

## **MATTERS TO BE SUBMITTED TO THE OPEN COUNCIL**

To be held at 6.45 pm on Tuesday, 4 March 2008

## **MATTERS SUBMITTED BY THE DIRECTOR - ENVIRONMENT AND PLANNING**

**ENV.17      DA33592/07    APPLICANT FROBAT PTY LTD    LOT 1 SP 37283 1/16  
TERRIGAL ESPLANADE TERRIGAL    PROPOSED DWELLING-HOUSE  
(NEW) DEMOLITION OF EXISTING UNITS/LANDSCAPING (IR4490964)**

Directorate:      Environment and Planning  
Business Unit:    Development

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### **EXECUTIVE SUMMARY**

**Reason for Referral to Council:** Public Submissions

**Application Received:** 13/09/2007

**Proposal:** Dwelling-house (New)/Demolition of Existing Units/Landscaping

**Zone:** Residential 2(b)-GPSO

**Area:**

899.3m<sup>2</sup>

**Public Submissions**

Six (6)

**Pre DA Meeting**

No

**Relevant Statutory Provisions**

- 1      Environmental Planning & Assessment Act, 1979 – Section 79C
- 2      Local Government Act 1993 – Section 89
- 3      GPSO - Clause 10(3), 10(4)
- 4      SEPP 71 - Coastal Protection
- 5      DCP 155 - Single Dwellings & Ancillary Structures
- 6      DCP 159 - Character
- 7      DCP 108 - Energy Smart Homes
- 8      DCP 128 - Public Notification of Development Applications
- 9      DCP 125 - Coastal frontage

**Key Issues**

- 1 Objectives of Zone
- 2 Character
- 3 DCP 155 - Compliance
- 4 Environmental Considerations
- 5 Public Submissions

**Recommendation**

Approval

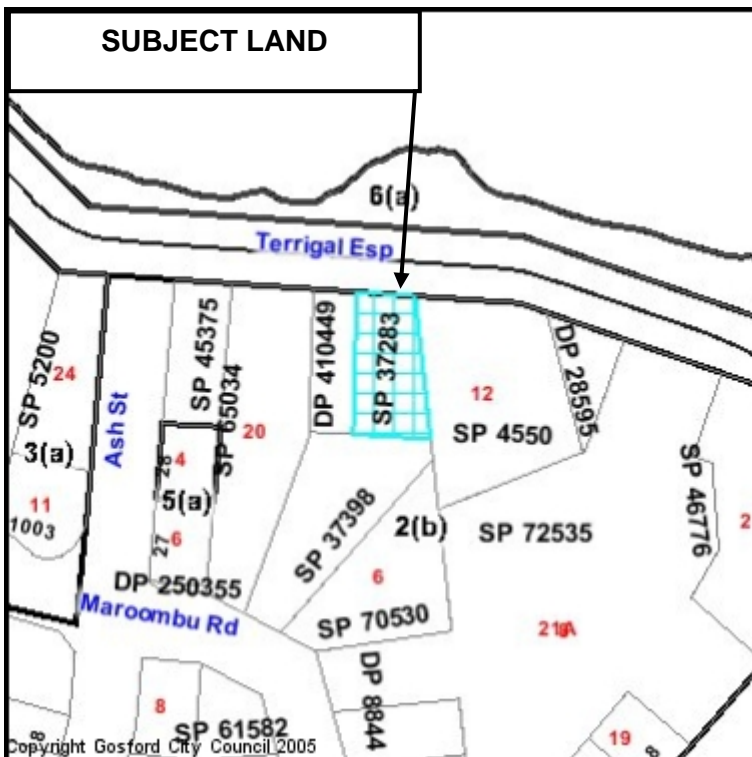
**REPORT**

**Proposal**

Consent from Council is sought for the following:

Demolition of the existing dilapidated residential flat building and construction of a two storey dwelling house with basement parking and retaining walls/landscaping.

**LOCALITY: TERRIGAL**  
**ZONE: RESIDENTIAL 2(B)-GPSO**



**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.

## Objectives of Zone

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

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

## 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 site is located within the 'Terrigal 6: Medium Density Hillside' character locality specified within DCP 159 - Character. The main attributes of the desired character of this locality are stated as:

*"These areas should remain medium-density residential hillside where improved standards of amenity and urban design quality are achieved by new multi-unit developments that are surrounded by leafy hillside gardens, providing distinctive backdrops to Gosford City's town centres, main roads or the railway.*

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

*Minimise the scale of new buildings and retain a proportion of the panoramic views that are available from any neighbouring property by using strongly-articulated forms, including floor-levels that are stepped to follow natural slopes plus facades that vary in shape and height. For example, divide floorspace into individual dwelling pavilions with a varied form or orientation, separated by verandahs and landscaped courtyards. Any facades that are taller or longer than buildings on neighbouring properties should be screened by a combination of extra setbacks and balconies or verandahs. Roofs should be gently-pitched to minimise the height of ridges, and flanked by wide eaves that disguise the scale and bulk of exterior walls. Parking is preferable in basements or open carports, rather than in wide garages that would accentuate building bulk, dominate visible facades or require steep driveways.*

*A "light-weight appearance" is preferable for all visible facades to minimise their scale and bulk, incorporating walls of windows that are shaded by framed balconies or verandahs plus exterior sunscreens, some painted finishes and sheet or board cladding rather than extensive plain masonry. Where dwellings face a street or common access-way, provide a traditional "street address" with visible verandahs, living rooms and front doors.*

*Screen any driveways, terraces, courtyards and balconies to protect the privacy and amenity of neighbouring dwellings."*

#### Comment

The proposal, having been amended to comply with Council's maximum 10 metre height restriction, retains a reasonable proportion of the views that are available from any neighbouring properties.

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.

In this instance, the proposal is considered to be in keeping with the character of the immediate locality and does not have an unreasonable impact on ocean, beach and lagoon views that are available and currently enjoyed from the neighbouring property.

#### **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.

#### **Vision 2025**

Although not a statutory plan at this stage, the proposal is generally consistent with Gosford Vision 2025.

#### **DCP 155 - Single Dwellings & Ancillary Structures**

The following table identifies the development guidelines of DCP 155. It is considered that the proposal demonstrates compliance with several requirements of the DCP as indicated below.

| Development Standard                                | Required  | Proposed   | Compliance   |
|---|---|--|--|
| <b>Site Occupancy</b>                               | Maximum FSR 0.5:1<br>Open Space >40%                                | 1.02 :1 (104% variation)<br>40%                                    | No*<br>Yes   |
| <b>Setbacks</b>                                     | Street –6m<br>Side boundary – 900mm                                 | 5m<br>1.3m   | No*<br>Yes   |
| <b>Height Restrictions</b>                          | Ridge 10m<br>Envelope (4.5m, 45°)<br><br>Top most floor - 4m        | 10m<br>2m encroachment at south<br>western corner.<br>4.55m        | Yes<br><br>No*<br>No*                                    |
| <b>External Surfaces –<br/>colours/reflectivity</b> | Blend with surrounds  | Consistent with existing<br>surrounding development.               | Yes  |
| <b>Front Fence</b>                                  | To be wholly within the<br>property and not create<br>safety hazard | Retaining walls/ fence<br>encroaching onto council<br>road reserve | No* (see<br>condition<br>No.33<br>requiring<br>deletion) |
| <b>Driveways</b>                                    | 25% max grade   | Minimum grade  | Yes  |
| <b>Views</b>  | View sharing  | Impact reasonable for<br>residential area                          | Yes  |
| <b>Consideration of<br/>Privacy</b>                 | Maintain reasonable<br>privacy to adjoining<br>premises             | Reasonable privacy<br>maintained.                                  | Yes  |

### Areas of non-compliance

#### Clause 8 - Site Occupancy for Dwellings

A maximum Floor Space Ratio of 0.5:1 applies to dwellings, however given that the proposed dwelling is in a 2 (b) Residential zoning, a greater floor space ratio consistent with surrounding residential flat buildings is considered appropriate. The proposed FSR of 1.02:1 is considered reasonable and not inconsistent with surrounding development.

Resultant areas available for open space are calculated at 40% which meets the required minimum 40% Open Space requirement.

#### Clause 9 - Setbacks

A minimum 6 metre front building setback is required by DCP 155. The proposed dwelling has a variable front building setback of 5m at the front north eastern corner of the dwelling to 7.4m at the front north western corner. The average setback across the frontage of the site exceeds the required 6m. The proposed minor front building setback encroachment would not adversely impact on the streetscape, and is not out of character with the front building setbacks of surrounding development.

#### Clause 11 - Height Restriction

A survey report by Stephen Thorne & Associates Pty Ltd, dated 21 November 2007, confirms that the maximum height of the proposal is 10 metres, which complies with the maximum 10 metre Building Height restriction required by DCP 155.

A two (2) metre building envelope encroachment is proposed at the rear (south western) corner of the development. This encroachment is considered a minor variation only to Councils building height envelope, having negligible impact on surrounding properties or the streetscape.

The proposed dwelling has a topmost floor height of 4.55 metres. Whilst this does not comply with the 4 metre height restriction required by DCP155, the variation is considered satisfactory and not a major contributing factor to the overall height of the proposal. (see 'Consideration of Views')

The roof design and ridge line has been amended / lowered by 600mm to comply with the required 10 metre building height restriction.

