

**ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979**

**DETERMINATION OF DEVELOPMENT APPLICATION NO. 64-3-2005**

**(FILE NO. 9038309-1)**

**4 LOT RESIDENTIAL SUBDIVISION**

I, Sam Haddad, the Deputy-Director General, Office of Sustainable Development, Assessments and Approvals as delegate for the Minister for Planning as described by the Instrument of Delegation dated 12 September 2005, and pursuant to Section 80 (1) (a) of the *Environmental Planning & Assessment Act, 1979*, and clause 10 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) To adequately describe the subdivision proposed;
- (2) To levy for open space, community services and road upgrades;
- (3) To ensure the proper placement of drainage and other services;
- (4) To maintain the environmental quality of the area during construction works.

Sam Haddad

**Deputy Director General  
Sustainable Development  
Assessments and Approvals**

Sydney,

2005

## SCHEDULE 1

### PART A—TABLE

|                                         |                                                                                                                                                                                                                                                                                                    |
|-----------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Application made by:</b>             | Lynnette & Alan Wells<br>PO Box 205, East Maitland, NSW, 2323                                                                                                                                                                                                                                      |
| <b>Application made to:</b>             | Minister for Infrastructure and Planning                                                                                                                                                                                                                                                           |
| <b>Development Application:</b>         | 64-3-2005                                                                                                                                                                                                                                                                                          |
| <b>On land comprising:</b>              | Lot 222 and Lot 223 DP 862015, Parish of Sutton,<br>County of Gloucester.<br>1B Waterfront Road, Swan Bay.                                                                                                                                                                                         |
| <b>For the carrying out of:</b>         | Development described in Condition A1, Part A,<br>Schedule 2                                                                                                                                                                                                                                       |
| <b>Estimated Cost of Works</b>          | NA                                                                                                                                                                                                                                                                                                 |
| <b>Type of development:</b>             | State Significant Development<br>Integrated Development                                                                                                                                                                                                                                            |
| <b>S.119 Public inquiry held:</b>       | No                                                                                                                                                                                                                                                                                                 |
| <b>BCA building class:</b>              | NA                                                                                                                                                                                                                                                                                                 |
| <b>Approval Body / Bodies:</b>          | Rural Fire Service<br>Council                                                                                                                                                                                                                                                                      |
| <b>Determination:</b>                   | Consent is granted subject to the conditions in the<br>attached Schedule 2.                                                                                                                                                                                                                        |
| <b>Date of commencement of consent:</b> | This development consent commences on the date<br>identified in the formal notification letter accompanying<br>the Determination.                                                                                                                                                                  |
| <b>Date consent is liable to lapse</b>  | This consent will lapse 5 years from the date of<br>commencement of consent, unless: <ul style="list-style-type: none"> <li>▪ a shorter period of time is specified by the Regulations or</li> <li>▪ a condition in Schedule 2, or</li> <li>▪ the development has physically commenced.</li> </ul> |

### PART B—NOTES RELATING TO THE DETERMINATION OF DA NO. 64-3-2005

#### ***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:

- (1) for a development application, within 12 months after the date on which the applicant received this notice, or

**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 where imposed in accordance with Port Stephens Contributions Plan No.4 – Karuah/Swan Bay. The Port Stephens Contributions Plan No.4 – Karuah/Swan Bay may be inspected at the following location:

- 116 Pacific Highway, Raymond Terrace.

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).

**Applicant** means Lynnette & Alan Wells or any party acting upon this consent.

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

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

**Council** means Port Stephens Council.

**DA No. 64-3-2005** means the development application and supporting documentation submitted by the applicant on 29 March 2005.

**Department** means the Department of Infrastructure, Planning and Natural Resources or its successors.

**Minister** means the Minister for Planning.

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

**Regulations** mean 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. 64-3-2005

#### PART A—ADMINISTRATIVE CONDITIONS

##### **A1      *Development Description***

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

- (1) Subdivision of the existing two lots in 2 stages to create 4 residential lots with the following descriptions and areas:

Stage 1:

- Lot 1 – 4000m<sup>2</sup>; and,
- Lot 2 – 4000m<sup>2</sup>;

Stage 2:

- Lot 3 – 4000m<sup>2</sup>, and,
- Lot 4 – 5.658 ha (residue lot).

