

SCHEDULE OF REVISED DOCUMENTS AND SUBMISSIONS

1. Bushfire Report by Australian Bushfire Protection Planners Pty Ltd (9.9.2009).
2. King & Campbell correspondence (9.10.09) re Preferred Project Report.
3. Table of Kempsey Shire Council issues – and response.
4. Statement of Commitments by client.
5. Seascope Grove Building Covenants.
6. Table of DECC issues – and response.
7. Table of Department of Planning issues – and response.
8. Correspondence from Kempsey Shire Council - dated 7 December 2009.
9. Correspondence from King & Campbell - dated 21 December 2009.

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Our Reference B09117

King & Campbell Pty Ltd
P.O. Box 243
Port Macquarie
NSW 2444



Attention: Paul Rowlandson

Re: Stage 1C, Seascapes Grove, South West Rocks

Dear Paul,

I have reviewed the amended layout for the proposed Stage 1C of the Seascapes Grove residential subdivision at South West Rocks, as presented on the Lot 800 Land Use Plan [Drawing No. 14777P_TREE, dated 9.9.2009 and confirm the following:

(1) Asset Protection Zone to Lots 605 – 607& Lots 610 – 613:

The width of the Asset Protection Zone to these lots has been recalculated using computer modelling and reduced to 12 metres, based on the dwellings on these lots being constructed to comply with Level 3 standards as defined by A.S. 3959 – 1999 – ‘Construction of Buildings in Bushfire Prone Areas’.

(2) Asset Protection Zone to Lots 614 – 617:

The width of the Asset Protection Zone to these lots has been recalculated using computer modelling and reduced to 12 metres, based on the dwellings on these lots being constructed to comply with Level 3 standards as defined by A.S. 3959 – 1999 – ‘Construction of Buildings in Bushfire Prone Areas’.

(3) Asset Protection Zone to Lots 618 – 622:

The width of the Asset Protection Zone to these lots remains as previously recommended with 8 metres to the south-western aspect of the future dwellings on Lots 618 - 622 and 12 metres to the south of the dwelling on Lot 622.

(4) Location of Asset Protection Zones on Lots 605 – 607; 610 – 613 – 617:

The recommended Asset Protection Zone to these lots has been located within the rear of the lots by increasing the length of the lots. The management of the Asset Protection Zone will remain the responsibility of the individual lot owners, under the provisions of a positive covenant on each allotment.

(5) Provision of Fire Trail Access for Fire-fighting operations:

A fire operational access trail shall be provided within Lot 800, located to the rear of Lots 605 – 607 and Lots 610 – 617, as shown on the Lot 800 Land Use Plan prepared by King & Campbell.

An easement shall be created, under the provisions of the Conveyancing Act of 1919, on the title of Lot 800 so that unrestricted access is provided to Council; the NSW Rural Fire Service and NSW Fire Brigade and for the maintenance of the trail by the owner of Lot 800. The width of the easement shall be 6.0 metres with the trail constructed and maintained to a width of 4.0 metres.

Locked Fire Trail gates shall be provided at the access points off the Public Road network, including the unformed road along the western side of the Estate.

The original Bushfire Protection Assessment Report recommended the provision of a fire trail along the southern boundary of Lot 622 – this requirement prevails. Due to the steep land to the southwest of Lots 618 – 622, the construction of a fire trail along the rear of these lots was not recommended – this recommendation also prevails with fire-fighting access being provided via the access handle between Lots 617 & 618.

(6) Management of Lot 800:

The area of Lot 800 not proposed to be re-vegetated shall be maintained as an Asset Protection Zone as defined by Appendix 5 of *Planning for Bushfire Protection 2006* and the NSW Rural Fire Service's – '*Specifications for Asset Protection Zones*'.

Should you require any further information please contact the undersigned.

Yours faithfully,



Graham Swain.

Managing Director

Australian Bushfire Protection Planners Pty Limited

9.9.2009

9 October 2009

Department of Planning
Locked Bag 9022
GRAFTON NSW 2460

ATTENTION: Ms Emma Barnet

Dear Ms Barnet

RE: SEASCAPE GROVE - MP 07_0129 Preferred Project Report

We refer to the responses received following the exhibition of the Environmental Assessment and to our on site meeting, and various discussions and emails between the writer and the Department's, Emma Barnett. We confirm that we have revised the proposal and have set out below for your consideration, our responses to the issues raised:

1. Department of Planning Issues Table

We have attached a copy of the table detailing our responses to the issues raised. Significant individual items are separately shown below.

The other matters that were raised during the submissions but not specifically mentioned in the table include.

- The statement of commitments now includes a requirement to undertake an Aboriginal Heritage survey over Lot 700 prior to filling works commencing.
- The lots with a common rear boundary to the existing unformed crown road to the west of the subject property will have a Restriction on Use prohibiting vehicular access over that boundary.

2. Lot 800 7(d) Lot

We confirm that it is intended to create Lot 800 in accordance with the attached Exhibit 8A. Alterations have been made to reflect changes to the bushfire protection measures and to allow implementation of vegetation removal offsets by delineating areas proposed for regeneration.

The general breakdown of areas within Lot 800 is now:

Lot 800 total area	=	5.74 ha
Area designated revegetation	=	10,770 m ²
Retained cleared area	=	9,900 m ²
Retained vegetated area	=	3.67 ha
Total proposed vegetation area	=	4.74 ha

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Asset protection zones have been removed from Lot 800 via a minor alteration to the rear boundaries of Lots 605 to 617. The application proposes the creation of fire trails, suitable for obtaining access to the rear of the lots, and to provide access to the edges of the regeneration areas. These fire trails will remain clear of combustible material to form an additional buffer to the vegetated areas. These trails will be covered by an appropriate Easement in favour of Council and the RFS in accordance with the details set out in the ABPP report.

The regeneration areas will be subject to the recommendations contained in Section 6 of the Darkheart 2009 report and the preparation of an estate-wide Tree Management Plan and Environmental Management Plan that is a condition of approval for the previous application MP 05_00118. These plans will require approval prior to the issue of a Construction Certificate for the next road construction stage. The regeneration areas will include the installation of 20 nest boxes in accordance with the Darkheart 2009 recommendations.

A copy of the Darkheart 2009 report is attached.

3. Bushfire Protection Measures

Following the submissions received, the rear boundaries of Lots 605 to 617 were altered and the entire Asset Protection Zone is now contained within each individual allotment.

The provision of the detailed supplementary report by ABPP dated 9 September 2009, has been included in the layout and shown in Exhibit 8A.

The fire trail and appropriate easements are as shown on the plan. The requirements of this report have been included in the Statement of Commitments.

4. Lot 900 Residue House Lot

In recent times the financial climate has severely curtailed land sales on this estate. In addition to this, financing for developments has become considerably more problematic.

Our client seeks to liquidate long term assets of the estate to assist with the development company's liquidity. With this in mind, we are seeking approval to excise the existing substantial residence and associated curtilage. The proposal is detailed in the accompanying Exhibit 7A.

The entire estate comprises in excess of 162 undeveloped lots. At current levels of uptake, it will be a number of years before the supply is exhausted, perhaps in the order of 10 years. It is therefore considered reasonable to maintain the existing substantial residence as a single home for at least that time frame. Our client is therefore seeking a purchaser of the house residue

Lot 900, who would, in the fullness of time, undertake the subdivision proposed by this application. In the interim however, we seek approval to excise the entire lot to free up capital.

The existing residence is currently fully serviced and will be contained in an area of 1.05 ha. Driveway access will be via the existing fully constructed driveway off Burrawong Drive.

The driveway will be within a Right of Carriageway that will cease to exist upon the extension of Burrawong Drive. The former house access via the Crown Road to the west will be discontinued.

Services in the adjoining new roads will cater for and be extended to service the future subdivision of Lot 900 as per the Master Plan layout.

This arrangement will allow positive gains to the development company's liquidity to assist with bringing the product to the market and additionally it ensures a sustainable use of the quite substantial infrastructure associated with the existing residence.

5. Ecological Recommendations

Following the representations made by DECC the assessment of Flora and Fauna was amended and a further report was produced by Darkheart Eco-Consultancy in October 2009.

This report was prepared in conjunction with the addition of the regeneration areas within Lot 800, revised rear boundaries on Lots 605 - 622, together with changes to the side boundary layouts of Lots 605 – 613.

The side boundary variations have allowed the vegetation around the small disused dam to remain untouched by the development as requested by DECC. The changes have also resulted in retention of two (2) additional trees.

The Darkheart 2009 report recommends compensatory measures for the loss of vegetation together with installation of nest boxes to compensate for the five (5) hollow bearing trees being removed.

The recommendations shown in Section 6 of the Darkheart report can be summarised as follows:

- Informed Development Design;
- Clearing strategy, pre clearing survey and hollow bearing tree removal;
- Retained tree habitat protection during construction;
- Reuse of fallen trees and hollows;
- Regeneration of Lot 800;
- Nest boxes and hollow limbs; and
- Long term management of Lot 800.

The implementation of these recommendations has been included in the Statement of Commitments.

The previous major project approval MP 05-0018, required the preparation of a Tree Management Plan (Condition B3), Environmental Management Plan (Condition B8) and a Construction Management Plan (Condition B5).

It is proposed to incorporate the recommendations of the Darkheart 2009 report into these plans. It is a condition of the approval of MP 05-0018 that these plans be completed and approved prior to the issue of a Construction Certificate for the road extension, designated as Precinct A1 and A2 in that approval.

It is therefore envisaged that tree removal will be undertaken over the entire estate over a period of time required to properly implement the recommendations but commencing with the next road construction stage.

The issues raised by the Department and DECC have been listed in the attached Issues Table reply.

In conclusion the application has been modified to address the matters raised in the submissions. The bushfire arrangements and layout changes improve the environmental outcomes and are now reflected within the revised Statement of Commitments.

If you have any queries regarding the above matter please do not hesitate to contact the writer.

Yours sincerely
King & Campbell Pty Ltd

Per



Paul J Rowlandson

Encl Revised Statement of Commitments V2
 Darkheart 2009 report
 Exhibits 5, 7, 7A, 8 and 8A
 Bushfire Report ABPP

KEMPSEY SHIRE COUNCIL	
General	
1. The South West Rocks Section 94 Contributions Plan, Section 94 Administration Plan and councils Developer Service Plans (Water and Sewer) apply to this development.	The application of contributions within these plans is detailed in the Statement of Commitments.
<p>2. The following additional comment is provided in relation to the existing in-force development control plans that affect this stage of the development: -</p> <p><i>Development Control Plan No. 9 South West Rocks- Spencerville</i> only relates to the Spencerville precinct and does not apply to other areas at South West Rocks including the Stage 1C site. A copy of the plan showing the land to which this plan applies is appended to this letter for your information.</p> <p><i>Development Control Plan No 10 - Provision of open space for South West Rocks and District</i> is relevant but has not been discussed in the relation to councils comment for the previous master plan.</p> <p>Clause 11.6 of <i>Development Control Plan 22 Local Housing Strategy</i> provides additional development controls for Dual Occupancy Developments at South West Rocks. The existing residential areas of the village have a significant number of dual occupancy developments which is being encouraged to grow as a percentage of the total housing as outlined in the Mid North Coast Regional Housing Strategy 2009. The applicant has not specifically discussed this aspect of the lot layout design other than to nominate proposed lot 700 as an integrated housing precinct. The applicant needs to identify how they intend to control dual occupancy development on the greater part of Stage 1C without compromising the proposed integrated housing precinct.</p> <p>When considering the proposed lot design layout the following remaining development control plans need to be considered as they are identified as applicable with respect to this stage of the development: -</p> <ul style="list-style-type: none"> • DCP24 Access and Mobility; • DCP25 Advertising Signs; • DCP29 Bed and Breakfast accommodation; and • DCP31 Energy Smart Homes. 	<ul style="list-style-type: none"> • The relevant DCPs have been addressed in the environmental assessment. • Seascope Grove provides Restrictions on Use limiting the construction of more than one building on the lots. It also provides Building Design requirements that are reinforced by an 88B Restriction limiting the house area to not less than 200m². Both of these measures discourage dual occupancies. <p>In addition to these controls the lots proposed are in the higher end of pricing and better suit stand alone dwellings. The new residential market will have a limiting effect on dual occupancy.</p> <p>Seascope Grove cannot restrict lawful uses that comply with government and local government planning regulations.</p> <p>The Integrated Housing precincts will most likely have a subtle difference in building forms and titling regimes that provide sufficient differential to standard dual occupancies. We could reasonably expect shared facilities and strata or community title management that would provide significant buyer differences to standard dual occupancy.</p>
3. The December 2007 <i>Darkheart Statutory Ecological Assessment</i> refers in its executive summary to land zoned 7(a). This land is identified as wetland in the Kempsey Local Environmental Plan 1987. There are no wetlands located on Lot 124 DP 1097510. This lot contains 7(d) Scenic Protection zoned land.	The Darkheart 2009 report has been amended to reflect the scenic protection zone.

<p>4. The following additional comment is provided in relation to the existing in-force State Environmental Planning Policies that affect this stage of the development: -</p> <p>(a) <i>State Environmental Planning Policy 71 Coastal Protection</i> Section 16 <i>Stormwater</i> has not been addressed in the EA page 34 discussion and or the associated table.</p> <p>The Water Management Plan 2006 has addressed water treatment through quality controls for only part of this stage of the development, The section of land in this stage of the development located on the western boundary of Lot 124 DP 1097510 was not included in the MUSIC modelling (refer to plan at appendix "A"). This part of the catchment will drain away from the proposed water quality controls into the neighbouring catchment to the west untreated into a coastal creek direct to Saltwater Lagoon and Saltwater Creek to Trial Bay.</p> <p>This section of SEPP 71 prevents the consent authority from consenting to a development where it is likely to discharge untreated stormwater into a coastal lake or creek.</p> <p>Point "g" in table at page 35 refers to measures to conserve animal and plants and their habitats. The comment provided refers to regeneration but there is no plan in any of the associated documentation showing how this option is to be utilised for this stage of the development.</p>	<ul style="list-style-type: none"> The water management plan, the stormwater management plan addressed all of the issues are detailed below and included all of the development proposed within the master plan approval. This approvals encompasses Stage 1A, Stage 1B and Stage 1C. These plans provide the framework for all the lots with the approvals. <p>Kempsey Shire Council was consulted during the approval process for both the master plan and the previous Major Project approval. It is appropriate to include all of the lots in all of these strategies and we can confirm that this is the case.</p> <p>The objectives of the Saltwater Creek management plan have been addressed and approved as part of the previous submissions.</p> <p>In regards to the conservation of animal and plant habitat the development now includes a significant revegetation area together with a vegetation management strategy. The recommendations for Construction and Environmental management and pre-clearing are also included in the Statement of Commitments.</p> <ul style="list-style-type: none"> The Water Management plan 2006 specifically includes all of the subject property which encompasses the subject Stage 1C. <p>We assume Council is referring to the plan Overall Management Plan accompanying the report.</p> <p>The plan in question details the natural catchment boundaries. Part of the lots detailed as 605, 605, 636 and 644-650 lie on the eastern side of the ridge that naturally drains to the unformed road.</p> <p>In the practical implementation of the subdivision the new road will allow the discharge of individual house drainage to the street, because of relatively flat grades and the normal practice of depressing the road pavement slightly below the existing natural surface to allow for overland flow paths in a major storm event. It is therefore submitted that improvements on these lots ,and therefore the major pollutant source)will drain to the street and be part of the detailed strategy.</p> <p>Some parts of the rear yards may, in fact, drain in accordance with the current contours. This would normally be the lot back yards. In relative terms this is a very small area and residential "back yard" approximates the existing land use of the main property residence curtilage and</p>
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	<p>existing pastures. It is therefore submitted that there is no increased pollutant load from this small area.</p> <p>This small area then drains via overland flows to the existing drainage system and a series of swales as part of the approved system constructed for the adjoining developments. It should be noted that the "back yard" flows are only a very small part of flows in this development.</p> <p>In addition to this, and most importantly, the stormwater quality measures detailed in the plan have taken account of the potential leakage of the rear yards and have overcompensated for this very small area by exceeding the nominated targets for pollution reduction in the stormwater strategy (refer page—17 of the approved Stormwater Management Plan 2006). We submit that this is a conservative approach that deals with the water quality standards for the entire catchment in a holistic way.</p> <p>Also, all lots in Stage 1C will be subject to a large Section 94 contribution under the South West Rocks Section 94 Contribution Plan. A portion of this plan levies a stormwater contribution in the order of \$2,370 (2007 rates) to implement or retrofit stormwater management measures set out in the Saltwater Lagoon and Saltwater Creek Catchment Stormwater Management Strategy (2006).</p> <p>It should be noted that the approved Stormwater Management Plan 2006 (section 4) provides measures to satisfy the published objectives of the Saltwater Lagoon and Saltwater Creek Catchment Stormwater Management Strategy (2006)</p>
<p>5. The following points need to be either clarified and or included in the Draft Statement of Commitment; -</p> <ul style="list-style-type: none"> • The design (item 16) and construction (item 3) phases of this stage of the development does not incorporate the recommended ameliorating measures contained in the December 2007 Darkheart Statutory Ecological Assessment. It only refers to the Umwelt 2004 Report and 2006 amendment, • The Umwelt amended Ecological Assessment 2006 states that there are no additional mitigating measures from the 2004 Assessment. The original 2006 assessment is not included in the documentation so they cannot be compared to the Darkheart 2007 recommendations. • At point 3 "construction" identifies filling required to be imported to the site. If some lots are proposed to be filled at this stage of the residential development then the Australian Standard 3798-2007 Guidelines on 	<p>The Darkheart 2009 report details the amelioration strategies and builds on the previous approved strategies. In addition the revised statement of commitments details the implementation of the estate wide vegetation management strategies. Following approval of these 58 lots the entire state will be considered as one in regards to the implementation of the measures proposed.</p> <p>All filling works are proposed to be implemented in accordance with Council is DCP 36 and the appropriate Australian standards. This is sufficient in our view to require that generally all works are constructed in accordance with Council's DCP 36.</p> <p>Construction noise and vibration is less relevant in this stage as the proposed roads will, in the vast majority, be in place. All clearing and filling works will be completed. The previous approval which covers the road construction has a condition that requires a construction management plan which will detail noise and vibration mitigation measures.</p> <p>Statement of commitments has been updated to include the landscaping elements detailed in the Darkheart report.</p>

