

Notice of decision

Section 2.22 and clause 20 of Schedule 1 of the *Environmental Planning and Assessment Act 1979*

Application type	State significant development
Application number and project name	SSD-10321 Residential Development at 89 John Whiteway Drive, Gosford
Applicant	The Trustee for JWD Developments Unit Trust
Consent Authority	Minister for Planning and Public Spaces

Decision

The Executive Director under delegation from the Minister for Planning and Public Spaces has, under section 4.38 of the *Environmental Planning and Assessment Act 1979* (**the Act**) granted consent to the development application subject to the recommended conditions.

A copy of the development consent and conditions is available [here](#).

A copy of the Department of Planning, Industry and Environment's Assessment Report is available [here](#).

Date of decision

14 October 2021

Reasons for decision

The following matters were taken into consideration in making this decision:

- the relevant matters listed in section 4.15 of the Act and the additional matters listed in the statutory context section of the Department's Assessment Report;
- the prescribed matters under the *Environmental Planning and Assessment Regulation 2000*;
- the objects of the Act;
- the considerations under s 7.14(2) and 7.16(3) of the Biodiversity Conservation Act 2016 (NSW);
- all information submitted to the Department during the assessment of the development application and any additional information considered in the Department's Assessment Report;
- the findings and recommendations in the Department's Assessment Report; and
- the views of the community about the project (see Attachment 1).

The findings and recommendations set out in the Department's Assessment Report were accepted and adopted as the reasons for making this decision. Additional reasons for making the decision are also recorded in the Department's Assessment Report.

The key reasons for granting consent to the development application are as follows:

- the project would provide a range of benefits for the region and the State as a whole, including a total capital investment of \$98,306,520 in the region, 472 construction jobs, both local and state infrastructure contributions, and 201 new dwellings to meet housing demand and provide housing diversity;
- the project is permissible with development consent and is consistent with NSW Government policies including the North Coast Regional Plan 2036, The Gosford Urban Design Framework, and Future Transport Strategy 2056;
- the impacts on the community and the environment can be appropriately minimised, managed or offset to an acceptable level, in accordance with applicable NSW Government policies and standards, subject to conditions of consent;
- the issues raised by the community during consultation and in submissions have been considered and adequately addressed through changes to the project and the recommended conditions of consent; and
- weighing all relevant considerations, the project is in the public interest.

Attachment 1 – Consideration of Community Views

The Department exhibited the Environmental Impact Statement for the project from 23 April 2020 until 20 May 2020 (28 days) and received 16 submissions, including 14 objections, 1 comment and 1 in support of the project.

Following the receipt of the amended application, the Department exhibited the amended documentation and response to submissions from 14 April 2021 to 27 April 2021 (14 days) and received 11 submissions objecting to the development.

The Department also undertook a visit to the site.

The key issues raised by the community (including in submissions) and considered in the Department's Assessment Report and by the decision maker include built form, amenity impacts, visual impacts, noise, biodiversity impacts, heritage and the impacts of the project on the road network. Other issues are addressed in detail in the Department's Assessment Report.

<i>Issue</i>	<i>Consideration</i>
<p><i>Height and Floor Space Ratio</i></p> <ul style="list-style-type: none"> Excessive height Site is not captured by Gosford SEPP variation clause. Excessive floor space ratio (FSR) as the non-buildable area has not been excluded from the calculation. Contrary to Gosford DCP 2018. Impacts on property values. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> Clause 8.4 – Exceptions to height and floor space in zones B3, B4 and B6 of the Gosford SEPP does not apply. However, the height variation is supported as it meets the requirements of Clause 4.6 of the Gosford SEPP. The non-buildable area is included in the calculation of site area for the purposes of calculating FSR, as the S88B restriction on the use of land does not operate as a prohibition. On this basis, the proposal meets the FSR control. DCP's do not apply to State Significant Development. Even so, the Department has considered the DCP controls in the assessment of the application and is satisfied that the objectives for precinct are satisfied. There is no evidence that property values would be affected by this development and it is not a material planning consideration. <p><i>Conditions</i></p> <ul style="list-style-type: none"> Nil required
<p><i>Amenity Impacts</i></p> <ul style="list-style-type: none"> Overshadowing of adjoining properties Privacy and overlooking 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> Solar access to adjoining properties will be maintained in accordance with the Apartment Design Guide and SEPP 65. The elevated topography of the site results in the proposed apartments primarily overlooking the roof tops of adjoining properties. Further, setbacks and separation distances between buildings will protect neighbour privacy. <p><i>Conditions</i></p> <ul style="list-style-type: none"> Nil required.
<p><i>Site Location</i></p> <ul style="list-style-type: none"> Site location is inappropriate for this kind of density due to topography and poor connections to the city centre. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The proposal is a permissible use in the zone and complies with the maximum floor space ratio. It is therefore consistent with the anticipated density in this location. <p><i>Conditions</i></p> <ul style="list-style-type: none"> Nil required
<p><i>Ecology/Vegetation Removal</i></p> <ul style="list-style-type: none"> Clearing and construction outside of non-buildable area Tree removal and retention Ecological impacts to wildlife 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The proposed works are within the boundaries of the Restriction as to User that applies to the site and the Gosford DCP, noting that only buildings and car parking are prohibited in the 'non-buildable area'. A number of trees are proposed to be removed both in the building footprint and to establish Asset Protection Zones (APZ) for bushfire protection throughout the site. Tree removal for the establishment of APZs would be required even if the development was reduced in size. The application has focused the tree removal on smaller and introduced species to protect a higher proportion of the large scale species. 118 new trees are to be planted within the building footprint. A Vegetation Management Plan (VMP) has been provided which includes further revegetation to widen the wildlife corridor and to continue the connection to Rumbalara Reserve. A Biodiversity Assessment Report (BDAR) was submitted with the application. It concluded that impacts were acceptable, subject to the retiring of credits under the Biodiversity Offset Scheme. The Biodiversity and Conservation Division (BCD) reviewed the application and were satisfied the biodiversity impacts have been addressed.