##### **A2      *Development in Accordance with Plans***

The development shall be generally in accordance with development application number 64-3-2005 submitted by the applicant on 29 March 2005, and in accordance with the supporting documentation submitted with that application, including, but not limited to, the following:

| Statement of Environmental Effects entitled Statement of Environmental Effects for the Subdivision of Lot 222 and 223, DP 862015 Waterfront Road, Swan Bay prepared by Lynnette and Alan Wells, dated 28 January 2005. |          |                                                          |                  |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|----------------------------------------------------------|------------------|
| Survey Drawings prepared by Ecovision Consulting and Rennie Golledge Pty Ltd                                                                                                                                           |          |                                                          |                  |
| Drawing No.                                                                                                                                                                                                            | Revision | Name of Plan                                             | Date             |
| -                                                                                                                                                                                                                      | -        | Proposed Subdivision Design, Waterfront Road, Swan Bay   | 17 December 2004 |
| 94.029                                                                                                                                                                                                                 | -        | Drainage Design Waterfront and Swan Bay Roads – Swan Bay | 28 January 2005  |

## PART B—PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

### **B1 Acid Sulphate Soil Management Plan**

An Acid Sulphate Soil Management Plan shall be prepared by a suitably qualified person in accordance with the *Acid Sulphate Soil Assessment Guidelines* (Acid Sulphate Soil Management Advisory Committee, 1998) and shall address matters raised in the recommendations of the report by Barker Harle Engineers and Scientists, entitled 'Preliminary Acid Sulphate Soil Investigation Report' and dated 17 December 2004. The Management Plan shall be submitted to and approved by Council prior to the issue of a Construction Certificate.

### **B2 Erosion and Sedimentation Control**

Soil erosion and sediment control measures shall be designed in accordance with the document *Managing Urban Stormwater—Soils & Construction* (NSW Department of Housing, 1998.) Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

### **Monetary Contributions and Contributions-in-lieu**

#### **B3 Monetary Contributions**

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           |
|---------------------------|------------------------|------------------|
| Open Space and Recreation | \$2264.00 X 2 new lots | \$4528.00        |
| Community Facilities      | \$791.00 X 2 new lots  | \$1582.00        |
| Emergency Services        | \$238.00 X 2 new lots  | \$476.00         |
| Library Book Acquisitions | \$118.00 X 2 new lots  | \$236.00         |
| Roadworks                 | \$675.00 X 2 new lots  | \$1350.00        |
| <b>TOTAL</b>              |                        | <b>\$8172.00</b> |

##### **(2) Timing and Method of Payment**

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

Evidence of the payment to Port Stephens Council shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

##### **(3) Indexing**

The amount of contribution payable under this condition has been calculated on the basis of costs as at the date of consent. In accordance with the provisions of the Contributions Plan, this amount shall be indexed at the time of actual payment in accordance with movement in the Consumer Price Index as published by the Australian Bureau of Statistics. In this respect the amount payable is valid for twelve months.

***Subdivision Works******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 the Certifying Authority prior to issue of a Construction Certificate. The hydrology and hydraulic calculations shall be based on models described in the current edition of Australian Rainfall and Runoff.

**PART C—PRIOR TO COMMENCEMENT OF WORKS*****Construction Management******C1 Construction Management Plan***

Prior to the commencement of any works on the site, a Construction Management Plan shall be submitted to and approved by Council. The Plan shall address, but not be limited to, the following matters where relevant:

- (1) hours of work,
- (2) contact details of site manager,
- (3) traffic management,
- (4) noise and vibration management,
- (5) waste management,
- (6) erosion and sediment control,

## **PART D—DURING CONSTRUCTION**

### ***Drainage Works***

#### ***D1 Interallotment Easement***

The drain within the proposed interallotment drainage easement shall be constructed **prior to lot filling** to ensure no stormwater runoff is inadvertently directed onto neighbouring properties.

### ***Site Maintenance***

#### ***D2 Erosion and Sediment Control***

All erosion and sediment control measures are to be effectively maintained at or above design capacity for the duration of the construction works and until such time as all ground disturbed by the works has been stabilised and rehabilitated so that it no longer acts as a source of sediment.

#### ***D3 Disposal of Seepage and Stormwater***

Any seepage or rainwater collected on-site during construction shall not be pumped to the street stormwater system unless separate prior approval is given in writing by Council.

