

ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979

DETERMINATION OF DEVELOPMENT APPLICATION NO. 235-09-2004

(FILE NO. 9036023)

PROPOSED THREE (3) LOT SUBDIVISION

I, the Acting Executive Director, Sustainable Development, Assessments as delegate for the Minister for Planning as described by the Instrument of Delegation dated 6 April 2006, and pursuant to Section 80 (1) (a) of the *Environmental Planning & Assessment Act, 1979*, and clause 10(2) of State Environmental Planning Policy No. 71 – Coastal Protection determine the development application referred to in the attached Schedule 1, by **granting consent** to the application subject to the conditions of consent in the attached Schedule 2.

The reasons for the imposition of conditions are:

- (1) Minimise the impacts of the development on the environment.
- (2) Ensure the amenity of the existing environment is maintained.
- (3) Ensure appropriate use of the site.

Chris Wilson
**Acting Executive Director
Sustainable Development
Assessment**

Sydney,

2006

SCHEDULE 1

PART A — TABLE

Application made by:	Maria & Cecil Tarrant c/o DEX Consulting Pty Ltd PO BOX 183 West Kempsey NSW 2440
Application made to:	Minister for Planning
Development Application:	235-09-2004
On land comprising:	Lot 72 DP 617047 Fisherman's Trail, Fisherman's Reach
Local Government Area	Kempsey Shire Council
For the carrying out of:	A detailed description of the development consented to is described in Conditions A1, Part A, Schedule 2
Estimated Cost of Works	N/A
Type of development:	State Significant Development Integrated Development
S.119 Public inquiry held:	No
BCA building class:	N/A
Approval Body / Bodies:	Rural Fire Service
Determination made on:	
Determination:	A development consent is granted subject to the conditions in the attached Schedule 2.
Date of commencement of consent:	This development consent commences on the date identified in the formal notification letter accompanying the Determination.
Date consent is liable to lapse	This consent will lapse 5 years from the date of commencement of consent, unless: (1) a shorter period of time is specified by the Regulations; or (2) a condition in Schedule 2, or (3) the development has physically commenced.

PART B—NOTES RELATING TO THE DETERMINATION OF DA NO. 235-09-2004

Responsibility for other approvals / agreements

The Applicant is solely responsible for ensuring that all additional consents and agreements are obtained from other authorities, as relevant.

Appeals

The Applicant has the right to appeal to the Land and Environment Court under Section 97 of the *Environmental Planning and Assessment Act, 1979*. The right to appeal is only valid, for

a development application, within **12** months after the date on which the Applicant received this notice.

Appeals—Third Party

A third party right to appeal to this development consent is available under Section 123, subject to Section 101, of the *Environmental Planning and Assessment Act, 1979*.

Legal notices

Any advice or notice to the consent authority shall be served on the Director-General.

Section 94 Conditions

This development consent contains a levy for development imposed under section 94 of the Act. The imposing of levies has been imposed in accordance with Kempsey Shire Council Section 94 Contribution Plan which may be inspected at the following locations during its normal business hours:

- (1) Kempsey Shire Council, Environmental Services, The Civic Centre, Cnr of Elbow and Tozer Street, West Kempsey, NSW 2440

The specific public amenity or service or both are identified in the monetary contributions conditions in Part B of Schedule 2.

PART C—DEFINITIONS

In this consent,

Act means the *Environmental Planning and Assessment Act, 1979 (as amended)*.

Advisory Notes means advisory information relating to the approved development but do not form a part of this consent.

Applicant means Maria & Cecil Tarrant or any party acting upon this consent.

Approval Body has the same meaning as within Division 5 of Part 4 of the Act.

BCA means the Building Code of Australia.

Certifying Authority has the same meaning as Part 4A of the Act.

Council means Kempsey Shire Council.

DA No. 235-09-2004 means the development application and supporting documentation submitted by the Applicant on 21 September 2004.

Department means the Department of Planning or its successors.

Director means the Director of the Urban Assessments (or its successors) within the Department or the nominees of the Director.

Team Leader means the Team Leader of the Urban Assessments (or its successors) within the Department.

Director-General means the Director-General of the Department.

Minister means the Minister for Planning.

PCA means a Principal Certifying Authority and has the same meaning as Part 4A of the Act.

Regulations means the *Environmental Planning and Assessment Regulations, 2000* (as amended).

Subject Site has the same meaning as the land identified in Part A of this schedule.

