

# Project Approval

Section 75J of the *Environmental Planning and Assessment Act 1979*

I, the Director-General of Planning, as delegate of the Minister for Planning, approved the project referred to in Schedule 1, subject to the conditions of approval in the attached Schedule 2 and the Statement of Commitments in Schedule 3.

These conditions are required:

- To ensure adequate provision for drainage, access and other services;
- To maintain the environmental quality of the area during construction works; and
- To levy for open space, community services and road upgrades.

  
Sam Haddad  
Director-General of Planning

Sydney, 24<sup>th</sup> July 2009



## SCHEDULE 1

### PART A—TABLE

Application made by:	Wells Environmental Services on behalf of R and L Wells.
Application made to:	Minister for Planning.
Project Application Number:	07_0041
On land comprising:	Lot 224, No.1C Waterfront Road and Part Lot 222 DP 862015, No.1107 Swan Bay Road, Swan Bay.
Local Government Area	Port Stephens Council.
For the carrying out of:	Subdivision to create four Torrens Title residential lots, earthworks associated with driveway construction, and demolition and removal of existing garages / brick wall.
Type of development:	Project Application.
Determination made on:	24 July 2009.
Date approval is liable to lapse:	5 years from the date of determination.

### PART B—NOTES RELATING TO THE DETERMINATION OF MP NO. 07\_0041

#### Responsibility for other consents / agreements

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

#### Appeals

The Proponent has the right to appeal to the Land and Environment Court in the manner set out in the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

#### Appeals—Third Party

A third party right to appeal to this approval in the manner set out in the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

#### Legal notices

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

### PART C—DEFINITIONS

In this approval,

**Act** means the *Environmental Planning and Assessment Act 1979*.

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

**BCA** means Building Code of Australia

**Construction Certificate** means a construction certificate for bulk earthworks or civil works unless specified otherwise.

**Council** means Port Stephens Council



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**CPI** means Consumer Price Index.

**Department** means the Department of Planning or its successors.

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

**Environmental Assessment** means the Environmental Assessment prepared by Alan Wells of Wells Environmental Services and dated 31 March 2008, including all Appendices.

**Minister** means the Minister for Planning.

**Project** means the project as described in Condition A1 to this approval.

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

**Proponent** means Alan Wells of Wells Environmental Services or any party acting upon this approval.

**Regulation** means the *Environmental Planning and Assessment Regulation 2000*.

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

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## SCHEDULE 2

### RECOMMENDED CONDITIONS OF APPROVAL

#### MAJOR PROJECT NO. 07\_0041

#### PART A—ADMINISTRATIVE CONDITIONS

##### **A1 Project Description**

Project Approval is granted only to carrying out the project described in detail below:

- 1) Subdivision of Lot 224 and Part Lot 222 DP862015 to create four Torrens Title residential lots, as follows:

Lot 1 – 4000m<sup>2</sup>;  
Lot 2 – 4000 m<sup>2</sup>;  
Lot 3 - 4000 m<sup>2</sup>;  
Lot 4 – 5.5175 ha (residue lot)

- 2) Earthworks associated with the construction and installation of driveways on Waterfront and Swan Bay Roads for each proposed lot.
- 3) Demolition and removal of existing garages and a brick wall.

##### **A2 Staging**

The development is to be constructed in 1 stage.

##### **A3 Project in Accordance with Plans**

The development shall be generally undertaken in accordance with Major Project Application 07\_0041 submitted by the Proponent, and in accordance with the supporting documentation submitted with the application, including the Environmental Assessment and the following drawing:

Drawings			
Drawing No.	Revision	Name of Plan	Date
Figure 4	A	Wells Environmental Services Proposed Alternative Subdivision of Lot 224 and Part Lot 222 DP 862015, Waterfront and Swan Bay Roads, Swan Bay.	12 May 2008

##### **A4 Project in Accordance with Documents**

The project will be undertaken in accordance with the following documents:

- (1) *Environmental Assessment Report* prepared by Alan Wells, Wells Environmental Services on behalf of R and L Wells, dated 2 June 2008;
- (2) *Response to Submissions* prepared by Alan Wells, Wells Environmental Services on behalf of R and L Wells, dated 20 October 2008;

- (3) *Statement of Commitments* prepared by Wells Environmental Services undated dated 23 April 2009;
- (4) *Bushfire Threat Assessment, Swan Bay Road, Swan Bay*, prepared by Ecobiological, undated, ref. 145-180;
- (5) *Acid Sulphate Soil Management Plan*, prepared by Barker Harle, dated 18 November 2005;
- (6) *Preliminary Contaminated and Site Classification Investigations*, prepared by Barker Harle, dated 18 November 2007, and accompanying letter from Barker Harle to Wells Environmental Services, dated 31 March 2008;
- (7) *Archaeological Cultural Assessment*, prepared by Archaeological Risk Assessment Services Pty Ltd, dated November 2007; and
- (8) *Flora and Fauna and Threatened Species Assessment*, prepared by Ecobiological, dated December 2005, ref. 145-180.

