages	Generally complies with DCP 55	Yes
4.3 Building envelopes	4.3 -	See comments under	
6.2 Building form	6.2a - avoid cubic forms with the use of	Generally complies with DCP 55	Yes

	<p>varied roof forms and external walls and parapets. Top floors should have stepped floor plans</p> <p>6.2c – define building form with layering (base, middle and top)</p> <p>6.2d – facades to be designed to reflect traditional narrow individual shopfronts with projecting balconies at upper levels and the use of variations in materials</p> <p>6.2e – pitched roofs preferred, plant and equipment should be concealed, penthouse units should be surrounded by a an equal mix of roofs and terraces</p>		
6.3 Architectural details + finishes	6.3a – side and rear facades should match front	Generally complies with DCP 55	Yes
6.4 light-weight features	6.4a – buildings should employ the use of lightweight features including screening expanses of masonry, penthouse should be provided with framed pavilion style structures with pitched roofs and wide eaves. Other building elements such as screened balconies, wide bay or corner windows, sheet or board cladding and painted finishes to accentuate features. Open balconies set above the street facades catering to outdoor dining are also encouraged	Generally complies with DCP 55	Yes
7.2 “Main street” design principles	7.2a – outdoor environment and beachside location to be promoted, near continuous shopfront businesses preferred	Generally complies with DCP 55	Yes

7.3 street level activity	<p>7.3a – shopfronts and entrances to be protected by continuous awnings or weatherproof balconies. On-site car parking should not be visible from the street. Wherever possible facades should not incorporate fire exits, services cupboards etc.</p> <p>7.3c – first floor balconies catering to outdoor dining may overhang footpaths, restaurants should have extensive windows to permit views to and from street level</p>	Complies	Yes
7.5 Shopfronts + Entrances	7.5a – divide shopfront windows into 2 panels (lower 2.7m and upper panel for advertising, walls and solid doors to be finished in durable materials, shopfronts not to be concealed behind heavy colonnade structures	Generally complies with DCP 55	Yes
7.6 Awnings + balconies	<p>7.6a – awnings should be opaque, underside of awnings should be consistent with any adjacent (3.3-3.5m above finished interior floor level), fascia of awning should be 0.3m in depth for advertising, face should be setback 0.5m from kerb</p> <p>7.6b – balconies to be consistent with Sections 4.3, 6.3 and 6.4 of this plan, may be roofed but not enclosed by permanent walls or windows and may be cantilevered or supported on posts and beams</p>	Awnings are consistent with the plan, balconies are not in strict compliance with the stated clauses, however, it is considered that a reasonable level of solar access at street level will be maintained, also part 7.6c of the plan encourages non-compliance at corner properties and wide sites to accentuate contrasts to horizontal elements and acknowledge landmark locations	Acceptable
8.2 Minimum dimensions	8.2a – Min. ceiling height for habitable rooms – 2.7m,	2.75m ceilings provided, windows suitably located and	Yes

	<p>dimensions, window locations and doors to be appropriate for each room</p> <p>8.2c – lift lobbies to be wide enough for furniture removal and 2-way passage of residents, common hallways to be min. 1.2m wide</p>	lift lobbies of suitable dimensions	
8.3 Views	<p>8.3a – height not to exceed LEP requirement</p> <p>8.3b – top storey to be shaped to minimise obstruction of significant views</p>	Height discussed under LEP commentary, top storey generally complies with DCP guidelines	Acceptable
8.3(sic) Private open space	<p>8.3a – may be 1 or more balconies or roof terraces, adjacent to living or dining rooms, large enough to accommodate outdoor dining, sitting and reclining, balconies to be not less than 2m wide and 4m long.</p> <p>8.3b – should include adjustable sunshades and privacy screens</p> <p>8.3c – balconies should be in short lengths to increase articulation of design</p>	Generally complies with DCP 55	Acceptable
8.4 Outlook + daylight	<p>8.4a – dwellings to be designed to achieve attractive outlook</p> <p>8.4b – principle windows of habitable rooms to be 6m from any wall or obstruction, balconies overhanging habitable room below not to extend more than 2m</p>	Generally complies with DCP 55. Bedrooms to the rear corner of the development have been provided light and ventilation having regard to the constraints of the site.	Acceptable
8.5 Acoustic privacy	<p>8.5b – structures and walls between dwellings to be acoustically rated to applicable standards</p> <p>8.5c – noise sources should be separated or insulated, windows oriented away from noise sources, windows and private</p>	Separation satisfactory, acoustic separation between to comply with BCA requirements	Yes