	<p><i>Conditions</i></p> <p>Conditions include:</p> <ul style="list-style-type: none"> • Tree protection measures for trees to be retained • Compliance with the VMP • Compliance with the BDAR including a requirement to retire credits prior to the issue of the Construction Certificate.
<p><i>Public Walkway</i></p> <ul style="list-style-type: none"> • The walkway is unsafe • Walkway connection to John Whiteway Drive would impact on 'Rumbalara Apartments'. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • The Department is satisfied the walkway would not cause any significant safety issues. The walkway and viewing platform can be viewed from the proposed apartments in Blocks C and D providing passive surveillance of the area. • The section of the walkway connection proposed at the EIS stage to John Whiteway Drive that adjoined the 'Rumbalara Apartments' has been deleted. <p><i>Conditions</i></p> <ul style="list-style-type: none"> • Nil required
<p><i>Geotechnical Impacts</i></p> <ul style="list-style-type: none"> • Stabilisation of the cliff face • Stabilisation of land at 117 John Whiteway Drive following tree removal • Excessive excavation • Risk of rockfall • Insufficient investigations undertaken 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • A Geotechnical Report was submitted with the application addressing the proposed excavation. • Following comments from Council, the Department engaged an independent Geotechnical Engineer to undertake a peer review of the report and advise the Department on its suitability. The peer review determined the measures outlined in the report were satisfactory subject to conditions. • Subject to conditions, the Department is satisfied that impacts on adjoining properties can be managed or mitigated. <p><i>Conditions</i></p> <p>Conditions include:</p> <ul style="list-style-type: none"> • Pre and post construction dilapidation reports. • Engagement of a certified engineer to design, certify and oversee all site excavation and construction of subsurface structures. • Further geotechnical investigations including site mapping of exposed rock faces. • Preparation of a Geotechnical Monitoring Plan.
<p><i>Stormwater</i></p> <ul style="list-style-type: none"> • A stormwater drain at 117 John Whiteway Drive should be considered 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • The Department is satisfied that stormwater can be managed appropriately subject to conditions. <p><i>Conditions</i></p> <p>Conditions include:</p> <ul style="list-style-type: none"> • Design of the stormwater management system in consultation with Council and in accordance with Australian Standards, prior to the issue of the Construction Certificate.
<p><i>Traffic and Parking</i></p> <ul style="list-style-type: none"> • Roads are at capacity • On-street parking is at capacity • Adequacy of Green Travel Plan • Safety of entrances • Lighting impacts into properties opposite the site. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • The proposed development would not cause significant increases in traffic movements at relevant intersections. • It is noted that the wider network has limitations in future capacity, however this development would have minimal impact. • The proposal is subject to payment of both local and state infrastructure contributions which would be used to improve infrastructure in the area. • The application proposes car parking in excess of the minimum requirements, noting that access to the town centre is constrained by the topography of the residential area. • The submitted Green Travel Plan (GTP) provides options for connections to alternative transport options including public transport, car pooling and walking. In this regard, the GTP is considered acceptable. • Entrances to the basement parking areas including their locations in the roadway will be subject to compliance with the relevant Australian Standards. • Given the number of likely movements in night time hours and the distance of adjoining residences from the site, the Department does not consider the location of the driveway entrances would have any significant amenity impacts on residents opposite the site as a result of lights from vehicles exiting the property. • Transport for NSW raised no objections to the development