**A5     *Inconsistency between documents***

In the event of any inconsistency between conditions of this approval, the proponent's Statement of Commitments and the drawings/documents referred to in Conditions A3 and A4, the conditions of this approval prevail to the extent of the inconsistency.

**A6     *Building Code of Australia***

All work must be carried out in accordance with the requirements of the *Building Code of Australia*.

**A7     *Prescribed Conditions***

The Proponent shall comply with the prescribed conditions of development approval under clause 98 of the Regulation.

**A8     *Lapsing of Approval***

This approval shall lapse if the development is not physically commenced within five years of the date of approval

## **PART B — PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

### **Design Details**

#### **B1 Design**

The following details/items shall be to the satisfaction of the Certifying Authority prior to issue of the Construction Certificate:

- 1) Proposed lots 1 and 2 shall be provided with a minimum 375mm diameter pipe, 5.0m long, at a minimum distance of 2.0 m from the (adjacent northern) edge of Swan Bay Road, ensuring an adequate grade within the drain. Gravel backfill and concrete headwalls shall be placed as indicated on **Council's Standard Drawing No. S107**. Pipe(s) adequate to cater for storm water from the contributing catchment area shall be provided.
- 2) The Proponent shall extend the bitumen seal on Swan Bay Road along the frontage of the subject land, from the end of the existing sealed formation to the western boundary of proposed Lot 1, a distance of approximately 165m. The works shall be in accordance with Council's Subdivision and Development Code and as described below.
  - a. Construct a gravel pavement 6m wide with a minimum 150mm compacted thickness of gravel.
  - b. Place two (2) coat hot bitumen seal 6m wide for the full length.
  - c. Construct drainage works as necessary.

#### **B2 Engineering**

The following items/details shall be submitted to the Certifying Authority prior to issue of the Construction Certificate:

- a) Engineering details in accordance with Council's Subdivision and Development Code shall be submitted to the Certifying Authority prior to issue of the Construction Certificate.
- b) Traffic control plans in accordance with the Roads and Traffic Authority – Traffic Control at Worksites Manual.
- c) Evidence of payment of fees and bonds (same Principle Certifying Authority fees, inspection fees and maintenance bonds as relevant to subdivisions).
- d) Evidence of contractors' public liability insurances to a minimum value of \$10 million.
- e) Evidence of payment of Subdivision Certificate/plan approval fee, prior to approval of Construction Certificate or plans.
- f) Evidence of payment of PCA/inspection fee, prior to approval of Construction Certificate or plans.
- g) Long Service Levy, prior to issue of Construction Certificate (verification of payment is required if paid directly to Long Service Board).

The relevant rates are as listed in Council's Fees and Charges. Contact Council's Development Engineering Coordinator prior to payment to ascertain current fees.

### **B3      *Erosion and Sediment Control***

An Erosion and Sediment Control Plan shall be submitted to the satisfaction of the Certifying Authority with details of measures to be implemented to prevent the movement of soil by wind, water or vehicles onto any adjoining property, drainage line, easement, natural watercourse, reserve or road surface, in accordance with "*Managing Urban Storm water*", Volume 1:2004 (Landcom).

### **Bushfire Protection**

### **B4      *Design and Construction***

Construction is to comply with Planning for Bush Fire Protection 2006 (RFS), Appendix 3 – Site Bush Fire Attack Assessment to the satisfaction of the Certifying Authority. The following design standards for construction shall be incorporated into the project to the satisfaction of the Certifying Authority:

- a) Roofing for the existing dwelling shall be gutterless, or have leafless guttering and valleys to prevent the build up of flammable material. Any materials used shall have a Flammability Index no greater than 5.
- b) The existing dwelling shall be upgraded to improve ember protection by enclosing all openings in a manner prescribed by *Australian Standard AS3959 – Construction of Buildings in Bushfire Prone Areas*.

### **B5      *Water and Utilities***

- 1) The provision of water, electricity and gas shall comply with Section 4.1.3 of Planning for Bush Fire Protection 2006 (RFS) to the satisfaction of the Certifying Authority.
- 2) A 10,000 litre dedicated water supply (non flammable or shielded from the threat) shall be provided to the existing dwelling.

## **PART C—PRIOR TO COMMENCEMENT OF WORKS**

### **Pollution Control**

#### **C1     *Erosion and sediment control***

- 1) All erosion and sediment control measures, as designed in accordance with the approved plans are to be effectively implemented and maintained at or above design capacity for the duration of the construction works for the project, and until such time as all ground disturbed by the works has been stabilised and rehabilitated so that it no longer acts as a source of sediment, all to the satisfaction of the Principal Certifying Authority.
- 2) Prior to commencement of works, all erosion and sedimentation control measures shall be installed and operational including the provision of a "shake down" area, where required, to the satisfaction of the Principal Certifying Authority.