<p>Earthworks for Commercial and Residential Development is the appropriate standard to refer to when selecting the fill to be used, method of placement and testing in conjunction with a Geotechnical Engineers Specification.</p> <p>In addition construction noise and vibration needs to be addressed.</p> <ul style="list-style-type: none"> • Easement placed over what will be private property to accommodate council utility services is to be sized in accordance with DCP36 Engineering Guidelines for Subdivision and Development. • The landscaping component contained in point 5 makes no mention of the recommendations for general landscaping contained in the Darkheart Ecological Assessment. Further the Landscape Principles Plan (appendix K) was a plan prepared for MP05-0018 and predates the Darkheart recommendations. This landscape principles plan does not address compensatory planting and or regeneration of native species. • There has been no public open (point 7) space identified by the applicant for dedication to the public in this stage of the development. • The ecological management component does not refer to any of the recommendations of the various Ecological Assessment recommendations only to a single point about mulching. There is no overall management plan incorporating the ecological management elements (tree report, both ecological assessments) with those fringe onsite elements (bushfire assessment, landscape principles, urban design etc), that will impact on the ecological management of this stage of the development, • Water supply and quality management incorporates more than creation of easements for stormwater assets. This stage of the development will no doubt connect to the proposed future overall stormwater drainage system. The applicant has not demonstrated whether temporary arrangements for this stage of the development are required pending construction of the final stormwater drainage system (including water quality and quantity treatment) and how this stage will integrate with the previously approved concept. • The applicant will need to address likely damage to existing council road pavements along the proposed haulage route to the site for this stage of the development. Council is not in favour of allowing importation of significant amounts of imported fill material along the existing South West Rocks village road network. In addition the applicant will be responsible for 	<p>Point 7 details the requirement to dedicate any land that covers public assets which is confined in this stage to the extension of the small access road around the existing house.</p> <p>The statement of commitments now details the production of Estate wide plans to cover the items indicated.</p> <p>Council should be aware that the previous approved Stages and therefore public utilities must be available because they allow the creation of the road network. The creation of any lots in this approval cannot be done without the completion of the infrastructure works in the previous stages. There is a natural engineering-based progression of the provision of downstream services. The previous strategies covering water supply and quality management already incorporate the subject lots. Similar comments apply to the stormwater drainage strategy. Council should be aware that the current land holder has made both applications.</p> <p>The application proposes the importation of fill material along the existing arterial Road network that is clear of the South West Rocks village network. The protection of Council assets is covered within the provisions of DCP 36 and the provision of bonds at Construction Certificate stage. The majority of filling will be obtained on site. Full details of the filling are set out in the Environmental Assessment. Given the proposed length of time to complete the development we also would put forward that any development seeking to dispose of clean approved fill that may be utilised on Seascope Grove actually reduces the potential for damage to the Road network as it does not need to be transported large distances for disposal.</p> <p>Urban infrastructure that Council will ultimately be responsible to maintain will be designed and constructed in accordance with DCP 36 and the applicable Australian standards together with industry best practice.</p>
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<p>rectifying damage along the identified haulage route for this stage of the development to the satisfaction of the Director of Shire Services.</p> <ul style="list-style-type: none"> Urban infrastructure that council will ultimately be responsible to maintain is to be designed and constructed not only in accordance with DCP36 Engineering Guidelines for Subdivision and Development but having regard for current applicable Australian Standards, council policy and good engineering practice. 	
<p>6. The following Council policy documents available from council web site will apply to this development proposal: -</p> <ul style="list-style-type: none"> <i>Ecological Sustainable Development policy C23.23;</i> <i>a Guide for Certification of Civil Engineering Design Work C23.25; Maintenance of Subdivisions, Security Deposits Bonds and Guarantees M13.9;</i> <i>Street Lighting on Public Roads C22.07;</i> <i>Street Naming C22.06 ;</i> <i>Tree Preservation Order and</i> <i>Macleay Water Integrated Water Cycle Management Strategy 2005.</i> 	Noted
Key Issues	
<p>7. Hazard</p> <p>7.a <i>Acid Sulphate Soils (ASS)</i> are not mapped within the Stage 1C precinct.</p>	<p>Acid sulphate soils were mapped as part of the previous application and do not extend into the subject area.</p> <p>The adequacy of the corridor between lot 617 and 618 has been assessed within the previously approved stormwater management plan. The stormwater discharges were modelled using the "Drains" software and were approved by Council.</p> <p>Additional information in the PPR has been lodged regarding the unlikely possibility of contaminated land.</p>
<p>7.b Stage 1C is not affected by the 1 in 100AEP flood event from the Saltwater catchment area.</p> <p>The applicant is to consider whether lots in this stage of the development are at an unacceptable risk from localised flooding during a 1 in 20 year storm event (Clause 12 (1)(a) and (c) of Kempsey Local Environmental Plan 1987.</p>	

In particular investigate whether the stormwater corridor located between proposed lots 617 and 618 is of adequate area/width to wholly accommodate local storm flows without adversely impacting upon likely future development of these two residential allotments and or the natural flow path of the existing gully.	
7.c A detailed <i>Hydrogeological Assessment</i> has not been undertaken at this site and the 2003 Geotechnical Assessment had not addressed the groundwater issue.	<p>The matter of groundwater or Hydrological Assessment was dealt with in the approved Water Management Plan 2006 in Section 5.1 to satisfy a specific DGEAR request. This assessment covers all the lots in Stage 1C and adequately addresses concerns. This plan was part of the previous approval and no submission raised issue with this part of the plan.</p> <p>The vast majority of roads and drainage that have potential for impacts on groundwater are approved under the Stage 1B approval and will be in place prior to Stage 1C residential lots.</p> <p>We also note that the DECC submission (or DWE) did not raise any issues with the previously approved plan and we submit this is acceptable and further modelling is not necessary.</p>
7.d Council's data base mapping does not identify this site as contaminated land. The 2003 Geotechnical Assessment does not address this issue for this site as indicated by the applicant.	
8. Council's <i>Waste Management Strategy</i> needs to be considered by the applicant.	Construction waste management will form part of the construction plan. The proposed lots will fully comply with Council's waste management strategy
9. There is no information held within the existing <i>Fauna and Flora Assessments</i> undertaken to date for preparation of vegetation, regeneration and or compensatory plantings of native species plan.	Following the exhibition of the proposal a revegetation and mitigation strategy was implemented within the proposed Lot 800 in accordance with the DECC submission and following site visits and consultations with the Department of Planning.
<p>10. Traffic and Access</p> <p>There is an existing formed gravel driveway servicing the current residence and outbuildings located within the current crown road reserve which extends approximately 200metres from the Belle O'Connor Street frontage.</p> <p>The subdivision Stage 1C layout in its current form will provide a secondary access in respect of proposed lots 604, 605, 644 to 650, 636 and one side of proposed lot 623 direct to Belle O'Connor Street for the future residents. This feature is undesirable as it will create a precedent allowing for the unnecessary duplication of the Shires urban road infrastructure.</p> <p>Council is unlikely to accept a transfer pursuant to section 151 of the Roads Act 1993 now and or into the future. The Roads Act defines a crown road as: - <i>"means a public road that is declared to be a Crown road for the purposes of this</i></p>	<p>This existing formed gravel driveway is no longer used by the current residence. Following creation of the residential allotments with rear frontage to this Crown Road an appropriate restriction on the crossing of this boundary by vehicles will be implemented to prohibit vehicular access.</p> <p>The majority of the provisions of the 2003 Pedestrian ACCESS Mobility Plan will be implemented with the construction of the major road network and in accordance with the previous approvals. The plan was considered in the overall master planned and the pedestrian desire lines were noted in the previous approvals and will be implemented as part of the overall estate construction program. There are no cycleways proposed as part of this approval. All pathways and cycleways form part of the previous approval and will be constructed in accordance with the approved strategies. The pedestrian and cycleway arrangements have sufficient capacity to service all the lots.</p>

<p><i>Act."</i></p> <p>Part 1 Section 5 of the Roads Act confers right of passage along a public road by members of the public and Section 249 identifies that where a place is a thoroughfare in the nature of a road used by the public then it is a public road. The applicant needs to address this issue as part of the subdivision lot layout design.</p> <p>Consider the South West Rocks component of the 2003 PEDESTRIAN ACCESS MOBILITY PLAN KEMPSEY AND SOUTH WEST ROCKS and provisions of DCP 36.</p> <p>Exhibit 9 showing extent of cycle ways is missing from the documentation please submit.</p>	
<p>11. With respect to lot layout and design the following comment is provided for proposed lots 609 to 613, 800 and 614 to 622: -</p> <ul style="list-style-type: none"> • Why is proposed Lot 622 so large compared to adjacent allotments on similar slopes which have significantly smaller areas? • The suitability of proposed lot 618 is questionable taking into consideration the significant site constraints such as the slope of the land, the proximity to the existing gully combined with the small reduced available lot area when compared to proposed adjacent Lot 617; • Plan Exhibit 5 shows a small area of land not labelled as a proposed lot west of lot 614, please clarify, • When designing a lot layout for a subdivision where there is a bushfire hazard it is common practice to allow the ring road in this case Burrawong Drive to act as a buffer to development. It is considered inappropriate in this instance to unnecessarily burdening the 7(d) Scenic Protection zone by incorporation of asset protection zones for a "Greenfield" development into the scenic protection zone itself even though part of this zone has been referred to as parkland associated with proposed Lot 800, • The EA for this stage of the development has mentioned Native flora regeneration but no specific detail has been provided. Rather than retaining a parkland bushfire clearing buffer using the 7(d) zoned land and establishing a single dwelling for the purpose of maintaining this buffer why not use the 7(d) land for native flora regeneration and or compensatory habitat. If the applicant still wishes to retain a dwelling on proposed lot 800 why not consolidate proposed lot 622 located in the residential zone and which will have minimum impact on the scenic protection zone. 	<p>It is considered that all of the lots has significant area to allow adequate building area in moderate slopes. Lot 622 includes the provision of a fire access trail and is consequently larger. In addition the lot design preserves existing trees.</p> <p>The layout of lots 617 and 618 has been redesigned to widen the access handle and incorporate large areas of the gully. The areas and building envelopes are available on lot 617 and 618 are now comparable and more than adequate.</p> <p>The small area of land not labelled has been removed and incorporated within lot 800</p> <p>Bushfire setbacks and firefighting measures are set out in the bushfire report. The layout is in accordance with the previous approvals and previous master plan approval. Council was consulted during these approvals.</p> <p>Specific regeneration areas are now detailed within the VPA are within lot 800.</p>

MASTERPLAN MP-07-0129 STATEMENT OF commitments Version 3			
No.	Issue	Commitment	Timing
1	General	The development will be carried out in accordance with Environmental Assessment Report (EAR), prepared by King & Campbell Pty Ltd 2008, and supporting reports, except where amended by other Items of this Statement of Commitments.	For the duration of the subdivision
2	Staging	Completion of the development in accordance with the staging set out on the Project Application plan (Exhibit 7).	For the duration of the subdivision
3	Construction	<p>Works shall not commence until such a time as a Construction Certificate has been obtained. A Construction Certificate may be obtained from Kempsey Shire Council upon application being made or from an accredited certifier.</p> <p>All construction work shall comply with any applicable Australian Standards and Council Policies where applicable.</p> <p>Any waste generated from the Construction of the development will be disposed of in accordance with Kempsey Shire Council's Waste Management Strategy. The details of Waste disposal shall be set out in the approved Construction Management plan.</p> <p>Construction work shall be confined to 7:00am to 6:00pm, Monday to Fridays and 7:00am to 12:00 noon Saturdays.</p> <p>Clearing and removal of vegetation shall not be undertaken unless in accordance with the provisions of the Tree Management Plan and Environmental Management Plan to be completed as a part of Major Project approval 05_0018. Works must also be in accordance with the recommendations of Darkheart 2009 regarding tree removal, revegetation and pre-clearing surveys to minimise the impacts of any arboreal fauna present. The Darkheart recommendations are detailed below as follows:</p> <ul style="list-style-type: none"> • When tree removal is to be programmed, all non-hollow bearing trees are to be removed at least 24hrs before removal of hollow-bearing trees. This is to stimulate any resident animals to abandon the den/roost site; • A pre-clearing survey is to be conducted on the night prior to removal of the hollow-bearing trees to help minimise the risk of injury/mortality of arboreal fauna (especially the Squirrel Glider) potentially utilising the subject trees as den-sites. The pre-clearing survey will consist of: <ul style="list-style-type: none"> ○ Saturated arboreal Elliot B trapping throughout the study site (particularly on and directly adjacent to the hollow bearing trees) to maximise the likelihood of capturing site-dependant animals on the night before clearing; and ○ Stag watches on the hollow-bearing trees to see if key roosts (maternity, nursery, hibernation) are present or to identify hollows subject to usage as Squirrel Glider den sites at the time of the clearing. ○ The Elliot B traps are to be checked and removed at dawn the following morning prior to the commencement of any clearing work. All hollow-bearing tree felling is to be completed on the day following trapping. If all hollow-bearing trees requiring removal are unable to be fallen the day following trapping, further hollow-bearing tree removal may only commence the day after a second night of trapping. ○ Any captured fauna are to be kept in a shaded area and released after sunset that evening in the retained vegetation. 	For the duration of the subdivision

		<ul style="list-style-type: none"> • If a tree is found to contain a key bat roost, this tree is not to be removed until the bats complete the key lifecycle stage and move on. This will have to be determined via periodic monitoring (i.e. stag watching and inspection with a remote infrared camera). Once the bats have moved on, the hollow bearing tree removal protocol will apply. • The 5 hollow bearing trees likely to require removal are to be removed in a way that will minimise the risk of injury/mortality of denning/roosting fauna (particularly the Squirrel Glider), within the practical and legal limitations of Occupational Health and Safety (OH&S) guidelines/legislative requirements. • Potential hollows in limbs on tree #383 are to be lopped by an arborist, and lowered to the ground via ropes. These limbs are to be carried to the 7(d) zone, and gently lowered to the ground with all openings exposed upwards to allow any resident fauna (which has not evacuated during felling) to emerge at dusk. Tree 627 is to be assessed by a consulting arborist in regards to the practicality of retaining this tree by pruning of dangerous crown limbs. If this is not possible, the top half of this tree (>5m from ground to try and avoid the chimney) should be cut and dropped, and the stump left till dusk for any bats to <p>The following tree/habitat protection measures will be required to be undertaken to protect the retained habitat/trees during construction. These include:</p> <ul style="list-style-type: none"> • All trees/habitat to be retained or removed should be clearly mapped on a site plan (ie a clearing plan) and marked on site (eg with a specific coloured flagging tape or fencing off) to ensure construction activities do not result in accidental damage or removal. • All practical measures possible are to be undertaken to protect retained trees/habitat to maintain long term health eg fencing off the area with temporary fencing during the length of the construction period. Appropriate guards approved by an arborist are to be installed to prevent physical damage to the trunk where setback via fencing is not practical/possible, and other additional measures (eg mulch placed over roots) are to be implemented to protect the health of the tree. Appropriate measures approved by a consulting arborist are to be taken when roots must be trimmed during any excavation works. • Machinery and vehicles should avoid being used or parked directly adjacent to trees which are to be retained to avoid soil compaction. If unavoidable, soil compaction and tree protection measures will be required. • Specific instruction to staff/contractors on what trees and habitat is to be retained, their significance and measures to be undertaken to avoid damage to them. Contracts are to contain clauses for penalty for non-compliance. • No disposal of cement wastes, construction material or washdown near the retained vegetation. <p>Mixing of imported soils with site soils outside the development/dwelling footprint should be avoided to minimise risk of disease and pathogenic fungus transfer.</p> <p>Clearance of hollow-bearing trees within the identified survey area shall be completed in accordance with the procedures identified by Umwelt (2004) to minimise the impacts to any arboreal fauna present.</p> <p>Any fill required to be imported to the site shall be either '<i>virgin excavated natural materials</i>' or suitable for classification as inert under the Department of Environment & Climate Change Guidelines.</p>	
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		<p>Provide AS2870 (Residential slabs and footings) classification of all lots created.</p> <p>Completion of the civil work shown in the engineering plans and in accordance with Kempsey Shire Council's Ausspec Construction Specifications.</p> <p>A Traffic Management Plan shall be completed prior to Construction as a part of the construction management planning. The plan shall detail the access routes to the lots and shall control the movement of heavy vehicles during the construction phase. The Plan shall detail the haulage route of any imported fill material in accordance with the route proposed in the Environmental Assessment. . The plan shall incorporate measures to monitor and rectify any damage to the haulage routes.</p> <p>Stormwater runoff from dwellings constructed upon lots 604,605,636 and 644 to 650 is to be direct to the eastern catchment stormwater treatment facility.</p>	
4	Statutory Requirements	<p>The following approvals will be obtained and maintained for the residential subdivision:</p> <ul style="list-style-type: none"> • Construction Certificate from Kempsey Shire Council or other Accredited Certifier; • Subdivision Certificate issued from Kempsey Shire Council; • Section 138 Consent for roadwork under the Roads Act 1993; • Country Energy certification; • Telstra certification; • Macleay Water Compliance certification; • Department of Land and Property Information registration; <p>Two days prior to commencing work Notice of Commencement of Building or Subdivision work and Appointment of Principal Certifying Authority is to be submitted to Kempsey Shire Council in accordance with the Environmental Planning and Assessment Act/ Regulations.</p> <p>A final plan of subdivision and Section 88B instrument will be prepared for the development. The Section 88B instrument will provide easements for utility services that encroach onto private land or public reserves.</p>	For the duration of the subdivision
5	Landscaping	<p>Indigenous plant species shall be used for landscaping on the site generally, in accordance with the Landscape Principles Plan prepared by King & Campbell (July 2006). A detailed Landscape Plan is to be submitted for approval with the Construction Certificate application. Specifically, such species should include Eucalypts, Grevilleas, Banksias, Melaleucas, Acacias, Allocasuarinas and Callistemons (especially Winter-flowering species which are useful for the Squirrel Glider, honeyeaters and Grey Headed Flying Fox eg Banksia integrifolia), and fruiting rainforest species such as Brush Cherry (Syzygium australe), figs, Acronychia littoralis, etc.</p> <p>Plantings shall not be planted in parkland style or isolated trees and should be planned to relocate a natural (layered) structure. This multi-layered planting can provide affective aesthetics while supporting passerine birds, bats and canopy species such as arboreal mammals.</p> <p>Flammability of vegetation chosen – avoidance of continuity of vegetation to ensure minimal flammable fuels present.</p>	Prior to the release of the subdivision certificate.