	<p><i>Conditions</i></p> <ul style="list-style-type: none"> • Nil required.
<p><i>Visual Impact</i></p> <ul style="list-style-type: none"> • Visual interruption to the natural skyline • Views to Rumbalara Reserve will be impacted • Contrary to Gosford DCP 2018. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • The proposal maintains views to the Rumbalara Reserve ridge line from key locations such as the waterfront. • The visual protrusion of the building is limited to areas of no tree canopy. • The development is in keeping with the surrounding built form and would not be visually obtrusive. • The proposal is consistent with the objectives of the Gosford DCP. <p><i>Conditions</i></p> <ul style="list-style-type: none"> • Nil required.
<p><i>Aboriginal Heritage</i></p> <ul style="list-style-type: none"> • Report is inadequate 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • An Aboriginal Cultural Heritage Assessment Report (ACHAR) was submitted with the application including consultation with registered Aboriginal parties. • Heritage NSW reviewed the ACHAR and raised no objections subject to conditions. <p><i>Conditions</i></p> <p>Conditions include:</p> <ul style="list-style-type: none"> • The preparation of an Aboriginal Cultural Heritage Management Plan (ACHMP) to manage the impacts of the development.
<p><i>Historical Heritage Impacts</i></p> <ul style="list-style-type: none"> • Heritage Impact Assessment is inadequate. • A formal archaeological assessment of the site should be undertaken. • The quarry face should be available for public viewing. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • A Heritage Impact Assessment report (HIA) was submitted with the application. • Council requested the preparation of a Heritage Interpretation Strategy (HIP). • The Department is satisfied that with the inclusion of the HIP, including a public art strategy to reflect the quarrying history, the historical significance of the site can be preserved. • The Department is satisfied that subject to conditions, should archaeological relics be discovered on site, they can be appropriately managed. <p><i>Conditions</i></p> <p>Conditions include:</p> <ul style="list-style-type: none"> • Preparation of an unexpected finds protocol for historical heritage • Preparation and implementation of a HIP in consultation with Council.
<p><i>Construction Impacts</i></p> <ul style="list-style-type: none"> • Staging should not be allowed • Construction impacts would be extended • Excessive noise 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • Staging is standard in the construction of major projects and is accepted by the Department. • Construction hours have been limited to those recommended by the EPA's Interim Construction Noise Guidelines (ICNG) to minimise impacts on adjoining properties. • The Department has also recommended conditions requiring the preparation of a Construction Environmental Management Plan (CEMP) prior to the issue of the construction certificate, to ensure construction impacts are mitigated and/or managed. • Noise and vibration impacts are required to be managed in accordance with a Noise and Vibration Management sub-plan which is to be consistent with the ICNG and relevant Australian Standards. <p><i>Conditions</i></p> <p>Conditions include:</p> <ul style="list-style-type: none"> • Limited construction hours • Preparation of a CEMP • Preparation of a Noise and Vibration Management sub-plan
<p><i>Waste Management</i></p> <ul style="list-style-type: none"> • Waste collection facility would have noise and light spill impacts 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> • The operational waste storage and processing areas must be designed in consultation with Council. • The limited movements associate with waste collection for a development of this size would not result in any significant noise or light spill impacts on adjoining properties. <p><i>Conditions</i></p> <p>Conditions include:</p>

	<ul style="list-style-type: none"> Detailed design of the operational waste and processing area is to be undertaken in accordance with Council's standards.
<p><i>View Loss</i></p> <ul style="list-style-type: none"> Loss of views from 80 John Whiteway Drive. 	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Department has considered the planning principles established in <i>Tenacity Consult v Warringah Council</i> [2004] NSWLEC. It is noted that any residential flat building on this site would affect views from 80 John Whiteway Drive even if fully compliant with the controls. The impact on view sharing is considered to be moderate, and acceptable in the circumstances of this proposal. <p><i>Conditions</i></p> <ul style="list-style-type: none"> Nil required.
<p><i>Cost of development</i></p> <p>Revised development reduces costs and application is no longer SSD</p>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> A revised Capital Investment Value (CIV) following the amendments to the proposal was provided. The revised CIV is over \$98 million therefore meeting the SSD threshold. <p><i>Conditions</i></p> <ul style="list-style-type: none"> Nil required.
<p><i>Affordable Housing</i></p> <p>Should be provided</p>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> There is no legislative requirement to provide affordable housing within the development. The development would provide additional dwellings in the Gosford City Centre improving housing supply in the area. <p><i>Conditions</i></p> <ul style="list-style-type: none"> Nil Required
<p><i>Bushfire Risk</i></p> <p>Asset Protection Zones (APZ) required Egress</p>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> Any development of this site would be required to provide APZs. The proposed development includes the subject site and part of 80 John Whiteway Drive as an APZ. Egress to and from the site is considered acceptable in a bushfire event. The NSW Rural Fire Service has reviewed the application and raised no objections subject to conditions. <p><i>Conditions</i></p> <p>Conditions include:</p> <ul style="list-style-type: none"> Construction to specified Bushfire Attack Levels (varies across the site) Maintenance of the APZs Provision of water and utility services for bushfires.
<p><i>Social Impact Assessment</i></p>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> The Department is satisfied that the Social Impact Assessment (SIA) submitted with the application is satisfactory. The impacts associated with the residential use in the residential zone, to a density anticipated by the FSR controls, would not result in significant social impacts. The development is subject to payment of local and state infrastructure contributions that would be used to fund infrastructure improvements in the locality. <p><i>Conditions</i></p> <p>Conditions include:</p> <ul style="list-style-type: none"> Payment of infrastructure contributions.
<p><i>Quality of Documentation</i></p>	<p><i>Assessment</i></p> <ul style="list-style-type: none"> Following amended information provided throughout the assessment process, the Department is satisfied the quality of the documentation is satisfactory to allow for a comprehensive assessment of the proposal. <p><i>Conditions</i></p> <ul style="list-style-type: none"> Nil required.