### **Clause 17 - Consideration of Views**

The proposal consists of a series of 3 individual sections of skillion roofline over an otherwise flat roofed design, with the largest protruding roofline being at the front (northern) end of the proposal and having a ridgeline extending 10 metres in a north - south alignment.

Of particular concern to all objectors is the extent to which this component of the design will impact on view loss.

To determine the height of the proposal accurately and assess the impact on views of the northern ridgeline, the applicant was requested to erect height profiles corresponding to a survey report, and the proposal was readvertised to previous objectors. Readvertising with height profiles in place resulted in 5 of the original 6 objectors reiterating their concerns and objections with respect to view loss.

A varying degree of view loss will occur from all units and balconies on the western side of the adjoining property - 12 Terrigal Esplanade, known as 'Cumbernauld'.

'Cumbernauld' contains a series of nine balconies (3 top floor, 3 mid floor and 3 lower floor), located along its western façade which are adjacent to, and overlook the subject property.

Objections have been received from 5 property owners of the adjacent units with respect to potential view loss from the proposed development.

In this regard, objectors were contacted and access gained to a sample of 3 units considered to be most affected by the proposal and selected having regard to their respective position and floor level in relation to the proposal.

The **view impact** (see below) upon individual units (Unit 20, Unit 13 and Unit 15) and on-site assessment (including photographs) are representative of the view impacts and have been used in conjunction with the Planning Principles established in the Land and Environment Court judgment *Tenacity Consulting V Warringah*, as a guide to formulating the reasonableness of any view loss that may occur.

#### **a Value of the View**

The proposal will affect the views of units on the western side of No 12 Terrigal Esplanade known as the 'Cumbernauld' to varying degrees, depending on their positioning in the building and their floor level in relation to the proposal.

Ocean views to the north and to the northwest (along Terrigal Beach, Terrigal Lagoon and Wamberal Beach) are more expansive from the upper third level units, whilst these views from the lower second level units would still be considered of high value.

#### **b Reasonable to expect to retain the view**

Unoccupied and dilapidated units currently exist on the subject property to be developed.

As a portion of the views currently enjoyed by unit owners in No 12 are in a north, north-westerly and a westerly direction across the subject property, it is expected that some degree of view loss will occur as a result of the site being developed to its potential.

**c View Impact**

The north - south ridge line (RL 28.5) of the proposed skillion style roof, which slopes down to the eastern side of the development has an impact on views of Terrigal Beach and Wamberal Beach land-to-water interface and Terrigal Lagoon, from the affected units (in particular from the balconies).

The northern ridge line (RL 28.5) of the proposed dwelling will be 10m above ground level, which satisfies Council's 10 metre maximum height restriction.

**Unit 20** - Top (third) floor, middle balcony: Views exist to the north and north-west of the Pacific Ocean, Terrigal Beach, Terrigal Lagoon and Wamberal Beach. The proposal will have an impact mainly on the southern end of Terrigal Beach views including the land and water interface. Ocean views to the north and distant views to Terrigal Lagoon and Wamberal Beach would remain.

It is considered that approximately 40% of the beach and water views from the balcony of Unit 20 would be affected by the proposal.

**Unit 13** - Second floor, middle balcony: Views exist to the north and north-west of the Pacific Ocean, Terrigal Beach, Terrigal Lagoon and Wamberal Beach. The proposal will have an impact on Terrigal Beach, Terrigal Lagoon and Wamberal Beach views including the land and water interface. Ocean views to the north and distant views to the northern end of Wamberal Beach would remain.

It is considered that approximately 50% of the beach and water views from the balcony of Unit 13 would be affected by the proposal.

**Unit 15** - Second floor, right-hand side (southern-most) balcony: Views exist to the north and north-west of the Pacific Ocean, Terrigal Beach, Terrigal Lagoon and Wamberal Beach. The proposal will have an impact on Terrigal Beach, Terrigal Lagoon and Wamberal Beach views including the land and water interface. Ocean views to the north and distant views to the northern end of Wamberal Beach would remain.

It is considered that approximately 70% of the beach and water views from the balcony of Unit 15 would be affected by the proposal.

**d Reasonableness of the proposal which is causing the impact**

The above impacts are not considered unreasonable (given the level of the respective units and their setbacks in relation to the street), as there is an expectation that a significant portion of these views would be impacted upon as a result of the subject property being developed to its potential and Council guidelines.

Whilst the original proposal exceeded the maximum height restriction by 600mm, the amended design/lowering of the roofline to the required 10m height restriction is considered to be a more skilful design with respect to the northern roof component, providing the applicant with the same development potential and amenity, and reducing the impact on the views of several adjoining property owners.

**Tree Assessment Officer Comments**

The application was referred to the Council's Tree Preservation Officer to assess the proposal and consider the Tree Management Report provided in support of the application prepared by Terrence Arnold Machin - Horticulture and Arborist Consultants, dated 28 June 2007.

The following comments were provided by Council's Tree Preservation Officer in relation to the application:

*"The proposed new dwelling has only one tree to consider, which is a mature Norfolk Island pine located in the front yard of the eastern adjoining property.*

*The applicant has submitted a Tree Management Report, which satisfactory addresses my initial concerns regarding any effect the proposal will have on the root system of the tree. Of particular note was the reports regard to the trees Critical and Primary root zones.*

*It was noted on site and within the Tree report that the area within the trees dripline area has been disturbed in the past by the existing building. Providing that the new building generally follows the footprint of the existing building, I agree that it would be unlikely that the trees root system will be affected.*

*However, the plans indicate that although the new proposal generally follows the footprint of the existing building, it does appear that there will be a slightly greater excavation closer to the boundary. Therefore I recommend the following condition to address protection of roots: -*

- *That a qualified Arborist be present at the time of excavation so that if roots are found during the excavation, they are to be cut by the arborist with a saw (not ripped by the excavator).*

*The report also recommends that the tree will require a canopy lift of approximately 4.3m, in the vicinity of the new building. It is agreed that this work will match up with the canopy lift that has occurred on lower branches on the neighbouring properties side of the tree. The following condition will address the canopy lift: -*

- *That the crown lift on the western side of the Norfolk Island Pine located on the eastern adjoining property is not to exceed 4.3m from the base of the tree, so that it appears to equal the canopy lift of the eastern side of the tree. All pruning works are to be undertaken by a qualified Arborist in accordance with the Australian Standard for Pruning amenity trees (AS 4373-2007)."*

### **Encroachment on Road Reserve**

A significant encroachment is proposed beyond the front property boundary and over Council's road reserve with respect to stone retaining walls and associated landscaping. This encroachment is considered to be excessive and cannot be supported.

The application was referred to Council's City Services Directorate and the following comments were provided:

*"City Services do not support physical structures such as retained gardens or mass plantings in the public road reserve. They create unwanted trip hazards and potential conflicts with existing and future utility services, as well impact on Council maintenance and future works activities. A more desirable proposal may be to lay turf at a grade of about 4% between the boundary and the concrete footpath. The cross-fall for the concrete footpath should be about 2.5%."*

In this regard, proposed works within Council's road reserve have been deleted in red on plans and the consent conditioned accordingly.

## Public Submissions

As a result of initial advertising, 6 objections were received from property owners of units in the adjoining development to the east, known as 'Cumbernauld', which enjoy views from windows and balconies on the western side of the building which are potentially impacted upon by the proposed development.

Re-advertising with height profiles in place resulted in 5 of the original 6 objectors, re-iterating their concerns and objections with respect to view loss.

**1 The common and overriding concerns and objections raised by the unit owners with respect to the original proposal, relate to the height of the proposed dwelling and its potential impact on ocean, lagoon and beach views.**

Comment

Plans have subsequently been amended by a lowering/re-design of the roofline by 600mm to comply with Council's 10 metre height restriction and address/reduce the impact on views.

Issues with respect to the consideration of views have been addressed in the body of the report.

**2 1 objector raised concern with respect to potential impact of the development on the mature Norfolk Island pine located in the front north western corner of the eastern adjoining property.**

Comment

Council's Tree Preservation Officer has assessed the proposal and raises no objections to the proposal, subject to appropriate conditions of approval being included in any consent, to protect the subject tree and associated root system.

## Conclusion

The impact on ocean, beach and lagoon views resulting from the original proposal warranted amendments.

The lowering/re-design of the roofline to the required 10m height restriction is considered to be an appropriate, more skilful design which provides the applicant with the same development potential and amenity, and maintains an acceptable impact on the views of adjoining property owners.

The proposed FSR of 1.02:1 is considered reasonable and consistent with Residential Flat Building development in the surrounding 2 (b) Residential zoning.

Resultant areas available for open space are calculated at 40% which meets the required minimum 40% Open Space requirement.

Stone retaining walls and associated landscaping is proposed beyond the front property boundary and over Council's road reserve. This encroachment is considered to be excessive and cannot be supported. In this regard, proposed works within Council's road reserve have been deleted in red on plans and the consent conditioned accordingly.

The perceived impacts to the surrounding neighbours have been considered in the assessment of the application. The proposal submitted to Council addresses the 'principles of view sharing', and will be compatible with the height, size and bulk of other buildings within the streetscape and surrounding 2 (b) Residential zoning.

**Attachments:** Nil

**Tabled Items:** Nil

## RECOMMENDATION

A Council as consent authority grant consent to Development Application No.33592/2007 for the proposed Dwelling-house (New)/Demolition of Existing Units/Landscaping on LOT: 1 SP: 37283, 1/16 Terrigal Esplanade TERRIGAL 2260 subject to the following conditions:

- 1 No works shall be commenced until a **Construction Certificate** has been issued.
- 2 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.

