



NSW GOVERNMENT
Department of Planning

**RESIDENTIAL SUBDIVISION
(LOT 124 DP 1097510) AND
ANCILLARY WORKS (LOT 22 DP 1071657)
BELLE O'CONNOR STREET
SOUTH WEST ROCKS**

**Proposed by ENVIRONMENTAL
RESOURCES MANAGEMENT AUSTRALIA
on behalf of WB & ME WALLS**

Director-General's Environmental Assessment
Report
Section 75I of the
Environmental Planning and Assessment Act 1979

May 2007



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May 2007

1 EXECUTIVE SUMMARY

Environmental Resources Management Australia on behalf of ME and WB Walls (the Proponent) is proposing to subdivide Lot 124 DP 1097510 at Belle O'Connor Street, South West Rocks into 108 residential lots in 6 stages. Ancillary works including stormwater management measures and establishment of asset protection zones are proposed on Lot 22 DP 1071657 which is directly east of the subject site and in the same ownership. The proposed subdivision will incorporate reticulated sewerage and on-site water retention and treatment which will contribute to future compliance with BASIX when houses are built.

The site is approximately 30 ha and is zoned predominantly Residential 2(a) and 7(d) Scenic Protection. Along the eastern boundary of the site there are 2 strips of land zoned 6(a) Open Space, divided by a strip of land zoned 1(d) Rural (Investigation). This zoning anomaly is currently the subject of a draft LEP which is at section 69 stage. A zoning map is at Figure 6.

Although subdivision is not permissible on the 6(a) Open Space and 1(d) Rural zones, the proposal is partly permissible due to the majority of the proposed subdivision occurring on the area zoned Residential 2(a). As such, under section 75J(3)(b), it is considered in the interest of orderly development to allow the proposal to proceed, however, with the restriction that subdivision certificates can not be issued for the lots that are not appropriately zoned. The intention therefore is to ensure that the zoning is formalised prior to any lots being purchased for dwelling houses.

This proposal is the second stage of a three stage subdivision of a larger site. The first stage, being a 23 lot residential subdivision was approved by Kempsey Shire Council in 2004. Works such as road construction and water reticulation have already occurred. In addition, the Minister for Planning approved a master plan for this site in March 2006 and the current proposal is consistent with the master plan.

The estimated project cost of the development is \$3,240,000 and it will create 25 full time equivalent construction jobs and 5 full time equivalent operational jobs in ongoing management roles associated with the future development of the site.

During the exhibition period, the Department received 24 submissions, being 6 from public authorities and 18 from the public. All public submissions objected to the development. The key issues raised comprise:

- provision of public open space
- section 94 contributions
- water quality and stormwater management
- removal of trees (including hollow-bearing trees) and buffers around hollow-bearing trees
- bushfire protection

The merits of the project have been assessed and all statutory obligations have been met. The impacts of the proposed development have been resolved following negotiations between the Proponent, the Department and relevant agencies, and addressed via the recommended conditions of approval and the Proponent's Statement of Commitments. It is considered that any impacts can be suitably mitigated to ensure a satisfactory level of environmental performance. As such, the site is considered suitable for the proposed development and it is expected that the project will provide environmental, social and economic benefits to the region. It is recommended that the proposed subdivision be approved, subject to the recommended conditions of approval.

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2 BACKGROUND

2 The Site

2.1 Site context and location

The site is located within South West Rocks, which is approximately 430 kilometres north of Sydney on the New South Wales coast in the Kempsey local government area. South West Rocks is physically constrained by the Pacific Ocean to the north, Hat Head National Park to the east, Spencers Creek and wetlands to the south and the Macleay River to the west.

The site is situated south east of the township of South West Rocks and is accessed from Belle O'Connor Street via Gregory Street, which provides direct access to the town centre. Belle O'Connor Street has been partly constructed to service an existing subdivision containing 23 lots that was approved by Council in 2004.

South West Rocks golf course is located to the north west of the site, with rural and rural residential properties to the north west, east and south east. The land directly to the north of the site is zoned 1(c) Rural (Small Holdings), and is currently the subject of a draft local environmental study (LES) to rezone it for residential purposes. The LES notes the potential for development of this land to include a collector road link between Phillip Drive located to the north, and Belle O'Connor Street, to maintain connectivity between the road networks.

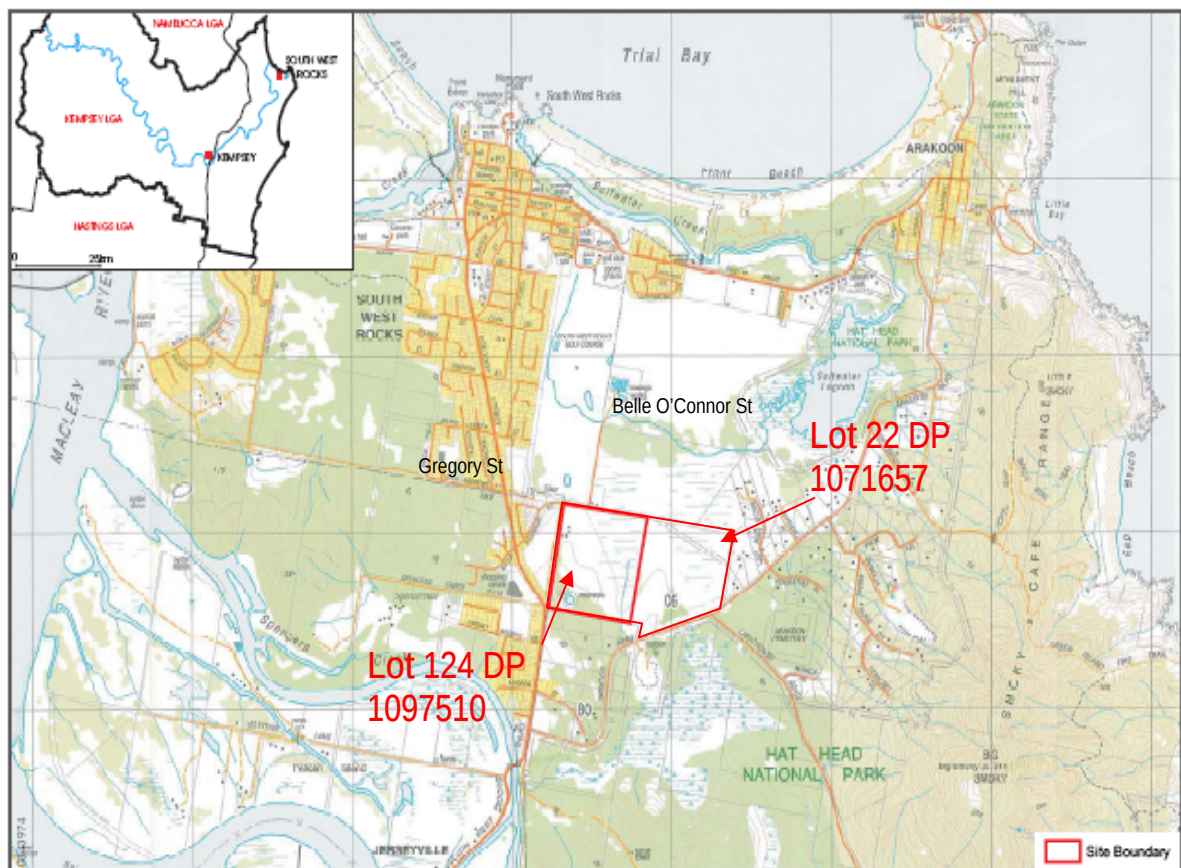


Figure 1. Site location

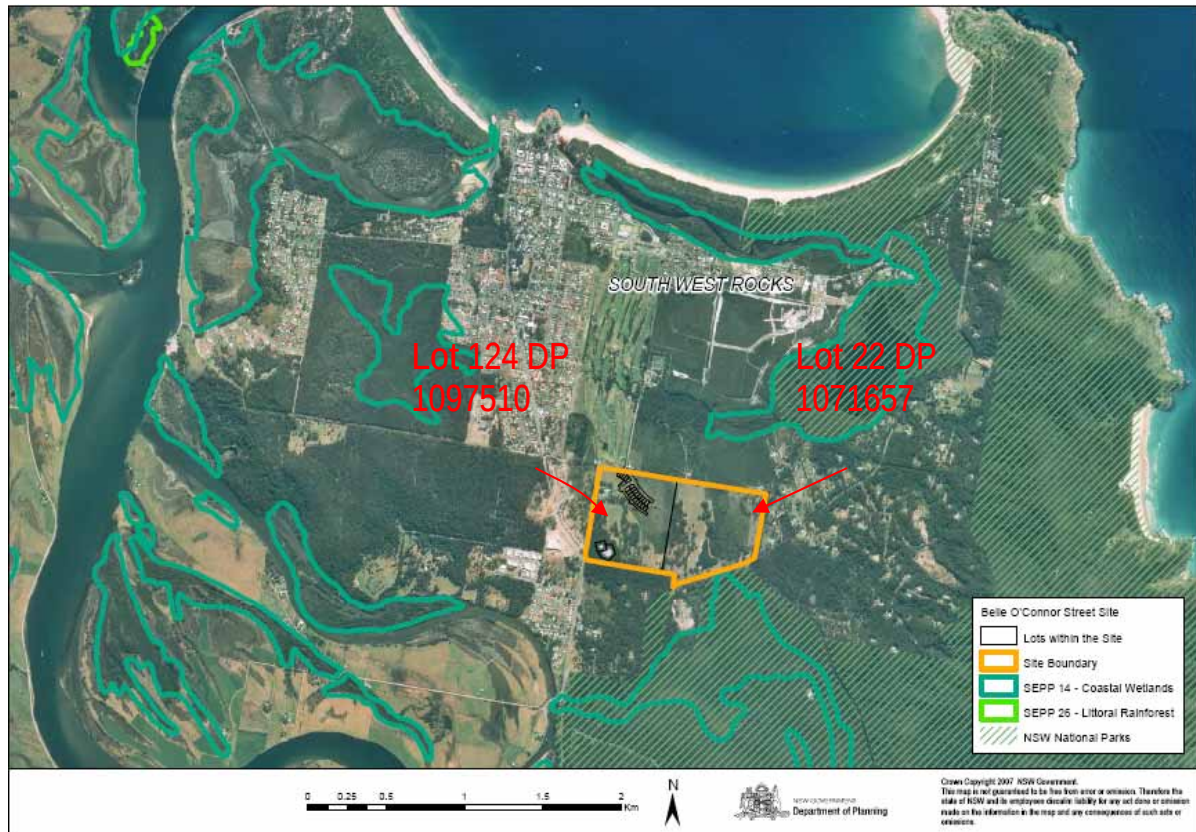


Figure 2. Site in relation to significant land features (Lot 124 is located to the west and Lot 22 to the east)

2.2 Existing site features

The site is characterised by vegetated upper slopes in the south west of the site (Group 1 forest vegetation) which is zoned 7(d) Environmental Protection and low-lying areas in the north that link to the wetland areas of the Saltwater Lagoon / Creek catchment. Although the vegetated area in the south west corner is fairly steep, the remainder of the site is reasonably flat.

Two disused water reservoirs owned by Council are located on the vegetated upper slopes on separate allotments within lot 124 (Lot 1 DP 560726 and Lot 1 DP 645213). This vegetated part of the site links to Hat Head National Park and wetlands classified under *State Environmental Planning Policy No. 14 – Coastal Wetlands* (SEPP 14), to the south and east of the site.

The site has previously been used for grazing and is therefore predominantly cleared of native vegetation. Some scattered mature eucalypts however exists on the site, including a large stand of trees in the southern-central part of the site.

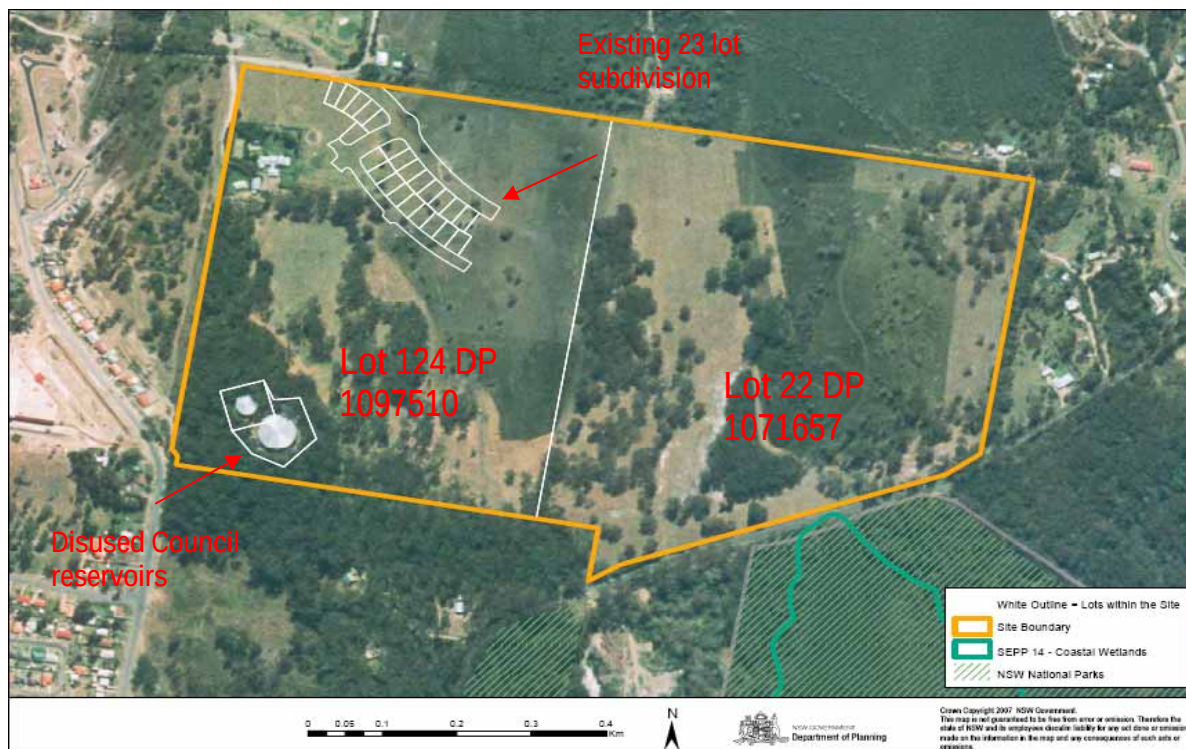


Figure 3. Lot 124 DP 1097510 and Lot 22 DP 1071657, Belle O'Connor Street

3 PROPOSED DEVELOPMENT

3.1 The proposed development

The application seeks approval for the following:

- subdivision into 108 residential lots with a minimum lot size of 680m² and average of 739m², to be constructed in 6 stages;
- a stormwater detention basin on an adjacent lot;
- an internal public road network to service the subdivision with access to Belle O'Connor Street;
- construction of physical infrastructure and services;
- water sensitive urban design measures;
- a stormwater management system including a detention basin in the north east of the site;
- removal of 57% of trees from the site;
- landscaping of proposed public spaces; and
- landfill of parts of the site to a maximum of 1.7 metres.

Ancillary works in the adjacent Lot 22 DP 1071657:

- construction of a bushfire access perimeter and an asset protection zone;
- a grassed swale within a proposed easement as part of the stormwater quality system;
- a secondary unsealed access road to Arakoon Road for use during construction and to provide emergency bushfire access to the site;
- landfill generally to 0.5m and to a maximum of 1.5m at the northern end, and the associated removal of trees.

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Figure 4. Land to which the subject application applies and proposed staging

3.1.1 Staging of Development

The proposed stages for subdivision and associated infrastructure works are:

Stage 1 – Part Precinct B: Lots 301, 328, 329, 330 and 331 – Rosedale Avenue;

Stage 2 - Precinct A1: Lots 201- 204, 207-215;

Stage 3 – Remainder Precinct B: All other lots in Precinct B, except for those identified above.

Stage 4 - Precinct C1: Lots 421 to 435;

Stage 5 - Precinct D: Lots 501 to 519;

Stage 6 – Precincts A2 and C2 (subject to rezoning being gazetted): Lots 205-206, 216-225 (Precinct A2) and Lots 401- 409 and 412-420 (Precinct C2).

3.1.2 Road works

The proposed internal road network involves the extension of Belle O'Connor Street with a series of through roads linking to a perimeter road, as shown on Figure 5. The design of the network provides for future bus routes along with designated pedestrian pathways and provision for cyclists. Additionally, a T-intersection will be created between Belle O'Connor Street and the existing access road to the north (leading to the sewage treatment plant). All roads are proposed to be dedicated to Council.

It is proposed that a temporary access road be created from Arakoon Road for use during the construction phase which will continue to provide for emergency vehicular access following occupation of the site.

3.1.3 Stormwater Management

Stormwater management measures for the subject proposal have been designed to maintain pre-development flows exiting from the site, and achieve a high level of nutrient removal via on-site treatment methods. Measures proposed to achieve this include:

- buffer strips
- road median swales
- gross pollutant traps
- infiltration structures, and
- a wet detention basin.

The wet detention basin is located immediately upstream of the existing discharge point in the north eastern corner of the site. The basin will have a permanent water level of RL 3.5 with a maximum height of RL 5.02 in a 1:100 year flood event. The pond has a low level outlet comprising four 750mm diameter pipes and a high-level overflow weir for major storm events.

3.1.4 Integrated Water Cycle Management Strategy (IWCMS)

The proposal seeks to implement Kempsey Shire Council's IWCMS and includes a water recycling scheme (Stage 1a of the development which was approved by Council included a dual reticulation scheme incorporating potable and recycled water mains which are currently in place).

The subdivision will accommodate re-use distribution mains which will allow the flow of recycled water from the South West Rocks Sewage Treatment Plant into the existing disused Council reservoir located on the site. This will facilitate the distribution of recycled water into other parts of South West Rocks, including existing sporting grounds and future residential areas.

The benefits of the water reuse scheme include:

- a reduction in the nutrient-laden loads from the South West Rocks Sewerage Treatment Works for disposal into the sandhills along the coast;
- a reduced demand for non-potable water supply;
- reduced pressure on groundwater sources from which water extraction currently takes place; and
- promoting awareness of the water cycle via the dissemination of educational material to residents.

3.1.5 Bushfire Protection

The site is surrounded by heath land to the north, forested land on the ridgeline to the south, and woodlands to the east. The subdivision design incorporates asset protection zones (APZs) to manage potential bushfire hazards. Measures proposed include:

- a 25 metre inner protection zone to the north in the proposed open space area within the site;
- a 20 metre APZ to the south, partly contained within the Burrawong Drive Road reserve;
- a 30 metre APZ to the east, comprising a 20 metre inner protection zone. This is to be within the 25 metre cleared bushfire and stormwater easement located on the adjacent Lot 22. A 5 metre building setback from the eastern boundary of lots 218-225 and 410-409 is also required.

Other proposed measures include:

- perimeter roads along the hazard interfaces;
- establishment of a perimeter trail along the eastern side of proposed lots 218-225 and 410-409;
- availability of an alternate access road as an emergency access point to Arakoon Road;
- provision of fire-fighting water supply points as required by Planning for Bushfire Protection 2001.

3.1.6 Filling

The north eastern corner of the site is generally below about RL 5.0 and is low lying wetland. Geotechnical analysis of the soils in this location identified sand and clayey sands. It is proposed that these sands be removed during construction to improve the drainage properties of the low lying areas of the site.

The south eastern corner of the site comprises an organic topsoil layer of around 200mm to 300mm overlying residual silty clay.