	<p>open spaces should be shielded</p> <p>8.5d - site planning should avoid direct exposure of habitable spaces to noise from other units and other specific sources</p> <p>8.5e - plant to be located away from habitable areas or insulated</p>		
8.6 Visual privacy	8.6a – appropriate orientation and/or separation required	Generally complies with DCP 55	Yes
8.7	<p>8.7a – windows should be protected from sun Sept – March whilst allowing sun March – Sept.</p> <p>8.7b – windows should allow Easterly winds to flow through apartments</p>	Generally complies with DCP 55	Yes
8.8 Safety + security	8.8a - Appropriate consideration to be given to safety and security	CPTED principles considered, draft conditions included	Yes
9.2 Floodprone properties	<p>9.2a – development to be planned and constructed to comply with the “floodplain Development Manual” and DCP 115</p> <p>9.2b – Buildings to be constructed to prevent entry of floodwaters</p>	Minimum floor level required 3.82m AHD.	Yes
9.3 Energy efficiency	<p>9.3a – development to achieve 3.5 star rating</p> <p>9.3b – insulate framed roofs and install 4 star water heaters (notate CC)</p>	Basix Certificate accompanied application. Basix commitments notated on plans	Yes
9.5 Water conservation	9.5a – collect and re-use stormwater	As above	Yes
10.2 Carparking	<p>10.2a – can be distributed on site and in public facility, at least 1 space per dwelling plus 1 space per each retail or business required on-site, balance/shortfall to be compensated by monetary contribution</p> <p>10.2b – car parking to comply with AS 2890.1</p>	See comments under DCP 111 – Car Parking	No

10.4 Garbage storage collection +	10.4a – storage to provided in accordance with Council’s policy 10.4b – unloading should not require contractor to enter property	Storage provided as required, kerbside collection to be provided	Yes
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Building Envelopes

DCP 55 – clause 4.1 Objectives states:

4.1 Objectives

- a Establish the primary controls to encourage financially-viable redevelopment that addresses scenic quality, character and residential amenity**
- b Limit both the visual impact of multi-storey buildings upon the scenic quality of this coastal setting, and the potential for obstruction of significant coastal and ocean views that are available from surrounding residential hillsides**
- c Vary the maximum building height for each development in proportion to the size and frontage of the development site, and according to the provision of specified benefits**
- d Maintain the established pedestrian-friendly scale of two storey facades facing all streets**
- e Promote a sunlit outdoor environment as the setting for a vibrant town centre maintaining existing levels of sunlight along footpaths during the middle of the day**
- f Ensure that town centre dwellings will receive satisfactory levels of midwinter sunlight**
- g Encourage variations in building form that create a varied silhouette or profile, and that contribute to a regionally-distinctive architecture**

DCP 55 - Clause 4.3 Building Envelopes states:

- a Except as provided in Sections 4.3b + c, exterior walls and balconies should not extend beyond a building envelope that is projected from each street or laneway frontage as detailed by Part C of this Plan:**
 - i Maintain the existing level of midwinter sun along public footpaths between at least the hours of 10am and 2pm by a building envelope that is projected at the appropriate solar altitude angle from the adjacent street kerb, and/or
 - ii Provide satisfactory levels of midwinter sunlight for existing residential storeys (whether existing or future buildings on properties that have not yet been developed according to this Plan) by a building envelope that is projected at the appropriate solar altitude angle from the first floor level of a façade facing Hudson lane, and/or
 - iii Maintain the pedestrian-friendly scale of existing low-rise buildings facing each street or laneway by a building that is projected at 45° from the façade at a point not higher than 7m above “street level”, or from the second storey floor, whichever is the lesser