		<p>All trees to be planted within the proposed public roads and reserves shall be identified on engineering plans submitted to Kempsey Shire Council with the Construction Certificate application.</p> <p>All trees that are unsuitable for retention, or have been identified for removal due to the provision of services or infrastructure shall be removed and mulched on site.</p> <p>Timber will be recycled as mulch throughout the landscape strategy. All hollow-bearing limbs (unsuitable for remounting as per section 6.1.6) and tree sections, as well as the main trunk sections of other trees, are to be transported to suitable portions (where machine access is safe by OH&S requirements, and avoids damage to existing habitat) of the 7(d) zone. These are to be stacked in small piles or laid out strategically in this area to provide habitat (refugia and foraging substrate) for native species.</p>	
6	Soil Erosion	Seascope Grove will prepare a soil and water management plan to control runoff during construction in accordance with the principles of the Landcom publication <i>Managing Urban Stormwater (MUS): Soils and Construction Volume 1, 4th Edition</i> and Construction Certificate plans approved by Kempsey Shire Council or an accredited certifier	Prior to the release of the construction certificate.
7	Public Roads Dedication	Public Roads, including areas containing stormwater management facilities, will be dedicated to Kempsey Shire Council.	Prior to the release of the subdivision certificate.
8	Ecological Management	<p>Timber will be recycled as mulch throughout the landscape strategy.</p> <p>The Management Plan to include the recommendations of the Darkheart 2009 report.</p> <p>The following measures to be commenced with the next stage of the Seascope Grove Estate road construction:</p> <ul style="list-style-type: none"> • Implementation of the recommendations of the Tree Management Plan • Implementation of the Pre-clearing strategy, nest box requirements and Hollow Bearing Tree Removal protocols detailed in Section 6 of the Darkheart 2009 report, including: <ul style="list-style-type: none"> ○ No domestic stock are to be kept on Lot 800, which has the capacity to be used for keeping of such, via restrictive title covenant (King and Campbell 2009). ○ Cats are to be confined indoors between sunset and sunrise via restrictive covenant (King and Campbell 2009). This is essential to avoid pet predation of the Phascogale and Squirrel Glider, which are particularly sensitive (NSWSC 2000a, Dickman 1996, Grayson and Galver 2004, May 1997, Smith and Murray 2003, Smith 2002a, Faulding and Smith 2008, Barratt 1997). Any dogs should be restricted to the residential Lots unless on a lead. No pets should be allowed to roam through the adjacent bushland in the general area. ○ Feral bee hives should be exterminated on detection to prevent new hives being established. Indian Mynas should not be encouraged to feed on site (eg by provision of seed, etc by residents), and if detected nesting on-site, they should be reported to the NPWS/DECCW, the Catchment Management Authority, or Council for appropriate action to be undertaken (ie nest destruction and trapping). ○ Removal of trees near retained habitat may not be suitable to be removed via standard removal practices. An arboricultural consultant is recommended to advise and if necessary supervise the proper removal method of such trees to avoid potential impacts to retained trees. 	For the duration of the subdivision

		<p>Sawing down of trees and stump grinding is considered likely to be the best method where a potential risk is identified.</p> <ul style="list-style-type: none"> ○ All prospective buyers should be advised of the limitations/restriction and the implications imposed upon them. This could include the compilation of an information booklet (including a copy of Darkheart's 2009 ecological impact assessment as background information) distributed with the title deed to establish resident awareness. ○ A minimum of 20 nest boxes designed to suit Yangochiropteran bats, Squirrel Gliders and Brushtailed Phascogale are to be constructed and erected at least 8 weeks before clearing commences to allow adoption by target fauna. Post-tree felling, the total number of hollows in the fallen trees will indicate the final number of replacement nest boxes required. After being erected for 12 months, it is recommended that a qualified ecologist inspect the nest boxes to determine whether they are in use and/or if they have been invaded by ants and/or feral honeybees and require treatment for fauna occupation. ○ The constructed nest boxes are recommended to be made out of at least 20mm thick marine ply to maximise their longevity (ie minimise weathering and termites and fungi activity) and insulative properties. They are to be predominantly designed to suit Squirrel Gliders and Phascogales, though several should be designed specifically to suit Yangochiropteran bats. The design should not encourage their use by either feral honeybees or Indian Mynas. 	
9	Archaeological	<p>If any artefacts or sites of Aboriginal significance are uncovered during site works, all work shall cease immediately and the NSW Department of Environment and Climate Change shall be notified immediately to advise of the requirements prior to re-commencing works.</p> <p>Local Aboriginal Land Council representatives shall be present during disturbance of the upper 20cm of natural soil during earthworks on the site.</p> <p>Undertake an Aboriginal Heritage Survey of the proposed Lot 700 prior to filling works being undertaken.</p>	During construction.
10	Bushfire	<p>Asset protection zones shall be provided to the western boundaries of proposed Lots 618 to 622 inclusive. An 88B instrument shall ensure that proposed Lots 618-622 inclusive and proposed Lot 700 adequately manage the nominated Asset Protection Zones and combustible fuels within the landscaped gardens.</p> <p>Seascope Grove will install fire hydrants in accordance with Australian Standard S2419.1-1994. Hydrants will be made accessible and located so that a tanker can park within a distance serviceable by a 20 metre hose and so that all houses are within 70 metres of a hydrant</p> <p>Fuel management within the Asset Protection Zones shall be in accordance with the recommendations of Appendix 5.4 & 5.5 of <i>Planning for Bushfire Protection 2006</i> and the Rural Fires Service '<i>Standards for Asset Protection Zones</i>'.</p> <p>Adoption and implementation of the recommendations of the Bushfire Hazard Assessment completed by Australian Bushfire Protection Planners Pty Ltd (Dated 3 November 2007) which includes:</p> <ol style="list-style-type: none"> 1. Asset Protection Zones shall be provided to the widths as nominated in Table 6. (Refer to Attachment D – "Plan of Bushfire Protection Measures"). 2. The Asset Protection Zones and the landscape gardens within each lot shall be maintained as an Inner Protection Area in accordance with 	Prior to the release of the subdivision certificate.

		<p>Appendix 5 of Planning for Bushfire Protection 2006 and the NSW Rural Fire Service's "Specifications for Asset Protection Zones".</p> <p>Management of the landscaped gardens shall comply with the following:</p> <ul style="list-style-type: none"> • Maintain a clear area of low cut lawn or pavement adjacent to the buildings; • Keep areas under fences, fence posts, gates & trees raked and clear of combustible fuels; • Utilise non-combustible fencing and retaining wall structures; • Separate the tree canopy and shrub connectivity with defined landscaped garden beds; • Maintain tree canopies and shrubs so that they are clear of the building by at least two metres; • Utilise non-flammable materials such as Scoria, pebbles and recycled crushed bricks as ground cover to landscaped gardens in close proximity to buildings; • Maintain minimal fine fuel loading at ground level within the Inner Protection Area and landscaped area (nominally 3 tonnes / hectare); • Trees and shrubs are acceptable provided that they are spread out and do • not form a continuous canopy, are not species that retain dead material • and are located away from the buildings to minimize radiant heat and • direct flame attack. • • Landscape species selection shall be drawn from those that are • considered to be species which are "fire retardant" and do not promulgate • the spread of fire. <p>3. An 88B Covenant, in accordance with the provisions of the Conveyancing Act of 1919, shall be created on the title of the future Integrated Development lot [Lot 700], Lots 618 – 622 and the residual Lot 800 formed by the subdivision of Stage 1C to ensure the ongoing management of the landscaped gardens/residual vegetation within the development in accordance with the prescriptions of an Inner Asset Protection Zone.</p> <p>4. The minimum construction standard to the future dwellings on the Integrated Development site [Lot 700] in Stage 1C shall be Level 1 construction standard, in accordance with the specifications of Australian Standard A.S 3959 - Second Edition 1999 and Amendment 1, 2000, "Construction of Buildings in Bushfire Prone Areas".</p>	
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		<p>5. The minimum construction standard to the future dwelling on Lots 605 – 617 the shall comply with Level 1 construction standards, in accordance with the specifications of Australian Standard A.S 3959 - Second Edition 1999 and Amendment 1, 2000, "Construction of Buildings in Bushfire Prone Areas".</p> <p>6. The minimum construction standard to the future dwelling on Lots 618 – 622 shall be such that the elevations exposed to the bushfire hazard shall be constructed to comply with Level 3 construction standards, in accordance with the specifications of Australian Standard A.S 3959. The elevations not exposed directly to the bushfire hazard shall be constructed to comply with Level 1 specifications as defined by A.S. 3959 – 1999 - Second Edition 1999 and Amendment 1, 2000, "Construction of Buildings in Bushfire Prone Areas".</p> <p>7. Future public access roads shall be constructed to comply with the deemed-to-satisfy provisions of Section 4.1.3 of Planning for Bushfire Protection 2006.</p> <p>8. The existing water supply mains shall be extended, to service the future residential development, in accordance with the specifications of Australian Standard A.S 2419.2. Hydrants shall have a flow rate of 10 litres / second with blue pavement marks provided to locate hydrant positions. Fire hydrants shall be accessible and located such that a tanker can park within a maximum distance of 20 metres from the hydrant and the habitable building must be located such that a fire at the furthest extremity can be attacked by fire-fighters using two 30 metre hose lines and a 10 metre water jet. A clear unobstructed path between the hydrant and the most distant point of the building cannot exceed 90 metres. Blue hydrant markers shall be provided to locate the positions of the hydrants. The markers shall be positioned on the hydrant side of the centreline of the road pavement.</p> <p>9. The roof gutters/valley of the future buildings on Lots 614 – 622 shall be fitted with a protection device that minimises the accumulation of combustible materials in the gutters/valleys. The protection device shall have a flammability index of less than 5 as measured under Australian Standard A.S.1530.2 – 1993 "Methods for fire tests on building materials, components and structures – Test for flammability of materials";</p>	
11	Public Utilities	<p>Seascape Grove will provide reticulated potable and non-potable water supply system , sewerage and underground electricity to each residential allotment.</p> <p>Seascape Grove will provide a reticulated water connection to any public reserve.</p> <p>Seascape Grove shall make satisfactory arrangements with Telstra for the provision of underground telephone plant to each allotment. A letter from Telstra stating that satisfactory arrangements have been made for the provision of telephone plant supply to this development shall be provided to Kempsey Shire Council.</p> <p>Seascape Grove shall make satisfactory arrangements with Country Energy for the supply of electricity to each lot. A letter from Country Energy stating that satisfactory arrangements have been made for the provision of electricity supply to this development shall be provided to Kempsey Shire Council.</p> <p>Seascape Grove shall bear the cost of the relocation of utility services required as a result of construction of the development.</p>	Prior to the release of the construction certificate.
12	Water Supply and Quality Management	Seascape Grove will create all easements to the satisfaction of Kempsey Shire Council to cover all stormwater assets.	Prior to the release of the subdivision certificate.
13	Noise	Hours of construction shall be limited to 7:00am to 6:00pm, Monday to Fridays and 7:00am to 12:00 noon Saturdays.	For the duration of the subdivision

14	Roads	<p>Street signs (Kempsey Shire Council and RTA requirements)</p> <p>Internal Roads shall be designed and constructed in accordance DCP No.36 '<i>Engineering Guidelines for Subdivision and Development</i>' having regard for current applicable Australian Standards, Council policy and good engineering practice..</p> <p>Footpaths / Cycle-paths (pedestrian access and mobility plan under DCP No. 36 <i>Engineering Guidelines for Subdivision and Development</i>'.</p> <p>Stormwater pipelines shall extend upstream of the handle between Lot 617/618 and collect all stormwater runoff in accordance with Council's DCP to ensure that no localised flooding impacts on Lots 617 and 618</p>	Prior to the release of the subdivision certificate.
15	Contributions	<p>Seascope Grove will pay contributions in accordance with Kempsey Shire Councils <u>Section 94 Contribution Plan - Project Administration</u> and <u>South West Rocks Section 94 Contributions Plan</u> on an 'ET' basis. There are no credits sought for any works completed.</p> <p>Seascope Grove will pay Section 64 water and sewer developer contributions in accordance with the development servicing plan applicable at the time of payment.</p> <p>Seascope Grove will submit an application for a Certificate of Compliance pursuant to Section 305 of the <i>Water Management Act 2000</i> and the lodgement of a Certificate of Compliance indicating the requirements of Section 306 of the <i>Water Management Act 2000</i> have been met.</p> <p>Payment of a contribution in accordance with Kempsey Shire Council Macleay Water Development Servicing Plan for Sewerage Services "Developer Charge" at the applicable rate for an Equivalent Tenement ET shall be paid prior to the issue of the Subdivision Certificate.</p> <p>Payment of a contribution in accordance with Kempsey Shire Council Macleay Water Development Servicing Plans for Water Supply Services "Developer Charge" at the applicable rate for an Equivalent Tenement ET shall be paid prior to the issue of the Subdivision Certificate.</p> <p>Extension of the town water supply main(s) is necessary to serve the proposed development, at full cost to the applicant. Detailed plan and calculations are to be submitted for approval prior to the issue of the Construction Certificate.</p> <p>Extension of the town sewer main(s) is necessary to serve the proposed development, at full cost to the applicant. Detailed plans and calculations are to be submitted for approval prior to the issue of the Construction Certificate.</p> <p>Provision of a reclaimed water reticulation main in addition to the potable main to service all the proposed allotments in this stage of the development and designed in accordance with the supplement to the Water Supply Code of Australia WSA 03-2002 and having consideration any additional requirements specified by Kempsey Shire Council's Macleay Water. Detailed plans are to be submitted for approval prior to the issue of the Construction Certificate.</p>	Prior to the release of the subdivision certificate.
16	Design	<p>Design controls will be prepared by Seascope Grove and implemented for the residential lots through the use of positive covenants on the titles to the lots.</p> <p>All residential dwellings shall be subject to the satisfaction of the neighbourhood scheme for Seascope Grove and shall be required to demonstrate compliance prior to the lodgement of plans with Kempsey Shire Council.</p> <p>Provide a suitable restriction on use on all lots with frontage to the unformed Crown Road to the west of the development that prohibits vehicular and pedestrian access across that common boundary.</p>	Prior to the release of the subdivision certificate.

		<p>No residential lots shall be created unless there is available</p> <ol style="list-style-type: none"> 1. A connection to dispose of stormwater to Council's system 2. Water and Sewer connection points 3. Electricity and Telstra Reticulation connections . 4. A connection to a dedicated public road. <p>Artificial lighting shall be kept to a minimum as per the recommendations of Darkheart's 2009 report, section 6.2.3, which reads:</p> <ul style="list-style-type: none"> • To ensure anthropogenic impacts are minimised, it is recommended that artificial lighting be kept to a minimum and be of a localised and low luminosity, with light directed to the ground and not into vegetation. 	
17	Lot 900	<p>Provide a right of carriageway over the existing driveway to Burrawong Drive.</p> <p>Provide a restriction on Use limiting further development on Lot 900 unless such development is in accordance with Major Project Approval MP 07-0129 or any such further development as may be approved by the Department of Planning.</p> <p>Provide clearances from Country Energy and Telstra regarding the provision of electrical reticulation and telephone services to the existing residence</p> <p>Payment to the Kempsey Shire Council of the Section 94 and Section 64 charges detailed in 15 above for one additional allotment together with submission to Kempsey Shire Council of a subdivision certificate application.</p>	



BUILDING COVENANTS

Section A – Design Requirements

Section B – Approval Procedure

Lot number -

Buyer's name -

Buyer's signature -

Buyer's signature -

Seller's name - W.B & M.E Walls

Seller's signature -

Seller's signature -

1. BUILDING COVENANTS – DESIGN REQUIREMENTS

All applications, dealings and approvals shall be dealt with by the Seller. The Buyer shall not seek approval of any plans, specifications, or such other information as may be required to obtain building approval or certification for the Buyer's proposed construction, until such time as the Buyer has received from the Seller a signed final drawing approval.

1(a) IDENTIFICATION OF BUILDING COVENANTS

These are the Building Covenants referred to in the Standard Special Conditions contained in the annexed Contract of Sale.

1(b) COMMENCEMENT ON SITE

No building, outbuilding, garage, carport, shed, fencing, swimming pool or excavation shall be commenced unless working drawings showing the design, materials for external elements of the structure, wall, roofing or such other combination of materials have been submitted to Waldel Park Pty Ltd and approved in writing by Waldel Park Pty Ltd prior to application for a building permit being lodged or obtained from Kempsey Shire Council or private certifier.

Waldel Park Pty Ltd may grant or refuse such approval or grant such approval subject to such conditions as Waldel Park Pty Ltd may determine in its absolute discretion.

1(c) USE OF LAND

The land shall only be used as a site for a single unit private dwelling. No more than one main building shall be erected on each lot on any lot shall not be used other than a private residential dwelling, however the building may be used for professional persons in the practice of their business as long as they comply with Kempsey Shire Council's Local Environment Plan.

1(d) DWELLINGS

i. Setbacks

A minimum street boundary setback of 6 metres is required. For corner lots, the minimum setback from the secondary frontage is 3 metres. Side boundary setbacks of a minimum of 900mm are required.

Zero lot lines will not be accepted.

ii. Minimum floor areas

Single dwelling - The total minimum gross external floor area shall be at least 190 square metres.

Areas not included – Floor areas of garages, carports, under soffits, entry porches, breezeways or roofed external areas, are not included in the calculation of minimum floor area unless specifically approved by Waldel Park Pty Ltd

iii.Design

In view of the unique location of this project, set amongst undulating parkland, Waldel Park Pty Ltd encourages the Buyer to design their houses to complement the environmentally sensitive character of the region.

Main building – As such the design of the main building and outbuildings, suitability for use on the Land, adjustment to the natural topography of the lot, orientation, floor levels, and use of materials and colours are subject to approval by Waldel Park Pty Ltd and are to be shown on the approved drawings. Houses are to take cognizance of the climate conditions of the area and the estate's unique location. The Buyer is encouraged to include eaves, verandahs, awnings, porches and shutters adding to the articulation of the building and to assist with achieving energy efficiency within the dwelling.