The remainder of the site is higher and therefore has a better ability to drain. This area is typically comprised of topsoil to depths of around 200mm to 300mm overlying orange/brown residual sandy clay. Significant filling of up to 1.7m is proposed for the lower sections of the site. Filling within the proposed easement on Lot 22 will necessitate the removal of 7 trees.

3.2 Project Amendments

The project application was amended as follows:

8 December 2006

- 1) staging of the subdivision was altered in response to re-zoning requirements;
- 2) an additional hollow-bearing trees proposed to be retained, bringing the total number of hollow-bearing trees to be retained on site to 12 out of a total of 37 existing hollow-bearing trees;
- 3) the Statement of Commitments was amended to address the management of hollow-bearing trees during construction, timing of the defects liability period to align with Council's requirements and to achieve compliance with Planning for Bushfire Protection guidelines (2001).

16 March 2007

- 1) deletion of public open space as Council would not accept the proposed dedication (see further discussion in section 6.1). This amendment resulted in the reconfiguration of lots and subsequent lot sizes.

16 April 2007

- 1) the boundaries of the Precincts (and therefore staging of the development) was amended to ensure consistency with the existing zoning pattern in the eastern part of area to be subdivided.

3.3 Project Chronology

- 06/09/05 – request for clause 6 opinion lodged with the Department
- 08/11/05 – Director-General, as delegate for the Minister formed the opinion that the proposal is a Project and that Part 3A of the Act applies
- 23/03/06 – Preliminary Assessment lodged with the Department
- 02/05/06 – Director-General's Environmental Assessment Requirements (DGRs) signed by the Director-General's Delegate and provided to the proponent.

- 18/08/06 – Environmental Assessment lodged with the Department. EA deemed adequate for exhibition purposes.
- 13/09/06-13/10/06 – EA placed on public exhibition
- 03/11/06 – Summary of submissions provided to proponent and issues from the Department
- 09/11/06 – Meeting with Proponent to discuss issues raised by Department
- 08/12/06 – Proponent's response to issues raised in public submissions submitted to the Department
- 19/12/06 – Proponent advised that response to submissions is satisfactory to allow for an environmental assessment by the Department.
- 16/01/07 – Comments on the Proponent's response to submissions received from Council and DEC, requiring clarification on a number of issues.
- 06/02/07 – Habitat assessment on 7(d) zoned land submitted to Department.
- 14/02/07 – Engineering details on original pathway submitted.
- 15/02/07 – Proponent submitted justification for the proposed open space areas and their dedication to Council.
- 19/02/07 – Proponent's submission of 15/02/07 forwarded to Council for review and comment along with a request by the Department for Council to advise on its position to accept ownership and maintenance of proposed open space areas, and the application of any relevant Section 94 contributions.
- 16/03/07 – Proponent amended application by removing the open space components and amending the development.
- 12/04/07 – Proponent provided details on the proposed staging of the subdivision and infrastructure works.
- 16/04/07 – Proponent amended Project Plan to align staging of development with current zone boundaries.

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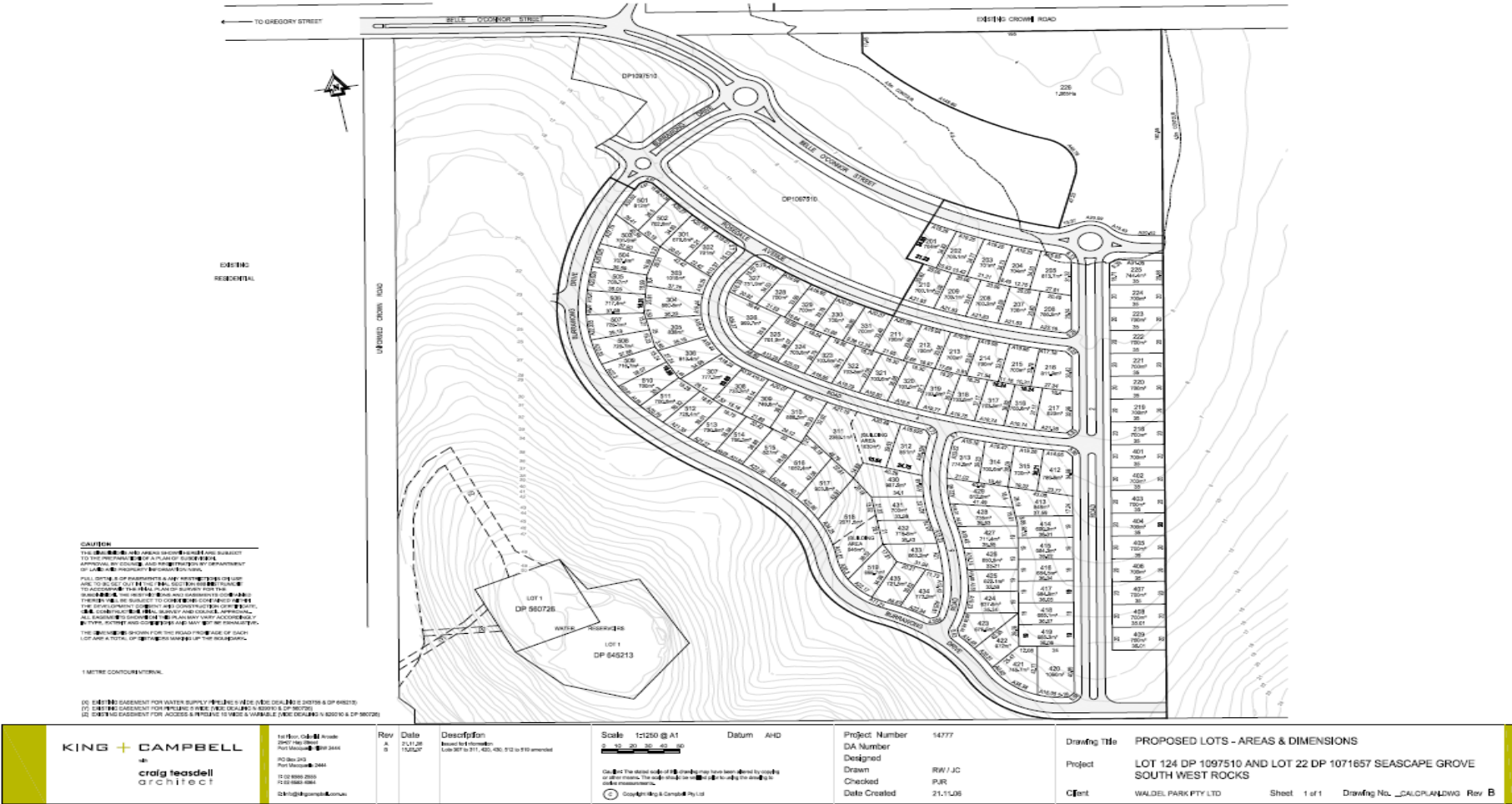


Figure 5. Proposed areas and dimensions of lots (enlarged plan shown at Tag B)

4 STATUTORY CONTEXT

4.1 Major Project Declaration

The project was declared to be a Major Project pursuant to Part 3A of Act by the Director-General on 8 November 2006, being the subdivision of land in a residential zone into more than 25 lots, in the coastal zone (Schedule 2, Clause 1(1)(i) under *State Environmental Planning Policy (Major Projects) 2005* (MP SEPP).

4.2 Permissibility

Under Kempsey LEP 1987, the site is zoned predominantly Residential 2(a) and 7(d) Scenic Protection. Along the eastern boundary of the site there are 2 strips of land zoned 6(a) Open Space, divided by a strip of land zoned 1(d) Rural (Investigation). This zoning anomaly is currently the subject of a draft LEP which is at section 69 stage.

Although subdivision is not permissible on the 6(a) Open Space and 1(d) Rural zones, the proposal is partly permissible due to the majority of the proposed subdivision occurring on the area zoned Residential 2(a). As such, under section 75J(3)(b), it is considered in the interest of orderly development to allow the proposal to proceed, however, with the restriction that subdivision certificates can not be issued for the lots that are not appropriately zoned. The intention therefore is to ensure that the zoning is formalised prior to any lots being purchased for dwelling houses.

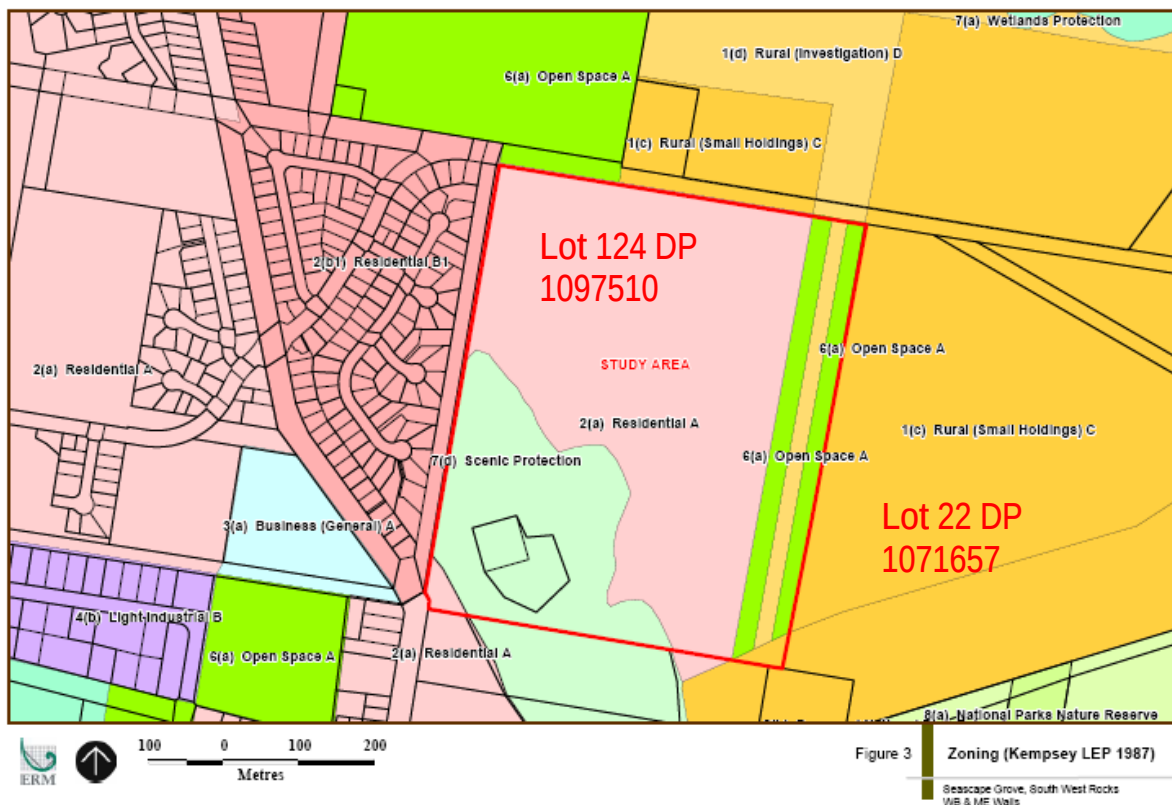


Figure 6. Current zonings

The south western part of the site is zoned 7(d) Scenic Protection. With the exception of part of a road, some clearing of landscaping and drainage works, no other works are proposed within this zone. Roads and utility installations (other than gas holders or generating works) are permitted with consent in the 7(d) Scenic Protection zone.

An overlay of the eastern portion of the site with the proposal is shown below:

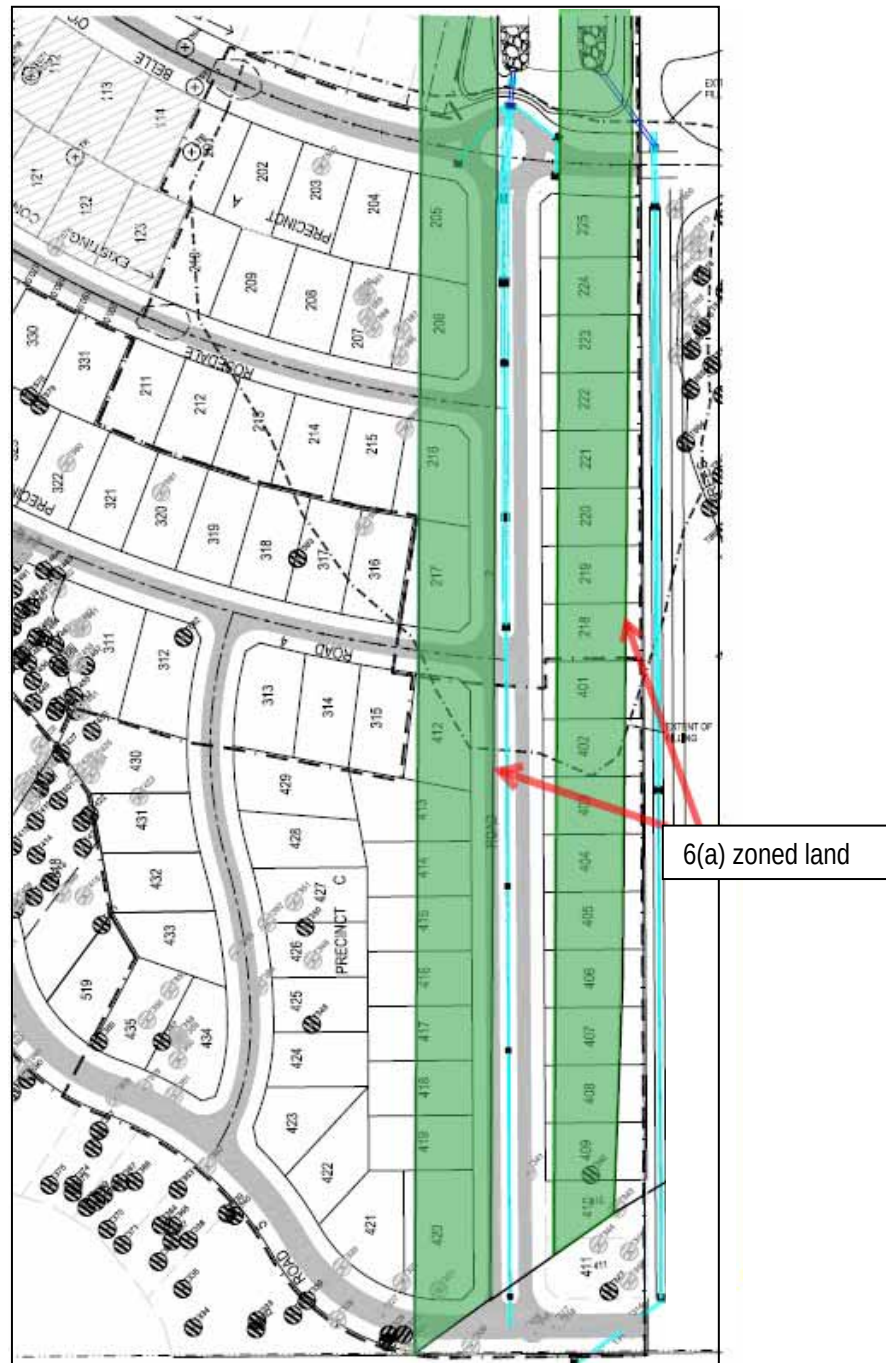


Figure 7. Overlay of existing zoning with development

The adjacent lot, Lot 22, is zoned 1(c) Rural (Small Holdings) C and the proposed ancillary works described in Section 3 of this report are permissible with consent in this zone.

4.3 Minister's Power to Approve

The Department has exhibited the Environmental Assessment (EA) in accordance with section 75H (3) of the *Environmental Planning and Assessment Act, 1979*, as described in Section 5 below. The project is predominantly permissible and meets the requirements of the MP SEPP.

Section 75I(2) sets out the scope of the Director General's report to the Minister. Each of the criteria set out therein have been addressed below, as follows:

(a) a copy of the proponent's environmental assessment and any preferred project report; and

The proponent's EA is included at Tag F.

(b) any advice provided by public authorities on the project; and

All advice provided by public authorities on the project for the Minister's consideration is set out at Appendix C.

(c) a copy of any report of a panel constituted under Section 75G in respect of the project; and

No independent hearing and assessment panel was undertaken in respect of this project.

(d) a copy of or reference to the provisions of any State Environmental Planning Policy (SEPP) that substantially govern the carrying out of the project; and

An assessment of each relevant SEPP is set in Appendix B.

(e) except in the case of a critical infrastructure project – a copy of or reference to the provisions of any environmental planning instrument that would (but for this Part) substantially govern the carrying out of the project and that have been taken into consideration in the environmental assessment of the project under this Division; and

An assessment of the development relative to the prevailing EPI's is provided in Appendix B.

(f) any environmental assessment undertaken by the Director General or other matter the Director General considers appropriate.

The environmental assessment of the project is this report in its entirety.

(g) a statement relating to compliance with the environmental assessment requirements under this Division with respect to the project.

The environmental assessment requirements under this Division are at Appendix A.

The Department is satisfied that the requirements have been complied with.

The Department has met its legal obligations and the Minister has the power to determine this project.

4.4 Environmental Assessment

The EA for the proposal was prepared by Environmental Resources Management Australia on behalf of the Proponent and was lodged with the Department on 18 August 2006. It addressed the DGRs and contained an assessment of key impacts, some of which were supported by specialist reports and plans as follows:

- ecological assessment
- tree retention
- landscaping
- water quality and hydrology
- stormwater management
- flooding
- bushfire hazards
- traffic impact assessment
- Aboriginal heritage
- utilities and servicing

4.5 Environmental Planning Instruments (EPIs)

There are no EPIs that apply to the proposal that substantially govern the carrying out of the development with the exception of State Environmental Planning Policy No. 71 – Coastal Protection and Kempsey Local Environmental Plan 1987.

The proposal is compliant with the provisions of SEPP 71 as seen in Appendix B.

Under the Kempsey Local Environmental Plan 1987, the site is zoned predominantly Residential 2(a) and 7(d) Scenic Protection. Along the eastern boundary of the site there are 2 strips of land zoned 6(a) Open Space, divided by a strip of land zoned 1(d) Rural (Investigation). As discussed in Section 4.2, this zoning anomaly is currently the subject of a draft LEP which is at section 69 stage.

4.6 Approved development consents

4.6.1 Master Plan

On 20 March 2006, a master plan was adopted by the Minister for Planning for the subject site (MP 38-09-2004). The Master Plan approved drawing "Residential Master Plan, Waldel Park, South West Rocks" relating to Stage 1(b), being the stage subject to this major project application (refer to tag D). The Master Plan set out that future land subdivision, infrastructure provision and residential development were subject to separate approval.

The Master Plan required the following matters to be addressed in all future applications:

- (a) a **Water Management Plan** to demonstrate the ability of the proposed stormwater measures to achieve the identified objectives and requirements for water quality and stormwater runoff in relation to Saltwater Creek and Lagoon;
- (b) the provision of **asset protection zones** wholly within the proposed residential allotments, as well as a **Bush Fire Safety Authority**;
- (c) the provision of **road infrastructure** in accordance with the requirements of the Regional Advisory Committee of the RTA, as detailed in its letter dated 16 August 2005;
- (d) a **visual impact assessment** in the form of photomontages; specific limits on roof colour;
- (e) **pedestrian and cycleway infrastructure**;
- (f) details of the **proposed integrated housing precincts** to demonstrate the appropriateness of the design in regard to residential amenity, urban design, parking and traffic management, private open space provision and privacy;
- (g) details of the **staging** of the development;
- (h) details regarding the gazettal of the **draft LEP** covering the strips of 6(a) Open Space and 1(d) Rural within the site;
- (i) details regarding the **heritage value** of any building either being retained or removed, and measures to be implemented to address any issues regarding heritage significance or value.