- 3 Development being generally in accordance with plan(s) numbered 13681 SA-01 dated 13/9/07, A-01 dated 6/9/07, A-02 dated 10/1/08, A-03 dated 7/9/07, A-04 dated 6/9/07, A-05 dated 18/1/08, A-06 dated 18/1/08, LA-01 dated 13/9/07, 8 sheets, submitted/drawn by Slater Architects, as amended in red, or where modified by any conditions of this consent.

A copy of the stamped approved plans must be kept on site for the duration of the site works and made available upon request to either the Principal Certifying Authority or an officer of the Council.

- 4 The external surfaces of all buildings shall be of materials and colour that have **low reflective** characteristic. The surfaces shall blend with the landscape of the site on which they are to be used, as well the surrounding natural environment.
- 5 Erosion and Sedimentation Control in accordance with Council's Code of Practice for Erosion and Sedimentation Control must be in place prior to the commencement of work. These controls must remain in place until the occupation of the building/site is stabilised.

- 6 The erection of a building must not be commenced or carried out until a principal certifying authority has been appointed.
- 7 Council must be notified two (2) days prior to the commencement of work, who is to be nominated as the Principal Certifying Authority.
- 8 All building work must be carried out in accordance with the provisions of the Building Code of Australia. In the event Council is nominated as the Principal Certifying Authority, additional information may be required to specifically address matters pertaining to the issue of a Construction Certificate.
- 9 The street or lot number being prominently displayed at the frontage of the property.
- 10 Building materials shall not be stored on Council's footpath or grass verges and a suitable sign to this effect should be erected adjacent to the street alignment. No construction work is to take place on the footpath.
- 11 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, work to be carried out by a licensed plumber and drainer.
- 12 All excavations in excess of 1 metre being subject to a report from a Geotechnical Engineer or being provided with a retaining wall designed by a Structural Engineer.
- 13 The installation of garbage disposal units is not permitted due to the release of nutrients into Council's sewerage system.
- 14 A sign must be erected on site in a prominent position where building work, subdivision work or demolition work is carried out.

The sign must identify:

- a The name, address and telephone number of the principal certifying authority for the work, and
- b The name of the principal contractor (if any) and a telephone number on which that person may be contacted outside working hours, and
- c That unauthorised entry to the work site is prohibited.

**NOTE:** Any such sign is to be maintained while building work is carried out, but must be removed when the work is completed.

A maximum penalty of 10 penalty units or \$1100 applies for non-compliance with this condition.

- 15 Separate application being made for connection to Council's sewerage system.

- 16 Prior to commencement of any demolition work, the property's sewer connection must be disconnected at the Inspection Shaft and capped. This work must be carried out by a licensed plumber after payment of the appropriate fee for alteration to sewer connection. It is necessary for the licensed plumber to contact Council's Plumbing Inspector on 4325 8222 between the hours of 8.38 am and 10.30 am Monday to Friday.
- 17 Buildings being demolished in a safe and systematic manner in accordance with the requirements of Australian Standard AS 2601-2001 "The Demolition of Structures", with all waste being removed from the site. Hazardous waste such as asbestos cement sheeting etc., being handled, conveyed and disposed of in accordance with guidelines and requirements of the NSW Workcover Authority. Disposal of asbestos material at Council's Waste Depot requires prior arrangement for immediate landfilling.
- 18 Roof water being drained to sealed pipeline to Council's street drainage system via rainwater tank.
- 19 Prior to placement of any roofing material all guttering and downpipes must be installed and connected to Council's drainage system. If no Council drainage system is available, the guttering and downpipes must be discharged away from the building site onto a stable vegetated area.
- 20 Excavated material to be removed from the property in an approved manner. A separate application is required to fill elsewhere on the property.
- 21 Prior to the commencement of any building works Council's "Prevent Pollution" sign must be displayed & maintained in a prominent location on the site so that it is visible to the public. This sign is available at Council's Customer Enquiry Counter at 49 Mann Street, Gosford.
- 22 For the purposes of section 80A (11) of the Environmental Planning and Assessment Act 1979 (as amended), the commitments pertaining to current BASIX Certificate and shown on the approved plans shall be complied with prior to the issue of an Occupation Certificate.
- 23 Any building and/or works constructed or carried out under the provisions of a development consent/construction certificate shall not be occupied until an **Occupation Certificate** has been issued, or in the case of works, such works are completed in accordance with the development consent and or construction certificate.
- 24 Notice must be displayed in the immediate vicinity of a swimming pool in accordance with Policy Statement No 9.4.1 "Guidelines for the Preparation of Posters on Resuscitation. The notice must bear the words "Young children should be supervised when using the Swimming Pool", and include instructional details on resuscitation technique.
- 25 Paved areas/pool surround being graded and drainage provided to prevent run-off affecting adjoining properties.
- 26 The motor, filter, pump and all sound producing equipment or fitting associated with or forming part of the pool filtering system being sound insulated and/or isolated so as not to create an offensive noise to the occupants of the adjoining premises.

- 27 The provision of plumbing and maintenance of a rainwater tank (of minimum 10,000L capacity) to new dwellings and or additions to dwellings, in accordance with the requirements of Development Control Plan No 165 - Water Cycle Management Amendment 1, the National Plumbing and Drainage Code AS/NZS 3500 and Council's Guidelines for the installation of Rainwater Tanks on Residential Properties - Plumbing Requirements. The rainwater tank shall be located in such a position as to maximise rainwater collection from the roof via downpipes.
- 28 To ensure that the dwelling and any associated structures are correctly positioned on the site, a report prepared by a registered surveyor is to be submitted to the principal certifying authority at each level of construction of the building (prior to the pouring of concrete) and upon completion, indicating that the finished floor level and finished ridge level is in accordance with the approved plans.
- 29 Noise levels submitted from the operation of the air-conditioning unit, measured at any boundary of the property, are not to exceed the background noise level by more than 5dBA.
- 30 In accordance with the Protection of the Environment Operations (Noise Control) Regulation 2000, the air conditioner must not be used on residential premises in such a manner that it emits noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open):
  - (a) before 8:00am or after 10:00pm on any Saturday, Sunday or public holiday, or
  - (b) before 7:00am or after 10:00pm on any other day.
- 31 The proposed dwelling is not to be used, adopted or let for separate occupation for purposes as a residential or commercial/industrial usage.
- 32 A separate application is to be submitted to Council for a vehicular access crossing including fee as prescribed in Council's Schedule of Fees and Charges.  
Note: The application form can be obtained by contacting Customer Services or is available on Council's Internet site.
- 33 No approval is granted for retaining walls/landscaping within Council's road reserve and all such works have been deleted, as indicated in red on approved plans.
- 34 A qualified Arborist shall be present at the time of excavation to ensure that if tree roots are found during the excavation, they are to be cut by the Arborist with a saw (not ripped by the excavator).
- 35 The crown lift on the western side of the Norfolk Island Pine located on the eastern adjoining property is not to exceed 4.3m from the base of the tree, so that it appears to equal the canopy lift of the eastern side of the tree. All pruning works are to be undertaken by a qualified Arborist in accordance with the Australian Standard for Pruning amenity trees (AS4373-2007).
- 36 A Dilapidation Report is to be prepared by a chartered professional Structural Engineer at the applicant's expense, detailing the structural condition 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 shall be submitted to the Principal Certifying Authority prior to any excavation works taking place. Such works shall take place in accordance with the recommendations of the Report.

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- 37 An Acoustic Report (including any specialised acoustic treatment of the building) prepared by a qualified practising Acoustic Engineer, shall be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate, to ensure that no nuisance is caused to adjoining premises as a result of the private bowling facility.
- B In accordance with Section 95(1A) of the Environmental Planning & Assessment Act 1979, this consent shall be valid for a period of five (5) years.
- C The objector(s) be notified of Council's decision.

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**ENV.18     ETTALONG BEACH COMMERCIAL DISTRICT REVITALISATION PROJECT (IR4449234)**

Directorate:     Environment and Planning  
Business Unit:    Integrated Planning

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**BACKGROUND**

Business operators and property owners in the Ettalong Beach commercial centre have been discussing the need to revitalise the centre and considering ways to co-ordinate a range of activities that will contribute to this.

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**REPORT**

This initiative has its origins in research conducted by the University of Newcastle after the completion of the Mantra Resort at Ettalong Beach which sought to measure the impact of the new resort on the local business community. It found that while many local businesses had benefitted from the Resort's establishment, significant pockets of business had seen no benefit at all. It suggested that co-ordination and a greater sense of place would substantially increase and spread the commercial benefits.

Central Coast Tourism Inc, one of the sponsors of that research, suggested to several local business operators and property owners that they join together to work out what they wished to do, if anything. Several well-attended meetings and planning discussions later, they have now established "Ettalong Beach Business Group Inc" (EBBG), a non-profit association that will promote and co-ordinate business activity in the commercial district.

The group is in effect setting up its own, self-generated Business Improvement District (BID). Council is currently facilitating the establishment of a BID in Gosford City Centre, which, as a pilot study, may provide the basis for a citywide approach to BIDs in commercial districts. This self-generated co-ordinated activity at Ettalong Beach provides a further basis on which to develop a citywide BID facilitation policy.