The Buyer is encouraged to design their residence such that it allows for street appeal.

The colours of external building materials and finishes are to be selected to be subdued in colour intensity and be non-reflective. In an established streetscape context, the ambient colours are to be considered and proposed colours are to be harmonious with the existing neighbouring dwellings. Colour accents will be considered in their context and may be approved.

Roof pitches – Roof planes shall be pitched and the roof slope shall be greater than 21.5 degrees unless otherwise approved. Where flat roofs are required, the front façade will require addition relief, and only be permitted as minor roof structures. Curved roof forms will be considered on their merits.

Eaves – Eaves must be provided generally and are to have a minimum of 450mm overhang. Any alterations to this specification are to be submitted to Waldel Park Pty Ltd in writing.

Covered entrances – The main entrance must be provided with an articulated covered entry porch compatible with the overall design of the residence.

Outbuildings – (garages, carports, sheds, toolsheds, playhouses, pergolas etc.) design, appearance, external colours and materials of all outbuildings shall be integrated with the design of the main building through the combined use of materials, colour and finishes.

Foundations – Raw concrete, steel or other stumping used in foundation work or supports shall be incorporated into the architectural and structural design of the dwelling.

High-set structure – When a dwelling is of high-set design, the lower storey of a high-set building shall be suitably enclosed and designed.

Privacy of neighbouring occupiers must be considered in relation to overlooking from balconies, decks and windows.

iv.Materials

Street appeal is to be addressed through the use of masonry, light-weight or alternative materials and the use of rendered finish and other textures.

All materials – Only new good quality building materials shall be used for construction.

Dwellings – Dwellings may be constructed of masonry or alternatively of composite construction, that is constructed in a combination of materials used for external cladding. Full fibre cement is permitted where such cladding is coated by an approved texture coating to resemble masonry or cement render or natural timber weatherboards painted to complement the overall amenity of the estate or such other material as Walde Park Pty Ltd may approve in writing.

Façade – Brick may only be used as features, infills or courses along the edge of façade.

Unpainted galvanized iron and Zinalume finishes, white roofs or other highly reflective finishes will not be approved as materials for building work.

v. Workmanship

All construction shall be carried out in a tradesman-like manner and in accordance with Australian Standards and the Building Code of Australia.

1(e) GARAGE/PARKING

i. Garage

A minimum of a double lock-up garage shall be built at the same time as the main building and shall be of similar design to the main building and constructed of identical materials, finishes and colours.

The garage entry is not to be flush with the front wall of the house. Double lock-up garages shall not be tandem parking.

ii. Screening

A carport must be screened on at least three sides and be of similar design, materials, finishes and colours to the main building design.

iii. Driveways

Driveways shall:

- Be less than 3 metres wide at the street boundary;
- Extend from kerb edge to the garage/carport;
- Extend to the full depth of a carport;
- Be constructed of pavers, exposed aggregate, stamped coloured concrete, or coloured textured concrete;
- Be constructed prior to occupation of the main building.

Plain concrete driveways are unacceptable.

1(f) SITE WORKS

i. Tree Removal

Protect - Trees on neighbouring land may not be removed or damaged.

Streetside trees shall be protected during construction. Any damage caused during the construction by the Buyer must be repaired and paid for by the Buyer.

Removal – Fallen tress, logs and branches must be removed from the estate and must not be placed onto neighbouring land.

ii. Excavation

Spoil/fill – Spoil shall not be removed from, nor fill placed upon the land except by way of excavation in accordance with the approved working drawings.

Excavation/fill material shall not be placed on or removed from neighbouring land.

Maximum height – Excavation or fill may not exceed 1200mm height from the natural ground level of the land.

iii.Retention of embankments

Retention – All cut and fill embankments shall be retained as prescribed by the local authority and as follows:-

Embankments – Where a slope is greater than 1:1.5 or higher than 900mm the embankment shall be retained by log, sleeper, masonry, concrete or other approved retaining walls and are to be shown on the working drawing. Retaining walls greater than 1 metre will require Structural Engineers design and certification.

Installation – Retaining walls within 1.5 metres of a property line shall be erected before construction of the main building wall commences.

All embankments shall be retained prior to habitation of the main building.

iv.Drainage

Drainage – Shall be provided at the foot of each embankment or retaining wall.

Stormwater – Shall be discharged to the designated weep hole in the street kerb or to the drain provided. Existing concrete kerbs are not to be penetrated in any way without the consent from WaldeI Park Pty Ltd.

Surface water – Shall not be directed onto neighbouring land. Surface drainage shall be formed to direct surface water run-off to gullies and or the street front.

1(g) FENCING, WALLS & SCREENS

i.Design

Completion – Fencing to all boundaries must be completed within one month of occupation of the main building.

Fencing – Fencing may not be fixed to retaining walls unless approved by WaldeI Park Pty Ltd in writing.

Height – Maximum 1.8metres.

Infill Panels – Treated timber, black looped pool fencing, painted shaped picket palings, stone or sandstone and iron features may be approved.

Masonry Fencing – Rendered or bagged finishes are to match the finishes and textures used in the main building. Colours should also be complementary.

Screens – All clothes lines and utility areas are to be screened from view from public areas.

Non-approved - Fibro-sheeting and Colorbond® or similar fence sheeting products will not be approved as fencing materials.

All fences must be approved by Waldel Park Pty Ltd in writing.

ii. Fencing between adjoining allotments

Timber fences – Boundary fencing between adjoining allotments shall be constructed of lapped treated pine palings with hardwood timber posts and must be capped with a continuous weathered top-plate. The timber is to be of good quality.

Masonry fencing – Render and bagged brickwork/block work is to match the main building.

Extent – Fencing shall not extend beyond the face of the building set-back alignment from the front boundary without specific approval being obtained from Waldel Park Pty Ltd.

Any fence erected on a lot dividing it from any adjoining land owned by the Seller is to be at the expense of the Buyer.

iii. Street-front fencing

Street-front fencing – No fence shall be constructed between the building set-back line and the street boundary.

Corner allotments – Street-front fencing to the minor road of corner lots must be masonry (to match the dwelling) with infill panels and shall not extend into the building setback area unless specifically approved by Waldel Park Pty Ltd. Timber fencing will not be permitted to street front boundaries unless represented in as infills to the main fence or is a combination of materials creating a desired effect and reflective of the style of dwelling. The position and materials to be used for fencing must be indicated on the submitted drawings.

Infill panels – Treated timber, black looped pool fencing, painted picket palings, stone or sandstone and iron features may be incorporated.

Specific design considerations and approvals by Waldel Park Pty Ltd are applicable.

Fencing onto parkland – Where allotments back or abut parkland the fencing for these lots shall be black looped pool fencing.

Waldel Park Pty Ltd will construct the fencing along specified boundaries throughout Seascape Grove – this fencing is not to be tampered with, removed or added to in any way.

1(h) LANDSCAPING

Extent – Plant and maintain a substantial quantity of trees and shrubs and lay good quality turf over the remainder of the land including the strip between the boundary and the kerb line.

Planting is to complement the architecture of the dwelling with at least one tree capable of growing to a minimum height of 3 metres.

Completion time – The landscaping between the building and the kerb line must be completed within one month of occupation of the main building and the remainder must be substantially completed within 6 months.

Maintenance – Maintain the landscaping between the street frontage and the kerb line.

1(i) SIGNS

Size – No sign shall exceed one square metre in area.

Type and number – One 'Builder's' sign and one 'For Sale' sign only may be erected on the Land at any one time.

Design – Permanent signs shall be of high quality sign writing and design and approved by Waldel Park Pty Ltd in writing prior to display. Hand written signs will not be approved.

1(j) ADDITIONAL FIXTURES

1(j)

Letterboxes-Design is to compliment the main building and located adjacent to the driveway. Letterboxes must be completed within one month of occupation of the dwelling.

Incinerators – Not permitted.

Garden sheds – Includes garden sheds and tool sheds that are separate from the main building must be less than 3 x 3 metres in plan and less than 2.1 metres in height and concealed from view. White or highly reflective colours may not be used.

Rainwater tanks – Are to be screened from the street and public view.

Rubbish bins – Are to be stored behind screening and are not to be left out beyond the front setback to the dwelling house, unless it is collection day.

1(k) ADDITIONS AND EXTENSIONS

Additions and extensions to the main buildings, outbuildings and other structures – including new verandahs, pergolas, outbuildings, sheds, swimming pools, retaining walls, and garden structures – are subject to the same covenant requirements as the main building and application for final approval must be made to Waldel Park Pty Ltd in the same manner as the original building applications.

1(l) TEMPORARY BUILDINGS

Dwellings/buildings from another site, caravan, privy or anything that could be an eyesore shall not be brought onto or erected on the Land.

1(m) CARAVANS, CAMPERVANS, BOATS, TRAILERS, COMMERCIAL VEHICLES, SURPLUS UNREGISTERED CARS.

Such vehicles parked or stored on the land shall be screened from public view behind the 6 metre building setback line by fencing, gates or dense planting. Commercial vehicles larger than those detailed by the Council laws shall not be parked on the estate.

1(n) CONSTRUCTION AND MAINTENANCE OBLIGATIONS

i. Keep clean and tidy

The Buyer shall keep the Land in a neat and tidy condition and free of weeds and rubbish before, during and after building works. No excavation material, trees, rubbish, builders' waste or other substances whatsoever shall be deposited or held on the neighbouring land at any time.

A bin or enclosure shall be provided on site for the duration of the construction period for collection of all Builders' rubbish and be emptied as waste accumulates. Builders must abide by the Environmental Protection Agency Legislation. Builders must erect erosion and sediment control barriers on the site to prevent discharge into drains and waterways. This should be erected once the initial site works have been commenced.

ii. Retention of embankments

Retaining walls shall be erected immediately after the site works have been completed and before commencement of construction of the main building

iii. Improvements

Improvements on the Land shall be effected only in accordance with working drawings fully approved by Waldel Park Pty Ltd.

iv. Construction time

Total construction time of the main building shall not exceed 12 months from commencement of work and must be commenced within 3 years of the settlement of the land.

v. Continuity of construction

No building works shall be left incomplete or without substantial work being carried out for a period longer than 2 months.

vi. Street trees and adjoining surfaces

Street trees, paving and turfed surfaces adjacent to a property are to be protected by the Buyer for the duration of construction and if damaged or removed during construction works are to be replaced by the Buyer at their expense.

vii. Building Contract to bind Builder to comply with these Building Covenants.

The Building Contract entered into by the Buyer for the construction of a residence, garage, shed, fence, swimming pool or addition to any of the foregoing shall contain a clause with states:-

'The Builder shall comply with the requirements of the Seascope Grove Building Covenants for the duration of the works under Contract and will not commence work on the site unless he has sighted or has in possession a copy of the letter of approval issued by Waldel Park Pty Ltd.

Occupancy

Occupation of a residence shall not commence until:

- Final building Certification is issued by the Principal Certifying Authority;
- Functional window coverings (blinds & curtains) are installed to any clear glass windows visible from the street;
- Driveways are installed and completed.

viii. Investment/rental properties

Where any property is purchased for investment/rental purposes the Buyer must ensure the obligations of the Building Covenant are passed onto the Investor or the Tenant.

1(o) CARE & ONGOING MAINTENANCE OF LAND

i. Normal maintenance

From the date of purchase of the land whilst the building works are in progress, and from then on, the Buyer shall:-

- a) Comply with these Covenants;
- b) Keep the land clear of excessive weeds by mowing;
- c) Maintain the Land in an acceptable state and free of rubbish and garbage;
- d) Not dump, or store or leave on the Land any spoil building or other materials.
- e) Not park vehicles on the Land other than in designated positions on paved surfaces;
- f) Conceal from view any vehicles not registered and/or in good repair.

ii. Obligatory rubbish removal, slashing, maintaining and clearing

Should the Seller notify the Buyer that rubbish removal, slashing, maintaining or clearing of the Land is necessary to maintain the tidy presentation of the Estate the Buyer shall carry out the works within 14 days.

If the Buyer fails to comply with the request to remove rubbish, slash, maintain or clear, the Seller may employ a contractor to carry out the rubbish removal, slashing, maintaining or clearing and the Buyer shall pay the Seller for the costs incurred thereby.

iii. Continuing maintenance

After completion of the building works, the Buyer shall maintain the landscaping and lawns within the land and that part of the landscaping which extends from the street alignment to the kerb line.

iv. Animals

No animal, livestock, or poultry shall be brought onto, raised, bred or kept on the Land without the prior approval of the local authority, other than a domestic cat or dog registered with the local authority. Cats are to be restrained on the property/allotment from sunset to sunrise to prevent wandering/creating nuisance.

2. BUILDING COVENANTS – APPROVAL PROCEDURE

2(a) APPROVALS REQUIRED BEFORE COMMENCEMENT – GENERAL

i. Prior to the commencement of any Building or Site-Works operation on the Land

The buyer shall deliver to Waldel Park Pty Ltd plans and specifications of the work and such other information as may be required to enable Waldel Park Pty Ltd to determine the nature of the construction and for Waldel Park Pty Ltd to consider giving its approval.

ii. Definition – Building and Site-Works

Includes the construction, alteration, renovation or repair of any building, garage, carport, pergola, outbuilding, fence, retaining wall, external sign, hoarding, external floodlighting, external fittings, landscaping, driveways, swimming pool, garden structure, and general site excavation.

iii. The buyer shall not submit to the local authority or private certifier for that authority's approval any plans, specifications or such other information as may be required to obtain building approval in respect of the Buyer's proposed building operation until such time as the Buyer has received written final drawing approval from Waldel Park Pty Ltd.

2(b) APPROVAL PROCEDURE

The following approval sequence shall be followed:-

Step 1 – Waldel Park Pty Ltd Approval

Step 2 – Local Authority or Private Certifier Approval

STEP 1 - WALDEL PARK PTY LTD APPROVAL STAGE

A Submission of working drawings

Before the buyer or his builder applies for a building approval from Kempsey Shire Council or private certifier and prior to any works commencing upon the land, the buyer shall submit to Waldel Park Pty Ltd for its approval 2 copies of the working drawings and specifications identical to those which are to be lodged for Development Consent and Construction Certification for the development of the land.

B Information required

The final working drawings, in addition to usual detailed local government requirements, must show documented particulars of all information required including:

a) Site plan (min scale 1:200)

- Existing contours – at 500mm vertical intervals;
- Excavation, fill and finished ground levels;
- Retaining walls – location, extent and height;
- Drainage of the Land;
- Trees to be removed or retained;
- Driveway location, finish and parking provisions;
- Fencing – extent, location and type;
- Swimming pools (proposed location)
- Ancillary structures (pergolas, sheds, carports, gazebos etc);
- Landscaping – lawn areas, massed planting areas, paving;
- All setbacks and the location of all buildings and structures on the Land.

b) Floor plans (min scale 1:100)

- Internal layouts;
- Floor area calculations;
- Proposed floor levels.

c) Elevations (min scale 1:100)

- Finished ground levels;
- Materials for external walls and roofing.

d) Cross sections (min scale 1:100)

- Existing natural ground level;
- Proposed finished ground levels;
- Finished cross-section detailing cut, fill, retaining walls and materials.

C Final approval advice

Final Drawings will be submitted to the Waldel Park Pty Ltd Review Panel. The panel shall advise its final approval of the working drawings within 10 days of receipt thereof or require that the buyer amend them to comply with the Building Covenants, and shall indicate its approval or otherwise in not more than 7 working days after receiving any required amendments.

STEP 2 – LOCAL AUTHORITY OR PRIVATE CERTIFIER APPROVAL STAGE

Upon the Buyer receiving the final drawing approval from Waldel Park Pty Ltd, the Buyer shall submit identical documents (amended as may be required) to Kempsey Shire Council or Private Certifier and obtain Development Consent and Construction Certificate.

CONSTRUCTION OF YOUR NEW HOME MAY NOW COMMENCE.

Waldel Park Pty Ltd, Seascape Grove, its Architects, and/or its employees or representatives do not accept any responsibility for the suitability or soundness of construction of the completed Buildings or the associated site development works. The documents supplied by the Buyer to the Seller have not been checked for compliance with any structural, health or planning requirements, or for the suitability of the building for the use to which it may be put. Any approval issued under these Building Covenants is not an approval under the requirements of the Environmental Planning and Assessment Act, or any other Act or Regulation.

The Seller may update these Building Covenants with new versions at any time.