Points (d), (f) and (i) have not been considered in the current application for the following reasons:

- in relation to the requirements of point (d) for a visual impact assessment and specific limits on roof colour, built form was not proposed with the Major Project Application; it was considered that future residential development on the site would be required to comply with existing development controls including reducing visual impacts (eg. roof colour);
- in relation to the requirements of point (f), the integrated housing precinct is not part of the subject application and will be subject to separate future approval; land subject to this component will form part of the proposed residue lot proposed by this application;
- in relation to point (i), the subject application will not necessitate the removal of any buildings on the site; the existing dwelling on the site is separated from the proposed subdivision and is located within the north west part of the site.

All other requirements of the Master Plan have been addressed in the subject application.

4.6.2 Stage 1a – 23 lot residential subdivision

On 15 February 2004 Kempsey Shire Council approved a 23 lot residential subdivision (Stage 1a – Council reference DA T6-03-593) directly to the north of the proposed subdivision (Stage 1b). The construction of Belle O'Connor Street was approved to the extent of that subdivision. Council's consent also incorporated a dual reticulation scheme including potable and recycled water mains.

Council modified the application pursuant to Section 96 of the Act on 4 August 2004 permitting an extension of Belle O'Connor Street, minor amendments to lot layouts and the implementation of a bushfire asset protection zone.

5 CONSULTATION AND ISSUES RAISED

5.1 Public Exhibition

The major project application was exhibited from 13 September 2006 for 30 days and was published in the Kempsey Mid-Coast Observer. The EA was made available to the public in the Department's Information Centre and at Kempsey Shire Council.

During the exhibition period, the Department received 24 submissions, being 6 from public authorities and 18 from the public. All public submissions objected to the development.

5.2 Submissions From State and Local Government

Submissions were received from Kempsey Shire Council and five State government agencies:

- Kempsey Shire Council – raised a series of concerns relating to the following issues; subdivision layout, staging and zoning; ecological assessment of land zoned 7(d); flooding; wet retention basin; section 94 contributions; dedication of open space; development adjacent to the coast; covenants; road and access; applicable DCPs; drainage and service; and the Statement of Commitments.
These issues, with the exception of Section 94 contributions (described in Section 6.2 of this report), have been resolved and are detailed at Appendix C.
- Department of Environment and Conservation (DEC) - does not object to the proposal, subject to the provision of retention of hollow bearing trees and maintenance of a buffer zone around each tree and asset protection zones being contained within the boundary of each lot.
- Department of Natural Resources (DNR) – does not object to the proposal, subject to all imported materials for filling and road construction to be free from any contamination; erosion and sediment control measures to be in place during construction, until site establishment; no operations being undertaken outside the subject area; all proposed works and operational management being in accordance with consent conditions; downstream areas of the drainage line disturbed by construction being restored and stabilised to minimise future erosion (appropriate scour protection is to be established at this location); and storage of equipment, fuels and chemicals is to be away from drainage lines and be self contained so as to avoid contamination of local streams.
- Rural Fire Service (RFS) – does not object to the proposal subject to specific issues being addressed to enable the issue of a Bush Fire Safety Authority under Section 100B of the Rural Fires Act 1997; the recommendations detailed in the Bushfire Assessment prepared by ERM Pty Ltd dated August 2006 should be considered; an easement over adjoining land to the east is to occur in order for maintenance of the asset protection zones to be secured to the title of the subject property, eliminating reliance on other parties for construction or maintenance works.
While a Bush Fire Safety Authority pursuant to Section 100B of the *Rural Fires Act* 1997 is not required for Major Project applications under Part 3A of the Act, the proposal is deemed to comply with the bushfire protection measures of the NSW Rural Fire Service, as described in Section 6 of this report.
- Roads and Traffic Authority (RTA) – did not object or raise issues relating to the proposal as the subdivision is located on local roads which are owned and maintained by Council.
- Dam Safety Authority – did not object to the proposal. The proposal was referred to the NSW Dam Safety Committee in order to determine if the detention basin should be prescribed. The NSW Dam Safety Committee has a statutory responsibility under the Dams Safety Act 1978 to ensure the safety of all dams, including prescribed dams. A dam is prescribed under the Dams Safety Act 1978 based on its size and Consequence Category (ie. potential for loss of life, destruction of property, and adverse effects on the community and environment in the event of dam failure).
In its review of the proposal, the Dam Safety Committee concluded that the Consequence Category is Low as the embankment is of low height and the storage capacity is small. The Committee had no further

requirements for this detention basin unless there is future development downstream which would upgrade the Consequence Category. Future applications downstream may require consideration of the detention basin and possible referral to the Dam Safety Authority.

5.3 Public Submissions

The following table identifies issues raised in public submissions, and where they are considered in this report:

Issue	Where addressed in this Report
Lack of assessment of ecological values	s 6.4 and Appendix C
Impacts on threatened fauna and wildlife corridors on adjacent land	s 6.4 and Appendix C
Impacts on Saltwater Creek and Lagoon	s 6.3 and Appendix C
Stormwater management	s 6.3 and Appendix C
Staging of the development	Appendix C
Heritage	s 6.8 and Appendix C
Road access to the north	s 6.7 and Appendix C
Inconsistencies with existing Council strategies	Appendix B
Incremental development in South West Rocks	Appendix C
Classification of South West Rocks under the Coastal Design Guidelines	s 6.6 and Appendix C

A summary of all submissions received can be found in Appendix C.

6 ASSESSMENT OF ENVIRONMENTAL IMPACTS

Key issues raised in the Department's assessment and/or in response to issues raised in submissions include:

- provision of public open space
- section 94 contributions
- water quality and stormwater management
- flora and fauna – removal of trees (including hollow-bearing trees) and buffers around hollow-bearing trees
- bushfire protection
- road access
- heritage
- ecologically sustainable development

6.1 Provision of Public Open Space

The initial proposal included two parcels of land which were proposed to be used for open space and dedicated to Council for care and control. These areas included:

- Precinct A reserve - a 2 hectare area dedicated to on-site stormwater treatment and detention, with some areas for passive recreation; and
- Precinct B reserve - a 3,755m² urban park on the mid-slope of the site containing many mature trees.

The urban park was nominated in order to protect a mature stand of trees, and included a pedestrian pathway linking Burrawong Drive to proposed Road 4.

Council refused to accept these dedications of open space as it questioned whether the area was useable and also raised concerns with the ongoing maintenance requirements. As such, the proposal was amended to delete the open space components as follows:

Precinct A reserve:

The originally proposed public reserve in this Precinct adjacent to the stormwater detention basin has been amended to be a dedicated drainage reserve. Edge planting of 15-20 metres is proposed to the urban interface to provide a physical barrier to the permanent water and will not exceed 4% grade or normal footpath cross falls. The full extent of the dedicated drainage area will be fenced with a lockable gate for maintenance purposes being located adjacent to Belle O'Connor Street to allow for vehicular access. All pedestrian links will be located outside of the perimeter fence. A recommended condition of consent requires the specific design details to be submitted to the Certifying Authority prior to issue of a Construction Certificate for the subdivision works.

Precinct B reserve:

This area of treed land is on a steeply sloping part of the site that the proponent identified as being suitable for open space (and not housing). The original proposal included a pathway through the existing stand of trees to link Burrawong Drive to Road 4 for improvement of pedestrian access throughout the subdivision. As Council has not agreed to accept this area, the land has been divided into 2 proposed lots (Lots 311 and 518), with appropriate title restrictions to prevent the removal of vegetation without Council consent.

The Department considers this outcome acceptable as the stand of mature trees will remain protected and some pedestrian access will still be maintained around the drainage area.

6.2 Section 94 Contributions

Contributions will be levied on the development for water supply and sewerage headworks, outdoor recreation (pursuant to Council's Section 94 Plan for Outdoor Recreation) and towards upgrading Belle O'Connor Street for each additional building entitlement created. These are addressed in the recommended conditions of approval being \$2,006 per additional allotment (total \$214,642).

Council also requested payment of contributions pursuant to its Section 94 Rural Roads Developer Contribution Plan (Rural Roads DCP) for the subject development. This DCP specifically applies to rural-residential

development within the Kempsey Shire, not residential development. Notwithstanding that the contribution Plan does not apply to the subject site, Council requested that contributions be levied based on the use of rural roads by construction traffic and the haulage of a significant amount of fill to the site, which may cause the degradation of such roads.

While the Department agrees that it may be appropriate to levy contributions for the maintenance of roads used for construction purposes, Council was not able to demonstrate that there was a direct nexus between the development and the need for a monetary contribution for road improvement. Further, Council was unable to quantify the amount of contribution sought. However, a condition of approval is recommended (and was sought by Council) requiring the Proponent to restore, replace and/or reconstruct any damage caused to road pavement surfaces or street furniture along the haulage route/s used for the construction of the subdivision, at any stage of the works, until all works associated with the approval are completed.

Council also requested, in its submission dated 20 November 2006 (in response to public exhibition of the application) that the Proponent consider entering into a voluntary planning agreement (VPA) to obtain contributions for the following purposes:

- carry out work directly identified in table ES1 items F, P and U of the Saltwater Creek EMP (described in section 5.3, below), and
- upgrading of Plummers Lane and Gregory Street from the Pacific Highway to Belle O'Connor St and Gregory St roundabout.

It is noted that Council did not raise the need for a VPA in its response to the Director General's requirements and did not pursue it with the Proponent. The Department discussed the option with the Proponent, who advised that the substantial engineering work proposed will mitigate potential impacts on Saltwater Creek, therefore addressing the matters contained in the Saltwater Creek EMP. The Department considers the works proposed will be satisfactory to minimise any impact on Saltwater Creek and therefore achieve the objectives of the EMP.

With regard to Council's request for contributions to facilitate the upgrade of road works, the Proponent is required to pay a contribution toward the upgrading of Belle O'Connor Street at a rate of \$1,351 per additional allotment via the conditions of approval. Council identified the need to also upgrade Plummers Lane and Gregory Street from the Pacific Highway to the intersection of Belle O'Connor Street and Gregory Street. This upgrade is not identified in a section 94 contributions plan. The Department had offered the Council the opportunity to provide justification for other contributions outside of its contributions plans, that the Minister may have been able to apply under section 94B(2) of the Act.

Council offered 3 options currently under investigation to upgrade Plummers Lane and Gregory Street as follows:

- Option A: \$1.2 million (0.35km including a 2 lane concrete bridge)
- Option B: \$5.8 million (2.9km including 3 lane RCBC relief culverts)
- Option C: \$3.7 million (3.1km including bank protection of the Macleay)

Council also advised that other upgrade works can be estimated at around \$1.2 million per kilometre; however, a more detailed feasibility study of the alignment options was recommended to confirm the above values.

The Department through correspondence with Council gave Council an opportunity to provide further details on the above in order to establish what would be a reasonable contribution for the subject development in terms of the nexus and the apportionment of the contribution for this development relative to the other subdivisions in the area. However, Council did not provide this information, on a rate per lot or similar. There is therefore not sufficient information to request the Minister to impose contributions for the road upgrade works pursuant to Section 94B(2).

6.3 Stormwater Management and Estuary Management Plan

Stormwater management measures for the subdivision comprise five main treatments, including buffer strips, median swales, gross pollutant traps, infiltration structures and a sediment pond. These measures have been designed to achieve a net reduction in pollutant loads leaving the site and therefore ensuring that pre-development flows (quantity and quality) are maintained throughout the life of the development.

It is a specific strategy in the Saltwater Creek Estuary Management Plan (EMP) to "*not place any additional stress on the existing natural environment of Saltwater Creek and Lagoon*". As the proposed stormwater system will ensure that the volume and quality of stormwater leaving the site remains at pre-development levels, it is considered that this strategy can be achieved.

The EMP also seeks to rehabilitate areas around the foreshores of the creek and lagoon which have become degraded through previous land clearing, weed invasion, fire, constructed drainage, inappropriate access and pool land management (Management Strategy Bio-2). Although the site is not directly adjacent to the foreshores of the creek, measures such as maintenance of fire buffers, use of native species in landscaping and weed mitigation is proposed to secure improved outcomes for the creek.

Council further sought that the Proponent implement three strategies in the EMP (via a VPA), being:

- *Strategy F: Investigate opportunities to establish wildlife corridors between SEPP 14 wetlands*
Actions derived from this strategy seek to explore the potential to link wetlands along wildlife corridors, and encourage re-vegetation of wildlife corridors on private lands through landholder incentives.

Comment: The site does not lie directly adjacent to an existing wildlife corridor that can provide links between SEPP 14 wetlands. Therefore, it does not provide an opportunity to achieve this objective.

- *Strategy P: Rehabilitate degraded habitats through revegetation, soil stabilisation, etc*
Actions specified for this action are aimed at undertaking rehabilitation of all land considered to be environmentally sensitive to the lagoon (ie. within 50m of the RL 3.0m AHD contour, or within RL 3.1m AHD contour.

Comment: The site contains low lying areas at approximately 3.8m AHD which is above the levels identified in Strategy P. Notwithstanding, it is considered that this strategy is met by the subdivision design through the mitigation of habitat degradation and the maintenance of pre-development flows and quality control.

- *Strategy U: Retrofit stormwater filtration devices and wetlands to manage runoff from adjacent urban areas.*
Actions seek to identify, assess and design a range of options for reducing urban runoff pollutants, including gross pollutant traps, wetlands and proprietary devices, taking into consideration site and environmental constraints, available funding, maintenance, etc. Stormwater management devices are to be installed in accordance with this strategy.

Comment: The proposal incorporates water sensitive urban design strategies such as buffer strips, median swales, gross pollutant traps, infiltration structures and a sediment pond which are designed to reduce impacts on downstream areas, including those adjacent to Saltwater Creek and Lagoon.

The Department is satisfied that the implementation of the proposed stormwater management measures will provide an adequate safeguard to any impacts on the downstream Saltwater Creek and Lagoon.

6.4 Flora and Fauna

Removal of trees, including hollow bearing trees

The vegetation on the site is characterised by the presence of Blackbutt (*Eucalyptus pilularis*), Red Bloodwood (*Corymbia gummifera*), Scribbly Gum (*E.racemosa*) and Needlebark Stringybark (*E.planchoniana*). There is a lack of shrub layer and the ground layer contains a low level of species diversity, most likely as a result of past grazing activities.

Broad-leaved Paperbark (*Melaleuca quinquenervia*) and one swamp Mahogany (*E. robusta*) is located in the low lying areas within the site and are identified as remnants of a previously occurring swamp ecosystem. Scribbly Gum with a grassy managed understorey is located on the adjacent site in the area of the proposed stormwater and asset protection works.

Generally the subdivision design seeks to maximise tree retention, with the ability of retention being addressed in terms of trees to be retained in the area to be subdivided and the area zoned 7(d) Scenic Protection.

In the area to be subdivided there is 179 mature trees, of which 77 (43%) are proposed to be retained. Most of these trees are on proposed lots 311 and 518. Trees suffering damage or likely to be affected by roads, services and building structures have been identified for removal.

Of these trees surveyed, 37 were recorded as being hollow bearing trees of various sizes. Of these, 12 are identified for retention. Hollow Bearing trees are recognised by the Scientific Community (established by the *Threatened Species Conservation Act 1995* – TSC Act 1995) for their importance to the survival of native animals which are reliant on hollows. In NSW, terrestrial vertebrate species that are reliant on tree hollows for shelter and nests include at least 46 mammals, 85 birds, 32 reptiles and 16 frogs, of which 45 species are listed as threatened on Schedule 1 and Schedule 2 of the TSC Act 1995 (from DEC website).

Concern was initially raised by the Department and the DEC about the extent of hollow-bearing trees to be removed, specifically the direct and indirect impacts on fauna reliant on such habitat for survival and the unsupported claim by the Proponent that sufficient habitat exists within land zoned 7(d) Scenic Protection to accommodate the loss of such habitat to accommodate the subdivision. An ecological study was subsequently submitted by the Proponent that confirmed there is sufficient similar habitat within land zoned 7(d) Scenic Protection which comprises 5.5 hectares of forest vegetation (refer to photos at Figure 8).

88 tree hollows were recorded within the 7(d) zoned survey area of 12,000m², which equates to a potential 60 hollow bearing trees with over 245 hollows over the entire area. The majority of hollows (20) detected in the survey area were between 6 and 10 centimetres in diameter, which provide habitat for arboreal mammals such as gliders and possums, while some larger hollows were also identified (15 medium and 3 large). Larger hollows are rare and occur predominantly in large old trees and are rarely less than 220 years old (Gibbons and Lindenmayer 2002).

DEC is of the opinion that *"the proposed removal of 68% of hollow bearing trees from the site cannot be fully mitigated in the short or long term, although there is some benefit in the provision of nest boxes, where they are designated for the threatened fauna displaced by the removal of hollow bearing trees, and appropriately maintained."*

Research indicates that to provide for the requirements of the full range of wildlife species in an area over time there needs to be enough hollow-bearing trees in the age group that provides hollows to replace those that are lost. Generally, 3-10 hollow-bearing trees, with as many as 30 hollows, may be required per hectare to support a diverse wildlife population (VIC Department of Primary Industries).

From the analysis on the 7(d) zoned land, it is concluded that sufficient habitat exists within the boundaries of the 7(d) zone to provide for species utilising hollow-bearing trees within the land to be subdivided.



Photograph 1
Overview of 7(d) Zone area from
the north (Seascape Grove)



Photograph 2
Well-developed shrub layer and
leaf litter within 7(d) area



Photograph 3
Habitat, 7(d) area

Figure 8. Photos of 7(d) zoned land, Source: Habitat Assessment, 7(D) Zoned Land, Seascape Grove, prepared by ERM dated 24 Jan07

Buffers for trees to be retained

DEC requested appropriate buffers be provided around hollow bearing trees within the land to be subdivided, to provide for the long term survival of these trees and their value to hollow dependent fauna. A minimum 10 metre buffer from the drip line to all development was recommended by DEC. In response to this requirement, the Proponent advised that DEC's recommendation is "impractical and would sterilise areas of 40 to 50 metres diameter around the trunk of such trees, which is not viable within a low-density residential subdivision context". Mapped buffer areas are displayed in Figure 9.