- iv Note that awnings, eaves, balustrades and parapets may project beyond the pedestrian envelope, but generally should not project beyond the solar envelope unless glazed or substantially of transparent construction.
- b Adjacent to any residential property exterior walls should be stepped to maintain reasonable sunlight to the principal living area and private open space of each dwelling:**
 - i According to provisions of *DCP No. 108 (Energy Smart Homes: Part Five)*.
- c Minor variations of building envelopes are desirable in the following situations on order to avoid the appearance of continuous horizontal building forms:**
 - i In general, variations are desirable at street corners where a vertical emphasis of landmark locations is appropriate, and to allow reasonable potential for the redevelopment of corner properties
 - ii Also, variations are desirable on wide sites where vertical structures or balconies can provide effective contrasts to continuous horizontal forms with regular steps that might otherwise occur.
- d The location and dimension of variations to the building envelopes should be limited:**
 - i Any façade that penetrates solar envelope should not be wider than 10m or taller than 4 storeys, and resulting shadows that are cast across a footpath or neighbouring façade should be relatively narrow and fast moving.
 - ii Variations of a pedestrian envelope should not have a total width that is greater than 30% of any facades width, and no single variation should exceed a width of 10 metres or 4 storeys, except upon a corner property where variations will be assessed subject to conformity with the objectives of Section 4.
 - iii Variations may include enclosed floorspace or roofed balconies that are constructed above public footpaths to accommodate outdoor dining.

Comments

DCP 55 distinguishes between “Pedestrian Scale Envelope” and “Solar Protection Envelope”. Pedestrian scale envelope applies to that part of the subject site facing Terrigal Esplanade whilst solar protection envelope applies to that part of the subject site facing Kurrawyba Avenue.

The building façade facing Terrigal Esplanade includes building elements that protrude through the pedestrian building envelope. The encroaching elements to the upper levels do not exceed 4 storeys and are less than 7m in width. They do, however, exceed 30% of the width of the frontage of the development. The encroachments (bedrooms and adjacent pergolas) extend to approximately 50% of the frontage of the proposed development. A pergola structure also extends through the envelope for a further 4m adjacent to the master bedroom. Whilst these structures are not in conformity with the DCP they are of varying width and contribute to the breaking-up of the horizontal elements of the building facing Kurrawyba Avenue.

The narrow nature of this site makes it difficult to accommodate sufficient useable space within the confines of the required building envelope. It is considered that the additional floor space does not detract from the appearance of the building and with the inclusion of the balcony dining areas at first floor area will not create an adverse impact to the pedestrian scale. The encroachments to the lower levels include enclosed balconies that may be used for outdoor dining and are encouraged with the DCP. In this instance the proposal is not considered to adversely impact the pedestrian scale for development along this street frontage as the line of sight to the upper levels of this development from the footpath is only available at and beyond the street gutter alignment. .

The building façade extends through the building envelope desired by the DCP. The subject site faces north east. Solar access will be preserved to the Terrigal Esplanade frontage as preferred by the DCP. Solar access will not be preserved to the street frontage in Kurrawyba Avenue past mid morning on the side of the street in front of the development site. Solar access will be preserved to the footpath on the opposite side of Kurrawyba Avenue to the development site for a reasonable amount of the day during mid winter. The extent of shadow from the proposed development in mid winter will extend fully across the footpath on the opposite side of Kurrawyba Avenue. The adjacent building to the south-west does not currently have a residential component. In this instance the shadow impact is not considered to be unacceptable for the following reasons:

- 1 Winter sunlight to the opposite footpath will be generally preserved between 10am and 2pm;
- 2 The outdoor concourse of the Crowne Plaza Hotel is elevated approx 1.2m above the footpath and will not lose sunlight as a result of this development;
- 3 Encroachments are encouraged with the DCP for landmark sites and at corner properties to allow reasonable potential for redevelopment; and
- 4 The extremity of the first floor balcony facing Terrigal Esplanade is located such that a pedestrian standing would need to standing on the street kerb to be able to observe any part of the upper parts of the building.

It is considered that this development generally meets with the objectives of DCP 55 as they apply to height envelopes. The proposal achieves a satisfactory appearance for this corner property with appropriate articulation in its design and elements that distinguish its corner presentation. Acceptable levels of pedestrian scale and solar access are maintained and active shopfronts with individual shop facades are provided.