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DECC	
Biodiversity Conservation	
Detailed Points for Consideration	
General	
1. The proposal lacks assessment of the cumulative impacts of the development on the natural environment as required by SEPP 71, both from a staging point of view and from the broader landscape perspective. Whilst habitat connectivity within the localised landscape is briefly discussed, the proposal is described as causing insignificant loss of habitat and vegetation. However, the loss of vegetation and habitat features that will result from the proposal constitute a net loss to the environment and there are no mitigation measures or offset strategies in place to address this loss. It is recommended that a detailed and specific offset and mitigation strategy be prepared to address unavoidable losses that will result from the proposal. These measures need to be ensured through either Conditions of Consent, or through revision of the Statement of Commitments for the proposal.	Following detailed discussions with the Department of Planning further management and regeneration options have been proposed for the residue Lots 800. Full details of these proposals are contained within the Preferred Project Report (PPR). These additional measures provide mitigation measures and offset strategies to address the loss of vegetation over the proposed lots 614 to 621 and 605 and 604. In addition the layout of the lots between 604 and 613 has been redesigned to avoid any impact on the isolated vegetation around the existing small farm dam. This is now contained wholly within lot 800 and will be retained in its present condition. It should be noted that the ecologist report has been revised and updated and a number of matters relating to the unfinished report have been amended.
2. SEPP 71 also requires measures to conserve threatened species. It is recommended that a number of measures be undertaken to reduce the impacts of the proposal on threatened species, as further examined below.	The implementation of the offset strategy and revegetation works are detailed in the PPR and will reduce the impacts of the proposal on threatened species.
3. There appear to be some conflicts between the Draft Mid North Coast Regional Strategy and part, of the Darkheart report. The Strategy provides for protection of "high value environments including ... threatened species, vegetation communities and habitat corridors by ensuring that new urban development avoids these important areas", whilst the Darkheart report states on page 38 that the site is "not a high value environment and doesn't contain any threatened species, vegetation community or habitat corridor that may be detrimentally affected. Page 39 goes on to state that the "site is not constrained by issues such as wetlands or landscapes of high scenic or conservation value", however, the site is in part zoned for scenic protection and contains threatened species habitat.	The lot layout was generally approved as part of the SEPP 71 master plan and predated the now adopted Mid North Coast Regional Strategy. The comments in the Darkheart report relate to the residential precinct. The area zoned scenic protection has now become the focus of mitigation and regeneration strategies as detailed in exhibit 8A. The threatened species habitat contained within this lot is maintained and enhanced by the proposed revegetation.
4. The environmental assessment does not include a methodology or requirement for the protection of retained vegetation during the construction phase from impacts such as accidental clearing, damage from heavy vehicles to root systems etc. It is recommended that the Statement of Commitments be amended to require erection of field markers showing the limit of clearing and protecting retained trees from vehicles accessing or parking beneath the dripline of trees. To ensure these markers are effective the proponent will need to commit to educating	The PPR details the methodology for the protection of retained vegetation during the construction phase and its subsequent integration into the implementation of the vegetation management principles including the re-establishment of nest boxes and hollow limb replacement. It is proposed to integrate this stage into the already approved Stage 1B as regards construction and vegetation management. This has the positive benefit of being able to implement the strategies set out in chapter 6 of the revised Darkheart report in conjunction with the next stage of road construction. This allows the staged implementation of these measures over the entire road construction period (in the

personnel and contractors accessing the site about the environmental protection measures that apply.	order of 20 weeks) it allows the use of appropriate sized machinery to limit the impact on surrounding retained vegetation and it also allows the staggered implementation of the clearing measures to reduce immediate impacts. Because of the implementation of these measures with the next road construction phase it is estimated that the period of time until residential development abuts the Lot 800 scenic protection zone will be in the order of up to 5 years. In that time significant regeneration would have occurred.
5. The Darkheart report describes a process of continuing degradation of vegetation and threatened species habitat on the site over the preceding 10 year period resulting from underscrubbing, slashing and grazing. If these activities were undertaken whilst the property was in the current ownership, there is concern that they may have been undertaken in anticipation of development of the site. Removal or degradation of threatened species habitat pre-empting a development proposal is not a practice that is supported by the DECC and should not be rewarded by the planning process. Refer to DECC "Principles for the use of Offsets in NSW" on the website: http://www.environment.nsw.gov.au/biocertification/offsets.htm	The land uses within the preceding forty year period are unchanged and were predominately for agricultural pursuits. No additional clearing was undertaken for the purposes of pre-empting development and indeed the property is covered by a tree preservation order. Our client has complied with all of the requirements of environmental legislation and rejects this interpretation of the statement. We believe the suggestion of being "rewarded" is unhelpful and should not have formed part of the Department submission.
6. The report claims that there are no Commonwealth listed threatened species on the site, however, the Grey-headed Flying-fox is listed under the <i>Environment Protection and Biodiversity Conservation Act 1999</i> .	GHFF was recorded by Umwelt on the property and assumed by Darkheart (2009) to occur on the subject site due to this and potential habitat. Impacts acknowledged as adverse but not significant. Implementation of the revegetation areas and subsequent consolidation of the habitat areas in the 7(d) zone ameliorates these impacts.
7. It is unclear whether the current proposal is seeking approval of a dwelling entitlement on Lot 800. Such a dwelling entitlement is not supported by the DECC as it would be located within the "core" habitat areas of the site and will increase both direct and indirect impacts to threatened species and their habitats.	This application is not seeking approval of a dwelling entitlement on Lot 800. Any such application will be subject to a detailed future application with appropriate level of detail as regards any potential dwelling. The purpose of including the lot within this application relates to the long-term management of the parcel and the fact that the lot will be separated from the residential precinct upon completion of the development of the residential lots. Additional scratch that significant additional information has been provided into the proposed land use for Lot 800 in accordance with the PPR and exhibit 8A

Biodiversity Survey and Assessment	
<p>1. The Darkheart report does not include a map showing the location of flora survey plots and transects undertaken to assist in determining whether the site was stratified adequately. This raises the question of whether the survey findings are an accurate representation of the floristic character and values of the site. In particular, it is difficult to assess the significance of vegetation within the proposed residential lots as distinguished from other vegetation on the site.</p>	<p>This comment refers to figures 3-5 in Darkheart (2009). Darkheart (2009) details that survey effort for most techniques was well above DEC (2004) minimum standards for a very small site; and the majority of the development footprint falls on pasture or highly degraded woodland with minimal habitat values. Consequently, Darkheart has included intensive sampling of the 7(d) zone to detect presence of threatened species as per best practice and DEC (2004) guidelines.</p>
<p>2. Discussion of the flora survey results fails to identify the total areas of vegetation communities to be cleared but instead repeatedly refers to "XHa" of vegetation to be cleared, and "XHa" of vegetation/habitat to be retained. Furthermore, the report then claims the areas to be cleared are insignificant, however, it is not possible to have confidence in this opinion given the lack of certainty over the size of the areas concerned. It is noted that 70 mature trees have been identified for removal, with another 18 being retained as individual trees within the residential allotments. It is further noted that the collective 7 Part Test done for threatened species also relies on reference to "XHa".</p>	<p>"Xha" indicates the report was an unfinished partial draft mistakenly provided for public exhibition.</p> <p>The draft report has been finalised and is designated Darkheart (2009). A description of the habitat to be cleared/retained is set out in Section 1 of the summary as follows:</p> <p><i>The proposal forms the final stage in addition to the currently approved sections of the larger residential development known as Seascope Grove. The proposal is to establish a further 54 residential Lots in the residual 2(a) zone, 2 residual Lots, and APZs on some Lots extending upslope into the fringes of the adjacent 7(d) zone. The proposal will remove about 39 scattered trees and an isolated patch (about 300m²) of immature trees from the agricultural woodland (over about 3.03ha), as well as remove about 1.27ha of ornamental gardens around the existing house, and 1.33ha of treeless pasture north of the existing house. Lots will adjoin an approved road, with a new ring road to service Lots in the mid-west. The remainder of the 7(d) zone (generally including about 4.18ha of forest) will be allowed to regenerate post-development, with about</i></p> <p><i>1.077ha actively regenerated under a Vegetation Management Plan. As clearly shown in Parts D and E, only 3.03ha of agricultural woodland/pasture with 6 hollow-bearing trees will be removed, compared to 4.18ha of dry sclerophyll forest retained intact (with an estimated 60 hollow-bearing trees and >245 hollows), and 1.7ha of woodland.</i></p> <p>The habitat to be removed/modified is also set out in Section 5.1 of the main Darkheart 2009 report.</p>
<p>3. The 7 Part Test was performed for a number of threatened species collectively. The factors are not assessed for relevant species individually and the report lacks appropriate detail from which the reader may draw a sound conclusion as to the significance of impacts.</p>	<p>DECCW reviewer appears to have completely missed appended full 7 Part Tests where each species considered by Darkheart to potentially occur has been assessed individually. Summary of these 7 Part Tests provided in section 8.2. of the Darkheart 2009 report.</p>

<p>4. No mapping showing survey locations for the various survey techniques used to detect fauna are provided in the Darkheart report. This reduces confidence in the findings of the report with respect to the author's assessment of the extent to which habitat for threatened species is to be impacted. It appears the survey effort may have been heavily focused on habitat that is to be retained.</p>	<p>Mapping is considered redundant given clear description in section 2.3.2. Of Darkheart 2009. In this regard the location of key survey techniques shown in figure 3 and 4 of Darkheart (2009). Techniques such as spotlighting, call detection, etc, not shown due to impracticality/superfluous eg map would be unreadable.</p> <p>DECCW should be aware that the vast majority of the development footprint is in cleared land. Obviously, to get reliable ecological data, survey has concentrated on available habitat to determine what habitats are present, what species do or may occur, and how they may be affected, as per DECC guidelines and common sense field survey techniques.</p>
<p>5. It is noted that the fauna survey was conducted during inclement weather which would have reduced its effectiveness. It is also noted that survey for the preceding stage of the development (MP45_0018) did not involve trapping. Trapping for arboreal species in this instance does not appear to have involved placement of traps within the area proposed to be directly impacted. It is further noted that Anabat surveys were not conducted due to inclement weather. Overall, the survey effort considering seasonal and prevailing weather conditions is not considered adequate to confidently assess the presence/absence of arboreal and ground-dwelling mammals and micro-bats in particular, nor was survey adequate to assess habitat use or analyse home ranges for significant arboreal species such as Squirrel Glider and Brush-tailed Phascogale. Therefore, it is important that a conservative assessment of the presence or absence of threatened species be assumed, based on availability of potential habitat on the site.</p>	<p>It is <u>clearly</u> stated in ecological report that survey was concentrated where habitat existed: most of the footprint is pasture. Trapping isolated trees in a paddock is not going to be as indicative of species assemblage as trapping within a forest block, and spotlighting and call detection covered all habitats. Trapping was also far above DEC (2004) trapping effort ie DECC standards based on minimum effort for 50ha: forest on site alone is < a tenth of this DECC unit, yet above minimum effort used for a <u>50ha</u> site.</p> <p>DECCW would appear to have failed to note that 150 trap nights were undertaken in the <u>only</u> habitat suitable for ground-dwelling mammals on the property – which is restricted to the upper 7(d) zone. The groundcover within the development footprint is pasture <5cm tall due to grazing and slashing. Results also indicated the assemblage is optimistically described as depauperate due to the low habitat quality and historical disturbance regime.</p> <p>DECCW has not noted that trapping over the 4.18ha of dry sclerophyll included 30 traps, with a total of 120 trap nights. In addition, 320 hair tube nights were performed. This extremely high level of effort for such a small area which is obviously a demonstration of current species presence, population size and home range ie only one Squirrel Glider was captured indicating the marginal quality of habitat.</p> <p>In addition to the above, the DECCW reviewer fails to acknowledge the consultant has conducted some 17 ecological studies in South West Rocks, including a major study of >70ha of identical and higher quality habitat in western South West Rocks, where home ranges and population densities for the Squirrel Glider and Brushtailed Phascogale were estimated. The consultant has also reviewed 17 other consultant's reports in the area. Consequently, the consultant is more than well-informed of the potential species occurrence.</p> <p>The ecological consultant has collated a wealth of information to determine the species which may occur on site, and reviewed their likelihood to occur with a precautionary approach, as clearly detailed in Darkheart (2009).</p>
<p>6. Micro-bats (including Common Bentwing Bat, Little Bentwing Bat, Eastern Freetail</p>	<p>All of the dry sclerophyll forest on site will be retained, comprising an estimated 4.18ha. This includes</p>

<p>Bat, Greater Broad-nosed Bat, Yellow-bellied Sheathtail Bat) and Grey-headed Flying-fox are likely to utilise habitat on the site that is proposed to be impacted, resulting in a net loss of available habitat for these faunal groups. Redesigning and or reducing the number of proposed lots to avoid vegetated areas would reduce this habitat loss. In addition, bush regeneration of adjoining areas within the site to improve its condition would contribute to maintaining habitat for these and other species likely or with potential to occur, such as the large forest owls and Eastern Quoll.</p>	<p>an estimated 60 hollow-bearing trees with >245 hollows (ERM 2007a). Darkheart (2009) also recommends recycling of hollow limbs and timber as habitat components within the 7(d) zone to enhance habitat. These recommendations are proposed to be incorporated within the Construction, Vegetation and Environmental management plans for the subdivision works.</p> <p>It is also proposed to actively regenerate (under a Vegetation Management Plan) approximately 1.077ha of the most disturbed sections of the 7(d) zone, in addition to allowing all areas outside a building envelope, APZs and access tracks on Lot 800.</p>
<p>7. Section 3.3 Fauna Habitat Description and Evaluation does not identify the results of the nine hours of den watches and spotlighting conducted as part of the survey. It is therefore not known whether fauna was observed using hollows within trees that are within the proposed residential allotments. Assessment of the use of hollows in these areas would assist in prioritizing areas of protection from impacts, and for better quantifying the extent of impacts that will be sustained.</p>	<p>Section 3.3 was unfinished at the exhibition stage. No threatened species were observed via spotlighting or stag watches. The list and results have been updated in the Darkheart 2009 report.</p> <p>Note that all the mammal species considered potential occurrences are den-swapping species (as detailed in Darkheart 2009), hence use of any given tree at any given point in time is subject to a range of factors. Given that some 60 hollow-bearing trees occur in the 7(d) zone within forest and hence less exposed to predators, hollows on the outer fringe are considered likely to be of lesser significance. No potential nest sites for owls are affected.</p>

Flora and Fauna Management	
<p>1. The habitat value of retained native trees within the residential allotments will be compromised by the presence of domestic animals and by the construction of fencing and other residential structures. The proposal will further modify existing habitat by removal of most of the standing vegetation (70 trees) around trees identified for retention, leaving only 18 isolated individual trees. These factors will reduce the ability of fauna to access these resources. Once the retained trees die or are removed by residents, they are unlikely to be replaced and therefore it is considered that over time all trees within the residential allotments will be permanently lost from the environment. Therefore the DECC recommends that:</p> <ul style="list-style-type: none"> (a) A review be undertaken of the number/location of allotments to be permitted as part of the proposal to maximize habitat tree retention outside the residential lots. (b) An offset strategy be developed to address the net loss of these vegetated areas over the short to medium term, including loss of specific habitat attributes such as hollow-bearing trees. Note that many of the trees are described as senescing, so whilst only six trees have been identified as currently containing hollows, removal of senescing trees will also reduce trees that would otherwise be likely to form hollows in the near future, as opposed to if these trees were of a younger age class. 	<p>The clump of trees around the dam on site have now been added to Lot 800, reducing tree loss by >12 trees.</p> <p>Lot 800 (5.7ha) will contain all the residual forest. This forest will be protected by existing zone, provisions under the <i>Native Vegetation Act 2003</i> and title covenants. No domestic stock will be allowed to be kept, allowing natural regeneration. In addition, approximately 1.077ha comprising most degraded area of Lot 800 (outside the likely development envelope for a future dwelling and APZ) will be subject to active bush regeneration.</p> <p>At least 20 nest boxes, a number of hollow limbs and sections of trees are to be placed in the 7(d) to enhance habitat as a further offset.</p> <p>The proposals for revegetation as are shown in the PPR and Exhibit 8A. We therefore confirm that the layout has been reviewed and altered to retain additional trees and that the offset strategy has been fully detailed as part of the consent conditions.</p>
<p>2. Barratt (1997) demonstrates that cats may range up to one kilometre from home into neighbouring bushland and may have home-ranges which exceed 20 ha in size. DECC does not believe that the proponents' proposed restrictions on cats and covenants on dogs in the residential development area will be an effective control on injury and death to native wildlife. Due to the close proximity of threatened species such as the Squirrel Glider and other susceptible species, DECC would encourage the exclusion of cats and dogs from the development entirely. The Koala Beach estate in Pottsville and Fern Beach estate in Ocean Shores are good examples of where this has been implemented.</p>	<p>The proposal represents the very last stage of the existing master plan approval. The existing 108 lot approval had a series of environmental conditions that did not include restrictions on the keeping of dogs and cats. Given that the proposed habitat area is surrounded by existing dwellings and urban areas there would appear to be very little benefit to restricting a relatively small number of the total lots that are located within the vicinity of the 7 (d) zone. The proposed mitigation measures and revegetation strategy will assist with the consolidation of the habitat area to reduce the impact of domestic animals.</p>
<p>3. The EA does not assess the potential impacts of human visitation and trail bike use within the 7(d) area. It is recommended that the applicant assess whether this is a risk and commit to ensuring adequate controls will be implemented based on the outcome of the assessment. Adequate controls may include fencing designed to exclude vehicles from the susceptible area.</p>	<p>The proposed Lot 800 is private property and will not be open to the public. The vegetation management plan measures will fence off habitat areas and limit any of the impacts detailed in this point. The implementation of the revegetation measures provides the area with a character of habitat protection which in the long run will ensure that the general public monitors any illegal use. The public eyes and ears are effective measure in the long-term management of habitat areas located within a residential precinct.</p>