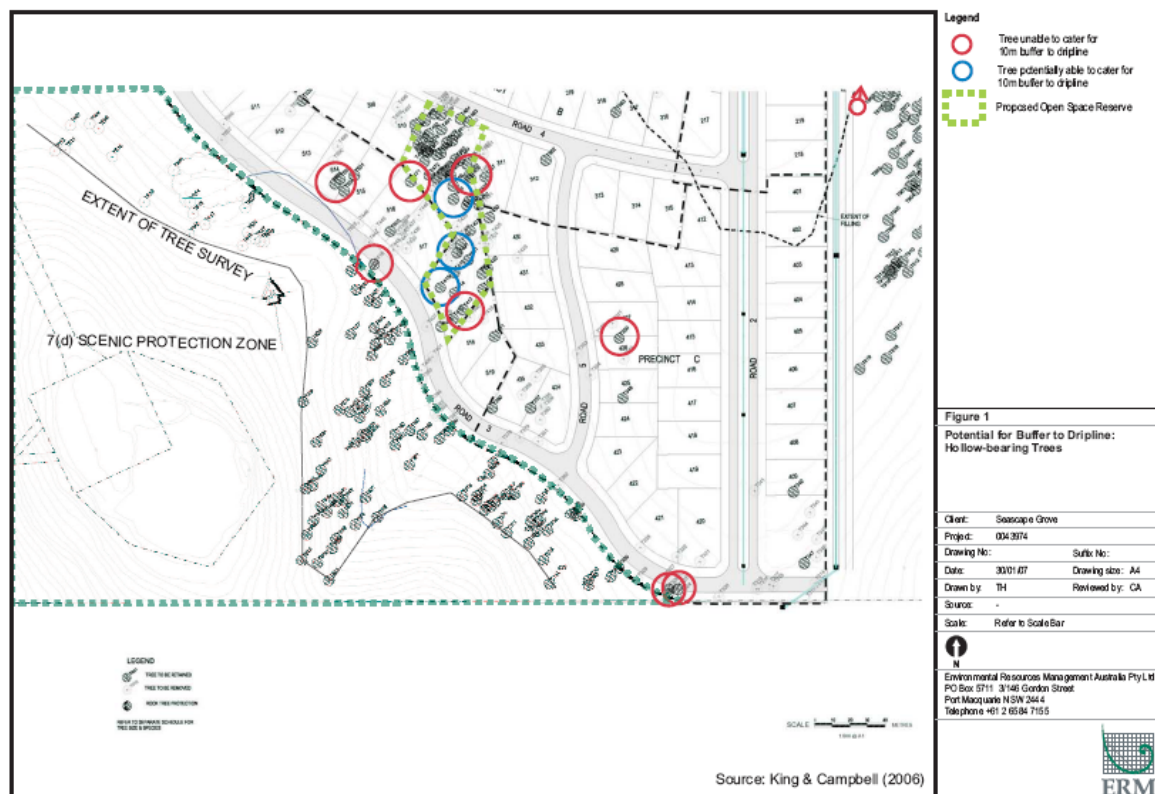


Figure 9. Potential for Buffer to Dripline: Hollow-bearing Trees (Source: Habitat Assessment, 7(D) Zoned Land, Seascope Grove, prepared by ERM dated 24 Jan07) – refer to Tag E for larger plan
 Note: 'proposed open space reserve notation no longer applies – lots will be in private ownership

Council requested that in order to provide for maximum tree retention, building envelopes on each affected allotment should be provided with a separation of no less than six (6) metres from trees nominated for retention, which should be enforced by a Section 88B restriction on title, pursuant to the *Conveyancing Act 1919*.

Figure 9 indicates where the 10m buffer from the dripline can be achieved. This is largely within proposed lots 311 and 518 while other lots also contain individual hollow-bearing trees along boundaries or adjacent to roads.

It is considered reasonable to require the on-going retention of the 77 trees identified for retention, including 12 hollow bearing trees, to be enforced by a restriction on title., and to apply a minimum buffer distance of 6 metres.

A Vegetation Plan of Management will be required to be submitted to Council prior to the issue of each Construction Certificate for subdivision that details:

- the proposed tree removal (for those trees to be removed as they will be on future roads etc) and the method including inspection of hollows by a suitably qualified person prior to felling;
- safeguards for the protection of fauna both prior to, during and following the works, including the presence of a suitably qualified person during the entire felling operation to ensure that proper management of any nocturnal animals or otherwise can be effectively managed;
- provision of nest boxes in the 7(d) zone (specification of number and location to be indicated in the Plan) to be used as artificial hollows (at a rate of 3 nest boxes for every hollow-bearing tree removed),
- the period and method of ongoing management and inspections of the nest boxes;
- the design of fences and other such barriers to avoid restricting the movement of fauna into and out of the 7(d) zone;
- all trees identified for retention to have a minimum 6 metre buffer and all structures and excavation (including for footings, swimming pools etc) to be outside of this zone. Building envelopes will required to be shown on the Subdivision Certificate for those affected lots.

- The application for the approval of dwellings and other structures on the affected lots must be accompanied by an arborist's report detailing the manner of construction required to achieve the on-going retention of the tree/s, confirming that the structure will not affect identified tree/s, and identifying the measures to protect the tree/s during dwelling construction works. It is noted that in some cases the 6 m buffer may have to be increased, depending on the location of tree roots.

6.5 Bushfire protection

The proposal incorporates asset protection measures on the adjacent lot (Lot 22) rather than within the boundaries of individual proposed lots, in order to allow for the central management of a buffer from bushfire hazards instead of requiring individual property owners to maintain fuel hazards.

The site is surrounded by heathland to the north of the site, forested land on the ridgeline south of the site, and woodlands to the east. The subdivision design incorporates asset protection zones (APZs) to manage potential bushfire hazards as shown on Figure 6. Measures proposed include:

- a 25 metre inner protection zone to the north, located within the proposed stormwater detention area within the boundaries of Lot 124;
- a 20 metre APZ to the south, partly contained within the Burrawong Drive Road reserve;
- a 30 metre APZ to the east, comprising a 20 metre inner protection zone; this is proposed to be located within the 25 metre cleared bushfire and stormwater easement located on Lot 22 and a 5 metre building setback from the eastern boundary of the allotments in this location.

Other proposed measures include:

- perimeter roads along the hazard interfaces;
- a road within an easement immediately east of the common property boundary within Lot 22;
- use of the alternate access road as an emergency access point to Arakoon Road;
- provision of fire-fighting water supply points as required by Planning for Bushfire Protection 2001.

The proposal complies with the requirements of the NSW Rural Fire Service.

6.6 Classification of town under the Coastal Design Guidelines

A public submission raised disagreement with the categorisation of South West Rocks as a 'coastal town'. South West Rocks is classified as a coastal town by the Coastal Council of NSW, based on a population range of 3,000 to 20,000.

Population projections indicate that South West Rocks and environs (South West Rocks, Arakoon and Jersyville) may experience strong population growth in the next decade. Although the natural environmental features surrounding the town physically constrain the town's expansion, population projections suggest that South West Rocks is more likely to meet the criteria of "coastal town" rather than "coastal village", simply due to the pressure for urban expansion, as defined by the Coastal Design Guidelines.

6.7 Road access

An unformed 20.115m wide Crown road is located between Lot 124 and land to the north of the site and will be the only means of access to the site from the existing local road network via Belle O'Connor St.

The redirection of Belle O'Connor St into the subject site was approved by Council as part of Stage 1 (23 lots). Concern was raised in public submissions that the design of the intersection with the Crown Road does not allow for the continuation of the Crown road along the existing reservation to provide access to land to the north of the site. Furthermore, 250 proposed lots will rely solely on the Crown Road for vehicular road access while the proposed future road connecting the southern and northern development areas will provide a critical vehicular link to Phillip Drive.

While the northern part of the subject site is identified for future integrated housing development, the potential for Belle O'Connor Street to link to the north is not part of the subject subdivision and may be considered by the relevant consent authority at the time an application for the integrated housing component is lodged.

As stated in section 3.1.1 of this report, a T-intersection will be created between Belle O'Connor Street and the access road to the north (leading to the sewage treatment plant). A future road connection joining Belle O'Connor St to Phillip Drive is a key principal of the development of South West Rocks as it will provide an important secondary access road to Arakoon and Trial Bay Gaol. The location of Belle O'Connor Street will not prevent the formation of a road linking to the north and to Phillip Drive and will be subject to assessment of a development proposal to the north, when proposed.

6.8 Aboriginal Heritage

There is the potential for the site to contain Aboriginal objects and places as a result of previous use or occupation of the site. A public submission noted that findings of an Aboriginal burial area have occurred adjacent to the industrial area while other burial areas occur in low-lying areas.

An Aboriginal Heritage Assessment was undertaken for the site. The site survey did not record any Aboriginal sites within the development area. It was concluded that there is minimal to no potential for undetected Aboriginal heritage material to be located within the study area based on the known archaeology of the South West Rocks area, the surface evidence and the previous disturbance to the site.

An inspection of the site was also undertaken by the Kempsey Local Aboriginal Land Council. Their findings stated that no artefacts were observed on the ground surface. However, the LALC request and a recommended condition of approval will require LALC representatives to be notified of the commencement of works in each stage to provide them with an opportunity to view those works. In addition, a recommended condition of approval requires that all construction work ceases in the event that Aboriginal artefacts or items of European heritage are encountered on site.

6.9 Ecologically Sustainable Development

The objects of any statute provide an overarching framework that informs the purpose and intent of the legislation and gives guidance to its operation. The Minister's consideration and determination of a project application under Part 3A must be informed by the relevant provisions of the Act, consistent with the backdrops of the objects of the Act.

The objects of the Act in section 5 are as follows:

- (a) to encourage:
 - (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
 - (ii) the promotion and co-ordination of the orderly and economic use and development of land,
 - (iii) the protection, provision and co-ordination of communication and utility services,
 - (iv) the provision of land for public purposes,
 - (v) the provision and co-ordination of community services and facilities, and
 - (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and
 - (vii) ecologically sustainable development, and
 - (viii) the provision and maintenance of affordable housing, and
- (b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and
- (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.

Of particular relevance to the assessment of the application is consideration of the objects under section 5(a). Relevantly, the objects stipulated under section 5(a) (i), (ii), (iv), (v), (vi) and (vii) are significant factors informing the determination of the application. The project does not raise significant issues with regards to 5(a), (iii) and (viii).

With respect to Ecologically Sustainable Development (ESD), the Act adopts the definition in the *Protection of the Environment Administration Act 1991* including the precautionary principle, the principle of inter-generational equity, the principle of conservation of biological diversity and ecological integrity, and the principle of improved valuation, pricing and incentive mechanisms.

The Department has considered the Objects of the Act, including the encouragement of ESD in the assessment of the project application. The principles of ESD have been considered in this assessment as follows:

6.9.1 Precautionary Principle

The EA submitted has identified and assessed the range of environmental impacts of the proposal. The proponent has demonstrated that the subdivision design and appropriate mitigation measures will be implemented to prevent any potential environmental impacts. Mitigation measures are outlined in the proponent's Statement of Commitments and/or the recommended conditions of approval.

6.9.2 Intergenerational Equity

The development provides the following benefits to the South West Rocks community now and into the future:

- 25 full time equivalent construction jobs and 5 full time equivalent operational jobs in ongoing management roles associated with the future development of the site;
- Protection of 57% of trees on site, including a stand of mature trees and placement of nest boxes to encourage fauna to continue to use remaining habitat within and adjacent to the site;
- Provision of additional housing within South West Rocks in close proximity to community and recreational facilities such as the shopping centre, medical centre and golf course;
- Provision of pedestrian and cyclist linkages throughout the development which will connect with Council's proposed off road pathway to the town centre along the western boundary of the golf course.

6.9.3 Conservation of Biological Diversity and Ecological Integrity

The proposed development site has been largely cleared of native vegetation, although some scattered mature eucalypts exist on site including a large stand of trees in the southern-central part of the site. The proponent undertook an assessment of the development's compliance with the following environmental planning instruments;

- *Environment Protection and Biodiversity Conservation Act (1999) (Cth)*;
- *Threatened Species Conservation Act (1995) (NSW)*; and
- *State Environmental Planning Policies (14, 26, 44 and 71)*.

No threatened flora species were recorded on site. A number of threatened fauna species were recorded on or over the site. Assessments of significance were undertaken for each of the species recorded or those with the potential to use the site and it was concluded that none of the threatened fauna species would be significantly impacted as a result of the proposed development.

The development proposes the removal of 25 hollow bearing trees which would provide habitat for many species of fauna. An assessment of adjacent vegetation within the 7(d) zone showed that there are sufficient numbers of hollow bearing trees in this area to provide habitat for fauna species using the area. In addition, the proponent has committed to the installation of fauna nest boxes within the 7(d) zone vegetation and open space area of the proposed development.

6.9.4 Improved Valuation, Pricing and Incentive Mechanisms

The subdivision has been designed in accordance with the principles of Water Sensitive Urban Design and includes a water recycling scheme. The scheme will provide dual reticulation throughout the development; re-use distribution mains will convey recycled water from the sewage treatment plant into a Council reservoir located on site which will allow for the extension of recycled water into other parts of South West Rocks. Other measures include water sensitive landscaping, minimising the area of impervious surfaces to promote infiltration and treating stormwater leaving the site with a detention basin and gross pollutant trap. These measures will help future development applications for the site to comply with BASIX.

Consequently, the Department is satisfied that the proposal is consistent with the principles of ESD.

7 CONCLUSION

The Department has assessed the EA and considered the submissions in response to the proposal. The key issues raised in submissions related predominantly to the protection of retained vegetation, provision of nest boxes to provide artificial hollows, and management and mitigation of construction impacts, particularly where hollow-bearing trees are to be removed. The Department has considered these issues and a number of conditions are recommended to ensure the satisfactory addressing of these issues and minimal impacts as a result of the proposal.

The proposed development will allow for future dwellings within a coastal town, adjacent to significant natural features. Furthermore, the project application has largely demonstrated compliance with the existing environmental planning instruments and meets the intent of the approved Master Plan.

On these grounds, the Department considers the site to be suitable for the proposed development and that the project is in the public interest. Consequently, the Department recommends that the project be approved, subject to the recommended conditions of approval.

8 RECOMMENDATION

It is recommended that the Minister:

- (A) consider the findings and recommendations of this report;
- (B) approve the carrying out of the project, under Section 75J *Environmental Planning and Assessment Act, 1979*; subject to modifications of the project and conditions and sign the Determination of the Major Project (tag A).

Prepared by:

Endorsed by:

Evelyn Ivinson
A/Senior Environmental Planner
Coastal Assessments

Alix Carpenter
A/Team Leader
Coastal Assessments

Heather Warton
Director
Coastal Assessments

APPENDIX A. DIRECTOR-GENERAL'S ENVIRONMENTAL ASSESSMENT REQUIREMENTS

APPENDIX B. ENVIRONMENTAL PLANNING INSTRUMENTS CONSIDERATION

Lot 124 and Lot 22 DP 1071657 Belle O'Connor Street, South West Rocks MP05_0018

Consideration of environmental planning instruments

The aims and objectives of the relevant environmental planning instruments, development control plans and policies are assessed below in relation to this development application.

It is generally considered that the application proposes development which is capable of satisfying the objectives of the environmental planning instruments and development control plans applicable to the site as outlined below.

- *State Environmental Planning Policy No.71 – Coastal Protection;*
- *State Environmental Planning Policy No.44 – Koala Habitat;*
- *State Environmental Planning Policy No.11 – Traffic Generating Development;*
- *North Coast Regional Environmental Plan 1988;*
- *Kempsey Local Environmental Plan 1987;*
- *Kempsey Shire Council Development Control Plan 22 – Local Housing Strategy (Urban Areas other than Crescent Head) 2003; and*
- *NSW Coastal Policy 1997.*

1.1 State Environmental Planning Policy 71 – Coastal Protection

MATTERS	COMPLIES	COMMENT
CLAUSE 2: AIMS OF POLICY		
(a) To protect and manage the natural, cultural, recreational and economic attributes of New South Wales coast and	YES	It is considered that the proposal will have no undue affects on the natural, cultural, recreational and economic attributes of the New South Wales coast. Stormwater management measures will treat water runoff on site thereby protecting downstream waterways.
(b) To protect and improve existing public access to and along coastal foreshores to the extent that it is compatible with the natural attributes of the coastal foreshore, and	N/A	The proposal is over private land and does not have frontage to coastal foreshores and will therefore not impede any public access to or along coastal foreshores.
(c) To ensure that new opportunities for public access to and along coastal foreshores are identified and realised to the extent that this is compatible with the natural attributes of the coastal foreshore, and	N/A	As per (b).
(d) To protect and preserve Aboriginal cultural heritage, and Aboriginal places, values, customs, beliefs and traditional knowledge, and	YES	The land to which the proposal applies has no known aboriginal cultural significance. Conditions of approval will require stop-work measures to be undertaken in the event that aboriginal objects are exposed during construction works.
(e) To ensure that the visual amenity of the coast is protected, and	N/A	The subdivision is not on a ridgeline and will therefore not impact on the visual amenity of the locality or coast.
(f) To protect and preserve beach environments and beach amenity, and	N/A	No beach environments are affected.
(g) To protect and preserve native coastal vegetation, and	YES	The proposal will remove a number of trees, including hollow bearing trees. Refer to Section 5 of this report for a detailed assessment.
(h) To protect and preserve the marine environment of New South Wales, and	YES	Stormwater management measures will treat water runoff on site thereby protecting downstream waterways.
(i) To protect and preserve rock platforms, and	N/A	No rock platforms are proposed to be disturbed as part of this development.

(j) To manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6(2) of the <i>Protection of the Environment Administration Act 1991</i>), and	YES	The land is identified within a residential strategy and is consistent with the site's zoning. Stormwater management measures will treat water runoff on site thereby protecting downstream waterways.
(k) To ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area, and	YES	The proposal is consistent with surrounding land uses and subdivision pattern.
(l) To encourage a strategic approach to coastal management.	YES	The proposal is consistent with the current zoning, development standards and surrounding land use and utilises existing infrastructure. Stormwater management measures have been designed to treat water runoff on site thereby protecting downstream waterways thereby supporting coastal management and protection.
CLAUSE 8: MATTERS FOR CONSIDERATION		
(a) the aims of this Policy set out in clause 2,		Addressed above
(b) existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved,	N/A	The proposal is over private land that contains no existing public access arrangements.
(c) opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability,	YES	There are no opportunities to provide new public access to and along the coastal foreshore. However, the proposal will not detract or remove any existing access routes to the foreshore and will not impact on pedestrian networks as identified in Council's Pedestrian Access Mobility Plan.
(d) the suitability of development given its type, location and design and its relationship with the surrounding area,	YES	The proposal is a low density residential in-fill development in an existing residential settlement that is consistent with the current zoning and surrounding land use pattern and is connected to the existing village settlement pattern.
(e) any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore,	YES	The proposal will not detrimentally impact on the amenity of the coastal foreshore nor cause any significant loss of views from a public place to the coastal foreshore due to the topography of the site.

(f) the scenic qualities of the New South Wales coast, and means to protect and improve these qualities,	YES	There will be no impacts on the scenic amenity of the coast as a result of this proposal.
(g) measures to conserve animals (within the meaning of the <i>Threatened Species Conservation Act 1995</i>) and plants (within the meaning of that Act), and their habitats,	YES	An ecological assessment has been completed on the entire site, including the section zoned 7(d) Scenic Protection and has determined that the proposal will not detrimentally impact on animals and plants and their habitats. Refer to Section 5 of the report for further detail.
(h) measures to conserve fish (within the meaning of Part 7A of the <i>Fisheries Management Act 1994</i>) and marine vegetation (within the meaning of that Part), and their habitats	YES	Stormwater management measures will treat water runoff on site thereby protecting downstream waterways.
(i) existing wildlife corridors and the impact of development on these corridors,	YES	An ecological assessment prepared for the site has demonstrated that the proposal will not negatively impact on existing wildlife corridors and will contribute to the conservation of land zoned 7(d) Scenic Protection, as well as a stand of trees with some connectivity to this vegetated section.
(j) the likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal hazards,	YES	The proposal incorporates water sensitive urban design which includes a water recycling scheme and re-use distribution mains. Such measures will positively contribute to coastal management and protection, including Saltwater Creek and Lagoon.
(k) measures to reduce the potential for conflict between land-based and water-based coastal activities,	YES	The proposal will not generate potential conflicts between land-based and water-based coastal activities.
(l) measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals,	YES	The land to which the proposal applies has no known aboriginal cultural significance. Conditions of approval will require stop-work measures to be undertaken in the event that aboriginal objects are exposed during construction works.
(m) likely impacts of development on the water quality of coastal waterbodies,	YES	As per (j).
(n) the conservation and preservation of items of heritage, archaeological or historic significance,	N/A	The site has no known items of heritage, archaeological or historic significance, nor is there any such listing in the Kempsey LEP 1987. Conditions of approval will require stop-work measures to be undertaken in the event that aboriginal objects or archaeological relics are exposed during construction works.