#### **C2     *Notice to be Given prior to Commencement***

- 1) The Principal Certifying Authority and Council shall be given written notice, at least 48 hours prior to the commencement of excavation, shoring or underpinning works on the site for each stage of the project.
- 2) The Principal Certifying Authority is to be given a minimum of 48 hours notice prior to any critical stage inspection or any other inspection nominated by the Principal Certifying Authority via the notice under Section 81A of the *Environmental Planning and Assessment Act 1979*.

### **Aboriginal Cultural Heritage**

#### **C3     *Aboriginal Cultural Education***

An Aboriginal Cultural Education program must be developed for the induction of personnel and contractors involved in the construction activities on the site. The program should be developed in collaboration with the Aboriginal community to the satisfaction of the Certifying Authority. A cultural awareness document clearly highlighting and explaining the materials likely to be exposed by earthmoving activities shall be supplied to all workers, and kept on site at all times during construction.

### **Services**

#### **C4     *Existing Services***

Prior to demolition, all existing services are to be disconnected, sealed and made safe to the satisfaction of the Principal Certifying Authority.

### **Contact Details**

#### **C4     *Contact Telephone Number***

Prior to the commencement of the works for each stage of the project, the Proponent shall forward to the Council a 24-hour telephone number to be operated for the duration of the construction works.

## **PART D – DURING CONSTRUCTION**

### **Acid Sulfate Soils**

#### **D1 Acid Sulfate Soils Management**

The following management measures must be implemented on the site to the satisfaction of the Certifying Authority:

- a) Limit the use of de-watering measures unless essentially required. If dewatering is to be conducted, extracted groundwater is to be pH tested and if necessary, adjusted before disposal. Disposal of the treated groundwater may require licensing by DECC. De-watering techniques where possible are to be avoided during the construction and operational phases of the development.
- b) The length of time that excavated acid sulfate soils are exposed to air is to be minimised so as to reduce oxidation levels. Progressive development is to be used to minimise exposure times.
- c) Dose excavated soils and the base of the excavated trench as per section 4.1 of *Preliminary Contaminated and Site Classification Investigations*, prepared by Barker Harle, dated 18 November 2007. Excavated soils are to be dosed with an appropriate lime-dosing rate and mixed using appropriate methods as discussed in section 4.1 of the Barker Harle report.
- d) Undertake chemical pH tests on dosed soils as per Section 5 of the Barker Harle report. Chemical testing is to be undertaken on excavated soils and groundwater before backfilling or disposal.
- e) Control any leachate movement on the site using either diversion or containment materials during site excavations. Excavation works are not to be undertaken during periods of wet weather or if wet weather is imminent. Backfill hole with excavated treated soils. Once excavation works are complete and soils have been treated, tested and are found to be meet pH guidelines as outlined in the Barker Harle report, soils are to be backfilled into the excavated trench holes:

#### **D2 Acid Sulfate Soils Contingency Procedure Plan**

- 1) If testing results (refer to Statement of Commitments, Table 2, Subject 2) indicate that the agreed standards or performance indicator levels are not being achieved, then remedial action will be required. A remedial action plan should be formulated by the proponent following with site contractor(s), field testing personnel, consultant(s) and relevant government authorities. If it is determined that the Acid Sulfate Soil Management Strategies require modification, relevant government authorities should be provided with details of the changes and why the changes have occurred, and the new plan for their implementation.
- 2) If the Acid Sulfate Soil Management Plan or Remedial Action fail, construction should cease and action to restore the site to a condition equivalent to that to that prior to the commencement of the project should be undertaken. Prior to the implementation of the restoration activities, an assessment should be undertaken to determine whether the problem is:
  - a) Related to the ineffective implementation of Acid Sulfate Soil Management Strategies;
  - b) Related to management strategies themselves being ineffective; or
  - c) Due to there being no suitable management strategies that can be implemented so that the project can meet agreed DECC or Port Stephens Council's standards or performance levels.

- 3) If it is determined that the Acid Sulfate Soil Management Strategies require further modification, relevant government authorities should be provided with details of the changes, why the changes have occurred, and the new plan for their implementation.

### **D3 Asset Protection Zone**

Upon the commencement of works, the property around the existing dwelling to a distance of 15 metres or to the property boundary, shall be managed as an inner protection area (IPA), as outlined in Section 4.1.3 and Appendix 5 of Planning for Bush Fire Protection 2006 (RFS) and the NSW Rural Fire Service's document 'Standards for asset protection zones', to the satisfaction of the Certifying Authority. Asset protection zones for the proposal must be exclusive of the adjacent Gir-um-bit National Park.