<p>4. Section 6(b) of the Darkheart report describes "secondary impacts ... generally associated with rural development", however, the proposal constitutes subdivision within a residential and bushland context. A number of shortcomings were identified in the assessment of "secondary impacts" as follows</p> <ul style="list-style-type: none"> Point (1) assesses the risk of weed invasion of retained bushland areas as insignificant, however, experience shows that urban residential subdivisions commonly result in increased weed species and abundance, often with significant invasions occurring. Weed species proliferation can degrade habitat for many species and can promote habitation by pest species such as foxes. Management measures need to be required of the applicant to ensure that weed invasions are prevented and existing weeds (eg <i>Lantana camara</i>) are controlled to minimise impacts to threatened species and ensure habitat areas are maintained. Point (2) notes the increased risk of fauna-roadkill during operation of Burrawong Drive, in particular for Squirrel Glider and Brush-tailed Phascogale. No controls are proposed to manage this risk. One option would be to install fauna exclusion fencing along the southern side of Burrawong Drive where it is not bound by residential allotments. Point (3) assesses risks to biodiversity associated with the presence or introduction of foxes and cats. In accordance with promoting a "maintain or improve" outcome for the environment, it is recommended that a fox and cat control program be implemented in the non-residential area of the site to the south-west of Burrawong Drive. This should be supplemented by controls placed over domestic cats and dogs within the residential area itself. Point (7) refers to risks to biodiversity associated with inappropriate bushfire regimes. There is no statement of what the current regime is, nor an indication of what the ideal ecological bushfire regime would be for the vegetation communities present. This needs to be identified and a bushfire management regime implemented that incorporates a mosaic burning pattern at the appropriate frequency and intensity in order to ensure continuous habitat availability for fauna, and to promote species diversity within the vegetation community. Point (8) lists potential disease risks associated with the proposal. The report does not address the potential for introduction of <i>Phytophthora cinnamomi</i>, a water and soil pathogen that can result in vegetation dieback. Given the proposal involves some importation of fill material and other earthworks, it is recommended that this NSW and Commonwealth listed Key Threatening 	<p>APZs and access roads generally adjoin the Lots adjoining the 7(d) zone. Maintenance of these areas as well as the proposed bush regeneration should control potential green waste dumping issues, as well as private ownership of Lot 800. The rear fences about the access trail within lot 800. The creation of this bar fire trail will discourage any rubbish to be deposited in this area. It allows for significantly increased surveillance opportunities</p> <p><u>Point 2:</u> Fencing is of little benefit given Squirrel Gliders glide. Road design will aim to limit effective speed to <50kph along key sections. The scale of the frontage along Burrawong Drive mentioned will have little or no effect and this measure is a high cost with little benefit. The frontage adjacent to Burrawong drive is generally the midpoint in the two connecting through roads for the loop and will have a lower traffic volume particularly of through traffic. The main users will be residents who will have a better appreciation of the proximity and importance of the habitat areas.</p> <p><u>Point 3:</u> Darkheart (2009)'s recommendations on clearing and vegetation management recommendations are to be adopted. This stage does not permit a holistic approach to the measures proposed as large amounts of properties are not and cannot be (as they are already approved) included in any such strategy. The implementation of these proposals would have a significant negative affect on the viability of the development. In an ad hoc fashion such as proposed it is impossible for a developer to implement this sort of "public" program. We believe this is unrealistic and not relevant to this development.</p> <p><u>Point 7:</u> Any bushfire will be subject to the Rural Fire Service's statutory approval and conducted according to their Environmental Code (as detailed in Darkheart 2009).</p> <p><u>Point 8.</u> Any fill is sourced will be required to be from an approved facility that is free of any contamination. Please note that any filling placed will be "capped" with the original topsoil layer after placement of fill.</p> <p><u>Point 9.</u> A proposed revegetation and offset area has been included in the proposal</p> <p><u>Point 10.</u> The particular characteristics of the proposed regeneration areas seek to increase the width of the habitat area which fundamentally reduces the edge affect potential and increase the mass and bulk of the area of habitat.</p>
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<p>Process be assessed and managed.</p> <ul style="list-style-type: none"> Point (9) refers to the risk of incremental loss of vegetation. Whilst it is acknowledged that there is a risk of gradual removal of vegetation by residents, the loss of vegetation within the residential area is regarded as inevitable. Measures to offset loss of vegetation/habitat from these areas need to be articulated and committed to. Point (10) refers to risks associated with edge effects, which the author has deemed to be insignificant due to existing disturbance. Whilst there is a history of underscrubbing and continuing vegetation degradation on the site, a commitment to bush regeneration within the non-residential parts of the site will require management of ongoing edge effects. In addition, bringing further residential development closer to "core" habitat areas also presents a risk that these areas will be further impacted by edge effects. 	
<p>5. Review of the Statement of Commitments (SoC) with respect to ecological management is needed. SoC 8 Ecological Management does not detail any measures to protect or manage the biodiversity of the site.</p>	<p>The Statement of Commitments has been reviewed to include the revegetation areas and a number of clearing and pre-clearing strategy together with habitat replacement such as nest boxes and hollow limbs in accordance with the updated Darkheart (2009) report and the submitted PPR</p>
<p>6. It was recommended for MP05_0018 that "all hollow-bearing trees on the development site will be retained and a buffer of ten metres from the dripline of those trees will be provided". It is recommended that as many as possible of the native trees, particularly hollow-bearing trees be retained as part of the subject proposal. Where hollow-bearing trees are retained, it is recommended that a development buffer of ten metres from the dripline of those trees be provided. Review of the design and number of lots on the proposal will assist in achieving this goal.</p>	<p>The previous approval was assessed based on all available information and included a submission from the former Department of DECC. It is not possible to retrofit conditions to this stage. The particular characteristics of that submission dictated the implementation of those specific conditions. This application has different characteristics and hence the revegetation strategy is proposed on Lot 800.</p>
<p>7. The Darkheart report indicates the proposal requires removal of 70 mature trees, of which 6 contain hollows. The report confirms the presence of habitat containing hollow bearing trees and other roosting resources on adjacent land (page 44). The fact that these habitat resources exist is not considered a mitigation measure addressing the loss of hollows, but rather confirms that there would be a net loss to the existing habitat resource available as a result of the proposal. Removal of these trees will contribute to incremental and cumulative loss of habitat for threatened species. DECC believes that an offset proposal needs to be developed to offset threatened species habitat loss that will result from the proposal, specifically loss of native vegetation that provides roosting and foraging habitat. Note that any hollow replacement program needs to be subject to ongoing maintenance for the period of time it will take for these hollows to be replaced in nature. Appropriate trees would need to be planted that will supplement the existing</p>	<p>The full extent of tree removal has been revised in the Darkheart (2009) report and strategies incorporated in the consent to minimise the impacts and provide mitigation measures. The revised strategy is considered to satisfy this point.</p>

<p>retained habitat area to ensure adequate recruitment of trees in which hollows will eventually form. It is noted that there are already a number of nest boxes that were to be placed within the 7(d) lands as part of the subdivision of previous stages of the development. Any hollow replacement program would need to be designed in consideration of the placement of these nest boxes.</p> <p>The number and dimensions of nest boxes (or salvaged hollow sections from felled trees) to be provided in place of hollow-bearing trees needs to reflect the number and size of hollows present in the trees that are to be removed in a minimum 1:1 ratio (ie one hollow lost = 1 or more replacement hollows). Any mitigation measures to address loss of hollows would need to be implemented prior to clearing commencing to ensure continuity of habitat availability.</p> <p>Recent scientific literature (Goldingay 2009) demonstrates that the success of nest box programs relies on a number of factors including: appropriate design; placement; management of non-target species; and maintenance.</p>	
<p>8. The Darkheart report identifies that trees will be cleared in accordance with a procedure outlined by Umwelt 2004, however, no reference is given for that document and the procedure is not reproduced within the EA documentation. The report then outlines a clearing protocol in its list of recommendations. Further variations on the protocol are subsequently outlined in the SoC. A comprehensive and consistent protocol for the removal of hollow bearing trees should be developed and submitted for consideration and comment, and should form part of the Statement of Commitments once endorsed. Further, the procedure needs to be included in any Environmental Management Plan for the project that demonstrates how the procedure will be implemented.</p>	<p>The full extent of tree removal has been revised in the Darkheart (2009) report and strategies incorporated in the consent to minimise the impacts and provide mitigation measures. The revised strategy is considered to satisfy this point.</p>

Aboriginal Cultural Heritage	
Detailed Points for Consideration	
1. The AHA relates to the entire 108 Lot subdivision as originally approved by DoP. It refers to a previous survey by the Kempsey Local Aboriginal Lands Council (LALC) in 2004 and to a more recent survey by ERM in 2007. Although the effective survey coverage of the entire proposal is claimed to be good (around 6%), there is no mapping or description of transects that confirms whether this coverage can be applied to the Stage 1C component of the lands.	The methodology contained within the 2004 report was considered suitable for the previous master plan approval. It is not considered necessary to revisit this matter as there is general agreement from DECC regarding the aboriginal heritage of the subject property.
2. In particular, there is no indication whether Lot 700, north of Belle O'Connor Street has been visited. This Lot occurs adjacent to wetlands and could therefore be of greater 'archaeological potential'. It is noted that this Lot will require land fill under the current proposal but that future subdivision of the Lot will be subject to further assessments.	Additional archaeology will be undertaken in accordance with the revised Statement of commitments. Additional work will be undertaken prior to the filling of this lot.
3. There is no statement confirming that the surveys above conform to the DECC's survey guidelines as stated in the <i>Aboriginal Cultural Heritage Standards and Guidelines. Kit (1997)</i> and the Aboriginal community does not appear to have participated in the 2007 ERM survey.	The 2007 survey was accepted by the Department of Planning as being adequate for the issue of an approval for the 108 lots. We therefore consider that it is also sufficient for the purposes of this approval.
4. The EA refers to consultation with various Aboriginal groups including the Kempsey LALC, however, the former are not named and written evidence of their views on the proposal are not included. Although an advertisement requesting the registration of relevant Aboriginal stakeholders was placed in the local newspaper, there is no discussion of the outcome. It is considered that the AHA fails to meet the criteria recommended in the <i>DoP's Part 3A EP&A Act Guidelines for Aboriginal Cultural Heritage impact Assessment and Community Consultation (September 2007)</i> or the DECC's <i>Interim Community Consultation Requirements (December 2005)</i> .	There was no answer to the advertisements. In addition to this there have been no representations to a number of previous Major Project applications within the South West rocks precinct.
5. The predictive model derived for the site suggests that it lies in excess of 500m from food resource areas, such as estuaries and wetlands, and that consequently, is of low archaeological potential. Although this model is supported by general reference to Collins (2004), in Section 2.1.9, it should be noted that some significant sites, for example, a burial, resource gathering area, ritual site and bora ground, as recorded on AHIMS (Figure 2.1 of the AHA), are on higher ground that is equally if not more distant. It is therefore considered inappropriate to associate archaeological potential with significance. It should also be noted that proximity to wetlands may well have differed in recent geological times and that older deposits may no longer be as close in any case.	Noted

6. There is no discussion pertaining to the relevance of the <i>Native Titles Act 1993</i> or <i>Aboriginal Land Rights Act 1983</i> to the proposal	All of the land subject to this application has been held within private Torrens Title ownership since the original Crown grant.
7. Section 3.1 of the AHA discusses the need for Section 87 or. 90 approvals under the <i>National Parks and Wildlife Act 1974</i> , however, these are not relevant under Part 3A applications.	No comment applicable
8. Despite the above concerns, it is acknowledged that the relevant lands have been heavily disturbed by European agriculture, for example, land clearing pineapple growing and grazing. It is for this reason that the likelihood of uncovering significant archaeological items on site is considered low. The precautionary mitigation measures detailed below are therefore recommended.	The recommended mitigation measures are standard procedure in the development of the subdivision.

DEPARTMENT OF PLANNING	
Issue	K&C Comment
1. Flora and Fauna a. Table 2 p35 of the EA mentions regeneration of vegetation to meet the provisions of Cl (i) of SEPP71. However, no other details have been given. Please provide details of proposed regeneration including where and how it is to be managed.	The development proposes the Preservation of a number of trees species as part of the previous Major Project approval in the rear of lots 311 and 617. Generally to the North East of the proposed lot 800. In addition to this sympathetic design of the proposed residential lots fronting Burrawong Drive has enabled the preservation of a number of trees species shown in blue on the tree retention plan Exhibit 8. The regeneration and protection measures relate specifically to the detailed proposals on Lot 800 which are set out separately in the report. In summary an area of 1.077 ha is proposed to be quarantined within a revegetation area. This area is subject to the preparation of a Vegetation Management Plan prior to the commencement of any construction. The implementation of this regeneration area also facilitates the protection of the existing vegetated elements of Lot 800. Overall the creation of the revegetation areas and the protection of the existing vegetated areas has the ability to provide suitable offsets for any vegetation loss
b. Please include in the Statement of Commitments (SoC) that only endemic species will be used for landscaping.	The landscape principles plan submitted as Exhibit 9 and Appendix K was approved as a part of Master Plan MP-38-9-2004 and the trees proposed to be planted as a part of the entire Seascope Grove Residential Estate, including the Stage 1C area, were listed in Exhibit 9. It is therefore proposed to add to the Statement of Commitments that planting be consistent with the approved landscape plan (Exhibit 9) and that any plants, other than those listed, shall be indigenous species only. Note that endemic species applies to aspecies restricted by evolution to very specific area and this is not relevant to the site. The Statement of commitments has been amended.
c. The EA states that no offsets are considered necessary despite the removal of hollow bearing trees and threatened species habitat as well as the cumulative impacts from previous stages. Please justify.	Approx. 1.077ha of the most degraded portion of the 7(d) zone to be actively restored via bush regeneration. Stock will also be prohibited from being kept on Lot 800. Nest boxes, recycled limbs and timber are to be placed in 7(d) zone to offset loss of hollows, and enhance habitat. The recommendations relating to the compensation for loss of trees detailed in the "Statutory Ecological Impact Assessment" prepared by Darkheart eco-consultancy and dated October 2009 has been included in the Statement of Commitments. The formalisation of the regeneration areas and implementations of the recommendations provides sufficient offsets for habitat.
d. Please provide details of how the vegetation within Lot 800 is proposed to be managed. This vegetation contains the overwhelming majority of key habitat components the removal of hollow bearing trees and other habitat is partially justified through retaining the vegetation on Lot 800.	The management of vegetation within Lot 800 is dealt with in detail in the enclosed report. A summary of the measures is as follows: <ul style="list-style-type: none"> • Creation of specified regeneration areas totalling 1.077 ha. • Fencing of the proposed regeneration areas and removal of stock and or pasture maintenance. • Specified clearing regime and establishment of nest boxes and placement of cleared limbs with hollows within the revegetation area. • Weed management and infestation removal. • Commencement of these measures in conjunction with the next stage of the previous approval stage 1B. • Provision of Restrictions on Use to Maintain Vegetated Areas and specify areas that cannot be subject to a future dwelling application.
e. Provide details of weed management measures proposed (as per p47 of the EA). Please note that sole reliance on bushfire is not considered a viable management technique.	A Vegetation Management Plan will be prepared for active regeneration of adjoining sections of the 7(d) zone within Lot 800. Weeds will be removed via standard bush regeneration techniques including weed removal fencing and avoiding contamination during construction. It will also include ongoing weed management and monitoring. Bushfire will only be used as per the Environmental Code (RFS 2006b) after RFS assessment.
f. Please identify the proposed sizes of the nest boxes and the species which they will target. Provide a rough indication of where the boxes will be located on site and how they will be managed. Please also include the provision of nest boxes (of at least 1 to 1 ratio) in the Statement of Commitments.	A minimum of 24 nest boxes will be constructed and erected prior to clearing (using an average of 4 hollows/tree). Final number will be determined by the number of hollows found during felling of hollow-bearing trees. Recommendations for the pre-clearing strategy, tree removal protocols and vegetation management will be adopted from the Darkheart report Oct2009. All nest boxes will be located in the 7(d) zone on Lot 800. These boxes will be designed to suit Yangochiropteran bats, Squirrel Glider, and Brushtailed Phascogale.
g. Please provide a plan showing which hollow bearing trees are to be removed and which are to be retained as well as the trees to be removed and those to be retained (Note: the EA conflicts with the Ecology Report in this matter. Please clarify the number of trees to be removed versus number to be retained and whether this includes vegetation within Lot 800). Please prepare a schedule to accompany the plan which identifies the species and approximate size of each tree to be removed.	Figure 8 in the Darkheart (2009) report shows the location of trees to be retained/removed. Table 11 of the Darkheart report lists a description of hollow-bearing trees to be removed. Exhibit 8a of the EA highlights these trees. ERM (2007a) estimates that some 60 hollow-bearing trees with >245 hollows occur in the whole of the 7(d) zone(Lot 800). Mapping of this information is considered superfluous as no work is proposed in this area and these trees are to remain untouched by the development.
h. Please include the recommendations from the ecology report in the SoC.	The Statement of Commitments have been updated with the recommendations from Darkheart 2009.
2. Bushfire a. Condition 2 of the Master Plan requires the provision of APZs wholly within the proposed residential allotments to ensure the maintenance of these areas is solely the responsibility of the future landholders. Please provide justification for the location of the APZ within the 7(d) zone adjacent lots 605 to 617.	Following consultation with the Department of Planning the arrangements at the rear of lots 605 to 622 have been altered to retain the asset protection zone totally within each individual lot. The Weeds of the zones vary between 8 and 12 m as calculated by the bushfire consultants. The variations in width are generally due to the changes in the degree of slope uphill of the rear of the allotments. In addition to this a multiuse fire trail through lot 800 will be provided. This ensures access to the rear of all allotments in the event of fire and will allow maintenance of the regeneration areas within lot 800. The full details are shown in Exhibit 8 a. The revised arrangements are detailed in the updated report from the bushfire consultant. The revised asset protection zone requirements are also included in the Statement of Commitments.
b. Please explain why in Table 5 p21 of Appendix A (Bushfire Protection Assessment), the width of the asset protection zone has been calculated as minimum >30m south west of Lots 605-617 and in Table 6 it has been calculated as 12m and yet on p74 of the EA it is stated that a 20m asset protection zone should be provided by way of positive covenant over Lot 800. Please explain exactly what APZs are proposed; please also provide a plan (overlayed on an aerial photo) showing the inner and outer protection areas.	The arrangements have been altered as per the above and Exhibit 8a. This issue is addressed in the revised arrangements.
c. Please include recommendations made by the Bushfire Assessment in the SoC.	Noted and completed. Please find attached an updated Statement of Commitments.
3. Aboriginal Heritage a. It is noted that the consultation was undertaken in accordance with the 2004 DEC guideline 'Interim Community Consultation Requirements'. However, no indication has been given of the response to this consultation. Please provide details of any response received from both the advertisements and the letters.	The additional consultation undertaken was as follows: Consultation was undertaken in accordance with the <i>Draft Guideline for Assessment of Impacts on Aboriginal Heritage</i> . In this regard, the following consultation was undertaken: <ul style="list-style-type: none"> • An advertisement was placed in the Macleay Valley Argus on 18 November 2008; and, • Letters were sent to the Department of Environment & Climate Change, Kempsey Local Aboriginal Land Council, Kempsey Shire Council, NSW Department of Aboriginal Affairs and the Native Title Services Corporation. No response was received to the consultation letters and/or any of the advertisement material completed as a part of the consultation including the newspaper advertisements.