DCP 111 - Car Parking

DCP 111 requires car parking for the proposed development as follows:

Residential units:

1.5 spaces per unit ($2 \times 1.5 = 3$)

0.2 spaces per unit for visitors ($0.2 \times 2 = 0.4$)

Sub-total = 3.4

Commercial premises

Ground floor: $189.79\text{m}^2/30 = 6.3$

Level 1: $249.9/30 = 8.33$

Level 2: $52.4/40 = 1.31$

Sub-total = 15.94

Total = 19.34 (20)

The ground floor and level 1 have both been calculated on the basis of the potential for restaurant use. To achieve a fair balance the potential for footpath dining and first floor balcony dining have not been included for the purpose of calculating car parking as it is likely that not all tenancies will become restaurants.

The subject development provides basement car parking for six (6) vehicles. DCP 55 – Terrigal Town Centre provides that required car parking spaces can be distributed on-site and in a public facility. The DCP also provides that on-site parking should provide at least

one space per dwelling, plus one space per retail or business tenancy. On this basis a minimum of twelve (12) spaces should be provided on site.

DCP 111 – Car Parking requires that in the Terrigal commercial centre no more than two-thirds of the required carparking is to be provided on-site and that the balance be provided by way of a cash contribution.

Whilst there is a shortfall in the number of spaces that should be provided on-site it is apparent that the proposed development is generally consistent with the limitations provided by the development standards applicable to the site. This being the case, even with a reduction in the number of tenancies proposed the number of car spaces required by DCP 55, it could be reasonably expected that ten spaces would be necessary on-site. Whilst it might be possible to provide a second level of basement parking the amount of site area required to accommodate ramps to the respective levels together with lift access would probably only yield 8 – 10 spaces in total. Whilst this scenario would produce more car parking the limited spaces produced at each level would likely prove uneconomical.

In terms of the total number of spaces required for this proposal there exists a shortfall of fourteen (14) spaces. In this case given that the applicant is required to pay a contribution (\$13,320.00 per space – total \$186,480.00) in lieu of providing the spaces on-site the proposal as submitted is considered reasonable.

This arrangement for car parking is generally consistent with that applied to DA 32253/2007. In that instance whilst there was only a shortfall of 1 space in the number of spaces required on-site per DCP 55, the overall shortfall in total number of spaces required was forty (40) spaces for which cash contribution was required.

A loading zone exists in front of the site in Kurrawyba Avenue for commercial deliveries.

It is considered appropriate in the circumstances that each of the two proposed residential units be allocated one of the car parking spaces provided with this development.

[Refer Draft Cond. 5.15].

Building Surveyor's Comments

No objection, draft conditions provided.

[Refer Draft Conds. 2.2, 3.5, 3.6, 3.7, 3.8, 3.9, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.11, 4.12, 6.5, 8.3 and 8.4].

Development Assessment Engineer's Comments

No objection, draft conditions provided.

[Refer Draft Conds. 2.3, 2.4, 2.5, 2.6, 2.7, 2.8, 2.9, 2.10, 2.11, 2.12, 2.13, 4.13, 4.14, 4.15, 5.10, 5.11, 5.12, 5.13, 5.14, 6.6, 8.5, 8.6 and 8.7].

Environmental Assessment Officer's Comments

No objection, draft conditions provided.

[Refer Draft Cond. 4.16].

Waste Services Officer's Comments

No objection, draft conditions provided.

[Refer Draft Cond. 8.8].

Architectural Assessment

Council's Architect has assessed the application and provided the following comments:

1.
The pergolas on the roof terrace also encroach on the height envelope and must remain unroofed.
2.
There must be adequate visual and acoustic privacy screening between the commercial and residential uses on level 2. It is important that this is not visible from the street and does not compromise the design of the development.
3.
There is concern that the terraces on the north west corner of the site will be largely enclosed by adjoining properties and will allow little light to adjoining rooms however as these are bedrooms it is considered adequate.

Comment

Conditions have been included regarding roofing of the roof-top pergolas and the screening between the commercial and residential uses at level 2.

[Refer Draft Conds. 2.15 and 6.7].

S94 Contributions

S94 Contributions are required for residential units in the Terrigal Town Centre. No contributions are payable for commercial floor space. Only 2 residential units are proposed with this application and 2 credits apply for the existing lots. Therefore in this instance no S94 Contributions are payable.