SCHEDULE 2

CONDITIONS OF CONSENT

DEVELOPMENT APPLICATION NO. 235-09-2004

PART A—ADMINISTRATIVE CONDITIONS

A1 *Development Description*

Development consent is granted only to carrying out the development described in detail below:

- (1) Three (3) lot subdivision of Lot 72 DP 617047

A2 *Development in Accordance with Plans and Documentation*

The development shall be in accordance with development application number 235-09-2004 submitted by the Applicant on 21 September 2004, and in accordance with the following:

Statement of Environmental Effects prepared by Dutton Engineering Excellence (DEX), dated 21 September 2004			
Bushfire Protection Assessment prepared by Macleay EnviroReports, dated 16 September 2004			
On Site Effluent Disposal Assessment prepared by Dutton Engineering Excellence (DEX), dated 28 July 2005			
Correspondence from Coffey Geosciences Pty Ltd to Dutton Engineering Excellence (DEX), dated 27 September 2005			
Correspondence from Dutton Engineering Excellence (DEX) to the Department, dated 4 January 2006			
Statement of Environmental Effects prepared by Dutton Engineering Excellence (DEX), dated 4 January 2006			
Flood Statement prepared by Dutton Engineering Excellence (DEX), dated 4 January 2006			
Architectural (or Design) Drawings prepared by Dutton Engineering Excellence (DEX)			
Drawing No.	Revision	Name of Plan	Date
File No. 112 Sheet 1 of 4		Site Analysis Plan	29.12.05
File No. 112 Sheet 2 of 4		Plan of Subdivision	29.12.05
File No. 112 Sheet 3 of 4		Plan of Subdivision A	29.12.05
File No. 112 Sheet 4 of 4		Flood Plan	29.12.05

except for:

- (1) otherwise provided by the conditions of this consent.

A3 *Subdivision Certificate*

Prior to the lodgement of the plan of subdivision for registration under Division 3 of Part 23 of the Conveyancing Act 1919, a Subdivision Certificate is to be obtained from Council in accordance with Section 109D(1)(d) of the Act.

A4 *Restriction as to User – Dwelling Envelopes*

The dwelling envelopes are restricted to those nominated in the plans and documentation referred to in Condition A2, Part A, Schedule 2. A restriction as to user which requires Council's consent to any variation of the dwelling envelope is to be imposed on these lots and clearly shown by notation on the property title.

A5 *On-Site Sewage Disposal*

The sewage treatment and disposal system proposed shall be designed to the specifications agreed by the Department, Council and the Applicant as set out in detail within the plans and documentation set out at Condition A2, Part A, Schedule 2 to the satisfaction of Council.

A6 *Developer Costs*

The developer is responsible for any costs relating to alterations and extensions of existing roads, drainage and services for the purposes of the development.

A7 *Exclusion – Removal of Trees*

The removal of any trees is specifically excluded from this consent. A separate application will need to be lodged for the removal of trees on the subject site.

A8 *Inconsistency between documents*

In the event of any inconsistency between conditions of this consent and the drawings / documents referred to above, the conditions of this consent prevail.

A9 *Prescribed Conditions*

The Applicant shall comply with the prescribed conditions of development consent under clause 98 of the Regulation.

PART B — PRIOR TO SUBDIVISION

B1 Monetary Contributions – Section 94

In accordance with Division 6 of Part 4 of the Act, the Applicant shall pay the following monetary contributions:

(1) Amount of Contribution

Contribution Category	Rate of Contribution	Amount
Outdoor Recreation Stuarts Point	\$487 per additional lot	\$974
Fisherman's Reach Stormwater Plan	\$595 per additional lot	\$1,190
Fisherman's Reach Sewerage Augmentation	\$3,942 per additional lot	\$7,884
TOTAL		\$10,048

(2) Timing and Method of Payment

The contribution shall be paid in the form of cash or bank cheque, made out to Kempsey Shire Council. For accounting purposes, the contribution may require separate payment for each of the categories above and you are advised to check with Kempsey Shire Council.

Evidence of the payment to Kempsey Shire Council shall be submitted to the Principal Certifying Authority prior to the issue of a Subdivision Certificate.

(3) Indexing

The contribution for land will be adjusted in accordance with the latest annual valuations.

B2 Flood Risk

A Flood Risk Assessment will be prepared by a suitably qualified person(s) in accordance with the requirements of Council. The Flood Risk Assessment will be submitted to and approved by Council prior to the issue of a Subdivision Certificate.

B3 Water Reticulation

An application for a Compliance Certificate pursuant to Section 305 of the Water Management Act 2000 and the lodgement of a Compliance Certificate indicating that the requirements of Section 306 of the Water Management Act 2000 have been met shall be submitted prior to the issue of a Subdivision Certificate.