(o) only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,	N/A	N/A
(p) only in cases in which a development application in relation to proposed development is determined: (i) the cumulative impacts of the proposed development on the environment, and (ii) measures to ensure that water and energy usage by the proposed development is efficient.	YES YES	The Minister approved a Master Plan for the site in March 2006 which related to future land subdivision, infrastructure provision and residential development. A cumulative assessment was undertaken which identified the need for a water management plan, bushfire protection measures, infrastructure provision and rezoning issues. Further details are provided in section 4.9 of the report. Existing water and power services are available to service the development site. The cost efficient use of these services is based on maximizing the number of consumers within the service catchment, (generally the residential zoned precinct). In addition DCP 31 Energy Smart Homes applies to all dwellings proposed to be erected within the Kempsey LGA. The merit of dwelling design will be the subject of further dwelling approvals.
CLAUSE 14: PUBLIC ACCESS		
A consent authority must not consent to an application to carry out development on land to which this Policy applies if, in the opinion of the consent authority, the development will, or is likely to, result in the impending or diminishing, to any extent, of the physical, land-based right of access of the public to or along the coastal foreshore.	YES	The proposal is over private land that contains no existing public access arrangements. There is no alteration to existing public access routes to coastal foreshores in the locality.
CLAUSE 15: EFFLUENT DISPOSAL		
The consent authority must not consent to a DA to carry out development on land to which this Policy applies in which effluent is proposed to be disposed of by means of a non-reticulated system if the consent authority is satisfied the proposal will, or is likely to, have a negative effect on the water quality of the sea or any nearby beach, or an estuary, a coastal lake, coastal creek or other similar body of water, rock platform.	N/A	The site is served by a reticulated sewerage system.

CLAUSE 16: STORMWATER		
The consent authority must not consent to a development application to carry out development on land to which this Policy applies if the consent authority is of the opinion that the development will, or is likely to, discharge untreated stormwater into the sea, a beach, or an estuary, a coastal lake, a coastal creek or other similar body of water, or onto a rock platform.	YES	The proposal incorporates water sensitive urban design which includes a water recycling scheme and re-use distribution mains, and an on-site stormwater detention basin. Such measures will positively contribute to coastal management and protection, including Saltwater Creek and Lagoon.

1.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX)

BASIX seeks to encourage sustainable residential development and requires a list of commitments to meet specific water and energy reduction targets. BASIX applies to residential dwellings at the time a development application or complying development certificate is sought. Compliance with BASIX is not required to be achieved for the proposed subdivision as consent is not currently sought for the erection of dwellings. However, provision has been made to provide for future compliance by way of a proposed reticulated sewerage and on-site water retention, which is acknowledged by BASIX.

1.3 State Environmental Planning Policy No.44 – Koala Habitat

SEPP 44 applies to the subject site due to its location in Kempsey LGA (Clause 6(a) and Schedule 1) and land size (Clause (c)(i)), having an area greater than 1 hectare. The habitat assessment conducted by Umwelt (2005) concluded that the survey area does not contain more than 15% of canopy species suitable for Koala habitat and no evidence of utilisation by Koalas was recorded.

MATTERS	COMPLIES	COMMENT
Step 1 – is the land potential koala habitat?		
(1) Before a council may grant consent to an application for consent to carry out development on land to which this Part applies, it must satisfy itself whether or not the land is a potential koala habitat.	YES	The survey area does not contain more than 15% of canopy species suitable for Koala habitat and no evidence of utilisation by Koalas was recorded on site.

1.4 State Environmental Planning Policy No. 11 – Traffic Generating Developments (SEPP 11)

SEPP 11 applies to the proposal as it involves subdivision of land into 50 or more allotments, pursuant to Schedule 2(g). As a result, the application required referral to the RTA which occurred on 12 September 2006. In response, the RTA advised that it had no objection to the proposal and that the subdivision is located on local roads that are under the care and control of Kempsey Shire Council as the Road Authority

1.5 North Coast Regional Environmental Plan

GOALS	COMPLY	COMMENT
Development control – residential development		
(1) The council shall not grant consent to development for residential purposes unless:		
(a) it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land,	YES	The proposed lot layout and road design provides a dwelling density that is compatible with the site and also provides for greater density at a later stage (Stage 1c, subject to separate approval).
(b) it is satisfied that the proposed road widths are not excessive for the function of the road,	YES	The proposed road widths were designed to comply with Council's design standards and seek to maintain residential amenity and allow integrated stormwater treatment systems. The road network makes provision for future bus routes within the site.
c) it is satisfied that, where development involves the long term residential use of caravan parks, the normal criteria for the location of dwellings such as access to services and physical suitability of land have been met;	N/A	N/A
(d) it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles, and	YES	The road network makes provision for future bus routes within the site as well as cycleways and pedestrian pathways.
(e) it is satisfied that site erosion will be minimised in accordance with sedimentation and erosion management plans.	YES	Erosion and sediment control measures will be implemented during construction in accordance with relevant controls and conditions of this approval.
Development control – development in the vicinity of the ocean or a waterway		
(1) The council shall not consent to a development application for development on land within 100 metres of the ocean or any substantial waterway unless it is satisfied that:		
(a) there is a sufficient foreshore open space which is accessible and open to the public within the vicinity of the proposed development,	YES	The proposal will not impact on available foreshore open space as the site is some 200m from the foreshore and 150m from Saltwater Lagoon. The proposal aims to provide 2 sections of open space for use by the public and will supplement the

		available open space network in South West Rocks.
(b) buildings to be erected as part of the development will not detract from the amenity of the waterway, and	YES	No buildings are proposed under this application. Notwithstanding, the proposal will provide for the construction of low density dwellings in accordance with Council's controls.
(c) the development is consistent with the principles of any foreshore management plan applying to the area.	N/A	There are no foreshore management plans relevant to the area.

Kempsey Local Environmental Plan 1987 (as amended)

Only relevant provisions of Kempsey LEP 1987 to the subject development are considered, below.

MATTERS		COMPLIES	COMMENT
Part 1 Preliminary			
3. Aims			
(a)	To protect the major agricultural activities of the area and to promote the agricultural potential of the Shire of Kempsey;	Y	The site was previously used for grazing and has been rezoned to allow for residential development.
(b)	To protect the quality of areas of high landscape or environmental value;	Y	The part of the site to be subdivided does not have significant views or landscaping with the exception of hollow-bearing trees (refer to Section 5 of the report for further details). The vegetated portion of the site zoned 7(d) Scenic Protection is not proposed to be developed.
(c)	To ensure that new developments do not require the uneconomic extension of services;	Y	Council approved a 23 lot subdivision on part of the site (Stage 1(a)). Services are to be extended for subsequent stages.
(d)	To ensure that a choice of lot sizes is available to rural land purchasers;	Y	Lots have a minimum size of 680m ² and an average of 739m ² which will ensure a range of lots sizes is available for residential development.
(e)	To create a flexible plan that can cope with fluctuations in the growth of the area;	Y	The proposal is for a staged subdivision to control staged release of land in response to market demand.
(f)	To protect land required for future urban and rural residential purposes from unnecessary subdivision;	Y	The land is identified on Council's Residential Land Release Strategy.
(g)	To protect cultural and natural resources from damage or destruction;	Y	Searches of available databases and an inspection of the site by Kempsey Local Aboriginal Land Council did not identify any artefacts at ground level, nor did it identify the site as having potential heritage significance.
(h)	To facilitate the provision of residential and tourist accommodation in appropriate locations;	Y	The land is identified on Council's Residential Land Release Strategy.

(i)	To ensure that development controls reflect differences in the physical capability of the land and accessibility to services;	Y	Relevant development controls identify appropriate principles for development and servicing the subject site which the subdivision complies with.
(j)	To ensure that developments which are visually intrusive or which generate excessive traffic are prohibited on arterial roads;	Y	The proposed subdivision is not located on significant ridge lines and will not be visually intrusive once fully developed. Predicted traffic generation is consistent with the RTA's guidelines.
(k)	To ensure that non-residential development is sited to avoid or minimise conflict with the residential amenity of adjoining lots;	Y	The subdivision adjoins the approved 23 lot subdivision and will facilitate the development of Lot 22 if developed in the future, with roads and services able to be extended from Lot 124.
(l)	To ensure that flood-free land is available for business and urban residential expansion; and		The Water Management Plan prepared by King & Campbell Pty Ltd and dated July 2006 demonstrated that proposed measures provide protection for the 1:100 year storm event from the site and also the 1:00 year flood level from Saltwater Creek.
(m)	To conserve and enhance the environmental heritage of Kempsey Shire.	Y	The development is in keeping with the environmental heritage of Kempsey Shire. The site has been identified by Council as being suitable for residential development.
Part 2 General Restrictions on Development of Land			
Zone objectives and development control table			
Zone No. 2(a) (Residential "A" Zone)			
1.	Objectives of zone – to provide areas for low density residential development.	Y	Proposed subdivision is for low density residential development consistent with the current zoning.
2.	Without development consent – dwelling-houses		Dwelling houses are not proposed in this application.
3.	Only with development consent – any purpose other than a purpose included in Item 2 or 4.	Y	Consent is sought to subdivide the site.
4.	Prohibited – recreation areas; recreation establishments; recreation facilities	Y	Not proposed.

Zone No. 6(a) (Open Space "A" Zone)			
1.	Objectives of zone The objectives are: (a) to identify publicly owned land that is used or is capable of being used for the purpose of active or passive recreation; and (b) to conserve and protect the visual and environmental qualities of foreshore reserves and encourage development compatible with the natural environment and landscape; and (c) to encourage the development of public recreation in a manner which maximises the satisfaction of the community's diverse recreational needs; and (d) to enable development associated with, ancillary to, or supportive of uses compatible with those uses.	Y	A small part of the site is zoned 6(a) Open Space and is proposed to be rezoned to 2(a) Residential to allow for residential development. The 6(a) zone is privately owned and therefore not publicly accessible nor is it suitable for the purpose of active or passive recreation due to its small size. Furthermore, it is not located close to foreshore reserves or adjacent open space. Dwelling houses are not permitted on land zoned 6(a) and therefore the site will require rezoning. An application to rezone the land, in conjunction with land zoned 1(d) Rural (Investigation) to 2(a) is presently with Kempsey Shire Council. A condition of approval will prevent the registration and release of lots in this portion until such time as it is rezoned for residential development.
2.	Without development consent – works for the purposes of landscaping, gardening, or bushfire hazard reduction.	Y	N/A
3.	Only with development consent – buildings for the purposes of landscaping, camping grounds, caravan parks, gardening or bushfire hazard reduction; carparks; recreation areas; roads; surf life saving clubs.	Y	Landscaping is part of the application and has been assessed.
4.	Prohibited – any purpose other than a purpose included in Item 2 or 3.	N/A	N/A
Zone No. 7(d) (Scenic Protection Zone)			
1.	Objectives of zone – the objective is to conserve the environmental and scenic quality of visually significant land by controlling development so that it will accord with the appearance of the landscape.	Y	Noted
2.	Without development consent – Nil.	N/A	N/A

3.	Only with development consent – agriculture (other than intensive animal husbandry and aquaculture); dwelling houses; home activities; recreation establishments; roads; tourist facilities; utility installations (other than gas holders or generating works).	Y	Roads and utilities are proposed on land zoned 7(d) Scenic Protection and are permissible under Council's LEP.
4.	Prohibited – any purpose other than a purpose included in Item 3.	Y	N/A
Part 3 Special Provisions			
Acquisition of reserved lands			
10. (1)	The owner of any land- (a) within Zone No. 6(a); or (b) within Zone No. 7(f2), may, by notice in writing, require – (c) the Council; or (d) the corporation respectively, to acquire the land.	N/A	N/A
(2)	On receipt of a notice referred to in subclause (1), the public authority concerned shall acquire the land to which the notice relates.	N/A	N/A
(3)	Until the land referred to in subclause (1) is acquired, development for any purpose may, with the consent of the Council, be carried out on that land.	N/A	N/A
(4)	The Council shall not grant consent as referred to in subclause (3) to the development of land unless it is satisfied that the carrying out of the development will not adversely affect the usefulness of the land for the purposes for which it is reserved.	N/A	N/A
Subdivision generally			
11.	A person shall not subdivide land except with the consent of the Council.	Y	The Minister's approval is sought to subdivide the land, pursuant to <i>State Environmental Planning Policy (Major Projects) 2005</i> .
Subdivision – flood prone land			

12. (1)	The Council must not consent to the subdivision of land in Zone No. 1(c), 2(a), 2(b1), 2(b2), 2(c) or 2(v) unless the Council is satisfied that: (a) the land is outside the limit of the 1 in 100 year flood and is not subject to an unacceptable risk from localised flooding during a 1 in 20 year storm event; or (b) not applicable to subject development; (c) in the case of land in Zone No. 2(a), 2(b1), 2(b2), 2(c) or 2(v), the allotments to be created by the subdivision each include not less than 500 square metres of land which is outside the limit of the 1 in 100 year flood and which is not subject to an unacceptable risk from localised flooding during a 1 in 20 year storm event.	Y	The Water Management Plan prepared by King & Campbell Pty Ltd and dated July 2006 demonstrated that proposed measures provide protection for the 1:100 year storm event from the site and also the 1:00 year flood level from Saltwater Creek.
(2)	Not applicable to subject development	N/A	N/A
(3)	In this clause: "1 in 100 year flood" means a flood calculated by the Council to have a recurrence interval of 100 years on average, that is a 1% chance of being equalled or exceeded in any one year; "1 in 20 year storm event" means a rainfall event calculated by the Council to have a 5% chance of occurring in any one year.	Noted	Noted
Subdivision – connection of water supply			
13.	The Council shall not consent to the subdivision of land in Zone No. 1(c) (other than at Arakoon, South West Rocks) having an area of not more than 10 hectares, or of land in Zone No. 2(a), 2(b1), 2(b2), 2(c) or 2(v), unless each lot proposed to be created by the subdivision has a reticulated water supply connected to it, or arrangements satisfactory to Council have been made for the future provision of water supply to each lot.	Y	The development will be serviced by a reticulated water supply.
Subdivision – connection to sewerage system			

14.	The Council shall not consent to the subdivision of land in Zone No. 2(a), 2(b1), 2(b2), 2(c) or 2(v) unless the Council is satisfied that each lot proposed to be created by the subdivision is connected to a sewerage system or arrangements satisfactory to the Council have been made for the future provision of a sewerage service to each lot.	Y	The development will be serviced by a reticulated sewerage system.
Subdivision – frontage to arterial road			
15.	Not applicable to subject development.	N/A	N/A
Subdivision – minimum lot sizes			
16. (1)	The Council shall not consent to the subdivision of land unless each allotment proposed to be created by the subdivision has an area of at least – (d) in the case of land within Zone No. 2(a) – 0.05 hectares.	Y	Complies (minimum 680m ²).
Development of land within Zone No. 5(a), 5(b), 6(a) or 6(b)			
18A	Despite any other provision of this plan, the Council may consent to development of land within Zone No. 6(a) for commercial purposes or community purposes if use of the land for that purpose is, in the opinion of the Council, occasional, infrequent or subordinate to, but compatible with, the primary use of the land.	N/A	The Minister's approval is not sought for commercial or community purposes on that part of the land zoned 6(a).
Land Clearing in Zone No. 7(d)			
19.	A person shall not, on land within Zone 7(d) – (a) cut down, top or lop any tree which has a height of 3 metres or more; or (b) alter the ground level of the land, except with the consent of the Council.	Y	Construction of roads and services within a small part of the site zoned 7(d) will require the clearing of shrubs but will not necessitate the removal of trees or alter the ground level.
Filling of land			
21. (1)	A person shall not place fill on any land to which this plan applies except with the consent of the Council.	Y	Approval is sought to place fill on part of the site. Refer to DG's report for details on this issue.
(2)	The Council may grant consent only if, in the opinion of the Council, the placing of fill will not have an adverse environmental impact.	Y	Refer to Section 5 of the report.
Development on land within Zone No. 7(d)			

32. (1)	The Council shall not consent to the carrying out of development on land within Zone No. 7(d) unless it is satisfied that the development will not detract from the scenic quality of the land or the topographic feature of which the land is a part.	Y	With the exception of roads and services on part of the site zoned 7(d), no other works are proposed in this section. The proposed roads and services shall not detract from the scenic quality of the land or any topographic features.
(2)	The Council shall not consent to the erection of a building on land within Zone No. 7(d) unless it is satisfied – (a) that the building has been designed and sited so as to minimise disturbance to the natural appearance of the land from urban areas, arterial roads and scenic viewpoints; and (b) that the erection of the building will result in as little clearing or lopping of trees as possible.	N/A	No buildings are proposed on land zoned 7(d).
Development in Open Space Zones			
36.	The Council shall not consent to the carrying out of development on land within Zone No. 6(a) or 6(b), being land owned or controlled by the Council, unless consideration has been given to – (a) the need for the proposed development on that land; (b) the impact of the proposed development on the existing or likely future use of the land; and (c) the need to retain the land for its existing or likely future use.	N/A	The part of the site zoned 6(a) is subject to a rezoning application to allow for residential development. Roads and services are permissible within the 6(a) zone with consent. The proposed works shall service the subject subdivision and development. Residential development in this zone will not be permitted until such time as the rezoning application is finalised.

Development along arterial roads			
38. (1)	The Council shall not grant consent to develop land which has a frontage to an arterial road unless, in the opinion of the Council – (a) access to that land is provided by a road other than the arterial road, wherever practicable; and (b) the safety and efficiency of the arterial road will not be adversely effected by the development of that land by – (i) the design of the access to that land; (ii) the emission of smoke or dust from that land; and (iii) the nature, volume or frequency of vehicles turning to and from the arterial road to the access to that land.	N/A	The site does not have frontage to an arterial road.
Development adjacent to zone boundaries			
53. (1)	A person may, with the consent of the Council, carry out development on land within 20 metres of the boundary between two zones for any purpose for which development consent may be granted in the adjoining zone.	N/A	N/A
(2)	The Council shall not grant consent as referred to in subclause (1) unless it is satisfied that: (a) the development is necessary due to the design characteristics of the proposed development or to ownership, servicing or similar requirements; and (b) the development if carried out will not operate so as to hinder the attainment of the objectives of either of the zones affected by the development.		
(3)	For the purpose of this clause, development does not include subdivision.		