DEPARTMENT OF PLANNING	
Issue	K&C Comment
4. Contamination a. Please justify why no contamination assessment was undertaken in accordance with the provisions of SEPP55.	The current owner has been in possession of the property for the past 40 years and has supervised the land use practices. No intensive agricultural activities have occurred on the property In that time and contamination is extremely remote based on that site history. The land has been assessed by Kempsey Shire Council for inclusion in their residential growth strategy and the Mid North Coast Growth strategy and no sources of contamination have arisen in the immediate vicinity of the property as part of that assessment. Generally in a small community such as South West Rocks the contamination sites are well-known and have been previously identified. In this case the areas identified include the petro chemical uses in Philip Drive and a number of Septic disposal sites and previous waste disposal sites. All of these sites are fully documented and do not impact whatsoever on the subject property no additional assessment under SEPP 55 was required at the master plan approval stage or the approval of the major project for stage 1B.
5. Traffic a. Two routes have been identified for construction vehicles. The Statement of Commitments states that all heavy vehicles will enter from Belle O'Connor and yet on p70 and again on p76 it is stated that 'to minimise disturbances to existing and adjoining residents, it is proposed to deliver the imported materialvia the secondary emergency access gate off Arakoon Road'. Please clarify.	The majority of heavy vehicles associated with the transportation of filling material, gravel for road construction precast pits and pipes and ready mixed concrete is designed to access the site via Arakoon Road. This will cater for the large majority of heavy vehicle transport movements. The environmental assessment allows for the use of the collector Road system Belle O'Connor Street for construction traffic socio with the future residential development. The assessment seeks to confirm that the Road network is capable of handling construction traffic for the completion of the residential dwellings. It should be noted that a condition of approval of the previous major project stage 1B required the provision of a Construction Management Plan and a Traffic Management Plan. The provisions of these plans will be applicable to the subject application. Indeed following approval the stage 1C lots will be incorporated into these plans as is appropriate given the relationship of the stages within the approved master plan. Suitable measures relating to the construction of Stage 1C will be incorporated into this Traffic Management Plan. Notations within the Statement of Commitments have been added to this effect.
Summary of issues raised in public submissions for 07_0129	
<u>1 Traffic and Access</u> • The intersection on Belle O'Connor Street lacks proper planning.	The intersection of Belle O'Connor street as referred to was approved as a part of the previous stages of Seascape Grove and does not form part of this Stage 1C application. It is noted that the intersection was the subject of a traffic impact assessment which was exhibited and assessed as a part of the Master Plan 38-9-2004 application. The intersection was also the subject of Council and the local traffic committee's assessment and was considered to be acceptable from a traffic management perspective.
• Provision should be allowed for access to future developments to the north.	Access for connection to 'future' development to the north has not been required as a part of the previous approvals relating to the site nor was it assessed as being a requirement as part of the master plan approval. It is however, noted that there is the opportunity for development to the north to connect to Belle O'Connor Street should it be required.
• Construction of the first stage of Seascape Grove has denied access to properties along Belle O'Connor Street.	Belle O'Connor Street is an existing road completed as a part of the previous approvals associated with this development. This Stage 1C application does not include nor propose to alter Belle O'Connor Street from that which has been approved and constructed.
• Access to full width of the road reserve that was previously named Belle O'Connor Street should be provided.	Access to the full width of the unformed road reserve is accessible via Belle O'Connor Street. This Stage 1C application does not propose to change the existing approved arrangements.
• To prevent serious accidents the (Belle O'Connor) intersection should be redesigned before Stage 1C proceeds.	As noted above, the existing Belle O'Connor Street intersection was considered as a part of a traffic impact assessment, assessed by Council and the regional traffic committee. The intersection was granted approval as a part of the approved Master Plan and has since been constructed as per the initial planning requirements which considered the entire Seascape Grove residential estate including Stage 1C.
• The additional 1,404 daily traffic movements will reduce the area's desirability for tourists.	The increase in traffic movements associated with the development of the site was considered as a part of the traffic impact assessment. The additional 1,404 daily traffic movements were considered acceptable in the locality and incorporated the entire Seascape Grove development and included additional counts for future Stage 2 development.
<u>2 Water Cycle/Water Quality Management</u> • The wet detention basin outlet and overflow control will make the road reserve unpassable.	These matters do not form part of the Stage 1C application. The Wet Detention Basin outlet and overflow control were approved as a part of Stage 1B and will be constructed as a part of Stage 1B.
• A box culvert should be installed across the road reserve to accommodate the stormwater flows.	These matters do not form part of the Stage 1C application.
• The Water Management Plan does not address impacts on Saltwater Creek and Lagoon associated with residential runoff high in phosphorus and nitrogen.	These matters do not form part of the Stage 1C application. The approved Stormwater Management Plan addresses the requirements of the Saltwater Creek Estuary Management Plan.
<u>3 Flora and Fauna</u> • The proposal will have an adverse affect on rare and threatened species.	The impact of the proposal on rare and threatened species is fully detailed within the Darkheart (2009) assessment. Darkheart(2009) considers the proposal is not likely to have a significant impact. To ameliorate impacts the proposal includes revegetation of 1.077 ha of existing pasture. It also includes the provision of nesting boxes to replace hollow bearing trees.
• The proposal will result in loss of habitat.	The Statutory Ecological Impacts Assessments Report (Darkheart 2009) details the extent of the impacts of the proposal. The impacts can vary between direct (eg loss of foraging habitat) and indirect (eg artificial lighting). However, while the proposed uses are an adverse effect the order of magnitude is not significant enough to result in loss of viability of any site dependent breeding population. Refer to Part D and E of Darkheart (2009).
• The proposal will reduce the environmental heritage values of adjacent parks, particularly Arakoon State Reserve and Hat Head National Park.	The Statutory Ecological Impacts Assessments Report (Darkheart 2009) details that the proposal will not reduce the environmental values of the adjacent parks. The habitat affected is only pasture or highly modified pastoral woodland (pasture with scattered trees), with only limited habitat values, and a depauperate fauna assemblage as confirmed by site survey. It is also not a key interlink – this is retained by the dry sclerophyll forest in the 7(d) zone. No threatened species is potentially significantly affected by this proposal. The subject proposal does not have the capacity to significantly impact on Saltwater Lagoon.
• The removal of mature and hollow bearing trees is unacceptable.	Loss of hollow-bearing trees is listed as a Key Threatening Process, and is a primary cause of decline for many species known or potentially occurring on or in the vicinity of the site. However the removal of hollow-bearing trees in this instance is considered to be a non-significant ecological impact. Darkheart(2009) considers the proposal is not likely to have a significant impact.
• The proposal will introduce feral/ and non native animals.	Foxes already occur on site. Aside from keeping of pets no particular aspect of the proposal is likely to increase the potential for feral/non-native species to significantly increase population size on site (see Darkheart 2009). Cats and dogs currently occur in adjoining rural-residential and residential estates without extraordinary restrictions.
• Incremental vegetation removal is an unsuccessful and unacceptable way to relocate species.	The subject proposal is the final stage of an approved masterplan, hence this issue has been addressed in previous Environmental Assessment. Effective linkages to Hat Head National Park are retained by the dry sclerophyll forest in the 7(d) zone, which is to be allowed to fully regenerate and enhance its habitat values. The majority of land contained within the proposal is zoned for residential development. The implementation of the conditions of approval for the development will ensure the proper an ongoing management of the environmental protection areas and the maintenance in perpetuity of this linkage. It provides security and ongoing maintenance regime and obligations.
• The artificial lighting created will have the potential to discourage nocturnal native species from foraging near the development.	All of the potential and known occurrences of threatened species have been documented occurring within urban remnants or edges and road reserves, Lighting will be low level associated with a low order access street construction and will be separated from the dry sclerophyll forest by the full depth of the adjoining allotments. The improvements to the vegetated areas of lot 800 will provide additional encouragement to nocturnal native species.
• The proposal will introduce weeds.	Weeds currently all but completely dominate the non-canopy stratum over the development footprint. These will be replaced by the development with lawns and gardens. Weeds (predominantly pasture) extend into the fringes of the 7(d) zone. The latter will largely be removed by bush regeneration and natural regrowth following exclusion of stock and cessation of pastoral maintenance.

DEPARTMENT OF PLANNING	
Issue	K&C Comment
<ul style="list-style-type: none">The proposal will alter the microclimate of the intact bushland.	It is not considered that the proposal will alter the microclimate of the bushland. The bushland on site is dry sclerophyll, which by definition, is an open forest. The site's dry sclerophyll is currently highly open to due to existing landuses. Natural and assisted regeneration is expected to see re-development of lower stratus in this forest, with associated positive impacts on microclimate and less desiccation of the leaf litter.
4 Subdivision Design <ul style="list-style-type: none">The subdivision encroaches on the Scenic Protection Zone.	The Stage 1C portion of the Seascape Grove Residential subdivision has been designed so as to follow the 2(a) Residential zone. No dwellings are proposed to be constructed within the 7(d) Scenic Protection zone or as a part of this Stage 1C application. It is however, noted that a residential dwelling is permissible within the 7(d) zone under the provisions of the Kempsey LEP 1987. Any such future dwelling will believe the subject of a separate application. The scenic protection zone is proposed to remain largely intact and minimal tree removal shall be undertaken as a result of bushfire protection measures. The visual assessment completed as a part of the submitted Environmental Assessment notes that the potential visual impacts associated with Stage 1C are Extremely Low to Medium and are not considered to have a detrimental impact on available views.
5 Visual <ul style="list-style-type: none">The negative visual amenity will reduce the area's desirability for tourists.	A visual assessment was completed as a part of the submitted Environmental Assessment. The assessment concluded that the proposal is not considered to detrimentally impact on available views. The proposal shall maintain existing vegetation within the south-western corner of the development site and the available development envelopes are located below that of the surrounding vantage points. It is not considered that the Stage 1C development envelopes shall have a detrimental visual impact on the areas desirability for tourists.
<ul style="list-style-type: none">Views from Hat Head National park will be damaged due to view lines to the development.	The visual impacts from Hat Head National Park were considered as a part of the visual assessment completed with the Environmental Assessment and included assessment from locations such as Monument Hill and the North Gap Beach Fire trail. The visual impacts associated with the proposed development from these localities were considered to be Extremely Low to Low. The proposal is therefore considered to have minimal detrimental impact to view lines from the Hat Head National Park.
6 North Coast Regional Environmental Plan <ul style="list-style-type: none">The proposal is not in keeping with Clause 34 of the North Coast Regional Environmental Plan due to its potential loss of aesthetic and scientific heritage.	Clause 34 of the NCREP was assessed as a part of the final environmental assessment (p.39). It is noted that no European or Aboriginal items of heritage significance were identified on the subject site as a part of the Aboriginal heritage assessments completed as a part of site investigations. The proposal is therefore considered to be consistent with the provisions of clause 34.
<ul style="list-style-type: none">The proposal is not in keeping with Clause 43 of the North Coast Regional Environmental Plan due to significant adverse effects on the environmental features of the land.	Clause 43 of the NCREP has been addressed on page 41 of the submitted final environmental assessment. It is considered that the proposal is consistent with the requirements of Clause 43 and shall not have significant adverse affects on the environmental features of the land.
7 Bushfire <ul style="list-style-type: none">Given the significant bushfire risk wide zones (including the whole of Lot 800) should be set aside as a buffer.	The bushfire requirements have been a assessed in accordance Planning For Bushfire 2006. The rigorous assessment of bushfire risk has determined the full extent of asset protection zones and a Bush fire buffers. It has also dictated the provision of fire access trails and land-use requirements to protect the future residential allotments from bushfire.
<ul style="list-style-type: none">The asset protection zones are inadequate, as proven by the recent Victorian fires.	The asset protection zone widths are consistent with Planning for Bushfire 2006. The width of the asset protection zones is subject to a number of factors including surrounding vegetation types and topography of the site. The recent Victorian fires have no relevance in the determination of these asset protection zones.

Ref: T6-09-106
AJC:DLC

7 December 2009

Heather Warton
Director
Coastal Assessments
NSW Department of Planning
GPO Box 39
SYDNEY NSW 2001

Attention: Emma Barnett

Dear Madam

**MAJOR PROJECT 07_0129
STAGE 1C SEASCAPE GROVE ESTATE
56 LOT RESIDENTIAL SUBDIVISION
LOT 124 DP 1097510 BELLE O'CONNOR STREET, SOUTH WEST ROCKS, KEMPSEY
PREFERRED PROJECT REPORT
YOUR REFERENCE: MP 07_0129**

Reference is made to your recent request seeking comment on the proponents Preferred Project Report dated the 9 October 2009 and accompanying version 2 spreadsheet dated 5 November 2009 as it relates to Kempsey Shire Councils submission of the 28 May 2009. This office regrets any inconvenience caused in the delay in formally replying to your request.

This office has reviewed the proponents Preferred Project Report as it relates to Council's submission on the preliminary Environmental Assessment (EA) for the development proposal and provides the following comments shown in greyscale to following on from Council previous comments: -

General

1. The South West Rocks Section 94 Contributions Plan, Section 94 Administration Plan and Councils Developer Service Plans (Water and Sewer) apply to this development.

In the *Statement of Commitments (8/10/09, item number 15)* the proponent states they will pay Section 94 contributions in accordance with Kempsey Shire Council's Section 94 Plans. The proponent will also pay Section 64 water and sewer contributions. Reference is also made to other contribution plans that do not exist.

The proponent should amend point 15 of this statement by including reference to the abovementioned Section 64 Developer Service Plans and Section 94 Contribution Plans only as no other contribution plans exist. For example the District Water Supply and Augmentation of Sewerage Head Works and Outdoor Recreation S94 have all now been included in the *South West Rocks Section 94 Contributions Plan, Section 94 Administration Plan and Councils Developer Service Plans (Water and Sewer)*.

2. The following additional comment is provided in relation to the existing in-force development control plans that affect this stage of the development: -

Development Control Plan No. 9 South West Rocks- Spencerville only relates to the Spencerville precinct and does not apply to other areas at South West Rocks including the Stage 1C site. A copy of the plan showing the land to which this plan applies is appended to this letter for your information.

This DCP does not relate to this site at all. The EA should be modified accordingly.

Development Control Plan No 10 – Provision of open space for South West Rocks and District is relevant but has not been discussed in the relation to councils comment for the previous master plan.

The authors of the EA have not sourced the Council's *South West Rocks Open Space Strategy (Draft reference document)* a copy of which is available from Council web site at, <http://www.kempsey.nsw.gov.au/councildocuments.htm> .

Clause 11.6 of Development Control Plan 22 Local Housing Strategy provides additional development controls for Dual Occupancy Developments at South West Rocks. The existing residential areas of the village have a significant number of dual occupancy developments which is being encouraged to grow as a percentage of the total housing as outlined in the Mid North Coast Regional Housing Strategy 2009. The applicant has not specifically discussed this aspect of the lot layout design other than to nominate proposed lot 700 as an integrated housing precinct. The applicant needs to identify how they intend to control dual occupancy development on the greater part of Stage 1C without compromising the proposed integrated housing precinct.

The proponent has addressed the abovementioned issue (refer version 2 of the 5/11/09).

When considering the proposed lot design layout the following remaining development control plans need to be considered as they are identified as applicable with respect to this stage of the development: -

- *DCP24 Access and Mobility;*
- *DCP25 Advertising Signs;*
- *DCP29 Bed and Breakfast accommodation and*
- *DCP31 Energy Smart Homes.*

The EA addresses DCP's 9, 22, 30 and 36 only. Council's Civic View Property data base shows that DCP 10, 22, 24, 25, 28, 29, 30, 31, 36 and Acid Sulfate Soils are applicable to this land parcel.

3. The December 2007 Darkheart Statutory Ecological Assessment refers in its executive summary to land zoned 7(a). This land is identified as wetland in the Kempsey Local Environmental Plan 1987. There are no wetlands located on Lot 124 DP 1097510. This lot contains 7(d) Scenic Protection zoned land.

The Darkheart Statutory Ecological Assessment (October 09) has been amended and reference to planning zone 7(a) modified.

4. The following additional comment is provided in relation to the existing in-force State Environmental Planning Policies that affect this stage of the development: -

- a) State Environmental Planning Policy 71 Coastal Protection Section 16 Stormwater has not been addressed in the EA page 34 discussion and or the associated table.

The Water Management Plan 2006 has addressed water treatment through quality controls for only part of this stage of the development. The section of land in this stage of the development located on the western boundary of Lot 124 DP 1097510 was not included in the MUSIC modelling (refer to plan at appendix "A"). This part of the catchment will drain away from the proposed water quality controls into the neighbouring catchment to the west untreated into a coastal creek direct to Saltwater Lagoon and Saltwater Creek to Trial Bay.

This section of SEPP 71 prevents the consent authority from consenting to a development where it is likely to discharge untreated stormwater into a coastal lake or creek.

Point "g" in table at page 35 refers to measures to conserve animal and plants and their habitats. The comment provided refers to regeneration but there is no plan in any of the associated documentation showing how this option is to be utilised for this stage of the development.

The total area that naturally drains from the development lot toward the unformed crown road is 2.6 hectares. Approximately 1.2 hectares is located in the 2(a) residential zoned portion of the land whilst the remaining 1.4 hectares is located in the 7(d) scenic protection portion.

Once this stage is fully developed the residential zone will contribute 0.62 of a hectare and the 7(d) zoned land 1.4hectares. The total area draining towards the existing unformed Crown Road will be 2.02 hectares. Therefore the major pollutant source (the house site) from these proposed lots will drain into the existing western catchment and not as stated by the proponent into the Seascape Grove stormwater treatment system.

The existing stormwater drainage system located west of this site below the Crown Road was designed to accommodate the unpolluted flows from that portion of the Seascape Grove property draining to the west only.

The grade at which proposed lots 604, 605, 644 to 650 and 636 drain toward the unformed crown road will prevent these lots draining towards the proposed internal road (refer to contours on plan exhibit 5 of EA) . The proponent position that only the rear of these lots will contribute is not correct.

The recommendations contained in the Darkheart Statutory Ecological Assessment (October 09) addresses point "g" of SEPP 71.

5. The following points need to be either clarified and or included in the Draft Statement of Commitment: -

- *The design (item 16) and construction (item 3) phases of this stage of the development does not incorporate the recommended ameliorating measures contained in the December 2007 Darkheart Statutory Ecological Assessment. It only refers to the Umwelt 2004 Report and 2006 amendment.*

Reference to the recent October 2009 Darkheart Statutory Ecological Assessment has been inserted in recent statement of commitment item 3 "construction".

At new item 16 in the statement of commitments the only new reference is for provision of restriction on lots fronting the crown road. There is no commitment to incorporating the proposed ameliorating measures specified in the Darkheart Assessment to offset the impact of the proposed development on the environment.

Where is the Estate wide plans referred to in the 5 November schedule?

- *The Umwelt amended Ecological Assessment 2006 states that there are no additional mitigating measures from the 2004 Assessment. The original 2006 assessment is not included in the documentation so they cannot be compared to the Darkheart 2007 recommendations.*

The proponent states that the 2009 Darkheart Assessment builds on the previous studies. The recommendations of that report need to be considered and adopted as required, as part of the state of commitment.

- *At point 3 "construction" identifies filling required to be imported to the site. If some lots are proposed to be filled at this stage of the residential development then the Australian Standard 3798-2007 Guidelines on Earthworks for Commercial and Residential Development is the appropriate standard to refer to when selecting the fill to be used, method of placement and testing in conjunction with a Geotechnical Engineers Specification.*

In addition construction noise and vibration needs to be addressed.