### **D4 Aboriginal Cultural Heritage**

- 1) If human remains are located during project activity all works must cease in the immediate area to prevent any further impacts to the find(s). The local police, Aboriginal community and the Department of Environment and Climate Change (DECC) are to be notified. If the remains are found to be of Aboriginal origin and the police consider the site not an investigation site for criminal activities, DECC should be contacted and notified of the situation. If a criminal investigation ensues, works shall not resume in the designated area until written approval from the police and DECC is obtained.
- 2) If Aboriginal cultural objects are uncovered during the approved works, the site is to be registered in the Aboriginal Heritage Information Management System (AHIMS) database, and the management outcome for the site included in the information provided to AHIMS. It is recommended that the local Aboriginal community be consulted about development and implementation of management strategies for the site, with all information required for informed consent being given to the Aboriginal representative for this purpose. A designated conservation area shall be identified and approved in consultation with the Aboriginal community for the rehousing of artefacts found on-site during construction in order to maintain the cultural integrity of the area.
- 3) All efforts must be made to avoid the impacts to Aboriginal Cultural Heritage values at all stages of the approved works. If impacts are unavoidable, mitigation measures are to be negotiated with the Aboriginal community. The Proponent must continue to consult with and involve Aboriginal representatives for the project, in the ongoing management of the Aboriginal Cultural Heritage values.

## **Construction Management**

### **D5 Approved Plans to be On-site**

A copy of the approved and certified plans, specifications and documents incorporating conditions of approval and certification shall be kept on the site at all times and shall be readily available for perusal by any officer of the Department, Council or the PCA.

#### **D6      *Site Notice***

A site notice(s) shall be prominently displayed at the boundaries of the site for the purposes of informing the public of project details including:

- 1) Details of the Builder, Principal Certifying Authority and Structural Engineer for all stages of the project;
- 2) Approved hours of work;
- 3) Name of the site/project manager, the responsible managing company (if any), its address and 24 hour contact phone number for any inquiries, including construction/noise complaint are to be displayed on the site notice; and
- 4) A statement that unauthorised entry to the site is not permitted.

#### **D7      *Protection of Trees – Street Trees***

All street trees shall be protected at all times during construction with protective measures to be implemented prior to the commencement of construction. Any tree on the footpath, which is damaged or removed during construction of any stage of the project, shall be replaced, to the satisfaction of Council.

#### **D8      *Protection of Trees – On-site Trees***

All trees on the site not approved for removal are to be suitably protected by way of tree guards, barriers or other measures as necessary. Such measures are to be provided to protect root system, trunk and branches, and shall be implemented prior to the commencement of construction to the satisfaction of the Principal Certifying Authority.

#### **Public Access**

#### **D5      *Public Way to be Unobstructed***

The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances.

#### **Site Maintenance**

#### **D6      *Erosion and Sediment Control***

- 1) Filling shall not obstruct any natural storm water flow path or water drainage system, and shall not encroach onto any adjoining property.
- 2) In areas that are disturbed for site filling, all available topsoil shall be stockpiled and re-used upon the completion of the earthworks. The topsoil shall be spread evenly and lightly rolled. All disturbed areas shall be stabilised within 14 days of completion of the filling operations with grass cover by either turfing or seeding.

#### **D7      *Demolition***

- 1) The demolition and disposal of materials containing asbestos shall be carried out in accordance with WorkCover Authority NSW Guidelines. The material may be disposed

of at Council's waste disposal site by phoning (4987 4524). Details of the materials and twenty-four (24) hours notice of disposal is necessary.

- 2) Building demolition shall be carried out in accordance with *Australian Standard AS2601-2001 - The Demolition of Structures*.

#### **D8      Dust Control Measures**

Adequate measures shall be taken to prevent dust from affecting the amenity of the neighbourhood during construction, particularly the following:

- (1) Physical barriers shall be erected at right angles to the prevailing wind direction or shall be placed around or over dust sources to prevent wind or activity from generating dust emissions,
- (2) Earthworks and scheduling activities shall be managed to coincide with the next stage of development to minimise the amount of time the site is left cut or exposed,
- (3) All materials shall be stored or stockpiled at the best locations,
- (4) The surface should be dampened slightly to prevent dust from becoming airborne but should not be wet to the extent that run-off occurs,
- (5) All vehicles carrying spoil or rubble to or from the site shall at all times be covered to prevent the escape of dust or other material,
- (6) All equipment wheels shall be washed before exiting the site using manual or automated sprayers and drive-through washing bays,
- (7) Gates shall be closed between vehicle movements and shall be fitted with shade cloth, and
- (8) Cleaning of footpaths and roadways shall be carried out regularly.

#### **Noise and Vibration**

##### **D9      Hours of Work**

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

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

Works may be undertaken outside these hours where:

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

#### **D10 Construction Noise Objective**

- 1) The construction noise objective for all stages of the project is to manage noise from construction activities (as measured by a  $L_{A10}$  (15minute) descriptor) so it does not exceed the background  $L_{A90}$  noise level by more than 5dB(A).
- 2) Background noise levels are those identified in the Environmental Assessment or otherwise identified in the approved Construction Management Plan. The Proponent shall implement all feasible noise mitigation and management measures with the aim of achieving the construction noise objective.
- 3) Any activities that have the potential for noise emissions that exceed the objective must be identified and managed in accordance with the approved Construction Management Plan.
- 4) If the noise from a construction activity is substantially tonal or impulsive in nature (as described in Chapter 4 of the NSW Industrial Noise Policy), 5dB(A) must be added to the measured construction noise level when comparing the measured noise with the construction noise objective.