As a key first step, EBBG wishes to produce a marketing plan for the commercial district. It has identified a consultant who specialises in marketing small towns and received a quote for the development of a marketing plan. It has approached the Department of State and Regional Development for funding under its Main Street Small Towns Program and has been granted in principle approval for 50% of the cost of the plan (\$7,623 including GST). The program requires that the 50% balance be funded through other sources.

EBBG has approached Council seeking funding of \$3,000, which is just under 40% of the total cost. It will raise the other 10% amongst the local business community.

In considering the request, the following is relevant:

- 1     The proposed marketing plan will deliver a set of practical actions that will improve the commercial operation of Ettalong Beach. It will aim to make it a more attractive place to visit and shop for local residents, day trippers and for tourists.

- 2 This is a sound basis on which to initiate a local business group by coalescing around a plan with specific short, medium and long term goals.
- 3 EBBG has good support from the local business community, as evidenced by attendance and discussion at several meetings it has organised, by the general agreement to set up the non-profit association, and by pledges to contribute funds to this and potentially subsequent projects.
- 4 The initiative is in line with Vision 2025 and with Council's preferred approach to economic development in that it is community / private sector led.
- 5 The Department of State and Regional Development's due diligence process requires that it and Council (should it provide funding) participate in the development of the marketing plan by serving on the project's steering committee, as well as standard financial reporting and compliance requirements.

**Attachments:** Nil

**Tabled Items:** Nil

#### **FINANCIAL IMPACT STATEMENT**

Funds are available within the special project allocation of the Tourism/Business Development Special Rate funds. This is an appropriate project to be funded from this source because it will directly contribute to business and tourist development in Ettalong Beach.

#### **RECOMMENDATION**

Council approve the allocation of \$3,000 to the Ettalong Beach Business Group Inc. for undertaking a town marketing plan, subject to the balance of funds being secured through the local business community and through the Department of State and Regional Development and in accordance with the established due diligence process under the Department's Main Street Small Towns Program.

**ENV.19 DA34107/07 APPLICANT LEND LEASE RETAIL LOT 201 DP 1064473  
HN 6 KARALTA ROAD ERINA PROPOSED ALTERATIONS AND  
ADDITIONS TO ERINA FAIR SHOPPING CENTRE (IR4475901)**

Directorate: Environment and Planning  
Business Unit: Development

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## **EXECUTIVE SUMMARY**

**Reason for Referral to Council:** Beyond Delegation - Value \$22,476,000.00

**Application Received:** 30/11/2007

**Proposal:** It is proposed to carry out alterations and additions in the south-western section of the Centre which generally contains the Home and Lifestyle buildings.

**Zone:** Part 3(a) General Business and Part 6(b) Open Space Special Purposes

**Area:** 39.08ha

**City Vision 2025:** Although not a statutory Plan, the proposal is consistent with the City Vision.

**Public Submissions:** One (1)

**Pre-DA Meeting:** Not Held

### **Relevant Statutory Provisions**

- 1 Environmental Planning & Assessment Act, 1979 – Section 79C
- 2 Local Government Act 1993 – Section 89
- 3 GPSO - Clause 10 and 49DG
- 4 DCP No 111 - Car Parking
- 5 DCP No 58 - Erina Fair
- 6 CP58A - Erina Fair Roadworks
- 7 DCP No 159 - Character
- 8 DCP No 128 - Public Notification of Development Applications
- 9 DCP No 165 - Water Cycle Management
- 10 DCP No 106 - Controls for Site Waste Management
- 11 SEPP No 71 - Coastal Protection
- 12 SEPP No 11 - Traffic Generating Developments
- 13 SEPP No 19 - Urban Bushland
- 14 Draft SEPP - Integration of Land Use and Transport

### **Key Issues**

- 1 Gosford Planning Scheme Ordinance
- 2 Access & Traffic
- 3 Drainage
- 4 Floor Space
- 5 Car Parking
- 6 Public Submissions

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**Recommendation:** Approval

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**REPORT**

**The Proposal:** The proposed alterations and additions involve, in summary:

## Level 4:

- the existing 'Home and Lifestyle' building is to be extended to the west and south, Existing tenancies along the western face will be vacated, and the outdoor 'Lifestyle' square will be removed. The entire extended area will be enclosed to accommodate a Kmart Discount Department Store (DDS), specialty shops, kiosks and mall area;
- the existing Bay Swiss tenancy will be extended and rebranded;
- a new goods lift will be installed on the southern elevation;
- two new sets of fire exit stairs will be provided on the western elevation;
- one new set of fire exit stairs will be provided on the southern elevation'
- the existing escalators to the north of the Home and Lifestyle precinct are to be relocated slightly to the position of the current main stair location, and a new café tenancy will be constructed around the relocated escalator; and
- where the escalators have been removed, the area will be infilled and a new retail tenancy will be constructed.

[Note: There is no 'Level 3' in this location]

## Level 2:

- the existing Level 2 'Yellow' car park is to be extended to the west and south in line with the slab extension above to provide a new DDS storage area;
- the car park layout will be partially reconfigured and 10 additional parking spaces will result; and
- three new external fire stairs and one new goods lift, as per Level 4 above.

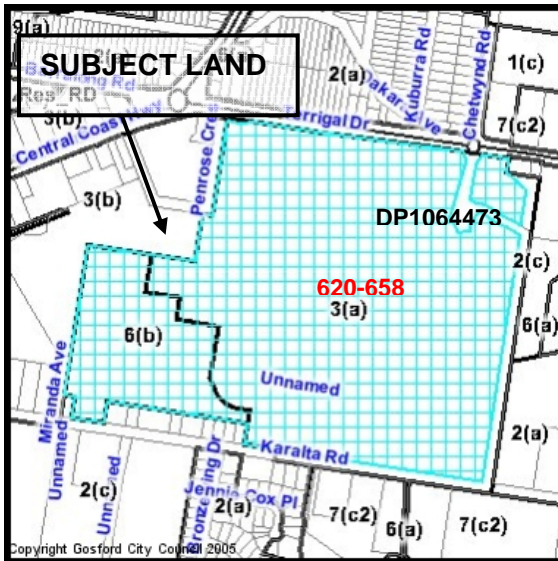
## Level 1:

- the existing Rebel and Freedom storage areas are to be reconfigured to provide a dock store for the new DDS; and
- three external fire stairs and one new goods lift, as per Level 4 above.

The floor space will increase by 6,633m<sup>2</sup>, to a total of 138,465m<sup>2</sup> for the Centre.

**LOCALITY: ERINA**

**ZONE: PART 3(A) GENERAL BUSINESS AND PART 6(B) OPEN SPACE SPECIAL PURPOSES**



### 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

#### 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 both Business General 3(a)-GPSO and Open Space (Special Purposes) 6(b) Zone as well as being consistent with the principles of Ecologically Sustainable Development, as specified within the Local Government Act 1993.

#### 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 proposal is effectively contained within the existing developed Shopping Centre.

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

## 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.

### Access and Traffic

Under a previous major expansion to Erina Fair (DA 10381/2000), the applicant was required to:

- upgrade the Karalta Road / The Entrance Road roundabout with an additional traffic lane on The Entrance Road northern approach;
- provide payment towards the RTA's conversion of the Terrigal Drive / The Entrance Road roundabout to traffic signal control;
- provide two additional traffic lanes on the Terrigal Drive eastern approach and linemark two approach lanes on the Tarragal Glen Avenue southern approach at the Terrigal Drive / Tarragal Glen Avenue roundabout;
- construct new roundabouts along Tarragal Glen Avenue;
- construct localised widening of Karalta Road at the main access into Erina Fair and signalize the main access.

Subsequently, an application was made and approved for the:

- provision of additional entry and exit access roads along Terrigal Drive between Penrose Crescent and Tarragal Glen Avenue;

In addition to these external works the following major internal traffic changes were also approved and implemented with DA10381/2000:

- construction of new entrance into the southern car parking area;
- construction of a new north-south road on the eastern side of the Centre; and
- construction of a major spine road on the western side.

A Traffic Report prepared by Masson Wilson Twiney dated 21 November 2007 concluded:

*"A survey of the traffic generation of the Centre at its busiest times of Thursday evening and Saturday morning found that it generates moderately less traffic than was forecast at the time of its planning. The additional traffic associated with the modifications (including the South-East expansion and the subject DA) now proposed would not elevate the traffic generation above the levels originally forecast. The Owner of the Centre undertook or contributed towards the substantial works to mitigate the effects of the previous extensions. The proposed modifications do not present any additional traffic impact concerns for the external road network.*

*Only very minor changes are proposed to the layout of parking and internal traffic arrangements within the site.*

*Overall, traffic and parking aspects of the proposed modifications are considered to be satisfactory."*

Turning circles for the proposed loading dock amendments appear to be satisfactory. The internal access and parking arrangements will be conditioned to comply with AS2890.

**(Refer Condition 9)**

The application was referred to the Hunter Regional Development Committee which advised it has no objections to the proposal, however the Committee recommends improved lighting on the zebra crossing in the bus interchange area as well as advance flashing lights to improve safety of the crossing. It is considered that this expansion may increase pedestrian traffic on the crossing.

**(Refer Condition 15)**

### **Drainage**

The proposed extension will provide some additional impervious areas. A Civil & Stormwater report prepared by Hyder Consulting Pty Ltd has indicated that a detention / nutrient basin constructed as part of the previous major expansion (DA10381/2000) has the capacity to detain additional stormwater generated by this extension to levels that existed prior to the construction under that DA (i.e. DA10381/2000).