Kempsey DCP 22 Local Housing Strategy (Urban Areas other than Crescent Head) 2003

MATTERS		COMPLIES	COMMENT
1.4 Aims and Objectives			
a)	To achieve a balance between maximising lot and dwelling yields for more efficient and effective use of land, infrastructure and services, whilst making our residential areas desirable places to live.	Y	The proposed lot layout and road design provides a dwelling density that is compatible with the site and also provides for greater density at a later stage (Stage 1c, subject to separate approval).
b)	To provide a degree of certainty to developers and existing residents with regard to the density of housing development throughout Council's urban areas.	Y	Approval of the proposed subdivision will allow for 108 residential lots to be released into the local housing market.
c)	Towards achieving these aims, the objectives of the DCP are:		
	i) to provide areas within Council's principle towns and villages for varying levels of residential density;	Y	The present zoning will permit low residential development.
	ii) to ensure that development densities are not beyond the capacity of the infrastructure, services and topographical constraints of each area;	Y	The extension of available services will cater for the subdivision.
	iii) to ensure that lands identified for higher density development are not developed for low density developments;	Y	The present zoning allows for an appropriate density in this location.
	iv) to provide for wider housing choices in general residential zones where there are minimal development constraints;	Y	As per iii), above.
	v) to encourage innovative building design and site usage;	Y	Building design and site usage will be subject to future approvals.
	vi) to encourage a more efficient and effective use of land and minimise the cost of providing urban infrastructure and servicing;	Y	The extension of available services will cater for the subdivision.
	vii) to encourage the design of energy efficient housing.	Y	The design of housing will be subject to future approvals.
3 General Performance Objectives			
3.1 Lot Size and Orientation			

	Where subdivision is proposed, lots are to have appropriate area and dimensions to enable the siting and construction of a <i>dwelling</i> or dwellings and ancillary outbuildings, whilst providing for: i) useable <i>private outdoor space</i> ; ii) convenient vehicle access and parking; iii) adequate solar access in accordance with DCP No. 31 – Energy Smart Homes; and iv) access to cooling breezes and other relevant siting and design considerations.	Y	Lot size and orientation comply with minimum lot size development standard as specified within Kempsey LEP 1987.
3.2 Building Siting and Design			
a)	Buildings are to be sited and designed to permit optimum privacy and daylight by ensuring that:- i) the privacy of dwellings and outdoor spaces for both residents and neighbours is protected as much as possible; ii) habitable rooms are capable of receiving adequate daylight; and iii) dwellings comply with the requirements of DCP No. 31 – Energy Smart Homes.	N/A	The application does not include dwellings houses. The design of housing will be subject to future approvals.
b)	The scale, height and length of a building and walls are to be appropriate to the local residential character, ensuring that there is no significant loss of amenity to adjacent dwellings and land.	N/A	The application does not include dwellings houses. The design of housing will be subject to future approvals.
c)	Buildings are to be sited and designed to accommodate the natural slope and orientation of the site and immediately adjacent lands, ensuring that: i) cut and fill is kept to a minimum, ii) the visual impact of the building is minimised through the choice of building materials, the bulk, height, length and scale and siting of the building; iii) soil stability and erosion control measures are adequate; and iv) site drainage will not adversely affect adjoining lands.	N/A	The application does not include dwellings houses. The design of housing will be subject to future approvals. The proposed fill is described in the report. As per b). Conditions of approval will require appropriate soil stability and erosion control measures to be implemented. Water sensitive urban design measures are incorporated in the development to mitigate impacts on adjoining and downstream land.
3.3 Private Open Space			

a)	<u>Private open space</u> areas are to be of dimensions sufficient to provide for outdoor recreation functions, including placement of table and chairs, BBQ's and the like.	N/A	Application does not include dwellings houses. Not applicable.
b)	Location of <u>private open space</u> is to take account of outlook, natural features of the site and is not to adversely impact on neighbouring buildings or open space.	N/A	Application does not include dwellings houses. Not applicable.
c)	Orientation of <u>private open space</u> is to provide for maximum year round solar access with a northern or easterly aspect.	N/A	Application does not include dwellings houses. Not applicable.
3.4 Vehicle Parking			
a)	Sufficient and convenient onsite parking for resident, visitor and service vehicles is to be provided, taking into account: i) the effect of sloping land on access, sight distances and manoeuvrability; ii) the safety of pedestrians and other road users; iii) the need to meet mean peak parking requirements such that parked vehicles will not obstruct the passage of vehicles on any carriageway or create traffic hazards; iv) the street hierarchy and traffic flows in the locality.	N/A	Application does not include dwellings houses. Not applicable.
3.5 Streetscape			
a)	Building siting and design is to enhance establishment of an attractive streetscape and is to provide opportunities for effective landscaping of areas visible from the street.	Y	The application does not include dwellings houses. The design of housing will be subject to future approvals. However, the current application proposes landscape works along residential streets that will positively contribute to the overall design and amenity of the estate once fully developed.
b)	Subdivision for residential development is to be designed so as to provide opportunities for retention of mature or <u>important vegetation</u> and to encourage establishment of an attractive streetscape.	Y	Vegetation, including hollow-bearing trees is to be retained as part of the development – refer to the report for further details.
3.6 Landscaping			
a)	The appearance, amenity and energy efficiency of new development for users and the general community should be enhanced by new development.	Y	Landscaping of the streetscape will positively contribute to future development within the estate.

b)	Integration of building and landscape elements is encouraged.	Y	As per a), above.
c)	Landscaping should enhance developments for acoustic and visual privacy as well as shade. Landscaping should blend new development into an established streetscape and neighbourhood. The use of water efficient landscape systems is encouraged.	Y	As per a), above. Proposed landscaping has been selected in the context of water sensitive urban design measures.
d)	Landscaping shall utilise predominantly <u>endemic species</u> which are appropriate for the intended purpose.	Y	Predominantly endemic species are to be used in the development.
3.7 Infrastructure and Services			
a)	Any development proposal is to be so designed as to:- i) ensure that the demands generated by the development are not beyond the capacity of the site or any related infrastructure or services; ii) minimise the cost of extensions or connection of infrastructure and services to the development; and iii) ensure that the cumulative impact of the development will not generate the need for significant upgrading or augmentation of any sewage, water or drainage system in the area. (Note: Infrastructure and services includes, but is not limited to, sewerage systems, reticulated water supplies, drainage networks and road networks).	Y	The development will require the extension of available infrastructure, originally constructed to service an earlier stage of the subdivision (Stage 1a). The extension of services will provide efficient, cost-effective measures in a well planned subdivision estate. Furthermore, water sensitive urban design measures have been designed to cater for the current and future stages of development, thereby avoiding the need to augment infrastructure.
4 Development Standards			
4.1 Residential Densities and Landscaped Area Requirements			
	Sets specific site and landscaped areas for low, medium and medium to high density residential developments.	Y	Landscaping of the streetscape will positively contribute to future development within the estate.
4.2 Setbacks			
	Identifies permissible street setbacks, side/rear setbacks and long walls.	N/A	N/A
4.3 Carparking and Access			

	Minimum car parking requirements for development involve maximum of 1, 2, 3 or more dwellings per allotment; access design.	N/A	N/A
4.4 Private Open Space			
	Minimum private open space requirements.	N/A	N/A
4.5 Landscaping			
a)	Landscaping shall be designed to enhance the natural features of the site and adjoining areas. Existing landscape elements such as rock formations, mature trees and other vegetation should, where possible, be preserved.	Y	The development has been designed to respond to the natural topography and retain significant natural features, such as a mature stand of trees in the south of the site. This stand of trees will provide a linkage to the vegetated 7(d) zoned land to the south west which links to adjacent reserves to the south and east. Vegetation, including hollow-bearing trees is to be retained as part of the development – refer to the report for further details.
b)	Landscaping shall be comprised of predominantly <u>endemic species</u> which is in keeping with the built and natural character of the locality;	Y	Predominantly endemic species are to be used in the development.
c)	A landscaping plan shall be provided with all applications indicating that the requirements of this plan will be met and shall include the location of all existing trees on site. Detailed landscaping plans indicating the actual number and species of plants to be established will be required either prior to granting of development consent or issuing of the required Construction Certificate.	Y	A landscaping plan meeting these requirements was lodged with the application.
d)	All parts of the site not built upon or paved (ie. the usable open space area) should be landscaped with grass, groundcovers, shrubs and/or trees.	Y	Appropriate landscaping in public spaces (verges, etc) is proposed.
e)	Use of sun protection devices along western walls.	N/A	N/A
f)	Council's Tree Preservation Order forbids the removal or lopping or certain trees without Council consent.	Y	The application proposes the removal of a number of trees which has been considered in detail in section 5 of the report.
4.6 Building Height			
	Maximum building heights	N/A	N/A
4.7 Solar Access and Energy Conservation			

	Minimum overshadowing provisions for 1, 2 and 3 storey development; submission of shadow diagrams; design of dwellings for energy efficiency.		
4.8 Visual Privacy			
	Visual privacy requirements between proposed and existing adjoining dwellings.	N/A	N/A, however, lot size and orientation will allow for buildings to be sited so as to achieve appropriate setbacks and privacy controls.
4.9 Cut and Fill and Retaining Walls			
4.9.1 Cut and Fill			
a)	The maximum height/depth of any cut or fill is to be limited to 1.5 metres above or below the <u>natural ground level</u> where no slope destabilisation is likely to occur.	Y	Refer to report.
b)	Areas of cut or fill are to be located such that no damage to any adjoining property will occur.	Y	Details of the proposed fill were provided with the application and will require further approval prior to the issue of a construction certificate for below ground works.
c)	All areas containing cut or fill are to be drained, stabilised and landscaped to prevent erosion.	Y	As per b).
d)	Cut or fill must be approved by Council in conjunction with a development application. Full details of all proposed earthworks must be clearly indicated on the plans and section drawings. Council may require that engineering drawings be certified by a suitably qualified structural engineer before any construction certificate can be issued.	Y	As per b).
4.9.2 Retaining Walls			
	Height, submission of details, drainage.	N/A	
4.10 Erosion and Sediment Control			
a)	Applicants are to demonstrate that any potential erosion, sedimentation and saltation can be controlled and that sediment and silt will not be washed from the site both during and after construction.	Y	Addressed in conditions of approval.
b)	Details of proposed erosion and sediment control measures are to be provided with plans for required construction certificates in accordance with Council's Guidelines for Erosion and Sediment Control.	Y	Addressed in conditions of approval.

4.11 Infrastructure and Services			
a)	As conditions of consent for any new development (excluding single dwelling houses on existing allotments), developers will be required to either provide or upgrade existing infrastructure or contribute monetarily to the provision of such services. Such services and infrastructure includes, but is not limited to, sewerage systems, reticulated water supplies, drainage networks, road networks, footpaving and kerb and guttering.	Y	Conditioned as relevant.
b)	Any contributions required to be paid shall be determined in accordance with the requirements of Section 94 of the Environmental Planning and Assessment Act 1979, Section 27 of the Water Supply Authorities Act 1987 and Section 64 of the Local Government Act 1993. Relevant Plans include: - Section 94 Contributions Plan for Off-Street Carparking - Section 94 Contributions Plan for Outdoor Recreation - Section 94 Contributions Plan for Stormwater Drainage: South West Rocks - Section 94 Contributions Plan for Belle O'Connor Catchment Distributor Road - Section 94 Contributions Plan for Trunk Stormwater Drainage: Belle O'Connor Catchment - Development Servicing Plan for Water Supply - Development Servicing Plan for Sewerage	Y	Conditioned as relevant.
5 Subdivision			
a)	Subdivision for multi-dwelling developments	N/A	N/A
b)	Development consent not required to subdivide in accordance with the requirements of the Strata Titles Act 1973 in certain circumstances.	N/A	N/A – strata title subdivision is not proposed.

c)	Clause 16A of Kempsey LEP 1987 provides that Council may allow subdivision into Torrens Title lots under the Real Property Act 1900 or Community Title lots under the Community Land Development Act 1989, but only with development consent.	N/A	N/A – community title subdivision is not proposed.
d)	Subdivision of dwellings lawfully erected before commencement of Kempsey LEP 1987.	N/A	The existing dwelling on the site lies outside of the proposed 108 lots.
e)	If it is intended to subdivide a proposed development into Torrens or Community Title allotments, it is recommended that the proposed subdivision layout and provisions for access to services be included on the initial development application to avoid the need for a separate application having to be made.	Y	Documentation submitted within the application complies with this requirement.
f)	Whether or not development consent is required for subdivision, linen plans will be released upon lodgement of an application for a Subdivision Certificate and Building Certificate accompanied by a Surveyors Report and all prescribed fees.	Y	Noted, conditioned.
6 Staged Development			
	Intention to stage construction should be indicated on the development application. The request for a staged development consent should be made clear on the application form and by annotation on the plans submitted with the development application. This will enable Council to specify the extent of works required for each stage and any contributions payable at each stage.	Y	Defined Precincts has set out staging of the development which is reflected in the conditions of approval.
7 Development in Low Density Areas			
	Development within areas identified on the DCP maps as being restricted to "low density" shall be restricted to single dwellings per existing allotment only unless it can be demonstrated that <u>all</u> of the relevant development standards specified in Section 4 of this plan have been met.	Y	The site is zoned for low density residential development.
8 Mixed development within Commercial Zones			

	Residential development within land zones 3(a), 3(b), 3(c) and 3(v) zones; development standards.	N/A	N/A
9 Variations to this Plan			
	Variations to this plan if an application for development is not substantially consistent with aspects of this plan.	Y	Noted.
10 Development Application Requirements			
	DA lodgement requirements.	Y	Full details were provided with the application.
11 Special Provisions for South West Rocks			
The following provisions shall apply to South West Rocks and shall prevail to the extent of any inconsistency with any other provisions of this plan.			
11.1 Aims and Objectives			
	In addition to the objectives contained in Section 1.4c), the following objectives shall apply to development at South West Rocks:- viii) to encourage buildings and landscaping that reflect the community's expectations of an area where the unspoilt beauty of the natural environment and relaxed country lifestyle are both preserved and complemented by an economy of high productivity and employment. ix) to facilitate development and implement plans to manage land use and to control development, having regard to the protection of the environment and the need to encourage economic expansion x) to examine development proposals taking into consideration the principles of ecological sustainable development.	Y Y Y	The proposal will allow for low density residential development in accordance with the zoning and Council's controls. The proposal is consistent with Council's land release strategy and incorporates measures to mitigate environmental impacts. The proposal incorporates the principles of ESD including water sensitive urban design (eg. water recycling).
11.2 Lot Size and Orientation			
	In addition to the requirements of Section 3.1, the following shall apply to subdivision in South West Rocks:- The minimum average allotment size for subdivision in South West Rocks shall be 650m ² .	Y	The minimum allotment size (680m ²) proposed complies with this requirement.
11.3 Streetscape			

	In addition to the requirements of Section 3.5, the following provisions shall apply to development at South West Rocks:-		
c)	Subdivision of land containing <i>important vegetation</i> shall be designed so as to maximise retention of trees within road and public reserves, except where required to be removed to provide services and to construct roads.	Y	The development has been designed to respond to the natural topography and retain significant natural features, such as a mature stand of trees in the south of the site. This stand of trees will provide a linkage to the vegetated 7(d) zoned land to the south west which links to adjacent reserves to the south and east. Vegetation, including hollow-bearing trees is to be retained as part of the development – refer to the report for further details.
d)	Where it is proposed to subdivide land that contains <i>important vegetation</i> , Council will require all trees over three (3) metres in height to be identified by survey.	Y	A tree survey was conducted. Mature trees are to be retained where possible.
e)	Details of the means of protecting trees nominated for retention during construction of the subdivision will be required.	Y	A condition of approval requires the submission of a Vegetation Management Plan that details how this requirement will be complied with.
f)	Where Council considers it necessary, appropriate title restrictions will be required to protect <i>important vegetation</i> from future removal.	Y	The existing stand of trees will be protected by appropriate title restrictions.
11.4 Maximum Site Coverage			
	Provisions apply in addition to the requirements of Section 4.1.	N/A	To be considered when approval is sought for dwellings.
11.5 Building Materials			
	Design and location of outbuildings.	N/A	N/A
11.6 Additional Controls for Dual Occupancy Development			
a)	Dual occupancy shall be restricted to corner allotments or allotments with minimum <i>primary street frontage</i> of 20 metres.	N/A	N/A
b)	Where it is proposed to erect two (2) detached dwellings on a single allotment which has a single road frontage, the dwelling at the rear of the allotment shall not exceed one storey in height.	N/A	N/A

4.7 Other Plans And Policies

The Proposal has been considered against the following non-statutory documents: The proposed development has been assessed against the strategies contained within these studies in Appendix C to this report.

4.7.1 NSW Coastal Policy 1997 and NSW Coastal Design Guidelines

The NSW Coastal Policy 1997 was designed to guide management and planning of the coastal zone by coordinating and integrating all levels of government involved in coastal zone management.

The Coastal Design Guidelines are designed to protect and plan for the diversity of coastal settlements, ensure that the scale of development is appropriate in both new and existing settlements, provide for sustainable communities, and protect the high scenic and ecological values of coastal areas.

South West Rocks falls within the criteria of a coastal town based on population statistics, as defined in the Coastal Design Guidelines. Population projections indicate that South West Rocks and environs (South West Rocks, Arakoon and Jersyville) may experience strong population growth in the next decade. Although the natural environmental features surrounding the town physically constrain the town's expansion, population projections suggest that South West Rocks is more likely to meet the criteria of "coastal town" rather than "coastal village", simply due to the pressure for urban expansion, as defined by the Coastal Design Guidelines.

The proposed subdivision is consistent with the objectives incorporated within the Coastal Design Guidelines as it seeks to protect and enhance the ecological and visual characteristics of South West Rocks and integrates the new development with surrounding land use and transport.

4.7.2 Kempsey Shire Council Section 94 Rural Roads Developer Contribution Plan

Refer to Section 5 of this report for discussion on this plan.

4.7.3 Kempsey Shire Council Development Control Plan 22 – Local Housing Strategy (Urban Areas other than Crescent Head) 2003 (DCP 22)

DCP 22 applies to the urban areas of Kempsey Shire other than Crescent Head, focusing on land zoned 2(a) Residential under Kempsey LEP 1987. It applies to all proposals for new dwelling houses, medium density development and subdivision and identifies areas or precincts in the Shire's towns and villages for low, medium and medium to high density residential development. DCP 22 contains development standards with special provisions for South West Rocks. The proposed subdivision has been considered against the relevant provisions of DCP 22 in Appendix C and is considered to be consistent with the provisions.

4.7.4 Kempsey Shire Council Development Control Plan No. 27 – Acid Sulfate Soils (DCP 27)

DCP 27 applies to all land within the Kempsey local government area as outlined in Section 2.1 of the Local Environmental Plan. A geotechnical analysis submitted with the application concludes that the site does not contain potential acid sulfate soils.

4.7.5 Kempsey Shire Council Development Control Plan No. 30 – Exempt and Complying Development

Schedule 2 of DCP 30 contains development standards for single storey dwelling houses within land zoned 2(a). The plan allows single storey houses to obtain a complying development certificate subject to meeting the requirements including provision of a BASIX certificate, prior to the commencement of work from either Council or an accredited certifier. Dwelling houses greater than single storeys will generally require development approval pursuant to Part 4 of the Act from the Council.

4.7.6 Kempsey Shire Council Development Control Plan No. 34 – South West Rocks Town Centre (DCP 34)

DCP 34 was developed in response to the South West Rocks Urban Design Study and Town Centre Master Plan. It divides the town centre into 4 distinct precincts based on land use and location to effect better urban design and amenity, establish planning provisions such as height, commercial space, parking and access, and translates the Master Plan into a statutory document.

Existing open space adjacent to Saltwater Creek is located within Precinct B – Public and Recreation Areas of DCP 34 and comprises public foreshore and recreation areas. This sub-precinct refers to land fronting the creek and linkages to the town centre. Development is to accord with any Plan of Management developed in accordance with the Master Plan. There are no known Plans of Management that apply to the subject major project application.

4.7.7 Kempsey Shire Council Development Control Plan No. 36 – Guidelines for Engineering and Subdivision

DCP No. 36 contains specific engineering and subdivision provisions. The proposed subdivision generally complies with the requirements of this Plan. Relevant conditions of approval are recommended requiring demonstration of compliance with the Plan.

4.7.8 Kempsey Shire Council Residential Land Release Strategy 1997

This Strategy was prepared to satisfy the North Coast REP 1988 by developing Urban and Rural Land Release Strategies. It aims to guide and direct future land use decisions in an integrated and orderly manner and ensure that future growth is accommodated within environmentally suitable lands which are able to be economically serviced.