#### **D11 Construction Noise Management**

For all stages of the project, the Proponent shall:

- (1) schedule rock breaking, rock hammering, sheet piling, pile driving and any similar activity only between the following hours unless otherwise approved in the Construction Management Plan:
  - (a) 9.00 am to 12.00 pm, Monday to Friday;
  - (b) 2.00 pm to 5.00 pm Monday to Friday; and
  - (c) 9.00 am to 12.00 pm, Saturday
- (2) ensure that wherever practical, and where sensitive receivers may be affected, piling activities are completed using bored piles. If driven piles are required they must only be installed where approved in the Construction Management Plan.

## **PART E—PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

### **Certification**

#### **E1      *Part 4A Certificate***

Prior to the registration of final subdivision plan in the Office of the Registrar-General, a Part 4A certificate shall be obtained under section 109D(1)(d) of the *Environmental Planning and Assessment Act 1979* for the subdivision.

#### **E2      *Compliance Certificate***

Prior to the application for a Subdivision Certificate for the subdivision a Compliance Certificate or Certificates shall be obtained from Council or an accredited certifier for the following:-

- a) Compliance Certificate - Roads
- b) Compliance Certificate – Drainage
- c) Compliance Certificate – Bushfire management provisions

#### **E3      *Road and Drainage Works***

A registered surveyor is to certify that all storm water pipeline systems are covered by an easement. Details are to be submitted to Council with the Subdivision Certificate.

All civil engineering works shall be carried out to the satisfaction of Council (with a letter of practical completion issued) and at no cost to Council prior to issue of the Subdivision Certificate.

Works-As-Executed plans prepared by a suitability qualified person detailing all road and drainage works in accordance with Council's Subdivision Specifications shall be submitted to the satisfaction of the Principal Certifying Authority, prior to issue of the Subdivision Certificate.

### **Monetary Contributions**

#### **E4      *Section 94 Monetary Contributions***

Prior to the endorsement of a Subdivision Certificate for the subdivision, the Proponent must pay, in proportion to the additional lots created by that stage, the following contributions to Council pursuant to Section 94 of the *Environmental Planning and Assessment Act (1979)*:

**(1) Amount of Contributions**

Civic Administration			
	No. of ET	\$ per ET	Sub-Total
Stage 1	2	\$377	\$754
Open Space, Parks			
	No. of ET	\$ per ET	Sub-Total
Stage 1	2	\$2,046	\$4,092
Recreation			
	No. of ET	\$ per ET	Sub-Total
Stage 1	2	\$4,821	\$9,642
Cultural Community Facility			
	No. of ET	\$ per ET	Sub-Total
Stage 1	2	\$2,424	\$4,848
Fire Emergency Services			
	No. of ET	\$ per ET	Sub-Total
Stage 1	2	\$188	\$376
Roadworks Levy			
	No. of ET	\$ per ET	Sub-Total
Stage 1	2	\$1,368	\$2,736
<b>TOTAL CONTRIBUTIONS PAYABLE</b>		<b>\$22,446</b>	

**1) Timing and Method of Payment**

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

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

The charges shall remain fixed for a period of twelve (12) months from the date of this approval and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges, current at the time of payment.

**2) Section 94 Plans**

A copy of the Section 94 contribution plans may be inspected at Council's Administration Building located at 116 Adelaide Street, Raymond Terrace.

**Services**

**E5 Utilities –Telephone and Electricity Services**

- 1) Prior to endorsement of the Subdivision Certificate the Proponent must submit written evidence from Telstra and Energy Australia that satisfactory arrangements have been made for the provision of their respective services to all lots in the proposed subdivision.
- 2) Each lot within the subdivision is to have a separate electricity service. The service must be installed wholly within the respective lot boundaries unless it is covered by a suitable easement.

Any 'cross property' electrical wiring between lots within the subdivision must be

removed or disconnected and made safe in accordance with the relevant electrical standards.

- 3) Certification from a registered surveyor shall be submitted to Council prior to the issue of the Subdivision Certificate, certifying that no services (including stormwater) or public utilities presently connected to the existing building will straddle any new boundary. Alternatively, an easement shall be created to cover the services, utilities or structures.
- 4) Documentary easements for services and drainage must be created over the appropriate lots in the subdivision pursuant to Section 88B of the *Conveyancing Act 1919*.