### **Floor Space**

Clause 49DG of the Gosford Planning Scheme Ordinance and DCP No 58 - Erina, stipulate that the total gross floor area of buildings on the site shall be no more than 275,000 square metres and located on that part of the site zoned 3(a) General Business.

The proposal results in an increase of 6,633m<sup>2</sup> to a total of 138,465m<sup>2</sup> and the alterations and additions are located on the 3(a) zoned land.

The proposal also matches the existing architecture of the site, therefore it complies with the GPSO and DCP No 58.

### **Car Parking**

Currently Erina Fair has 4,528 car parking spaces on site.

The alterations approved under Consent No 33375/2007 for alterations to Woolworth, Big W and Target result in an increase of 38 car parking spaces.

With the 10 additional spaces proposed under this application, there will be a net increase of 48 spaces, bringing the total car parking to 4,576 spaces.

The applicant submits that under Council's Car Parking Policy of 1 space/30m<sup>2</sup>, the total gross floor area of 138,465m<sup>2</sup> would require 4,616 car parking spaces. That is, there is a deficiency of 40 spaces.

However, it is considered the proposed parking of 4,576 spaces is adequate and complies with Council's Policy for the following reasons:

- i The applicant has submitted a car parking study/report which has found that on average 851 car parking spaces were vacant or available during peak times. This equates to a parking rate for the centre of 1 space per 35m<sup>2</sup> gross floor area and a need for only 3,957 spaces.
- ii Council's Policy permits a reduction in the number of car parking spaces where peak parking demands are staggered. This would be the case where shops, restaurants and cinemas have different peak times.
- iii A reduction in total car parking is justified where customers will attend numerous facilities in the centre.

- iv Some uses within the centre are classified as furniture showrooms or similar which generate less car parking (1 space per 45m<sup>2</sup>) than shops (1 space per 30m<sup>2</sup>).

## Public Submissions

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

A summary of the submission is detailed hereunder.

- 1 The application for a second discount department store (DDS) should be reviewed by an independent assessment of the economic impact on the existing DDS within Erina Fair (Big W). The review should consider whether the existing shopping catchment can support a second DDS and deliver the identified community benefits.**

### Comment

The proposal is essentially a minor increase (5%) in the floor area overall in the Centre. The economic viability of Big W if Kmart opens within the same shopping centre is not a matter for Council to assess or determine. The market will determine this.

Nonetheless, Council's Economic Advisor has reviewed the application and advises:

*"It seems the primary economic driving force behind this application is an expansion by discount chain Kmart into the Central Coast. It is understood there is a development application before Wyong Shire Council for an expansion at Westfield Tuggerah to accommodate a Kmart store. This application for expansion is mostly to accommodate the Kmart store at Erina.*

*There are currently two Kmart stores operating on the Central Coast: one at Woy Woy and one at Bateau Bay.*

*It is clear the owners of Erina Fair also see the expansion as a defensive move to avoid losing business to Westfield Tuggerah. It says in its impact assessment: "The proposed expansion will allow Erina Fair to maintain its competitive positioning in light of a major expansion at Westfield Tuggerah".*

*These are normal commercial developments and a reflection of the commercial reality that retail operations need to be renewed from time to time to continue to attract customers.*

*The assessment does not show that any additional retail spending will be drawn from outside the Central Coast as a result of the expansion. Therefore there is likely to be some negative impact on other retail centres in the region. The proponents estimate that by 2010 Erina Fair revenue will increase by \$15.7 million or 2.9%, if the expansion goes ahead. Seven out of 21 other retail centres are estimated to see slightly lower retail spending growth if it goes ahead, but this will depend on number of factors, including how individual stores respond to competition.*

*The proponent estimates that 162 permanent jobs will be created as a result of this expansion.*

*In general, there may only be marginal benefits from this expansion to the Central Coast as a whole because no extra external spending is being attracted. However, the expansion would benefit the Gosford community through the creation of extra jobs at Erina rather than further afield and by reducing travel time and costs for those who wish to shop at this particular discount department store."*

**2 The modified loading docks should be in accordance with the relevant Australian Standard and does not lead to OH&S issues.**

Comment

The modified loading dock has been assessed by the Regional Development Committee and Council's Development Engineer and are required to comply with the relevant standards.  
**(Refer Condition 9)**

**3 The proposed variation to car parking is significant and should not be supported. The Kmart DDS should not rely on car parking approved under previous applications and new parking should be located where the new floor space is located.**

Comment

It is considered the total car parking spaces provided on site is more than adequate for the Shopping Centre.

While 38 additional spaces were provided in the alterations and additions to Woolworths/Big W, these additional parking spaces serve the whole Shopping Centre and not just the shops in close proximity.

The proposal involves not just an increase in floor space in the south-west corner of the Centre, but is also utilising existing floor space. There is more than adequate car parking spaces located within the vicinity of the proposal.

**4 Car Parking should be in accordance with Council's minimum DCP No 111 requirements.**

Comment

The proposal and Shopping Centre provides adequate car parking spaces.

**5 The lack of readily accessible additional parking spaces will place more demand on existing parking spaces. This will increase pedestrian movements which will conflict with the additional traffic generated and people circulating looking for a parking space.**

Comment

It is likely that the Kmart DDS will result in an increase in pedestrian movements in the vicinity of this section of Erina Fair. However adequate and safe pedestrian paths have been provided from the parking areas to the retail areas.

Some pedestrian paths are elevated and separated from vehicular traffic, and some are at road level. The main road level pedestrian crossing is located on the north-south road which contains bus/taxi stops.

A marked pedestrian crossing is provided in this location with a flashing pedestrian light.

The RDC recommends that improved lighting be provided on the pedestrian crossing to improve safety.

**(Refer Condition 15)**

## Conclusion

The proposal is permissible with Council's consent and complies with the maximum floor space permitted and Council's Policies.

It is considered the car parking provided is adequate and complies with the objectives of DCP No 111.

The Regional Development Committee raises no objections to the proposal subject to improved lighting of the pedestrian crossing on the north-south road at the pedestrian crossing near Council's Erina Centre.

The public submission to the proposal does not raise any issues which justify refusal of the proposal. The internal make-up of shops, discount department stores, restaurants etc and the economic viability of the shops, stores etc is not one for Council to consider or determine.

The increased floor space and provision of a Kmart DDS should provide increased employment opportunities and local community benefits.

**Attachments:** Nil

**Tabled Items:** Nil

## RECOMMENDATION

A Council as consent authority grant consent to Development Application No. 34107/2007 for the proposed Alterations and Additions to Erina Fair Shopping Centre on LOT: 201 DP: 1064473 No 6 Karalta Road ERINA 2250, subject to the following conditions:

- 1 Development being generally in accordance with plans numbered: 116335 DA-001 to DA-002, DA-101 to DA-104, DA-111 to DA-118, DA-121 to DA-122 and DA-131 Issue A, dated 26 November 2007, 18 sheets, submitted/drawn by Lend Lease APPF, or where modified by any conditions of this consent.

A copy of the stamped approved plans must be kept on site for the duration of the site works and made available upon request to either the Principal Certifying Authority or an officer of the Council.

- 2 Loading and **unloading operations** associated with the approved development shall be confined to within the property.
- 3 The **driveway**, vehicle manoeuvring area and car parking spaces as shown on the approved plan, shall be properly constructed, graded, drained and sealed with an impervious all-weather material. All car parking spaces shall be clearly marked, and maintained in accordance with Council's Policy, DCP111 – Car Parking.
- 4 The external surfaces of all buildings shall be of materials and colour that have **low reflective** characteristic the surfaces shall blend with the landscape of the site on which they are to be used, as well the surrounding natural environment.

- 5 No materials, **waste matter** or products shall be stored outside the building or the approved waste storage area, at any time.
- 6 All **lighting on the site** shall be directed such a manner so that no nuisance will be caused to adjoining properties, or to drivers on the surrounding street.
- 7 Prior to the issue of a Construction Certificate, a **security deposit** of **\$25,000** shall be paid into Council's trust fund to cover the cost of repairing damage caused as a result of the development. Such deposit will be refunded upon the completion of the project if no damage is caused.
- 8 Satisfactory arrangements shall 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, shall be obtained prior to the issue of a Construction Certificate. Contributions may be applicable to the Section 307 Certificate.

Developers should make early application for a Section 307 certificate from Council. For a copy of the application form 'Application For Certificate Under Section 305' contact Customer Service on (02) 4325 8200 or visit Councils web site [www.gosford.nsw.gov.au](http://www.gosford.nsw.gov.au) to download a form from the Water & Sewerage forms index.

- 9 **Driveways/Ramps and car parking areas and loading docks** shall be designed according to the requirements of the current Australian Standard AS2890. Plans shall show the following information:
  - a a longitudinal section through the centre line of the driveway from the centre line of the road to the proposed loading docks and car parking areas, showing driveway grades and suitable transition at changes of grades;
  - b drainage pits and pipes;
  - c a pavement design prepared by a suitably qualified Engineer.

At the completion of construction a work as executed plan and written verification of the driveway shall be submitted to Council prior to the issue of an Occupation Certificate. The written verification shall state that all driveway pavements as built will perform to the criteria set down by the designing engineer and that the work has been constructed in accordance with the Construction Certificate.