#### ***D4 Site Notice***

A site notice(s) shall be prominently displayed at the boundaries of the site for the purposes of informing the public of project details. The notice(s) is to satisfy all but not be limited to, the following requirements:

- (1) Minimum dimensions of the notice are to measure 841mm x 594mm (A1) with any text on the notice to be a minimum of 30 point type size;
- (2) The notice is to be durable and weatherproof and is to be displayed throughout the works period;
- (3) The approved hours of work, the name of the site/project manager, the responsible managing company (if any), its address and 24 hour contact phone number for any inquiries, including construction/noise complaint are to be displayed on the site notice; and
- (4) The notice(s) is to be mounted at eye level on the perimeter hoardings/fencing and is to state that unauthorised entry to the site is not permitted.

#### ***D5 Contact Telephone Number***

The applicant shall ensure that the 24 hour contact telephone number is continually attended by a person with authority over the works for the duration of the development.

#### ***D6 Protection of Trees – On-site Trees***

All trees on the site are to be suitably protected by way of tree guards, barriers or other measures as necessary are to be provided to protect root system, trunk and branches, during construction works. No trees are to be removed from the subject site without the prior approval of Council.

**Noise and Vibration****D7 Hours of Work**

The hours of construction, including the delivery of materials to and from the site, shall be restricted as follows:

- (1) between 7:00 am and 6:00 pm, Mondays to Fridays inclusive;
- (2) between 8:00 am and 1:00 pm, Saturdays;
- (3) no work on Sundays and public holidays.

Works may be undertaken outside these hours where:

- (1) the delivery of materials is required outside these hours by the Police or other authorities;
- (2) it is required in an emergency to avoid the loss of life, damage to property and/or to prevent environmental harm;
- (3) the work is approved through the Construction Noise and Vibration Management Plan; and
- (4) residents likely to be affected by the works are notified of the timing and duration of these works at least 48 hours prior to the commencement of the works.

**Heritage****D8 Impact of Below Ground (Sub-surface) Works – Aboriginal Relics**

If any Aboriginal archaeological relics are exposed during construction works, the Applicant shall immediately notify the National Parks and Wildlife Service and obtain any necessary approvals to continue the work. The Applicant shall comply with any request made by the NPWS to cease work for the purposes of archaeological recording.

## **PART E—PRIOR TO SUBDIVISION**

### ***Drainage Works***

#### ***E1 Drainage Works to be Completed***

All on-site drainage works are to be completed as part of stage 1 and in accordance with Drainage Design File number 94.029 prepared by Rennie Golledge Pty Ltd and dated 28 January 2005. Connection to Council's drainage system at Swan Bay Road is to be carried out to Council's specifications and to the satisfaction of Council.

### ***Drainage Easement***

#### ***E2 Drainage***

Documentary easements for drainage must be created over the appropriate lots in the subdivision to provide for drainage as a consequence of the subdivision, and created pursuant to Section 88B of the *Conveyancing Act 1919*.

### ***Wastewater Treatment Easement***

#### ***E3 Effluent Disposal***

Documentary easements must be created over all lots in the subdivision to require that all on-site treatment and disposal of domestic effluent and wastewater must be in accordance with the Barker Harle Report, entitled On-Site Effluent Disposal Investigation Report, ref:HB Ref 3210 and dated 17 December 2004, and that there be no effluent disposal areas within 10 metres of existing tree trunks and that no trees are to be removed in the construction of these disposal areas and such to be created pursuant to Section 88B of the *Conveyancing Act 1919*.

Note: Council shall be nominated on the Restriction as to user as the sole party to vary, modify or extinguish the Section 88B Instrument.

**PART F—PRIOR TO OCCUPATION OR COMMENCEMENT OF USE*****F1 Road Damage***

The cost of repairing any damage caused to Council or other Public Authority's assets in the vicinity of the subject site as a result of construction works associated with the approved development, is be met in full by the applicant/developer prior to the issue of an Subdivision Certificate.

***Easements******F2 Registration of Easements***

Prior to the issue of an Occupation Certificate, the applicant shall provide to the PCA evidence that all easements required by this consent, approvals, and any other consents have been or will be registered on the certificates of title.

## **PART G—GENERAL TERMS**

### ***NSW Rural Fire Service***

#### ***G1 Water Supply***

A tank with a capacity of 10 000 litres for the exclusive use for fire fighting purposes shall be provided for the existing dwelling. A 65mm storz fitting and ball or gate valve shall be installed in the tank.