You are advised that a Compliance Certificate pursuant to Division 5 of the Water Management Act 2000 will be issued by Council, subject to the following matters being complied with:

- Payment of a contribution towards district water supply at the rate of \$1,256 per equivalent tenant, i.e. $\$1,256 \times 2 = \$2,512$ total for 2005/2006 (indexed).
- Payment of a contribution towards Fisherman's Reach water supply at a rate of \$4,021 per equivalent tenement, i.e. $\$4,021 \times 2 = \$8,042$ total for 2005/2006 (indexed).
- The applicant is to make satisfactory arrangements with Kempsey Shire Council's Macleay Water for the supply and installation of one additional hydrant on the existing water main located on Fisherman's Reach Road prior to the issue of a Subdivision Certificate at full cost to the development. The installation is to comply with Development Control Plan 36 Council's Engineering Guidelines for Subdivision and Development and the Water Code for Australia.

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- d) The applicant is to make satisfactory arrangements with Kempsey Shire Council's Macleay Water for the supply and installation water service conduit crossings to supply all the proposed lots fronting Fisherman's Reach Road prior to the issue of a Subdivision Certificate at full cost to the development. The installation is to comply with Development Control Plan 36 Council's Engineering Guidelines for Subdivision and Development and the Water Code for Australia.

B4 Stormwater and Drainage Works Design

Final design plans of the stormwater drainage systems within the proposed subdivision, prepared by a qualified practicing Civil Engineer and in accordance with the requirements of Council shall be submitted to and approved by the Principle Certifying Authority prior to issue of a Subdivision Certificate. The hydrology and hydraulic calculations shall be based on models described in the current edition of Australian Rainfall and Runoff.

B5 Acid Sulphate Soil (ASS) Management

A Preliminary Soils Assessment shall be prepared by a suitably qualified person in accordance with the requirements of Council and the *Acid Sulphate Soils Manual* (Acid Sulphate Soils Management Advisory Committee, 1998). The Preliminary Soils Assessment will be submitted to and approved by Council prior to the issue of a Subdivision Certificate.

If Council considers that significant ASS risk is identified in the Preliminary Soils Assessment, an Acid Sulphate Management Plan shall be prepared by a suitably qualified person in accordance with the requirements of Council and the *Acid Sulphate Soils Manual* (Acid Sulphate Soils Management Advisory Committee, 1998). The Acid Sulphate Management Plan will be submitted to and approved by Council prior to the issue of a Construction Certificate.

B6 Telephone and Electricity Services

Prior to the issue of a Subdivision Certificate the applicant shall provide to the Department or Council a letter from Country Energy and a Compliance Certificate from Telstra stating that satisfactory arrangements have been made for the supply of electricity and telephone services in the subdivision. Easements for the electricity purposes, satisfactory to Country Energy shall be created over existing and proposed electricity lines (pursuant to Section 88B of the Conveyancing Act 1919).

B7 Requirements of Public Authorities for Connection to Services

The applicant shall comply with the requirements of any public authorities (e.g. Country Energy, Telstra Australia, etc) in regard to the connection to, relocation and/or adjustment of the services affected by the subdivision, in addition to any further requirements of Council. Any costs in the relocation, adjustment or support of services shall be the responsibility of the applicant. Details of compliance with the requirements of any relevant public authorities are to be submitted to the satisfaction of Council prior to the issue of a Subdivision Certificate.

B8 Service / Domestic Drainage Line Certification

Certification is to be provided to the Principle Certifying Authority by a Registered Surveyor prior to the issue of a Subdivision Certificate, that all services and domestic drainage lines are wholly contained within the respective lots.

PART C – GENERAL CONDITIONS

C1 Property Access

Property access is to comply with Section 4.3.2 of Planning for Bushfire Protection 2001 in that the minimum trafficable width of 4m with an additional 1m wide strip on each side of the road to be kept clear of long grass and bushes is to be provided. The access shall also be positioned so that the gradient does not exceed 15 degrees although preferably not more than 10 degrees.

C2 Bushfire Protection

Any future development application lodged for this subdivision under Section 79BA of the Environment Planning and Assessment Act 1979 will be subject to the requirements as set out in *Planning for Bushfire Protection 2001*.

ADVISORY NOTES

AN1 Excavation – Aboriginal Relics

Should any Aboriginal relics be unexpectedly discovered then all excavations or disturbance to the area is to stop immediately and the Department of Environment and Conservation shall be informed in accordance with Section 91 of the *National Parks and Wildlife Act, 1974*.

AN2 Excavation – Historical Relics

Should any historical relics be unexpectedly discovered then all excavations or disturbance to the area is to stop immediately and the Heritage Council of NSW shall be informed in accordance with Section 146 of the *Heritage Act, 1977*.

AN3 Shared Trenching

Council will consider proposals to provide compatible public utility services in common trenching. In such instances the proposal is to be discussed with the relevant service providers.