- 10 **Construction of the following works** in accordance with Council's 'Civil Construction Specification', 'GCC Design Specification for Survey, Road and Drainage Works' and 'Code of Practice for Erosion and Sedimentation Control' prior to the issue of an Occupation Certificate. The works shall not have an adverse impact upon nearby properties and shall comply with WorkCover Authority requirements. It is the contractors responsibility to ensure that all works shall be carried out in accordance with the Occupational Health and Safety Act.
  - a Internal roads, drainage and pathways.
  - b All **redundant dish crossings** and/or damaged kerb and gutter are to be removed and replaced with new kerb and gutter.
  - c **Piping** of all stormwater from impervious areas within the proposed development via the existing on-site stormwater detention basin to Council's drainage system.
  - d **Roadside furniture and safety devices** including fencing, signage, guide posts, chevrons, directional arrows and guard rail in accordance with RTA and Australian Standards.

- 11 **Erosion and siltation control** measures shall be implemented in respect to all civil works. The controls shall be constructed in accordance with Council's Code of Practice for Erosion and Sedimentation Control and the Protection of the Environment Operations Act, 1997. An erosion and sedimentation control plan (ESC) shall be approved by Council prior to the issue of a Construction Certificate. All disturbed areas to be fully established with vegetation prior to the issue of the Occupation Certificate.

**The applicant shall be held responsible for any breaches of the *Protection of the Environment Operations Act, 1997*. Failure to implement or maintain appropriate erosion/sediment control measures is a breach of *Section 120 of the Protection of the Environment Operations Act, 1997*. Such a breach is liable to a \$750 on-the-spot fine for an individual, or \$1,500 for a Company. Applicant(s) and Builder(s) are advised that spot checks of Erosion and Sedimentation Control measures may occur and fines for breaches imposed.**

- 12 **No filling** or debris shall be placed within any watercourse or drain.
- 13 Proposed **retaining walls**, greater than one (1) metre in height, are to be designed by a practising by a Civil/Structural engineer.

At the completion of construction and prior to the issue of an Occupation Certificate, a work-as-executed plan and certification shall be submitted. The Engineer shall certify that the retaining walls as built have been constructed in accordance with Construction Certificate, accepted practice, and that the structure is stable.

- 14 Arrangements shall be made with Energy Australia (Tuggerah Office - 4399 8115), Australian Gas Light Company (Agility, Greg Knight on 0402 060 241) and Telstra (Phone 1800 600 182 for pre-provisioning letter) for the **supply of services** concurrent with the engineering work. Arrangements shall include relocation of existing mains and services and dedication of easements for mains and services. A letter of clearance from, each relevant authority is to accompany the Occupation Certificate.
- 15 The installation of improved lighting on the zebra crossing in the bus interchange area as well as advance flashing lights to improve safety of the crossing, prior to the issue of an Occupation Certificate.
- 16 A Site Management Plan shall be submitted prior to the issue of a Construction Certificate. The plan shall include the following:
- Details of on-site parking arrangements for employees, contractors, construction machinery and vehicle's.
  - Route identification for the supply and delivery of materials/goods to and from the site.
  - Identification of construction zones at each stage of construction.
  - Crane permits (crane location plan).
  - Location, for storage of all materials all materials, on the site.
- 17 Any relocation, or alteration, of any **utilities** or any existing services made necessary as a result of this development is to be carried out at no cost to Council, with satisfactory arrangements being made with the authority concerned. These services may include stormwater, telephones, electrical cables and power poles, gas, water mains (hydrants, stop valves, stop cocks), sewer mains and manholes, parking signs, street signs and traffic signals.

- 18 The erection of a building in accordance with a development consent must not be commenced or carried out until detailed plan and specification of the building have been endorsed with a construction certificate.
- 19 The erection of a building must not be commenced or carried out until a principal certifying authority has been appointed.
- 20 Council must be notified two (2) days prior to the commencement of work, who is to be nominated as the Principal Certifying Authority.
- 21 All building work must be carried out in accordance with the provisions of the Building Code of Australia.
- 22 On completion of the erection of the building, and/or prior to the release of the strata, the owner shall submit to Council a Fire Safety Certificate. A Fire Safety Certificate is to state, in relation to each essential fire or other safety measure implemented in the building or on the land on which the building is situated:
  - a That the measure has been assessed by a properly qualified person, and
  - b That, as at the date of the assessment, the measure was found to be capable of performing to a standard not less than that required by the schedule to the relevant approval.Thereafter the owner shall submit annually to Council a Fire safety statement attesting to the satisfactory maintenance and state of the essential services.
- 23 Any building and/or works constructed or carried out under the provisions of a development consent/construction certificate shall not be occupied until an **Occupation Certificate** has been issued, or in the case of works, such works are completed in accordance with the development consent and or construction certificate.
- 24 All plumbing and drainage installations must comply with AS3500 National Plumbing and Drainage Code and NSW Code of Practice - Plumbing and Drainage. The following plumbing and drainage inspections (where applicable) are **mandatory** and must be conducted by Council's Plumbing and Drainage Inspectors:
  - a External sewer drainage lines before backfilling of the trenches.
  - b Internal drainage lines before the floor is laid, or poured and any other internal drainage lines.
  - c Internal stack/aerial work.
  - d Any other plumbing work
  - e Trade waste pre-treatment systems
  - f Backflow prevention devices
  - g A final inspection prior to the occupation of the building after fittings and fixtures are installed.

The appropriate Plumbing and Drainage fee with completed owners application form and plumbing diagram must be paid prior to construction.

- 25 The payment of a Contribution of \$338,283.00 prior to the issue of a Construction Certificate as required under Contribution plan 58A - Erina Fair Roadworks. The contribution shall be indexed in accordance with CPI increases quarterly.
- B In accordance with Section 95(1A) of the Environmental Planning & Assessment Act 1979, this consent shall be valid for a period of five (5) years.
- C The objectors and RTA be notified of Council's decision.

**ENV.20 DA30696/06 APPLICANT HOWARD LESLIE & ASSOC LOT 9 DP 549014  
HN 21 PEMMELL STREET WYOMING SECTION 82A REVIEW OF  
DETERMINATION PROPOSED RESIDENTIAL FLAT BUILDING (4 UNITS)  
(IR4475695)**

Directorate: Environment and Planning  
Business Unit: Development

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## **EXECUTIVE SUMMARY**

**Reason for Referral to Council:** Section 82A Review of Determination. Beyond delegation - the initial determination to refuse the application was made by the Development Assessment Team under delegation therefore the review must be made by Council.

**Public Submissions:** Nil

**Recommendation:** For Council's consideration and determination.

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## **REPORT**

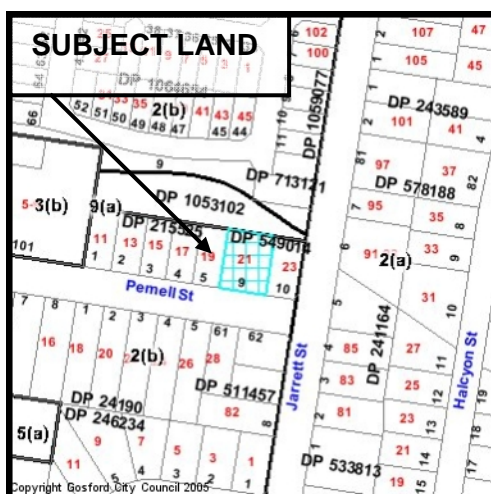
### **Background**

The application was refused on 27 April 2007 by Council's Development Assessment Team for the following reasons: -

- "1 *The flood report prepared by Halcrow & Associates (DW Doc. No. 2975203) indicates there shall be a cumulative impact on flood flows (substantially greater than Council's tolerable increases, in both velocities and flood levels) due to development within the floodplain. Council should not allow a development consent for this proposal based on the fact that existing illegal structures (non-flood compatible fencing) impact on the floodplain.*
- 2 *The submitted flood report (DW Doc. No. 2975203) does not provide adequate information with regard to the following:*
  - *The 1% AEP Flood level at the headwall downstream of the open channel has been assumed to be at a level of 4.0m AHD. This level at the outlet is considered to be unsuitable unless it can be verified by hydraulic calculations.*
  - *The report does not include a sensitivity analysis. Although a sensitivity analysis is not always deemed a necessary requirement within a flood study, the decision to adopt mannings 'n' values which vary from the values specified within GCC Design Specifications for Survey, Road and Drainage qualifies the need for a sensitivity analysis to be included within the report.*
  - *Consideration of the Probable Maximum Flood (PMF) or 2 × 1% AEP Flood event (Council accepts the 2 × 1% AEP Flood event as an acceptable alternative to considering the PMF) has not been taken into account within the submitted flood report. This is a requirement of the NSW Floodplain Development Manual.*

- *The survey plans provided within the submitted flood report do not provide sufficient information with regards to the 1% AEP Flood extents. A more detailed survey is required for both Council purposes and demonstration of accurate modelling of the floodplain.*
- *The flood report does not include plans demonstrating pre and post development, 1% AEP Flood profiles and cross-sections of river stations. These are required to support any flood analysis for the purpose of a development application.*
- *The adopted design peak flow does not consider surface water from the catchment downstream of Jarrett Street. Consideration of any additional flows are to be included within the report.*
- *If the upstream culverts at Jarrett Street do not contain the flows, hydraulic calculations demonstrating the effects on flow rates including the road acting as a weir should be considered."*

**LOCALITY: WYOMING**  
**ZONE: RESIDENTIAL 2(B)**



**Background**

Council's assessment of this application was based on the following studies:

- Bewsher Consulting Pty Ltd were engaged in the preparation of a flood study titled "Flood Study for Proposed Landcom Medium-Density Residential Development" dated November 1996 that was submitted in conjunction with development application for DA22484/1997. This study indicated the flood levels varied across the rear of the site from RL 5.4m AHD on the eastern boundary (section 8-8) to RL 5.0m AHD on the western boundary (section 9-9).