#### **E6      *Asset Protection Zone Maintenance***

A restriction as to user is to be created over the portion of the residential lot over which the Asset Protection Zone required by Condition B14 falls, requiring the owner to maintain the Asset Protection Zone in perpetuity in accordance with the inner protection area requirements of the *Rural Fire Services Standards for Asset Protection Zones* document. The draft wording of the instrument is to be lodged with Council for approval and Council is to be a party to the covenant, whose approval is required for any alterations to the covenant. The covenant is to be registered with the registration of the subdivision plan.

#### **E7      *Restriction on cats and dogs***

A Section 88B instrument is to be created over all lots in the subdivision which prohibits cats within the subdivision, and only permits dogs (both with the exception of companion and assistance animals) within the subdivision if walked on a leash and otherwise fenced. The draft wording of the instrument is to be lodged with Council for approval and Council is to be made a party to the instrument, and its approval is required for any alterations to the instrument. The instrument is to be registered upon registration of the subdivision plan.

#### **E8      *Restriction on Access to Gir-um-bit National Park***

A Section 88B instrument is to be created over all lots in the subject site to prohibit direct access from all lots to the adjacent Gir-um-bit National Park by way of access trails and gated entry. The draft wording of the instrument is to be lodged with Council for approval and Council is to be made a party to the instrument, and its approval is required for any alterations to the instrument. The instrument is to be registered upon registration of the subdivision plan.

### **Easements**

#### **E9      *Registration of Easements***

- 1) The creation of easements for services are applicable under Section 88B of the *Conveyancing Act 1919*, including the following:
  - a. Easements for drainage over all public services/infrastructure on private property.
  - b. Drainage Easements are to be placed over all subsurface drains and inter-allotment drainage, benefiting and burdening the property owners. Maintenance of the subsurface drains is to be included in the 88B instrument.
- 2) Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions,

easements or rights of way to be revoked, varied or modified only with the consent of Council.

- 3) Privately owned infrastructure on community land may be subject to the creation of statutory restrictions, easements etc in accordance with the *Community Land Development Act 1989*, *Strata Schemes Management Act 1996*, *Conveyancing Act 1919*, or other applicable legislation.

These requirements shall be made to the satisfaction of, and at no cost to Council.

#### **E10      *Registration of Easements***

Prior to the issue of any Subdivision Certificate, the proponent shall provide to the Principal Certifying Authority evidence that all easements required by this approval, other approvals, and other consents have been or will be registered on the certificates of title.

#### **E11      *Payment of bonds***

Evidence of payment to Council of a Maintenance Bond and a Street Tree Bond/Contribution shall be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

#### **E12      *Road Damage***

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

**Note:** Should the cost of damage repair work not exceed the road maintenance bond, Council will automatically call up the bond to recover the costs. Should the repair costs exceed the bond amount, a separate invoice will be issued.

## **PART F—PRIOR TO OCCUPATION OR COMMENCEMENT OF USE**

### **Engineering**

#### **Wastewater Management**

##### ***F1 On-Site Sewage Management***

Port Stephens Council is the appropriate regulatory Authority for matters pertaining to On-Site Sewage Management. For each allotment, an application to install a waste treatment device or human waste storage facility shall be submitted to Port Stephens Council in accordance with the Local Government Act 1983 (Section 68).

The application shall be submitted prior to occupation of the sites and in a timeframe that permits:

- a) The application assessment approval process it to be satisfactorily completed; and
- b) Installation and commissioning of the treatment system is also required to be satisfactorily completed.

The application is to take account of all systems for the treatment of human waste:

- a) The proposed treatment system and method of effluent disposal shall meet the requirements of Division 4 of the *Local Government (General) Regulations 2005, AS1547 – On-Site Domestic Wastewater Management, Port Stephens Development Control Plan, 2007* and any requirement deemed appropriate by Port Stephens Council.

## **ADVISORY NOTES**

### **AN1 Requirement for a Roads Act Approval**

The proponent is advised that an approval under Section 138 of the Roads Act 1993 is required. Any works associated with this approval is subject to:

- a) inspection by Council,
- b) testing by a registered NATA Laboratory and
- c) approval by Council at each construction stage as determined by Council.

### **AN2 Requirements of Public Authorities for Connection to Services**

The Proponent shall comply with the requirements of any public authorities (e.g. Energy Australia, Telstra Australia, AGL, etc) in regard to the connection to, relocation and/or adjustment of the services affected by the construction of the proposed structure. Any costs in the relocation, adjustment or support of services shall be the responsibility of the Proponent. Details of compliance with the requirements of any relevant public authorities are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate.

### **AN3 Compliance with Building Code of Australia**

The Proponent is advised to consult with the Certifying Authority about any modifications needed to comply with the BCA prior to submitting the application for a Construction Certificate.