Again the proponent should commit to preparation of a suitable Geotechnical Specification by an appropriately qualified person for the selection, placement and testing of any fill on this stage of the development having regard for the appropriate Australian Standards and good engineering practice.

If the proponent is using a DECCW Guideline then it needs to be identified not some vague reference and should tie it to the preparation of a Geotechnical Specification.

- *Easement placed over what will be private property to accommodate council utility services is to be sized in accordance with DCP36 Engineering Guidelines for Subdivision and Development.*

Item 3 compliance with DCP 36 noted.

- *The landscaping component contained in point 5 makes no mention of the recommendations for general landscaping contained in the Darkheart Ecological Assessment. Further the Landscape Principles Plan (appendix K) was a plan prepared for MP05-0018 and predates the Darkheart recommendations. This landscape principles plan does not address compensatory planting and or regeneration of native species.*

The Landscape Principles Plan 2006 has not been amended having regard for the recommendations of the October 2009 Darkheart Statutory Ecological Assessment nor does it address compensatory planting and or regeneration of native species.

- *There has been no public open (point 7) space identified by the applicant for dedication to the public in this stage of the development.*

The proponent needs to consider this aspect of the development in conjunction with the previous staged approval and incorporate it into the statement of commitment.

- *The ecological management component does not refer to any of the recommendations of the various Ecological Assessment recommendations only to a single point about mulching. There is no overall management plan incorporating the ecological management elements (tree report, both ecological assessments) with those fringe onsite elements (bushfire assessment, landscape principles, urban design etc), that will impact on the ecological management of this stage of the development.*

Addressed in modified statement of commitment.

- *Water supply and quality management incorporates more than creation of easements for stormwater assets. This stage of the development will no doubt connect to the proposed future overall stormwater drainage system. The applicant has not demonstrated whether temporary arrangements for this stage of the development are required pending construction of the final stormwater drainage system (including water quality and quantity treatment) and how this stage will integrate with the previously approved concept.*

The proponent has not addressed the abovementioned original comment in the modified statement of commitment.

- *The applicant will need to address likely damage to existing council road pavements along the proposed haulage route to the site for this stage of the development. Council is not in favour of allowing importation of significant amounts of imported fill material along the existing South West Rocks village road network. In addition the applicant will be responsible for rectifying*

damage along the identified haulage route for this stage of the development to the satisfaction of the Director of Shire Services.

The proponent states that the fill will be hauled along the existing arterial road network and not the village network. The heavy haulage route nominated in the EA is via Arakoon Road, a local Council road within the precincts of South West Rocks, not an arterial road.

The proponent should commit to the haulage route specified in the EA and be responsible for rectifying damage along the identified haulage route for this stage of the development to the satisfaction of the Kempsey Shire Council. Preparation of a Traffic Management Plan to be incorporated into the Construction Management Planning is acceptable.

- *Urban infrastructure that council will ultimately be responsible to maintain is to be designed and constructed not only in accordance with DCP36 Engineering Guidelines for Subdivision and Development but having regard for current applicable Australian Standards, council policy and good engineering practice.*

The proponent is to commit to having regard for current applicable Australian Standards, council policy and good engineering practice in the statement of commitment.

6. The following Council policy documents available from council web site will apply to this development proposal: -

- *Ecological Sustainable Development policy C23.23;*
- *Guide for Certification of Civil Engineering Design Work C23.25;*
- *Maintenance of Subdivisions, Security Deposits Bonds and Guarantees M13.9;*
- *Street Lighting on Public Roads C22.07;*
- *Street Naming C22.06 ;*
- *Tree Preservation Order and*
- *Macleay Water Integrated Water Cycle Management Strategy 2005.*

The proponent has just noted the abovementioned policies without addressing them.

Key Issues

7. Hazards

- a) *Acid Sulphate Soils (ASS) are not mapped within the Stage 1C precinct.*
- b) *Stage 1C is not affected by the 1 in 100AEP flood event from the Saltwater catchment area.*
The applicant is to consider whether lots in this stage of the development are at an unacceptable risk from localised flooding during a 1 in 20 year storm event (Clause 12 (1)(a) and (c) of Kempsey Local Environmental Plan 1987.

In particular investigate whether the stormwater corridor located between proposed lots 617 and 618 is of adequate area/width to wholly accommodate

local storm flows without adversely impacting upon likely future development of these two residential allotments and or the natural flow path of the existing gully.

- c) A detailed *Hydrogeological Assessment* has not been undertaken at this site and the 2003 Geotechnical Assessment had not addressed the groundwater issue.
- d) *Council's data base mapping does not identify this site as contaminated land. The 2003 Geotechnical Assessment does not address this issue for this site as indicated by the applicant.*

Point 7(a) was an observation not meant to be addressed.

Point 7(b) has not been specifically addressed by the proponent. Council has not approved any "Drains" calculations, that process is undertaken during the Construction Certificate stage. Council has no record of any localised flooding that might be likely associated with stage 1c.

The contour plan shows that there are no contributing areas directly above the lots in this stage located on the western boundary. This area will most likely not be affected by localised flooding.

In the area over proposed lots 614 to 622 located in the south east of the land there is an intermittent drainage line between lots 617 and 618. The proposed lot 800 handle width is 6.34metres on the original version and subsequently amended on the 2009 version. There are no dimensions on the new layout. The proponent is to ensure the 1 in 100 year ARI flood level from the storm water upstream of proposed lots 617 and 618 will remain within the corridor should the pipe block. The corridor may need to be widened if this flow cannot be contained in the proposed new corridor width.

Point 7(c) comment was aimed at bringing attention to this matter not being addressed. The main concern is the location of any springs located in stage 1c area which would more likely become evident during storm events and impact upon the lots.

Point 7(d) was an observation not meant to be addressed.

8. Council's Waste Management Strategy needs to be considered by the applicant.

The proponent indicates that the proposed lots and construction phase waste management will fully comply with the Council Waste Management Strategy yet this commitment is not reflected in the proponents Statement of Commitments.

9. There is no information held within the existing Fauna and Flora Assessments undertaken to date for preparation of vegetation, regeneration and or compensatory plantings of native species plan.

It is agreed that the revised October 2009 Ecological Impact Assessment now contains recommendations allowing for regeneration and or compensatory plantings of native species.

10. Traffic and Access

There is an existing formed gravel driveway servicing the current residence and outbuildings located within the current crown road reserve which extends approximately 200metres from the Belle O'Connor Street frontage.

The subdivision Stage 1C layout in its current form will provide a secondary access in respect of proposed lots 604, 605, 644 to 650, 636 and one side of proposed lot 623 direct to Belle O'Connor Street for the future residents. This feature is undesirable as it will create a precedent allowing for the unnecessary duplication of the Shires urban road infrastructure.

Council is unlikely to accept a transfer pursuant to section 151 of the Roads Act 1993 now and or into the future. The Roads Act defines a crown road as: -

"means a public road that is declared to be a Crown road for the purposes of this Act."

Part 1 Section 5 of the Roads Act confers right of passage along a public road by members of the public and Section 249 identifies that where a place is a thoroughfare in the nature of a road used by the public then it is a public road.

The applicant needs to address this issue as part of the subdivision lot layout design.

Consider the South West Rocks component of the 2003 PEDESTRIAN ACCESS MOBILITY PLAN KEMPSEY AND SOUTH WEST ROCKS and provisions of DCP 36.

Exhibit 9 showing extent of cycle ways is missing from the documentation please submit.

The proponent has considered this issue and suggested providing a restriction as to user over the title preventing vehicle access off proposed allotments 604, 605, 644 to 650, 636 and one side of proposed lot 623. This restriction should burden the proposed lots and allow Council to be an interested party such that it is the only authority allowed to vary and or extinguish this restriction.

In Councils experience any proposed restriction should apply to all movement (pedestrian and vehicle) from the proposed lots in this stage of the development and be combined with a physical restriction within the developed lots (not within the Crown road Reserve) such as earth mounding and fencing. Any vehicle and or pedestrian movement from these proposed lots to the existing unformed Crown road will undermined the concept provided by the proponent as part of the approved master plan for this development and create duplicate systems for both pedestrian and vehicle access thereby placing an unnecessary maintenance burden upon Council (and community).

Since forwarding Councils initial submission on this stage of this development a Preliminary Draft Development Control Plan (DCP) for the locality known as Saltwater has been prepared (4/12/09) following rezoning to residential in late 2009. The Draft DCP is currently being internally reviewed by Council prior to submitting to Council seeking public exhibition and adoption.

This Preliminary Draft DCP shows an arrangement where the primary access roads converge into the existing roundabout at the intersection of Burrawong Crescent and Belle O'Connor Street. This is the preferred traffic arrangement for this locality and a copy of the Draft Plan is appended to this letter for your information. This locality is the only practical location for such an intersection as determined recently by Traffic Engineers reports associated with preparation of the Preliminary Draft DCP.

The ERM 2006 Traffic Impact Assessment prepared for this development shows a proposed potential future road link servicing existing land to the north of Seascope Grove in its Internal Traffic Distribution Proposed Road Hierarchy Plan but did not specify a location for that intersection.

At the time this ERM Traffic Impact Assessment was prepared in 2006 the area known as "Saltwater" was still being prepared for rezoning and information that would allow for the determination of an appropriate road network to link Seascope Grove with the wider area to the north was not available. The information is now available and supports the 2006 ERM Traffic Impact Assessment findings allowing for a future road link to the north.

It is suggested that development approval incorporate into it a condition to allow for the dedication of land within the Seascope Grove Estate as depicted in the Draft DCP allowing for the future road link with the "Saltwater" land to the north in accordance with the 2006 ERM Traffic Impact Assessment.

11. With respect to lot layout and design the following comment is provided for proposed lots 609 to 613, 800 and 614 to 622: -

- *Why is proposed Lot 622 so large compared to adjacent allotments on similar slopes which have significantly smaller areas?*
- *The suitability of proposed lot 618 is questionable taking into consideration the significant site constraints such as the slope of the land, the proximity to the existing gully combined with the small reduced available lot area when compared to proposed adjacent Lot 617;*
- *Plan Exhibit 5 shows a small area of land not labelled as a proposed lot west of lot 614, please clarify.*
- *When designing a lot layout for a subdivision where there is a bushfire hazard it is common practice to allow the ring road in this case Burrawong Drive to act as a buffer to development. It is considered inappropriate in this instance to unnecessarily burdening the 7(d) Scenic Protection zone by incorporation of asset protection zones for a "Greenfield" development into the scenic protection zone itself even though part of this zone has been referred to as parkland associated with proposed Lot 800.*
- *The EA for this stage of the development has mentioned Native flora regeneration but no specific detail has been provided. Rather than retaining a parkland bushfire clearing buffer using the 7(d) zoned land and establishing a single dwelling for the purpose of maintaining this buffer why not use the 7(d) land for native flora regeneration and or compensatory habitat. If the applicant still wishes to retain a dwelling on proposed lot 800 why not consolidate proposed lot 622 located in the residential zone and which will have minimum impact on the scenic protection zone.*

This office accepts the Fire APZ areas within proposed lot 622 reduce the available area available for development.

Refer to comment at point 7(b) with regard to the issue of the width of the Lot 800 corridor between proposed lots 617 and 618 designed to accommodate the existing intermittent gully.

The Fire APZ are now wholly located within the proposed allotments 622 to 618 and 605 to 613 inclusive for this stage of the development.

Along the rear of proposed lots 605 to 613 there is a proposed new fire trail that runs from Burrawong Crescent to the unformed Crown Road. Council does not own and or maintain this road.

The Crown Road is not under "Roads Authority" control as defined in the Roads Act 1993. The Crown is not a Road Authority. You need approval from a Roads Authority to construct a road and or build a Fire Trail. Council would have to accept dedication of this unformed Crown Road for this part of the proposal to proceed. Council's position is as before that accepting dedication of the unformed Crown Road will be an unnecessary duplication of the proposed road network servicing this stage of the development for which Council will become ultimately responsible and thereby unnecessarily burden the rate payer with public infrastructure that is not required. The proposed Bushfire Trail has no link and is not the preferred option and therefore does not meet the minimum requirements of the Planning for Bushfire Protection 2006. Council is not interested in having an interest in any easement accommodating a fire trail located on private property.

The proposed fire trail servicing proposed lots 614 to 617 is located on adjoining proposed lot 800. The preferred method (Planning for Bushfire Protection 2006) is to rely on permitter roads not fire trails especially in "Greenfield" developments such as this. Further it was understood from previous comment by the proponent that the proposed lot 800 corridor between lots 617 and 618 was widened to allow for better design and accommodate the existing natural gully, only.

Should you require any further information please contact the undersigned at Kempsey Shire Council's Sustainable Development Services on 6566 3200.

Yours faithfully

AJ Castle
DEVELOPMENT ENGINEER
SUSTAINABLE DEVELOPMENT SERVICES

21 December 2009

Department of Planning
Locked Bag 9022
GRAFTON NSW 2460

ATTENTION: Ms Emma Barnet

Dear Ms Barnet

RE: SEASCAPE GROVE - MP 07_0129 Preferred Project Report

We refer to the responses received following the exhibition of the Environmental Assessment and to our on site meeting, and various discussions and emails between the writer and the Department's, Emma Barnett. We confirm that we have revised the proposal and have set out below for your consideration, our responses to the issues raised:

General:

1. Statement has been amended to reflect updated contribution designation.
2. DCP 9 – South West Rocks and Spencerville: Reference has been deleted.

DCP 10 – Provision for Open Space for South West Rocks and District: The provision of open space and the location of small playgrounds was resolved during the adoption of the approved Master Plan and the previous Major Project approach. No additional open space areas are proposed within this application.

DCP 22 – Local Housing Strategy (Urban Areas other than Crescent Head 2003): Addressed as per Council letter 7 December 2009.

DCP 24 – Access and Mobility: Provisions of the DCP are generally applicable to non residential buildings. Crossfalls of footpaths and profiles of kerb ramps will be in accordance with Council's DCP 36 which is also consistent with the standards set out in this DCP.

DCP 25 – Advertising Signs in Kempsey Shire: Is not relevant to this application.

DCP 28 – Leasing of Public Areas for Restaurants and Cafes: Not relevant to this application.

DCP 29 – Bed and Breakfast Accommodation: Not relevant to this application

DCP 30 – Addressed in EA.

urban design

civil engineering

architecture

town planning

landscape architecture

surveying

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DCP 31 – Energy Small Homes: Applicable to:

- Single dwellings
- Alterations and additions
- Medium Density and Attached Dwellings
- Multi Unit Residential.

This DCP is therefore not applicable. The issues of site analysis and solar access have been dealt with in the EA and residential dwelling energy efficiency is covered by BASIX regulations.

DCP 36 – Addressed in EA and Statement of Commitments.

3. Not applicable
4. We do not agree with Council assessment of the Stormwater flow paths from lots 604, 605, 644 to 650 and 636.

To resolve this issue we have added to the statement of commitments requiring stormwater runoff from residences on these lots to be directed to the western catchment stormwater quality control facility.

5. The preparation of a Vegetation Management Plan is required under the conditions of approval prior to the issue of a Construction Certificate for any new road works. The Landscape Principles plan will be incorporated into the Vegetation Management Plan.

The statement of commitments has been expanded to include, *"Imported material for filling shall be generally in accordance with Australian Standard 3798-2007 and a Geotechnical Engineers specification."*

Reference to the dedication of Open Space has been removed from the Statement of Commitments.

We reject Council's claim that we have not addressed any temporary arrangements. This claim fails to understand the existing consent conditions and the natural order that the subdivision was planned. We cannot create any lots without a dedicated public road which will be put in place with the previous approval. Stormwater connection points and leadin services will be already constructed as part of the previous stages.

Notwithstanding Council's misplaced concerns we proposed to add to the Statement of commitments as follows:

No residential lots shall be created unless there is available

1. A connection to dispose of stormwater to Councils system
2. Water and Sewer connection points
3. Electricity and Telstra Reticulation connections .
4. A connection to a dedicated public road.

The Statement of commitments has been amended to include the haulage route be in accordance with the route set out in the environmental Assessment and that measures to monitor and rectify any damage to the haulage routes shall be included in the Traffic Management plan.

The reference to compliance with Kempsey's DCP 36 has been augmented with reference to current Australian Standards and good engineering practice.

6. Not Applicable.

7. (a) No comment.

(b) The overall stormwater strategy allowed for an area comprising 35,300m² of contributing catchment upstream of the handle between Lot 617 and Lot 618. The proposal will provide for a piped system through the handle to cater for 1:100 year flows within the pipe and with the inlet above the lots. Calculations within the stormwater management plan indicate the pipe size will be in the order of 750mm diameter.

Council is correct in saying that final calculations for pipe size are undertaken at Construction Certificate stage. The handle has a width of 12.5metres. The dimension has increased to allow for retention of trees adjacent to Burrawong Drive.

Collecting stormwater runoff upstream of the handle means there will be no localised stormwater runoff that would be considered a hazard to Lots 617/618.

The Statement of Commitment has been amended to reinforce the proposal.

(c) No comment.

(d) No comment.

8. The statement of commitments states that" *Any waste generated from the Construction of the development will be disposed of in accordance with Kempsey Shire Council's Waste Management Strategy.*"

The statement has been augmented with a requirement that the details of Waste disposal shall be set out in the approved Construction Management plan.

9. Not applicable

10. The limitation on access has been amplified to include pedestrian access. The access and mobility strategy is as shown in the approved Masterplan. The statements of commitments include a reference to the access and mobility plan in the proposed construction.

In relation to the requested access off the Belle O'Connor Street roundabout our client cannot accept a condition to cover the provision of access arrangements for the adjoining development. We believe it is unlawful to impose a condition that provides a commercial advantage to an adjoining developer. We are willing to discuss arrangements for allowing access but these must be on a commercial basis.

11. In accordance with discussions the access trails proposed as part of the bushfire measures will not be constructed as they are not required. The separation between the lots and the revegetation areas will remain to allowing management of the revegetation area.(weeding etc). This addresses Council concerns of using the Crown Road reserve. We do note however that Council uses the reserve for as a service corridor and it is also used for overhead electricity reticulation

If you wish to discuss this matter further please do not hesitate to contact the writer.

Yours sincerely
King & Campbell Pty Ltd

Per



Paul J Rowlandson