The Strategy has identified the existing supply and future demands for future urban residential land, and lists a number of sites in South West Rocks which collectively have the potential of producing 918 lots (Schedule 2 to the Strategy – Residential Land Supply Register). The subject site is identified within the Strategy as having potential for residential development (an estimated yield of 161 lots), which with the future development of the residue lot (that part zoned 2(a)) will be achievable.

4.7.9 Kempsey and South West Rocks Pedestrian Access Mobility Plan prepared by Cardno MBK dated June 2003

The Pedestrian Access Mobility Plan mapped specific pedestrian routes based on categories by user (eg. seniors' routes, school routes, shopping and recreation routes, and locality pedestrian routes) in both Kempsey and South West Rocks. The routes were based on data collection to determine accessible pedestrian pathways, hazardous areas based on records of incidences and constraints and opportunities for walking in urban areas. The report is supplemented by a schedule of treatments to specific roads in both towns and includes new footpaths, pedestrian refuges, shared bike/pedestrian paths and traffic signals.

Belle O'Connor Street is not mapped by the strategy as being of priority for seniors, school, shopping or recreational. However, Gregory Street which is the main north-south thoroughfare is classified as a school and shopping route and is scheduled for specific treatments in sections to facilitate an improved pedestrian network. Section 5 of this report contains an assessment of the proposal on roads and access.

4.7.10 Draft Mid North Coast Regional Strategy 2006

This draft strategy identifies 4 major regional centres and 6 major towns that are capable of accommodating population growth, residential development and employment growth. South West Rocks does not qualify as either a major regional centre or major town. However, it is considered to be a town under this strategy which is defined by having a larger settlement although a limited service catchment.

Such towns are characterised by lower density residential development with a small to medium scale concentration of retail, health and other services. They are reliant on major regional centres and major towns, such as Kempsey and Macksville for high order services, retailing and employment. The proposal is not inconsistent with the objectives of this strategy.

4.7.11 Saltwater Creek & Lagoon Estuary Management Study and Plan – Final Report, June 2006

The Saltwater Creek & Lagoon Estuary Management Study and Plan ("EMP") recognise Saltwater Creek and Lagoon as an Intermittently Closed and Open Lake or Lagoon (ICOLL) meaning that it is not permanently connected to the ocean. The EMP is the most comprehensive study done to date of the threats facing the estuary and identifies management measures to mitigate further impacts. The aim of the EMP is to *"ensure ecological sustainability of the ICOLL whilst balancing the demands on the system by human uses, both within the waterway and around its foreshores. It also seeks to achieve an equitable balance between opportunities for future development around the estuary and ensuring that such development does not degrade the natural values that make development in the area attractive"* (p iii).

The catchment of Saltwater Creek and Lagoon occupies 8.7 square kilometres and includes part of the towns of South West Rocks and Arakoon. Uses within the catchment are predominantly light agricultural (rural-residential), recreational (golf course) and urban.

The report recognises the sensitive ecological value of the creek and lagoon, the impacts it has been under from urban development and the potential threats to restoring balance to the water quality from further urban expansion within the catchment. One of the fundamental issues requiring ongoing control is the urban stormwater inputs that currently impact on the ecological function of the estuary and the recreational uses of the system. Section 5 of this report discusses water quality in light of the strategies proposed in the EMP. In summary, the stormwater measures proposed by this development support the strategies of the EMP.

4.7.12 Saltwater Creek Flood Study – Final Draft Report prepared by WMB Oceanics Australia and dated February 2006

The Saltwater Creek Flood Study (the Study) was prepared to provide a greater understanding of the potential flooding impacts of Saltwater Creek and to inform the estuary management plan. Commissioned by Kempsey Shire Council, the Study uses computer modelling to model the flood behaviour of the catchment. As mentioned earlier, the site is located within the Saltwater Creek catchment which is the study area of the flood study. The study indicates that the low lying areas surrounding the creek and lagoon are susceptible to low to medium flood hazards. This modelling does not extend to the subject site.

4.7.13 Saltwater Creek Catchment Flora and Fauna Study, South West Rocks, prepared by Kendall and Kendall Pty Ltd, dated 13 February 2003

The Flora and Fauna Study was prepared for Kempsey Shire Council Coastal & Estuary Management Committee to supplement the Estuary Processes Study prepared for Saltwater Creek by Manly Hydraulics Laboratory. The report outlines the flora and fauna communities and species within the catchment, particularly those that are reliant on surface or near surface watertable regimes, and includes suitable habitat for a number of threatened flora, although no threatened species listed under the Threatened Species Conservation Act 1995 or Environmental Protection and Biodiversity Conservation Act 1999 were identified by the study.

The study recognises that the potential for nutrient contamination from urban development is high, and that wetland conservation and urban development are conflicting land uses that require an effective buffer (p31). In this regard, the stormwater design for the proposal has sought to provide a high quality nutrient treatment system to mitigate impacts within the Saltwater Creek catchment.

4.7.14 Coastal Lakes Management: Strategies for a sustainable future, Philip Haines 2006

This strategy refers to the Healthy Rivers Commission (HRC) Independent Inquiry into Coastal Lakes which concluded that current management practices did not pay sufficient regard to the unique characteristics of coastal lakes.

A series of management frameworks for all coastal lakes in NSW was prepared, based on their perceived values and future management needs, with all coastal lakes categorised according to the level of protection they required.

Saltwater Lake is classified as requiring Comprehensive Protection, *"where the restoration and preservation of all natural ecosystems is considered paramount. These lakes generally have pristine or near pristine catchments, with little modification to the waterway, and a high conservation value"* (pp20-21). It is categorised as being most suited for future development (p44) and is least sensitive based on the physical characteristics of the ICOLL.

APPENDIX C. SUBMISSIONS

Kempsey Shire Council

Item # (agency)	Agency comment	Proponent's response	Consideration
Subdivision layout			
1a	Discrepancy between number of lots shown on documentation: 178 lots on cover page and 108 lots in Ch 2 of EA and Appendix B	Project approval is sought for 108 lots + 2 reserves + the residual area of the property	No action required
1b	Need clarification of number of lots in Precinct D.	19 allotments in Precinct D.	No action required
1c	Council records indicate that Lot 124 DP 1097510 has an area of 26.19ha, not 30.07 as displayed in the EA.	Agreed.	No action required
	Staging of development will be reliant on rezoning of eastern strip. Plan named Rev C shows revised precincts A1, A2, C1 and C2 which will be affected by the rezoning.	A revised staging plan was prepared excludes the creation of lots on the eastern strip affected by the rezoning. Construction of the road and drainage network is permissible under the existing zoning.	A condition of approval will prevent the registration of lots in Precincts A2 and C2 until the rezoning is gazetted.
1d	Figure 4 has an incorrectly zoned block near the SWR town centre and no parks are shown in this figure.	Noted.	No action required
Design principles			
2a	The EA has not addressed NSW Coastal Guidelines including: - how the development will enhance the relationship between SWR and the coast;	The development is not adjacent to the coast; relationship between town and coast cannot be achieved.	Refer to assessment against Coastal Design Guidelines in Appendix B.
	- the visual sensitivity with respect to the coast and Saltwater Lagoon;	The proposal has avoided the visible upper slopes. A visual assessment will be addressed in subsequent DAs.	ERM clarified that site will not be visible from surrounding areas, including the foreshore due to the topography of the land. A visual assessment is therefore not required.
	- access to the foreshore and Saltwater Lagoon and	There are no opportunities to link the	The road network for this application

	Creek, and adds to social and cultural opportunities. There is no documentation that supports that this aspect was investigated. The future residents expect reasonable links.	site to either the coastal foreshore or Saltwater Lagoon – this would require Council, DEC and/or private landholder cooperation.	will facilitate future connections to the north subject to development north of the subject site. Belle O'Connor St is positioned to allow for future consideration of road connections to the north.
	- discussion regarding street hierarchy. Agreement on road standard in stage 1A has been agreed on. Further discussion on road hierarchy on remaining roads outside stage 1A to be discussed further.	Refer to Traffic Assessment. The street hierarchy allows for further development to the east and provides a bus circulation path through the Stage 1 area.	Refer to report for description of road network.
Covenants			
2b	Are the covenants discussed referring to an 88E instrument?	Yes, it is intended that the proposed covenants would be included on the title in the form of a S88E instrument under the NSW Conveyancing Act 1916.	No action required
Roads and access			
3a	Confirm traffic arrangements for the location of a future road linking residential development to the north east at the existing new roundabout.	The proposal does not exclude a possible road link to the north connecting to the existing Belle O'Connor St roundabout.	Refer to report for further details.
3a	Council will require time to assess this proposal in relation to the draft LES for the adjoining allotments to the north.	Strategic planning for future residential areas to the north should consider the subject proposal given that it is consistent with the current LEP zoning.	
4	Preliminary longitudinal cross sections with typical cross sections of proposed Burrawong Drive is required. Council would like to see a preliminary longitudinal section of Burrawong Drive to ascertain if there might be any adverse effects on the proposed allotment layout in and around proposed lots 516 to 518.	The longitudinal grade for Burrawong Drive is subject to the requirements of DCP 36 Subdivision Code and the relevant AUSPEC design requirements. This is best reviewed with all other design constraints at Subdivision Certificate stage. A	Road design and engineering details will be required to comply with Council's requirements via a condition of approval.

condition requiring compliance with DCP 36 is included in the Statement of Commitments (Item 21).

DCPs

3b	The following additional Council policies and DCPs apply to the site: - street naming (C22.06) The developer will need to seek Council approval to the current policy framework and Roads Act 1993.		Conditioned
	- maintenance of Subdivisions, Security Deposits, Bonds and Bank Guarantees (M13.09);	Payment of security deposits and bonds are matters to be determined at CC stage.	No action required
	- DCP 25 Advertising Signs in Kempsey Shire; and	There are no advertising signs proposed.	No action required
	- DCP 30 Management of Acid Sulfate Soils.	While geotechnical investigations have indicated there are no acid sulfate soils on the site, a contingency has been added to the Statement of Commitments to satisfy this request.	No action required

Flora and fauna

4a	Neither the Umwelt or ERM Flora and Fauna Assessments used trapping as part of the survey process for this development. There is a link from the copse of trees located in the proposed public park in Precinct B that has links to the 7(d) area.	Trapping was not used due to the lack of ground habitat resources for small mammals within the study area. Nevertheless, all threatened species with likelihood to occur in the study area were considered in the assessments.	A habitat assessment was undertaken on the 7(d) zone – refer to report for further details.
	Impacts of development on threatened flora and fauna within the 7(d) zone have not been assessed. Excluding the 7(d) zone will not allow for a proper assessment of the impact of the development on the environment.	There is only a small area of roadway proposed within this zone. An ecological assessment of this area is not warranted.	A habitat assessment was undertaken on the 7(d) zone – refer to report for further details.

Flooding and wet retention basin

4b	Some allotments fronting Belle O'Connor St are affected by the Probable Maximum Flood (PMF) for the	The identified 1:100 year flood level for the site is RL 3.2m AHD. No part	The proposed lots are well above the assessed 1:100 flood level and not
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	site.	of the development including the detention basin impacts on the 1:100 year flood envelope. The minimum road level is approximately 5.7m AHD. In general, all of the lots are above 5.9m AHD. The impact of the PMF is approximately 0.02% of the 8.7km ² catchment.	affected by the PMF.
4b	Effect of the wet retention basin on flood storage or floodwater during the PMF event. Whether a public park in the detention basin area is desirable. The Proponent needs to demonstrate the suitability of the proposed wet detention basin area as a passive open space, considering all available standards.	The wet detention basin has no impact on the 1:100 flood level and given that the permanent water level is 3.5m AHD, there is no loss of flood storage volume.	Open space uses have been deleted from proposal. Fencing around the detention basin is proposed.
Section 94 contributions			
4c	S94 contributions are to be paid to cover the impacts of construction traffic to Arakoon Road and any other roads used to transport fill. The source of fill and associated haulage routes should be identified. Council's existing S94 Rural Roads DCP applies. Letter of 20/11/06 advises of options: (i) separate DA to Council for importation of fill prior to CC for current application, or (ii) submit prior to approval of MP an Impact Assessment along the length of the haulage route having regard for source, suitability of fill, social and environmental considerations, traffic impacts, noise, etc.	There is no S94 plan that applies to the filling works so no contributions are required. Fill will be taken from approved sources in the locality.	Refer to report for further details.
Public reserve, Precinct B			
4d	A submission to Council is required detailing why the public reserve in Precinct B is suitable given its slope (20-30%). The intermittent watercourse is not located in this part of the site and is not proposed for drainage purposes. Council is concerned as to whether the area is useable in addition to ongoing maintenance. Council requires further justification of the area's suitability given its physical constraints.	Council's concerns relate to maintenance of "pocket parks". Objective of the reserve is to retain this stand of trees and provide a pedestrian link. A pathway will be constructed and the reserve maintained during construction. Ongoing maintenance will be	Open space uses deleted from proposal. Refer to report for further details.

minimal.

Alternate options, eg. inclusion within adjacent lots, were found to not be in the public interest as it would not facilitate public access and may lead to poor maintenance.

Drainage and services

4e	Intermittent watercourse traversing proposed lots 519 and 433. Specific engineering details to ensure large storm flows can be diverted clear of these lots and connected to proposed Road 2 drainage can be provided at CC stage.	The natural surface water drainage occurs along proposed Road 2 which is designed to cater for these flows.	Specific conditions relating to stormwater and drainage are proposed.
4f	There are no preliminary layouts for water storage or reuse systems.	A layout was submitted to Macleay Water and approved with the Stage 1 CC.	Specific conditions relating to servicing and infrastructure works are proposed.
	Preliminary details of the existing overflow/scour pipes to ensure development is not adversely affected.	ERM has not received details as to: - the frequency or quantity of discharges - whether the discharges are concentrated or sheet flows - whether the discharges are classed as storm water runoff that can be discharged to the drainage system or whether the discharges are classed as sewage. The appropriate discharge point can be provided as part of the CC for the relevant stage. The provision of any discharge point should not form a development condition as it is not due to the subdivision. It is more a matter between adjoining land owners and should be resolved regardless of any DA.	Specific conditions relating to servicing and infrastructure works are proposed.

Statement of Commitments

i	Points 4 and 7 proposed to dedicate the identified parks in the plan to council as public reserves. Council still needs a submission to be lodged by the applicant demonstrating that the land being offered as public reserve/park is suitable for the intended purpose.	Open space uses deleted from proposal. Refer to report for further details.
ii	Point 14 outlines measures suggested by Umwelt to minimise impacts to any arboreal fauna present. Concern is raised that hollows would not be inspected until the tree had been felled. It is preferable that a suitably qualified person undertake an inspection of the hollows prior to felling trees. In addition, the qualified person should remain onsite for the entire felling operation so that proper management of any nocturnal animals or otherwise can be effectively managed.	A condition of approval will require the submission and approval of a Vegetation Management Plan that addresses the management of remaining habitat and trees to be removed, as well as provision for habitat within the 7(d) zone.
iii	Any material delivered to the site that does not comply with the relevant AS or does not meet Council requirements will be rejected (add to point 15).	Conditioned.
iv	Council to approve of the proposed CMP prior to the issue of the CC for this stage of the development (points 11 and 16)	Conditioned.
v	Add to item 20 "and in accordance with good engineering practice"	A condition of approval requires all civil works to be undertaken in accordance with Council's requirements.
vi	Item 25: hydrants AS 2419.1-1994 is now AS2419.1-2005	Conditioned.
vii	Item 37 – written confirmation from the LALC is to be lodged with Council prior to the issue of the Subdivision Certificate for each precinct of the development.	Conditioned.
viii	Item 38: the rising mains for the potable and re-use system are to be located as shown on the plan 14857 Revision B attached to this letter.	Conditioned.
ix	Item 41: add "Lighting in accordance with AS1158-1997 Road Lighting to be provided."	Conditioned.
x	Amend Item 43 to read "The proposed <u>internal roads</u>	Conditioned.

	shall be constructed and dedicated for the full frontage of all the lots in the development to the characteristics defined in Table D1.5 of <i>DCP 36 Council's Engineering Guidelines for Subdivision and Development</i> and in accordance with the approved Master Plan."	
xi	Item 51: The new rates for dot points one and two are \$7468 and \$6300 respectively as per advice contained in Council's letter of 20/11/06.	Conditioned.
xii	Item 58: part precincts A1 and C1 would be affected. Clarification required.	Conditioned (condition A2).
xiii	Item 59: The details of the proposed nesting boxes and demonstration of compliance/suitability is to be lodged with the plans for the proposed CC.	Conditioned (Vegetation Management Plan)
xiv	There is no mention of compliance with the Saltwater Creek Estuary Management Plan.	Refer to report for a detailed assessment.
xiiv	Council's letter of 20/11/06 provides the S94 contribution payable for this development.	Conditioned.
xiiiv	Council would like the developer to consider entering into a Voluntary Planning Agreement (s94) to obtain contributions for the following purposes: - carry out work directly identified in table ES1 items F, P and U of the Saltwater Creek EMP - upgrading of Plummerville Lane and Gregory Street from the Pacific Highway to Belle O'Connor St and Gregory St roundabout.	Refer to report for a detailed assessment.

Department of Environment and Conservation

Item #	Agency comment	Proponent's response	Consideration
1	DEC is able to support the proposal subject to the following amendments being made to the Statement of Commitments which are important for DEC's ongoing support of the proposal.		Noted
1a	All hollow bearing trees on the development site will be retained and a buffer of 10m from the drip line of those trees will be provided.	An additional 3 hollow bearing trees are to be retained. The following measures will be undertaken:	Condition of consent requiring submission of vegetation management plan detailing measures to be

	12 of the 37 hollow bearing trees on the site will be retained. The additional 3 trees to be retained are inadequate for the provision of nesting/roosting opportunities for threatened fauna and microchiropteran bats. The value of retaining trees is greatly diminished where a minimum 10m buffer from the drip line to all development has not been provided. This will considerably reduce the long term survival of these trees and hence their value to hollow dependent fauna will be lost. No detail of habitat value of adjacent land has been provided to justify the removal of trees. The proposed nest boxes in the 7(d) zone and open space areas has some merit, although the number of boxes proposed is less than the number of hollows to be removed. Nest boxes should be specific to the species they are intended to attract.	- prior to the removal of hollow bearing trees provide nest boxes in the 7(d) zone and open space areas of the site. - trees with hollows to be subject to inspections during felling operations. (Details contained in Hollow Bearing Trees Assessment).	undertaken prior to felling of trees to protect fauna. ERM provided details of proposed buffers to all hollow bearing trees on the development site. Buffers shall be protected by a restriction as to use. Habitat assessment for 7(d) land to be provided. A condition is to specify the rate of nest boxes to be provided (3 nest boxes for every tree removed, equivalent to hollow size and maintained until suitable hollows develop). A management plan is to be prepared by a suitably qualified person and submitted post consent detailing the number, type and location (7(d) zone and open space areas) of nest boxes as well as their management.
1b	Asset protection zones are to be provided to adjacent vegetation to the north, east and south of the site and are to be fully contained within the proposed development site boundaries. DEC's special data and aerial photography indicate that the eastern APZ is forested. DEC does not support the clearing of native vegetation on adjacent land when suitable cleared land currently exists on the	The APZ to the east of the development site is to be contained within an easement also to be utilised as a bushfire perimeter trail and drainage reserve. RFS has indicated that this arrangement is suitable. It will provide management of this asset under a single ownership and	ERM clarified that the removal of trees on the eastern APZ is required due to fill, not to enable the APZ to be created. RFS is satisfied with the proposed APZ arrangement. A condition of approval requires an easement to be created for this purpose in this location.

site for the provision on an APZ.

will not require the removal of trees.