Public Submission

The application was advertised in accordance with Council's DCP 128 – Public Notification of Development Applications and attracted one (1) submission.

Those issues associated with the key issues have been addressed in the above report. The remaining issues pertaining to various concerns were considered in the assessment of the application having regard to the matters for consideration contained within Section 79C of the Environmental Planning and Assessment Act 1979.

A summary of the submission is contained hereunder:

- 1 **Height:** We do not believe that Council should approve increased height for a roof terrace. We note also that there is no provision for air conditioning units, or mechanical ventilation for possible cafes on the ground floor. The southern elevation indicates a "paint and rendered masonry handrail" which would also breach the permissible height allowance.

Comment

With the exception of a decorative roof element containing the lift overrun, stair shaft including W.C. and minor pergola structures the building height complies with the maximum height requirement for the site. A service void/duct is located adjacent to the stair shaft and services each floor within the proposed development. The balustrade around the roof-top terrace is to be constructed mainly of rendered masonry with two short lengths of glazing facing Kurrawyba Avenue. The roof-top terrace is contained within the roof pavilions and will not be easily observed from the street.

- 2 **Building Envelope:** The building appears to exceed the building envelope on all elevations. The walls rise vertically for 3 storeys instead of the prescribed two storeys. This is somewhat hidden by the fact that the balconies on the second storey extend over the pavements. It is the writer's recollection that corner blocks required greater setbacks on the upper storeys – rather than lesser – to enable a visual opening up of the street ends.

A precedent for all development along the Esplanade would be created were the proposed development to be approved in its current form.

Comment

See comments under DCP 55 re: building envelopes.

It is not considered that this development will create a precedent given that it is likely that other development along The Esplanade will achieve a five storey height for its upper storey and be higher than the roof top terrace proposed with this development proposal.

Conclusion

The proposed development is consistent with the objectives of the zone and is consistent with the principles of Ecologically Sustainable Development.

The proposal generally complies with the requirements of Clause 49S of the GPSO, minor departures are supported with a SEPP 1 Objection.

The proposal is generally consistent with the requirements of DCP 55 and whilst there is a shortfall of required car parking required by DCP 111 a monetary contribution is required to off-set this shortfall.

Relevant Council officers have assessed the proposal and found it to be satisfactory.

Having considered all relevant matters the application is recommended for approval.

Attachments: A Draft conditions

Tabled Items: Nil

RECOMMENDATION

- A The Joint Regional Planning Panel as consent authority approve consent to Development Application No 37986/2009 for Demolition & Commercial and Residential Development on LOT: 13 DP: 746757, LOT: 14 DP: 746757, 44 Terrigal Esplanade Terrigal, 42 Terrigal Esplanade Terrigal for the following reasons:

OR

The JRPP as consent authority grant consent to Demolition & Commercial and Residential Development

- B The applicant is advised of Councils decision and of their right to appeal to the Land and Environment Court within 12 months after the date of determination.
- C The objectors are notified of Council's decision.

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 Howard Leslie and Associates

Drawing	Description	Sheets	Issue	Date
09404-1 of 11	Site analysis plan	1	-	Nov 2009
09404-2 of 11	Survey plan	1	-	Nov 2009
09404-3 of 11	Basement plan	1	-	Nov 2009
09404-4 of 11	Ground floor plan	1	-	Nov 2009
09404-5 of 11	Level 1 plan	1	A	11/12/10
09404-6 of 11	Level 2 plan	1	A	11/12/10
09404-7 of 11	Level 3 plan	1	A	11/12/10
09404-8 of 11	Roof plan	1	A	11/12/10
09404-9 of 11	Elevations	1	A	11/12/10
09404-10 of 11	Elevations	1	A	11/12/10
09404-11 of 11	Shadows	1	-	Nov 2009

1.2 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 Basement storey is to be provided with exit design that complies with BCA Part D1.

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:

Heavy-duty vehicle crossing that has a minimum width of 4m paved finish surface the same as the existing footway and being constructed upon a 200mm thick concrete reinforced with 1 layer of SL72 steel fabric top and bottom.