#### ***G2 Future Development Application***

Any future development application lodged for this subdivision under Section 79BA of the EP & A Act 1979 will be subject to the requirements as set out in Planning for Bushfire Protection, 2001.

### ***Council***

#### ***G3 Driveway Construction***

No driveways are to be constructed as part of this consent. A separate application shall be made to Council for any proposed driveways.

#### ***G4 Swan Bay and Waterfront Roads***

All works including location of plant are to be located a minimum of 3m away from the vehicle travel paths on Swan Bay Road and Waterfront Road. If works are required within of these roads, a Roads Act Approval shall be obtained from Council.

#### ***G5 Road Reserve Works***

All drainage works within Council's road reserve shall be constructed and rehabilitated to Council's satisfaction **prior to linen release**.

#### ***G6 Road Reserve Notification***

Council's Subdivision Engineer shall be notified two days **prior to commencement of works** within any road reserves.

## **ADVISORY NOTES**

### ***AN1 Bushfire Protection***

The letter dated 4 July 2005, issued by the NSW Rural Fire Service is deemed to be a Bush Fire Safety Authority subject to compliance with Condition G1 and G2 of this Determination.

### ***AN2 Compliance Certificate, Water Supply Authority Act, 2000***

Prior to issuing a subdivision certificate, a Compliance Certificate shall be provided to the consent authority showing that the development has met with the detailed requirements of the relevant water supply authority for the region that the subject site is located within.

The developer shall obtain the Compliance Certificate from the relevant local water supply authority and produce this to the satisfaction of:

- (1) the certifying authority before release of the Construction Certificate,
- (2) the consent authority before the release of the subdivision certificate, and
- (3) the principal certifying authority prior to occupation.

### ***AN3 Requirements of Public Authorities for Connection to Services***

The applicant shall comply with the requirements of any public authorities (e.g. Energy Australia, Telstra Australia, AGL, etc) in regard to the connection to, relocation and/or adjustment of the services affected by the construction of the proposed structure. 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 the PCA prior to the issue of the Construction Certificate.

- (1) For special operations including the delivery of materials, hoisting of plant and equipment and erection and dismantling of on site tower cranes which warrant the on street use of mobile cranes, permits must be obtained from Council:
  - (a) at least 48 hours prior to the works for partial road closures which, in the opinion of Council will create minimal traffic disruptions, and
  - (b) at least 4 weeks prior to the works for full road closures and partial road closures which, in the opinion of Council, will create significant traffic disruptions.
- (2) The use of mobile cranes must comply with the approved hours of construction and shall not be delivered to the site prior to 7.30am without the prior approval of Council.

### ***AN4 Movement of Trucks Transporting Waste Material***

The applicant shall notify the Roads and Traffic Authority's Traffic Management Centre (TMC) of the truck route(s) to be followed by trucks transporting waste material from the site, prior to the commencement of the removal of any waste material from the site.

**AN5    Excavation – Aboriginal Relics**

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

**AN6    Application under Part 4A of the Act**

An application under Part 4A of the Act shall be submitted in accordance with Section 109D (1) (d) of the Act along with a plan of subdivision prepared by a registered surveyor, for certification prior to the issue of the Subdivision Certificate.

**AN7    Other Details Required prior to Issue of Subdivision Certificate**

The applicant shall submit to the satisfaction of the consent authority or the council, the following information, prior to the issue of the Subdivision Certificate:

- (1) Documentary evidence of the payment of the open space/ community facility/ transport and access contribution(s),
- (2) An Occupation Certificate, and
- (3) Documentary evidence that the property has been developed in accordance with plans approved by Development Application No. 64-3-2005 and of compliance (or a Compliance Certificate) with the conditions of that consent.

**AN8    Street Numbering**

Street numbers will need to be clearly displayed at either end of the ground level frontages in accordance with Council's Policy, prior to the occupation of the building(s) or commencement of the use.

If street numbers or a change to street numbers is required, a separate application shall be made to Council.

**AN9    Stormwater drainage works or effluent systems**

*A construction certificate for works that involve any of the following:*

- (1) water supply, sewerage and stormwater drainage work
- (2) management of waste

as defined by Section 68 of the Local Government Act, 1993 will not be issued until prior separate approval to do so has been granted by Council under Section 68 of that Act. Applications for these works must be submitted on Council's standard Section 68 application form accompanied by the required attachments and the prescribed fees.