- Youngs Consulting Engineers were engaged to carry out a further flood study for the engineering designs associated with the engineering plans for the construction stage of the development for DA22484/1997. The study (reference 219309\21814 DP dated 14 December 2001) indicates a different flood profile over the site to the Bewsher flood profile, that varies from RL 5.43m AHD near the eastern boundary of the site to RL 4.88m AHD near the western boundary of the site. On the basis of the detailed contour information shown with this report and profile it would be considered that this report would now take precedence over the original Bewsher report. It is noted the Youngs Report also appears to include works associated with the extension of the culvert and piping of the creek through lot 101 DP 869711 (Advanx Motors) to the west of lot 1 DP 215525.
- The survey information provided with the original DA submission for this development DA30696/2006 indicated 1m contours and was insufficient to determine the flood prone area of the site. It is perceived that on this basis a conservative approach was requested for all development to be relocated outside of land below RL 5.4m AHD, ie the 1%AEP flood level indicated on the original Bewsher report.
- At Council's request for additional information in relation to flooding issues associated with the development/site & surrounds, Halcrow & Associates were engaged by the applicant to prepare a flood report to address Council's concerns. This report titled "Flooding Effects Study", report reference 604013.REPAH dated December 2006 indicated that the proposed works would raise the flood levels in the creek by more than Council's permitted standard of 10mm when compared to the levels as determined by the flood studies prepared by Bewsher Consulting Engineers Pty Ltd and Youngs Consulting Engineers.

### Applicant's Submission

The application made under Section 82A of the Environmental Planning and Assessment Act is accompanied by a 'Creek Flooding Assessment', prepared by Bewsher Consulting, and revised plans. The applicant's submission is summarised as follows: -

*"We state that the key and original issues of Council's letter dated 8<sup>th</sup> August 2007 have been satisfactorily addressed. Support of the proposal in principle is provided by Bewsher Consulting. As the consultants were instrumental in the preparation of the original flood analysis affecting this site, they have clearly stated that the issues of refusal can be raised in accordance with the relevant flooding policies, however in this instance the proposal can be considered an appropriate use and that the flooding has inconsequential aggravation. The proposal should now be supported."*

The findings of the 'Creek Flooding Assessment' are as follows: -

#### **1 The Flood Plan shows how only the very north-eastern corner of the site lies within the fringe of the 100 year floodplain,**

Development Engineer's response

The amended plans including the Flood Plan (File No 06356, Drawing 1 of 1, Rev B dated August 07) submitted with the Section 82A review now indicate contour levels at 0.1m interval and the approximate 1%AEP flood line as reflected in the Youngs Consulting Engineers report. It is noted that the contour levels on this plan do not reflect those that would arise from the Youngs study. In effect the levels indicated on the Youngs study should have been transferred on to the contour information submitted with the Section 82A review, which in effect would show that the site is more affected in the 1%AEP floodplain than what is shown on the Flood Plan. Therefore, the extent of the flood plain on the site has been incorrectly plotted and the statement made by Bewsher is not supported.

- 2 In the same NE corner, the Flood Plan shows how there is no change in ground levels; open style boundary fencing is to be provided such that there is minimal obstruction to the (shallow) 100 year flood flow; openings are provided in the underfloor area of unit 3 to allow (shallow) floodwaters pass under that dwelling;**

Development Engineer's response

Reference to the revised architectural plans indicate it is proposed to locate units 2 & 3 and associated decks within the area affected by the 1%AEP flood plain. With respect to the results of the report by Halcrow & Associates it is concluded that the area affected by the 1%AEP flood would be classified as floodway as filling or obstructions within this area have the potential to increase flood levels by more than Council's adopted standard i.e. 10mm. Therefore, to locate units within the floodplain would create the potential for flood levels to rise. The architectural plans indicate that it is proposed to provide openings in the sub floor areas to permit flood flows under the units. These openings are small and the walls around these openings would cause obstructions within the flood way. Even if the units were placed on piers within the floodway (with no fill or walls in the affected areas) the development still raises concerns in that the piers associated with the units and decks have the potential to accumulate debris and blockage within the creek causing raised levels within the creek and potential damages to the development. The proposal to provide units within the floodplain is not in accordance with Council's flood management policy.

- 3 Whilst the north-western corner of the site is outside of the 100 year floodplain, the same within-site works as found in the north-eastern corner have also been appropriately adopted;**

Development Engineer's response

Reference to the revised survey information submitted with the Section 82A review and the levels as per the Youngs report, would result in the north-eastern corner of the site also being affected by the flood plain. As such concerns raised in the response to point 2 above would also apply in this instance.

- 4 The other plans provide details which are consistent with the flood related works that are documented in the Flood Plan.**

**Hence it is clear that the plans explicitly show:**

- a) how only a very small portion of the site is marginally inundated in the 100 year flood event, and**
- b) how the proposed works will have a negligible impact on the passage of the 100 year flood event.**

**We therefore consider that the revised plans represent an appropriate and clarifying response to Council's previous flood-related concerns.**

Development Engineer's response

Reference to the architectural plans indicate small openings and obstructions from walls of the sub floor area. As such concerns raised in the response to point 2 above would also apply in this instance.

The additional information submitted has not directly addressed the reasons for refusal, and the correspondence prepared by Bewsher has not provided supporting analysis to verify these statements.

**Conclusion**

The original application was refused on 27 April 2007 by Council's Development Assessment Team. The grounds for refusal were based on flooding issues resulting from development within the flood plain and the lack of information in the submitted flooding report.

Comments on flooding issues of this Section 82A application have been provided by a Senior Development Assessment Engineer who had no input into the original application.

The Engineer has considered the original information submitted with the application, the additional information submitted with this Section 82A review, the reasons for refusal on Council's determination of the application dated 27 April 2007, and the previous flood studies associated with Pemell Creek. This assessment concluded that the additional information submitted has not directly addressed the reasons for refusal.

**Attachments:** Report to Development Assessment Unit - 24 April 2007

**Tabled Items:** Nil

**RECOMMENDATION**

For Council's consideration and determination.

**ATTACHMENT**

REPORT TO DEVELOPMENT ASSESSMENT UNIT 24 APRIL 2007

**TITLE**            **DEVELOPMENT APPLICATION NO. 30696/2006**  
**APPLICANT: HOWARD LESLIE & ASSOC**  
**PROPOSED: RESIDENTIAL FLAT BUILDING (4 UNITS) ON LOT: 9 DP: 549014,**  
**21 PEMELL STREET WYOMING**

Directorate:       Environment and Planning  
Business Unit:    Development

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**EXECUTIVE SUMMARY****Assessing Officer**

P I Drew

**Application Received**

26/06/2006

**Proposal**

Residential Flat Building (4 units)

**Zone**

Residential 2(b)

**Area**878.3m<sup>2</sup>**Public Submissions**

Nil

**Relevant Statutory Provisions**

- 1 Environmental Planning & Assessment Act, 1979 – Section 79C
- 2 Local Government Act 1993 – Section 89
- 3 State Environmental Planning Policy (SEPP) No. 1 - Development Standards
- 4 State Environmental Planning Policy (SEPP) (Building Sustainability Index: BASIX) 2004
- 5 State Environmental Planning Policy (SEPP) 71 - Coastal Protection
- 6 Draft SEPP (Application of Development Standards) 2004
- 7 Gosford Planning Scheme Ordinance
- 8 Development Control Plan (DCP) 100 - Medium Density Residential Development
- 9 Development Control Plan (DCP) 128 - Public Notification of Development Applications

## Key Issues

- 1 Objectives of Zone
- 2 Character
- 3 Building Envelope
- 4 Compliance with DCP 100
- 5 Open Space
- 6 Visitor Parking
- 7 Flooding
- 8 SEPP 71

## Recommendation

Refusal

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## REPORT

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.

### Objectives of Zone

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

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

### 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 site is located within the Wyoming 6: Mixed Density Hillside character locality of DCP 159 – Character. The proposal complies with the desired character statement for the locality. The proposed building contains numerous design elements which are consistent with existing and emerging development in the locality, and it has been demonstrated that the proposal exhibits several of the desired character elements. It is therefore considered that the proposal complies with the objectives of DCP 159 – Character.

## Building Envelope Encroachments

Clause 28(4) of the GPSO states that residential flat buildings within the 2(b) zoning must not exceed the building envelope, derived from planes projected at 45 degrees from the height of 3.5m above natural ground level at the side and rear boundaries to a maximum height of 10 metres above natural ground level. In this instance, small portions of the eaves on the east and west section of the first floor project beyond the building envelope. Accordingly, the applicant has submitted a SEPP 1 objection to vary the development standard.

The appropriate manner of dealing with a SEPP 1 objection is found in the judgment of Lloyd J in *Winton Property Group v North Sydney Council* [2001] NSWLEC 46. This case established that the application of SEPP 1 requires consideration of the following questions.

(i) *Is the planning control a development standard?*

The building envelope requirements expressed in Clause 28(4) of the Gosford Planning Scheme Ordinance falls within the definition of a development standard pursuant to Section 4(1) of the Environmental Planning Assessment Act 1979.