### **AN4 Minimum Habitable Floor Levels**

Minimum habitable floor levels for future dwellings on the site must be 3.4m AHD in accordance with Port Stephens Foreshore (Floodplain) Management Study, the design flood level for the site, and maximum potential sea level rise. Future dwellings on the site are likely to be required to be of removable construction in the event of inundation, and the site may be rendered unusable for residential development given the combined effects of flooding, coastal processes and inundation to a projected likely maximum sea level rise of 0.91m to the year 2100 as referred to in DECC's Floodplain Risk Management Guideline, *Practical Consideration for Climate Change*, 2007.

### **AN5 Structural Capability for Existing Structures**

The structural capabilities of any existing structure will need to meet the requirements of the Building Code of Australia and may require engaging a structural engineer.

### **AN6 Geotechnical**

The site is suitable for development with a building supported on a slab on grade or strip footing system designed by a structural engineer in accordance with engineering principles and AS 2870 - 1996 "Residential Slabs and Footings" for no less than the minimum requirements for a Class M site. Any high-level footing system must be design by a suitably qualified engineer using a maximum soil bearing pressure of 50Kpa.

#### **AN7 Use of Mobile Cranes**

The Proponent shall obtain all necessary permits required for the use of mobile cranes on or surrounding the site, prior to the commencement of works. In particular, the following matters shall be complied with to the satisfaction of the PCA:

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

#### **AN8 Stormwater drainage works or effluent systems**

A Construction Certificate for works that involve any of the following:

- (1) water supply, sewerage and stormwater drainage work (including connection of a private stormwater drain to a public stormwater drain, installation of stormwater quality control devices or erosion and sediment control works); and
- (2) the management of waste.

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

#### **AN9 Temporary Structures**

An approval under Part 11 of SEPP Infrastructure (Temporary Structures and Places of Public Entertainment) 2007 must be obtained from the Council for the erection of the temporary structures. The application must be supported by a report detailing compliance with the provisions of the Building Code of Australia.

Structural certification from an appropriately qualified practicing structural engineer must be submitted to the Council with the application under Section 68 of the *Local Government Act 1993* to certify the structural adequacy of the design of the temporary structures.

#### **AN10 Disability Discrimination Act**

This application has been assessed in accordance with the *Environmental Planning and Assessment Act 1979*. The Proponent/owner is responsible to ensure compliance with the Disability Discrimination Act and other anti-discrimination legislation. The *Disability Discrimination Act 1992* covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which references AS 1428.1 - Design for Access and Mobility. AS1428 Parts 2, 3 & 4 provides the most comprehensive technical guidance under the *Disability Discrimination Act 1992* currently available in Australia.

#### ***AN11 Commonwealth Environment Protection and Biodiversity Conservation Act 1999***

The Commonwealth Environment Protection and Biodiversity Conservation Act 1999 provides that a person must not take an action which has, will have, or is likely to have a significant impact on a matter of national environmental significance (NES) matter; or Commonwealth land, without an approval from the Commonwealth Environment Minister.

This application has been assessed in accordance with the New South Wales Environmental Planning & Assessment Act, 1979. The determination of this assessment has not involved any assessment of the application of the Commonwealth legislation. It is the proponent's responsibility to consult Environment Australia to determine the need or otherwise for Commonwealth approval and you should not construe this grant of approval as notification to you that the Commonwealth Act does not have application. The Commonwealth Act may have application and you should obtain advice about this matter. There are severe penalties for non-compliance with the Commonwealth legislation.

#### ***AN12 Tree Preservation Order***

Tree clearing shall be carried out in accordance with Council's Tree Preservation Order, particularly in respect of the River red gum and Swamp mahogany species on the site. The project approval and construction certificate must be issued before it is possible to remove any trees within 3m of any approved building, as measured horizontally from the building wall to the outside trunk of the tree. Tree clearing for the vehicle driveway or any other purpose requires separate approval under the Tree Preservation Order. A copy of the Tree Preservation Order is attached.

#### ***AN13 Change of Use to Seniors Living***

NSW Rural Fire Service advice was given for the development being used for residential purposes only. Any change of use to a SEPP Seniors Living development will require assessment as a Special Fire Protection Purpose development as outlined in Planning for Bushfire Protection 2006.

**SCHEDULE 3**

**MAJOR PROJECT NO. 07\_0041**

**FOUR (4) LOT TORRENS TITLE RESIDENTIAL SUBDIVISION**

**PART LOT 222 & 224 DP 862015, WATERFRONT & SWAN BAY ROADS, SWAN  
BAY**

**STATEMENT OF COMMITMENTS**

**23 APRIL 2009**

## Statement of Commitments

This Statement of Commitments relates to the property known as Lot 224 and part Lot 222 DP 862015 Waterfront Road, Swan Bay. The Statement of Commitments is submitted in relation to Major Project Application 07-0041 which seeks the approval from the Minister for Planning for the subdivision of the existing two lots to create four (4) residential lots comprising of three (3) x 4000m<sup>2</sup> plus a residue lot having an area of 5.5175 hectares as shown by Drawing 4, titled "Proposed Alternative Subdivision of Lot 224 and Part Lot 222 DP 862015 Waterfront Road and Swan Bay Roads, Wan Bay and dated 31 March, 2008 contained in the Environmental Assessment report.