The piping of all stormwater from within the site to Council's drainage system located in Kurrawyba Ave.

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 \$29,700.00 must be paid into Council's trust fund prior to the issue of a Construction Certificate. The payment of the security deposit is required to cover the cost of repairing damage to Council's assets that may be caused as a result of the development. The security deposit will be refunded upon the completion of the project if no damage was caused to Council's assets as a result of the development.
- 2.6 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.

A minimum radial clearance of 1.0m is to be provided around the existing / proposed sewer inspection opening within the site.

The existing / proposed sewer inspection opening shall be located within the proposed driveway and outside the building.

- 2.7 Design of the following engineering works within private property:

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 driveway from Kurrawyba Ave shall have a minimum crest height of 3.82m AHD.

Nutrient/pollution control measures must be designed in accordance with Council's DCP165 - Water Cycle Management. A nutrient/pollution control report including an operation and maintenance plan shall accompany the design.

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

- 2.8 Piping of all stormwater from impervious areas within the site to Council's drainage system located in Kurrawyba Ave.
- 2.9 The minimum floor level of all commercial / retail and habitable rooms in the development must be RL 3.82m AHD.
- 2.10 All building materials used or located below RL 3.82m AHD must be of a type that is able to withstand the effects of immersion.
- 2.11 The verandah posts for the proposed verandah area within Terrigal Esplanade and Kurrawyba Ave road reserves shall be non load bearing and easily removable (completely detachable), and be a minimum 600mm clear of the existing water mains.
- 2.12 The existing footway / pavers levels in Terrigal Esplanade and Kurrawyba Ave are not to be altered except at the proposed vehicle access cross over.
- 2.13 A minimum clearance of 3.0m shall be maintained between the existing footway level and the underside of the verandah.
- 2.14 Payment of a contribution for car parking in accordance with Contributions Plan No 69 – Terrigal Car Parking (14 spaces x \$13,320.00 = \$186,480.00).
- 2.15 Details of privacy/acoustic screening between the commercial and residential uses at level 2 being submitted and approved by Council. The screens are to be designed so as to be visually compatible with the development and not visible from the street.

3. PRIOR TO COMMENCEMENT OF ANY WORKS

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

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

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

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

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

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

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

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

- 3.8 Prior to commencement of any demolition work, the property's sewer connection must be disconnected at the Inspection Shaft and capped.
- 3.9 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

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 report prepared by a registered Surveyor is to be submitted to the Principal Certifying Authority at each floor level of construction of the building (prior to the pouring of concrete) indicating that the finished floor level is in accordance with the approved plans.
- 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 The development must be designed to avoid foot holes or natural ladders so as to minimize unlawful access to the premises.
 - d Adequate signage within the development to identify facilities, entry/exit points and direct movement within the development.
- 4.5 Building materials must not be stored nor construction work carried out on the road reserve unless associated with a separate approval under the *Roads Act 1993*.
- 4.6 If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made is responsible to notify the neighbour and responsible for the protection and preservation of the adjoining allotment of land.
- 4.7 This development is subject to Council's DCP106 – Controls for Site Waste Management. The Waste Management Plan submitted as supporting documentation with this development consent is required to be implemented during all stages of demolition and construction.
- 4.8 Buildings are to be demolished in a safe and systematic manner in accordance with the requirements of Australian Standard AS 2601-2001 - *Demolition of Structures*, and disposed of in an approved manner.
- 4.9 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.
- 4.10 Mechanical ventilation systems comprising water cooling, evaporative cooling, or warm water systems must be registered with Council on completion of the installation.
- 4.11 Impervious surface areas including pathways and driveways are to be graded and drained to prevent water run-off affecting adjoining properties.
- 4.12 All roof water being drained to a stormwater drainage system as per engineering design to rainwater tanks and/ or Council drainage system.
- 4.13 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'.
- 4.14 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'.
- 4.15 The location of all electrical fixtures and/or gas outlets are to be at a minimum height of RL 1.8m AHD for the basement and RL 3.82m AHD for the ground floor.

- 4.16 An appropriately qualified person shall be engaged to undertake soil and water analysis to determine whether Acid Sulphate Soils (ASS) are present and if they occur in such concentrations as to warrant the preparation of a management plan.