(ii) *What is the underlying objectives or purpose of the standard?*

The objectives of the development standard are not stated in the Gosford Planning Scheme Ordinance. It can be assumed that the underlying purpose of the standard is to restrict building bulk and minimise the extent of overshadowing on adjoining properties. The building envelope encroachments will not significantly impact upon the shadows expected to be cast on the adjoining properties, nor will it increase the apparent bulk and scale of the proposed building.

(iii) *Is compliance with the standard consistent with the aims of SEPP 1, and in particular does compliance with the standard tend to hinder the attainment of the objects specified in Section 5(a)(i) & (ii) of the Act?*

The aim of SEPP 1 is to provide flexibility in 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.

As the proposed encroachments are considered minor and will not increase the apparent bulk and scale of the development or impact upon overshadowing of the adjoining properties, it is considered that strict compliance with the standard is unnecessary in this instance. The proposal will promote the orderly and economic use and development of land and is consistent with of objects of the Act.

(iv) *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*

For the reasons outlined above, strict compliance with the development standard is considered unreasonable or unnecessary in this instance.

(v) *Is the objection well founded?*

The objection to the standard under the provisions of SEPP 1 is considered well founded.

Overall the development achieves the underlying purpose of the standard, despite non-compliance with Clause 28(4)(a) of the Gosford Planning Scheme Ordinance. The proposed variation to the standard is consistent with the objectives of SEPP 1 and Draft SEPP (Application of Development Standards) 2004.

### Compliance with DCP 100

The table below summarises the main requirements of DCP 100 against the proposal.

| <b>Development Standard</b> | <b>Required</b>   | <b>Proposed</b>             | <b>Compliance</b> |
|-----------------------------|-------------------|-----------------------------|-------------------|
| Site Area (GPSO)            | 800m <sup>2</sup> | 878.3m <sup>2</sup>         | Yes               |
| <b>Open Space</b>           | <b>40% min</b>    | <b>38%</b>                  | <b>No</b>         |
| Site Coverage               | 50% max           | 48.3%                       | Yes               |
| Resident Parking            | 6                 | 6                           | Yes               |
| <b>Visitor Parking</b>      | <b>1</b>          | <b>0</b>                    | <b>No</b>         |
| Front Setback               | 6m                | 6m                          | Yes               |
| Side Setback                | 1m                | 1m                          | Yes               |
| Rear Setback                | 1m                | 1m                          | Yes               |
| Courtyard Area              | 40m <sup>2</sup>  | >40m <sup>2</sup> each unit | Yes               |
| Courtyard Width             | 5m x 5m contig    | 5m x 5m each unit           | Yes               |
| Building Envelope           | 3.5m @ 45°        | Minor Encroachments         | Yes               |
| Building Height             | Ridge – 10m       | 7.37m                       | Yes               |
|                             | Top Floor – 4m    | 3.48m                       | Yes               |
| Front Fence Height          | 1.5m              | 1-1.5m                      | Yes               |
| Front Fence Setback         | 1.5m              | 0.5-1.5m                    | Yes               |

The areas of non-compliance are discussed below.

### Open Space

Clause B.1.4 of DCP 100 requires that at least 40% of the site shall remain open space. The proposed development incorporates 38% open space, which represents a shortfall of 2% or approximately 18m<sup>2</sup>. Whilst the development involves a minor shortfall in the open space requirement of DCP 100 it is considered that the proposal incorporates sufficient outdoor open space to meet the reasonable recreational, landscaping, service and storage needs of the development.

### Visitor Parking

Clause B.1.7.3(a)(iii) of DCP 100 states that visitor spaces, calculated on the basis of 0.2 spaces per dwelling, must be provided on-site and clearly marked for use by visitors only. The proposal does not incorporate visitor parking on-site, however it is considered that sufficient unrestricted car parking is available within the street to accommodate visitors. This issue alone does not warrant refusal of the application.

### Flooding

The proposed development site has been identified as being subject to flooding as it is located within the 1% AEP Floodplain of the Pemell St Creek Floodplain. Council's Flooding and Drainage Engineer has provided the following comments on the proposal.

*"A flood report prepared by Halcrow & Associates (DW Doc. No. 2975203) was submitted to Council as a part of the above development application. The report presented includes only hydraulic modelling using a 1 dimensional modelling program (Hec Ras) and did not include hydrological analysis, instead adopting flow rates from a Brewsher Consulting report submitted as a part of a previous application (DA 22484). The Brewsher analysis used a downstream HGL of 4.0m AHD for the 1% AEP Flood at Pemell St. Halcrow & Associates report have not extended their HGL calculations for the piped section from Pemell Street through Advanx Motors to the headwall downstream of the open channel. I have not located any approved designs for this length of pipe and would consider the assumed 4.0m AHD 1% AEP flood level at the outlet unsuitable unless it is verified by hydraulic calculations.*

*The report also presents concern regarding the lack of information supporting the analysis. Any future or revised flood reports should also include:*

- A sensitivity analysis, including use of mannings 'n' values as specified in accordance with GCC Design Specifications for Survey, Road and Drainage Works ( $n = 0.085$  for natural channels), open channels are to be designed with consideration of the lack of Council's maintenance resources. Please also consider the case of peak design flows being, for example, 20% higher than calculated.*
- Calculation and consideration of the PMF event or  $2 \times 1\%$  AEP Flood (this requirement appears to have been misinterpreted as a request for the 2% AEP).*
- The survey plans provided by Halcrow & Associates do not provide sufficient information with regards extent of the 1% AEP flooding. I believe a more detailed survey is required for both Council purposes and for accurate modelling through the reach of the creek under investigation.*
- Plans demonstrating pre and post development 1% AEP flood extents, 1% AEP Flood profiles and cross-sections of each river-station.*
- The adopted design peak flow does not consider surface water from the catchment downstream of Jarrett Street. Consideration of any additional flows are to be included within the report.*
- If the upstream culverts at Jarrett Street do not contain the flows, hydraulic calculations demonstrating the effects on flow rates including the road acting as a weir should be considered, Brewsher Consulting 1995 report may have considered the culverts running full but not under head.*
- It is expected, should a flood report use assumptions and previously determined results from a study conducted by a different consultant for a private development, the consultant (Halcrow & Associates) referring to an alternate report should obtain the entire report from the original consultant (Brewsher Consulting). Council needs to be considerate of copyright obligations.*

*Regardless of the above concerns, Council should not allow a development consent for this proposal based on the fact that existing illegal structures (non-flood compatible fencing) impact on the floodplain. The existing illegal structures impacting on the floodplain are currently being investigated by Council, and should these structures be removed, the report has adequately indicated there shall be a cumulative impact on flood flows (substantially greater than Council's tolerable increases, in both velocities and flood levels) due to development within the floodplain. For this reason, I cannot support the development application (DA 30696/06) as proposed and recommend the application be resubmitted with all structures and fill located on land above the 1% AEP Flood level."*

**(Refer to reason for refusal 1 & 2)**

## **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.

## **Conclusion**

All relevant matters under Section 79C of the Environmental Planning and Assessment Act, Section 89 of the Local Government Act, the objectives of the zoning and the principles of ecologically sustainable development have been considered and the proposal is recommended for refusal for the reason outlined below in the recommendation.

**Attachments:** Nil

**Tabled Items:** Nil

## **RECOMMENDATION**

A Council as consent authority refuse consent to Development Application No. 30696 for Residential Flat Building (4 units) on LOT: 9 DP: 549014, 21 Pemell Street WYOMING 2250 for the following reasons:

- 1 The flood report prepared by Halcrow & Associates (DW Doc. No. 2975203) indicates there shall be a cumulative impact on flood flows (substantially greater than Council's tolerable increases, in both velocities and flood levels) due to development within the floodplain. Council should not allow a development consent for this proposal based on the fact that existing illegal structures (non-flood compatible fencing) impact on the floodplain.
- 2 The submitted flood report (DW Doc. No. 2975203) does not provide adequate information with regard to the following:
  - The 1% AEP Flood level at the headwall downstream of the open channel has been assumed to be at a level of 4.0m AHD. This level at the outlet is considered to be unsuitable unless it can be verified by hydraulic calculations.

- The report does not include a sensitivity analysis. Although a sensitivity analysis is not always deemed a necessary requirement within a flood study, the decision to adopt mannings 'n' values which vary from the values specified within GCC Design Specifications for Survey, Road and Drainage qualifies the need for a sensitivity analysis to be included within the report.
- Consideration of the Probable Maximum Flood (PMF) or 2 × 1% AEP Flood event (Council accepts the 2 × 1% AEP Flood event as an acceptable alternative to considering the PMF) has not been taken into account within the submitted flood report. This is a requirement of the NSW Floodplain Development Manual.
- The survey plans provided within the submitted flood report do not provide sufficient information with regards to the 1% AEP Flood extents. A more detailed survey is required for both Council purposes and demonstration of accurate modelling of the floodplain.
- The flood report does not include plans demonstrating pre and post development, 1% AEP Flood profiles and cross-sections of river stations. These are required to support any flood analysis for the purpose of a development application.
- The adopted design peak flow does not consider surface water from the catchment downstream of Jarrett Street. Consideration of any additional flows are to be included within the report.
- If the upstream culverts at Jarrett Street do not contain the flows, hydraulic calculations demonstrating the effects on flow rates including the road acting as a weir should be considered.

B The applicant be advised of Councils decision and of their right to appeal to the Land & Environment Court within 12 months after the date of determination.