Department of Natural Resources

Item #	Agency comment	Proponent's response	Consideration
1.	Part 3A permit required under the <i>Rivers and Foreshores Improvement Act 1948</i> in relation to filling, road works, stormwater controls and sediment and erosion controls that are within 40m of the 1 st order water course.	Part 3A permits do not apply to major projects pursuant to Part 3A of the <i>Environmental Planning and Assessment Act 1979</i> .	Proponent's response not forwarded to DNR for comment.

Special conditions

2.	All imported materials for filling and road construction shall be free from any contamination.	Addressed in Statement of Commitments (Item 17)	No action required. Matters have been addressed.
3.	Erosion and sediment control measures shall be in place during construction and until site is established.	Addressed in Statement of Commitments (Item 11)	
4.	No operations shall be undertaken outside the area shown on the application.	There are no proposed earthworks outside of the project application area.	
5.	Part 3A permit is only valid for operations on freehold land.	N/A – permit not required	
6.	All proposed works and operational management shall be in accordance with Council's consent conditions.	All proposed works shall be accordance with the SoC and consent conditions issued by DoP.	
7.	Downstream areas of the drainage line, which are disturbed by the construction, should be restored and stabilised to minimise future erosion. Appropriate scour protection should be established at this location.	The wet detention basin outlet drain has been set at the invert RL of the existing culvert within the crown road. Whilst this stormwater conduit will be replaced the outlet level will remain unchanged and there will be no requirement to provide an extended tail out drain. Scour protection will be provided immediately adjacent to the outlet in accordance with the design specification DCP 36. Details of the protection will be provided with the CC plans.	

		Downstream, the outlet structure will remain undisturbed and the existing channel vegetation will remain. This vegetation is the most effective form of scour protection beyond the outlet. No works will be undertaken on downstream private land.	
8.	Storage of equipment, fuels and chemicals should be away from drainage line and be self contained so as to avoid contamination of local streams.	Addressed in Statement of Commitments	

Rural Fire Service

Item #	Agency comment	Proponent's response	Consideration
1	The requirements of <i>Planning for Bushfire Protection 2001</i> are to be considered in the planning stages of any development of the subject site. APZs, construction requirements and water provisions will be finalised when DAs for individual dwellings are assessed under Section 79BA.	These are incorporated into the proposal.	The subdivision design meets the requirements of the RFS. Future dwellings shall be required to comply with PfBP.
2	To ensure the RFS' support of a subdivision of the subject land the proposal will need to demonstrate that compliance with PfBP is achievable. The recommendations of the Bushfire Assessment should therefore be considered. It is noted that an easement over the adjoining land to the east is to be gained for maintenance of the APZ to be secured to the title of the subject property, eliminating reliance on other parties for construction or maintenance works. This will need to be addressed to ensure the successful issue of a BFSA under Section 100B.	A BFSA is not required under Part 3A. The easement would be established via a S88B instrument.	The development meets the requirements of PfBP. A condition of approval will require the easement on Lot 22 to be established via a S88B instrument.
3	A Plan of Management should be prepared for the proposed Public Space to the north east of the property to ensure that the retained vegetation is appropriately managed to ensure that fire does not	The reserve will be dedicated to Council and will be managed in perpetuity as part of the Council reserve system. As such, there is no	The open space proposals have been deleted from the development. Refer to report for further details.

have the potential to generate and pass into adjoining properties.	benefit gained from preparing a Plan of Management as Council management will prevail on this area.
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Dam Safety Authority

Item #	Agency comment	Proponent's response	Consideration
	The Committee determined that the basin not be prescribed based on the information provided, as the embankment is of low height, the storage capacity is small and the Consequence Category is Low. The Committee had no further requirements for this detention basin unless there is future development downstream which would upgrade the Consequence Category.	N/A	Refer to details in report. Future applications downstream may require consideration of detention basin and possible referral to Dam Safety Authority.

ISSUES RAISED IN PUBLIC SUBMISSIONS

Item No.	Comment	
Statutory Framework		
1	The requirements of SEPP 71 have not been addressed.	The Department's assessment has considered the proposal against all relevant environmental planning instruments.
2	A Master Plan for Stage 1 was not required	Not relevant to the subject application.
3	MP 38-9-2004 did not include entire site under same ownership.	Not relevant to the subject application.
4	Action on the <i>South West Rocks Structure Plan Review</i> (2003) has been slow. The Residential Land Release Strategy should be revised, along with the revision of the Kempsey LEP 1987, as recommended by the South West Rocks Structure Plan Review 2003.	Not relevant to the subject application.
5	Wildlife corridors should be adopted in the LEP as required by the North Coast REP.	No wildlife corridors exist on site. However, the Department's assessment did include an ecological review prepared by the Proponent for land zoned 7(d) Scenic Protection within the boundaries of the site.
6	Amendments to the LEP continue to increase density.	Not relevant to the subject application.
7	The subdivision proposal leans heavily on a perceived need for more housing lots but the Structure Plan Review states “actual demand for housing versus possible future supply needs to be resolved by a review of Council's Residential Release Strategy” (p iv).	The proposal is consistent with Council's Residential Release Strategy.
8	A change of zoning has already occurred on the site between Stage 1 and Stage 2 which should have alerted Council to the need for wildlife corridors in compliance with the North Coast REP. Another change of zoning is imminent for Stage 2 and wildlife corridors will be no less urgent then.	Refer to 5, above.
9	SWR has been suffering an absence of protection by Council which has encouraged the distributor road within the development listed.	The distributor road was approved by Council. The current proposal relies on the extension of Belle O'Connor Street and the creation of an internal road network to facilitate the subdivision.

Development in South West Rocks

10	Reference to public workshops in 2002 where the community agreed that recent developments in South West Rocks were not in the right character for the area and is annihilating bushland.	The proposal is consistent with Council's Residential Release Strategy. Furthermore, the Department's assessment has addressed impacts on biodiversity via recommended conditions.
11	Incremental lot-by-lot development resulting in ribbon settlement has already occurred along sections of the main access road, Gregory Street. Approval for this occurred without community consultation and with inadequate opportunity for public access to reports advising of threatened species.	The proposal is consistent with the Coastal Design Guidelines.

Ecological values

12	Little regard shown for ecological values around SWR by this proposal or by Council which has encouraged the distributor road within it.	The proposal is consistent with Council's Residential Release Strategy. Furthermore, the Department's assessment has addressed impacts on biodiversity via recommended conditions.
13	Survey area of flora & fauna report is only in the 2(a) residential zone and is too small to consider bush corridors which must offer connectivity between nearby areas of significant habitat value. The areas of retained trees have no connectivity and the Scenic Protection zone affords little opportunity to link with the other side of Gregory Street, for wildlife or for people crossing the road as per p. 13 of the Traffic Impact Assessment.	A habitat assessment was conducted on part of the site zoned 7(d) Scenic Protection and recommended conditions of approval will protect the habitat of fauna utilising hollow-bearing trees.
14	The section on the Wallum Froglet in the Threatened Species Assessment undervalues the habitat value of this site. The claim that the area does not conform to the acid paperbark swamps preferred as habitat is misleading because the removal of trees does not equate with the removal of the frogs. The species was recorded nearby Saltwater Lagoon. The wet soak area on this site (intermittent creek and land subject to inundation) is a viable habitat link.	The Department is satisfied that the proposal will not negatively impact on threatened species.
15	Tree dwelling species which need vegetation links across this site to travel between the Hat Head National Park and habitat across Gregory Street include the Brush-tailed Phascogale and the Squirrel Glider.	The Department is satisfied that the proposal will not negatively impact on threatened species.
16	This design proposal makes it impractical to retain most of the vegetation.	Some trees are being removed to facilitate the proposal. Other than minor road and services, no works are proposed within that part of the site zoned 7(d) Scenic Protection. Furthermore, nest

		boxes shall be supplied in this area.
17	ESD principles that would be most likely to achieve the desired character of the locality, ie. wildlife corridors, have been ignored.	ESD principles have been incorporated into the design to protect downstream water quality. The water management strategy designed for the site will ensure that all stormwater flows from the new urban areas are minimised and treated so as to preserve the sensitive Saltwater Creek/Lagoon catchment.
18	The computer generated list of species in the flora and fauna study is lacking.	The Department is satisfied that the ecological assessment submitted with the application is satisfactory.
19	A known Osprey nest is located to the east of the property in the area known as Stage 2.	The Department is satisfied that the proposal will not negatively impact on threatened species.
20	The Squirrel Glider and Brush-tailed Phascogale occur on the other side of Gregory St but the report concludes that further assessment is not required for either, due to the absence of suitable vegetation.	The Department is satisfied that the proposal will not negatively impact on threatened species.
21	Covenants to prohibit cats and dogs and to control the design of fences to allow wildlife movement would be desirable but are lacking.	Future development on the site (ie. single dwellings) is subject to separate approval. However, in managing the future development of the site, the Proponent intends that only registered dogs or cats will be allowed within the subdivision and that cats are to be restrained on the property from sunset to sunrise to avoid wandering.
22	The land is surrounded on 3 sides with a green belt: Smoky Cape or Hat Head National Park (south) which incorporates the Smoky Cape Lighthouse (tourist attraction); Arakoon Cemetery (east) which has been enclosed by land subdivided into 1ha blocks; SEPP14 Saltwater Lagoon Wetland (north): the land in question drains into this wetland.	Noted.
23	It is imperative that any surrounding development would not impose any further risks to this area. Pollution of any kind, from groundwater runoff, urban development, increased domestic pet and human penetration would tip the balance of this gem into a state of ecological turmoil.	The proposal incorporates water sensitive urban design which includes a stormwater system that will maintain pre-development flows and nutrient removal on site.
24	Risk to swimmers further down Saltwater Creek at its mouth on Main Beach.	Not applicable to subject application.
25	Suggested 1 hectare lots on the higher regions with state of the art total	The site is zoned for residential development with a minimum lot

	water cycle management systems implemented, and regeneration of the lower areas with the key endemic species.	size of 550m ² .
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Suitability of the site

26	Disagrees with claim that SWR is defined as a coastal town under the Coastal Design Guidelines	Refer to section 6 of report.
27	Recent development in SWR has had a "slash and bulldoze" approach which is a land management failure.	The proposal is consistent with the Coastal Design Guidelines.
28	Fig. A.2 of the <i>South West Rocks Structure Plan Review</i> 2003 shows the north and east of the site fall within key habitats and fauna corridors.	The proposal has considered impacts on fauna and flora. Refer to the assessment and conditions for further details.
29	This proposal adds to cumulative impact and does nothing to encourage compact towns, as it serves to extend suburban sprawl.	The proposal is consistent with the Coastal Design Guidelines.
30	The scale of this proposal is not appropriate in this location.	The proposal is consistent with the Coastal Design Guidelines.
31	The natural setting of the village is in danger of being erased by suburban creep, on a site which creates a residential fringe where residents could enjoy seeing wildlife movement along a vegetation corridor.	The proposal is consistent with the Coastal Design Guidelines.

Population growth projections

32	Population estimates given by the Proponent are based on a Council report Future Infrastructure Planning for SWR circular 2004, not on Parsons Brinckerhoff's report dated 2003, and therefore assume that the local population will increase by an additional 2000 people. The demand for housing is not as high as assumed by the Proponent.	The proposal is consistent with Council's Residential Release Strategy.
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Staging of the development

33	The staging of this proposal is confusing.	Addressed in report.
34	Phasing should follow some plan and should comply with the desired future locality character which this does not.	The proposal is consistent with Council's Residential Release Strategy.

Saltwater Creek and Lagoon / Flooding

35	The site includes wetlands but the proposal would completely alter it with	The site does not include wetlands pursuant to State
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	landfill and ponding.	Environmental Planning Policy No. 14 – Coastal Wetlands. The proposed constructed wetland (detention basin) will assist with the treatment of stormwater runoff from the site.
36	The development would occupy all residential land on site above flood level rather than being confined and retaining the natural features.	The development is not located on the upper ridgeline and predominantly occupies that part of the site zoned for residential development.
37	Provides habitat for many species including the threatened Wallum Froglet.	The ecological assessment submitted with the application indicates that the vegetation to be removed will not pose a significant impact to any threatened flora and fauna species, communities or populations.
38	The need to protect the sensitive ecology around the Saltwater Creek and Lagoon catchment is not addressed by this proposal.	The proposal has considered impacts on Saltwater Creek and Lagoon and incorporates water sensitive urban design measures. Refer to the assessment and conditions for further details.
39	Water cycle management is used in this proposal to justify an increased site density in an unsuitable location. It should not be used to justify the removal of wet soak areas which are suitable habitat for the vulnerable Wallum Froglet and which would be replaced by landfill, in some places exceeding 1.5m in depth.	The density of the development has allowed for larger lot sizes above the minimum size set by Council, thereby providing a lower density. The ecological assessment submitted with the application concluded that the low-lying areas of the site did not provide preferred habitat for the Wallum Froglet.
40	Valuable wetland would be lost as it is proposed to use ponds and landfill.	The site does not include wetlands pursuant to State Environmental Planning Policy No. 14 – Coastal Wetlands.
41	Retaining the natural features is essential and must be included in the planning process	The proposal responds to the natural features of the site. Furthermore, the low density residential development permitted by the zoning has informed the design of the development.

Stormwater

42	Total water cycle management is a good option for coastal development but cannot result in zero impact in areas which should not be developed.	The water sensitive urban design measures incorporated for the site will ensure that all stormwater flows from the new urban areas are minimised and treated so as to preserve the sensitive Saltwater Creek/Lagoon catchment.
43	Natural habitat values should be given higher priority than a showcase drainage project.	The site has limited habitat value due to previous agricultural use. Retention of mature trees, including hollow-bearing trees, along with restrictions on development surrounding the latter trees, has been incorporated into the development. This is further supported

		by a habitat assessment conducted on part of the site zoned 7(d) Scenic Protection which determined that there is a high level of habitat value existing in that area, which does not form part of the site to be developed.
44	The 1:25,000 topographic map shows an intermittent stream on the site, and land subject to inundation.	Pre-development and post-development flows have been considered in the water management plan for the development.
45	The charts of pollutant loads and flows, pre-and post-development have been generated by a computer program. Such software is meant to model land suitable for development, not wetland and streams.	Modelling undertaken to determine the quantity and quality of flows generated by the development have determined that the proposed WSUD control measures are appropriate for the development.
46	Stormwater management does not make up for removal of wetland by landfill.	The proposed stormwater detention basin is part of an integrated stormwater system that will minimise and treat water flows, to preserve the sensitive Saltwater Creek/Lagoon catchment.
47	The encouragement for a total water cycle management system by Council and the State government has given the engineering consultants the idea that the natural values did not need to be retained. Costly studies have been done for a scheme that would not have been contemplated if revisions had been made to the LEP, as outlined in the Structure Plan Review.	The proposed stormwater detention basin is part of an integrated stormwater system that will minimise and treat water flows, to preserve the sensitive Saltwater Creek/Lagoon catchment. The LEP and Structure Plan Review do not form part of this assessment.
48	The amount of water collected in the drainage solution requires a new lake, secondary to Saltwater Lagoon but with no connectivity for it to act as a fish nursery like the lagoon.	The proposed stormwater detention basin is part of an integrated stormwater system that will minimise and treat water flows, to preserve the sensitive Saltwater Creek/Lagoon catchment. It is not appropriate to be considered for use as a fish nursery.

Land ownership

49	32.50 hectares of land located directly to the north of Seascope Grove - Lot 84 DP 792945 comprising 4.98ha of land owned by Malbec South West Rocks P/L and Proposed Lot B in an unregistered plan (27.52ha which is part of Lot 52 DP 831284 owned by Saltwater Developments P/L; Malbec is in the process of purchasing this land.	Noted
50	Lot 29 DP 882846 comprising 68.70ha and proposed Lot A in an unregistered plan (7.39ha) which is part of Lot 52 DP 831284 both owned by Saltwater Developments P/L.	Noted

Rezoning background

51	Council resolved all of the above properties (excepting Lot 84) to Residential 2(a) subject to the preparation of a LEP on 11/06/02. Lot 84 was added to the properties to be rezoned on 24/02/04 by Council. The former DUAP endorsed the Kempsey Residential Land Release Strategy in 2002 which includes all of the above properties. LES is due to be completed in October 2006. Preliminary Master Plan subdivision layout plans have been prepared and has made allowances for constraints (eg. setbacks from the STP, SEPP 14 wetlands and Saltwater Lagoon).	Noted
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Roads and traffic

52	An unformed 20.115m wide Crown road is located between the Seascapes Grove property and land to the north of the site and will be the only means of access from the existing SWR road infrastructure (Belle O'Connor St) to the north.	Refer to Section 5 of this report for details.
53	The redirection of Belle O'Connor St into the Seascapes Grove development was approved by Council as part of Stage 1 (24 lots). The design of the intersection with Crown Road is appalling as it currently does not allow for the continuation of the Crown road along the existing reservation to provide access to land to the north of the site.	
54	250 proposed lots will rely solely on the Crown Road for vehicular road access. In addition, the proposed road connecting the southern and northern development areas will provide a critical vehicular link to Phillip Drive.	
55	A road connection joining Belle O'Connor St to Phillip Drive is a key principal of the development of SWR as it will provide an important secondary access road to Arakoon and Trial Bay Gaol.	
56	ERM traffic report (p2) report that the Regional Traffic Committee recommend a T-junction at Belle O'Connor St and the STP access. Furthermore, consideration should be given to the road reserve (Crown Road) and improvements required to manage turning traffic if further development is undertaken to the north.	

57	Section 2.5.2 of the Traffic Impact Assessment by ERM refers to pedestrian links as indicated in Figure 2.1 which could not be found in the document.	Amended by Proponent.
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Aboriginal Heritage

58	Findings of an Aboriginal burial area have occurred adjacent to the industrial area while other burial areas occur in low-lying areas.	A search of AHIMS identified 19 Aboriginal objects or places in the South West Rocks area, the closest being some 0.7km from the site. An inspection of the site in conjunction with the Kempsey Local Aboriginal Land Council indicated that no artefacts were observed on the ground surface. Relevant conditions of approval will require all construction work to cease in the event that Aboriginal artefacts or items of European heritage are encountered on site.
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Pedestrian and cycle access

59	The site is located 2km from the beach which is considered a long distance for potential elderly residents.	The proposal is for low density residential development consistent with the existing zoning. The pedestrian and road network will facilitate both pedestrian and vehicular access to the coast, the town centre and essential services.
60	Pedestrian and cycle networks are hampered by the lack of paths giving direct access to the Bi-Lo shopping centre via the adjacent subdivision.	
61	The footpath leads eventually to the main street of SWR but the distances would likely result in accessing the main street with cars rather than on foot.	
62	The subdivision would be better off in higher density accommodation closer to the centre of SWR.	

Public domain

63	The desired function of open space is largely to attract wildlife. The open space in this proposal is aimed at human recreational use, however boggy it may be.	The open space proposal, submitted as part of the original application, has been deleted from the development. Refer to section 5 of this report for further details.
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Visual impacts

64	Visual impact for tourists travelling to Smoky Cape and Hat Head National Park will be extremely ugly due to built form.	The site is zoned for low density residential development. Existing controls will apply to housing, when approval is sought, to minimise visual impact, and the bulk and scale of built form.
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