### Approved Development

The development shall be carried out generally in accordance with the documentation submitted with the Project Application, as outlined below in Table 1.

**Table 1: Approved Documentation**

Document	Creator	Reference	Date
Environmental Assessment Report.	Wells Environmental Services.		2 June 2007.
Figure 4.	Wells Environmental Services.		31 March 2008.
Response to Submissions	Wells Environmental Services		20 October 2008.
Statement of Commitments.	Wells Environmental Services.		23 April 2009.

Table 2 below includes a Statement of Commitments which has been prepared on behalf of Mr R and Mrs L Wells, in accordance with the Director-General Requirements (DGR's). The Statement of Commitment imposes requirements to be undertaken in association with the construction phase of the subdivision.

**Table 2: Statement of Commitments**

Subject	Objective	Commitment	Approved by Whom	Timeline
1. Design details.	<ul style="list-style-type: none"> <li>To ensure completed subdivision is consistent with that proposed in the Major Project Application No 07-0041.</li> </ul>	<ul style="list-style-type: none"> <li>The subdivision will be consistent with Figure 4 titled "alternate Subdivision of Lot 224 and Part Lot 222, DP 862015 Waterfront Road and Swan Bay Road, Swan Bay.</li> </ul>	<ul style="list-style-type: none"> <li>Principal Certifying Authority.</li> </ul>	<ul style="list-style-type: none"> <li>Details are to be submitted prior to a Construction and/or Subdivision Certificate being issued.</li> </ul>
2. Construction Management	<ul style="list-style-type: none"> <li>To minimize adverse environmental and amenity impacts.</li> <li>To ensure construction occurs consistent with good engineering and building practices.</li> </ul>	<ul style="list-style-type: none"> <li>All demolition work will accord with the requirements of Workcover Authority of NSW Guidelines.</li> <li>Sedimentation and Erosion Control measures will be implement in accordance with the approved plan.</li> </ul>	<ul style="list-style-type: none"> <li>Principal Certifying Authority.</li> </ul>	<ul style="list-style-type: none"> <li>At the commencement of construction activities.</li> <li>Prior to commencement of construction activities.</li> </ul>

Subject	Objective	Commitment	Approved by Whom	Timeline
		<ul style="list-style-type: none"> <li>Onsite testing for Acid Sulfate Soil (ASS) is to be carried out during site works. If ASS encountered, the ASS Contingency Plan will be enacted consistent with the recommendations contained within the approved Acid Sulfate Soil Management Plan dated 18 November, 2005.</li> </ul>		<ul style="list-style-type: none"> <li>At the commencement of Construction activities.</li> </ul>
3. Traffic Control.	<ul style="list-style-type: none"> <li>To ensure the safety of motorists, workers and other road users utilising Swan Bay Road is not compromised</li> </ul>	<ul style="list-style-type: none"> <li>Prepare a Traffic Control Plan</li> </ul>	<ul style="list-style-type: none"> <li>Principal Certifying Authority.</li> </ul>	<ul style="list-style-type: none"> <li>Prior to Construction activities commencing.</li> </ul>
4. Bushfire Protection.	<ul style="list-style-type: none"> <li>To ensure the existing dwelling and subdivision are protected from bush fire hazard.</li> </ul>	<ul style="list-style-type: none"> <li>An Inner Protection Area will be provided around the existing house.</li> <li>Existing dwelling to be upgraded to comply with Australian Standards AS 3959 – Construction of Buildings in Bushfire Prone Area.</li> <li>Install a 10,000 litre dedicated fire water supply for the existing dwelling.</li> </ul>	<ul style="list-style-type: none"> <li>Principal Certifying Authority and NSW Rural Fire Service.</li> </ul>	<ul style="list-style-type: none"> <li>Prior to Construction activities commencing.</li> </ul>
5. Aboriginal Heritage	<ul style="list-style-type: none"> <li>To ensure the protection of Aboriginal objects and the interest of the local Aboriginal community are taken into consideration</li> </ul>	<ul style="list-style-type: none"> <li>That the recommendations by Archaeological Risk Assessment Services contained in their report dated November, 2007 and additional recommendations of the Worimi Local Aboriginal Land Council dated 17 December, 2007 are undertaken.</li> </ul>	<ul style="list-style-type: none"> <li>Worimi Local Aboriginal Land Council</li> </ul>	<ul style="list-style-type: none"> <li>Prior to commencement of construction activities.</li> </ul>

Subject	Objective	Commitment	Approved by Whom	Timeline
		<ul style="list-style-type: none"><li>Should any Aboriginal object be located that all work will cease</li></ul>	<ul style="list-style-type: none"><li>Worimi Local Aboriginal Land Council</li><li>NSW DECC/NPWS; and</li><li>Principal Certifying Authority</li></ul>	