If an ASS Management Plan is required the applicant shall implement the plan.

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 Lots 13 & 14 DP746757 must be consolidated into a single allotment under one Certificate of Title prior to the issue of an Occupation Certificate.
- 5.4 The driveway, vehicle manoeuvring area and six (6) 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.
- 5.5 The street number is to be at least 100mm high and be clearly visible from the street frontage.
- 5.6 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.
- 5.7 Mechanical ventilation systems comprising water cooling, evaporative cooling, or warm water systems must be registered with Council on completion of the installation.
- 5.8 Impervious surface areas including pathways and driveways are to be graded and drained to prevent water run-off affecting adjoining properties.
- 5.9 All roof water being drained to a stormwater drainage system to rainwater tanks and or to Council drainage system.
- 5.10 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'.
- 5.11 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.
- 5.12 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.

- 5.13 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.

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.

- 5.14 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).

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.

- 5.15 One car parking space being allocated to each of the two (2) residential residencies.

- 5.16 A separate application be made for licences for all dining areas over Council's road reserve.

6. ONGOING OPERATION

- 6.1 Nothing associated with the business is to be located on the footpath or adjoining public area, including the parking of vehicles, storage of goods, materials, waste or the like.
- 6.2 The sound level output from the development or business shall not exceed 5dBA above the ambient noise level measured at the boundary of the property.
- 6.3 No materials, waste matter or products shall be stored outside the building or the approved waste storage area, at any time.
- 6.4 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.
- 6.5 The operation of all mechanical plant equipment and machinery (i.e. air conditioning unit and/or heat pump) shall not give rise to offensive noise as defined in the Protection of the Environment Operation Act 1997.
- 6.6 Maintenance of the nutrient/pollution control facilities in accordance with the operation & maintenance plan.
- 6.7 No roofing is permitted above the roof-top pergolas.

7. OTHER APPROVALS

Nil

8. ADVICE

- 8.1 The public authorities may have separate requirements and should be consulted in the following aspects:
- a *Australia Post* for the positioning and dimensions of mail boxes in new commercial and residential developments;
 - b *Jemena Asset Management* for any change or alteration to the gas line infrastructure;
 - c *Energy Australia* for any change or alteration to electricity infrastructure or encroachment within transmission line easements;
 - d *Telstra, Optus* or other telecommunication carriers for access to their telecommunications infrastructure.
 - e *Gosford City Council* in respect to the location of water, sewerage and drainage services.
- 8.2 All work carried out under this Consent should be done in accordance with WorkCover requirements including the Occupational Health and Safety Act 2000 No 40 and subordinate regulations, codes of practice and guidelines that control and regulate the development industry.
- 8.3 Separate application being made for connection to Council's sewerage system.
- 8.4 It is the sole responsibility of the owner, builder and developer, to ensure that the proposed building or works complies with the requirements of the *Disability Discrimination Act*.
- NOTE: The *Disability Discrimination Act* (DDA) is a Federal anti-discrimination law. The DDA covers a wide range of areas including employment, education, sport and recreation, the provision of goods, services and facilities, accommodation and access to premises. The DDA seeks to stop discrimination against people with any form of disability including physical, intellectual, sensory, psychiatric, neurological, learning, disfigurement or presence in the body of a disease-causing organism. Whilst this development consent issued by Council is in accordance with the relevant provisions of the current *Building Code of Australia*, it does not indicate nor confirm that the application complies with the requirements of the DDA.
- 8.5 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.
- 8.6 The inspection fee for works associated with approvals under the Roads Act is calculated in accordance with Council's current fees and charges policy.
- 8.7 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 to download a form from the Water & Sewerage forms index.
- 8.8 The residents, caretaker or Body Corporate will be responsible for placing the Mobile garbage/recycling containers at a suitable location at the kerbside. This will be no earlier than the evening prior to the collection day and returned to the building no later than the evening on collection day.

9. PENALTIES

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

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

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

Warnings as to Potential Maximum Penalties

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

10. REVIEW OF DETERMINATION

10.1 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.

11. RIGHT OF APPEAL

11.1 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.

11.2 To ascertain the date upon which the determination becomes effective refer to Section 83 of the Act.