

**ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979**  
**DETERMINATION OF DEVELOPMENT APPLICATION NO. 297-07-2003**  
**(FILE NO. N03/00224)**  
**2 LOT SUBDIVISION**

I, the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), pursuant to Section 80 (1) (a) of the *Environmental Planning & Assessment Act, 1979*, and clause 10 of State Environmental Planning Policy No 71 – Coastal Protection determine the development application referred to in the attached Schedule 1, by granting consent to the application subject to the conditions of consent in the attached Schedule 2.

The reasons for the imposition of conditions are:

- (1) To minimise and mitigate potential environmental impacts from the development;
- (2) To ensure development is carried out in accordance the provisions of State Environmental Planning Policy 71 – Coastal Protection and the Port Stephens Local Environmental Plan, 2000; and
- (3) To ensure that the constructed development is consistent with the assessment of the subject development application.

Diane Beamer MP  
**Minister for Juvenile Justice**  
**Minister for Western Sydney**  
**Minister Assisting the Minister for Infrastructure and Planning**  
**(Planning Administration)**

Sydney,

2003

**SCHEDULE 1 –THE DEVELOPMENT****PART A—TABLE**

|   |   |
|---|---|
| <b>Application made by:</b>             | Mr and Mrs J and G McMahon<br>58 Rednal Street<br>Mona Vale NSW 2103  |
| <b>Application made to:</b>             | Minister for Infrastructure and Planning  |
| <b>Development Application:</b>         | 297-07-2003   |
| <b>On land comprising:</b>              | Lot 2 DP 382581<br>160 Oyster Cove Road<br>Oyster Cove NSW 2318   |
| <b>For the carrying out of:</b>         | Development described in Condition A1, Part A, Schedule 2   |
| <b>Estimated Cost of Works</b>          | N/A   |
| <b>Type of development:</b>             | State Significant Development   |
| <b>S.119 Public inquiry held:</b>       | No  |
| <b>BCA building class:</b>              | N/A   |
| <b>Approval Body / Bodies:</b>          | Not Integrated  |
| <b>Determination made on:</b>           |   |
| <b>Determination:</b>                   | Development consent is granted subject to the conditions in the attached Schedule 2.  |
| <b>Date of commencement of consent:</b> | This development consent commences on the date identified in the accompanying letter.   |
| <b>Date consent is liable to lapse</b>  | This consent will lapse 5 years from the date of commencement of consent, unless: <ul style="list-style-type: none"> <li>▪ a shorter period of time is specified by the Regulations or a condition in Schedule 2, or</li> <li>▪ the development has substantially commenced.</li> </ul> |

**PART B—NOTES RELATING TO THE DETERMINATION OF DA NO. 297-07-2003****Responsibility for other approvals / agreements**

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

**Appeals**

The applicant has the right to appeal to the Land and Environment Court under Section 97 of the *Environmental Planning and Assessment Act, 1979*. The right to appeal is only valid:

- (1) for a development application, within 12 months after the date on which the applicant received this notice, or
- (2) for a modification to the consent, within 3 months after the date on which the application received this notice.

**Appeals—Third Party**

A third party right to appeal to this development consent is available under Section 123, subject to Section 101, of the *Environmental Planning and Assessment Act, 1979*.

**Legal notices**

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

**Section 94 Conditions**

This development consent contains a levy for development imposed under section 94 of the Act. The imposing of levies is imposed in accordance with the Section 94 Contributions Plan District No. 5 – Tilligerry, adopted by Port Stephens Council on 23 June 1999 and Division 6 of the Act. The Contribution Plan may be inspected at Council's Customer Service Counter, 116 Adelaide Street, Raymond Terrace during normal business hours.

The specific public amenity or service or both are identified in the monetary contributions conditions in Part E of Schedule 2.

**PART C—DEFINITIONS**

In this consent,

**Act** means the *Environmental Planning and Assessment Act, 1979* (as amended).

**Applicant** means Mr J and Mrs G McMahon or any party acting upon this consent.

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

**BCA** means the Building Code of Australia.

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

**Council** means Port Stephens Council.

**DA No. 297-07-2003** means the development application and supporting documentation submitted by the applicant on 2 July 2003.

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

**Director** means the Director of the Urban Assessments branch (or its successors) within the Department.

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

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

**Minister** means the Minister for Infrastructure and Planning.

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

**Regulations** means the Environmental Planning and Assessment Regulations, 2000 (as amended).

**Senior Planner** means the Senior Planner, Urban Assessments branch (or its successors) within the Department.

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

**Team Leader** means the Team Leader, Urban Assessments branch (or its successors) within the Department.

**SCHEDULE 2 –****THE CONDITIONS OF CONSENT (INCLUDING ADVISORY NOTES)****DEVELOPMENT APPLICATION NO. 297-07-2003****PART A—ADMINISTRATIVE CONDITIONS****A1 Development Description**

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

- (1) 2 lot subdivision creating proposed lot 201 of approximately 7,500 square metres and proposed lot 202 of approximately 1.65 hectares (16,500 square metres).

**A2 Development in Accordance with Plans**

The development shall be generally in accordance with development application number 297-07-2003 submitted by the applicant on 2 July 2003 and in accordance with the supporting documentation submitted with that application, including, but not limited to, the following:

| <b>Survey Drawings prepared by Palmer Bruyn and Parker Consulting Surveyors</b> |                 |   |             |
|---|-----------------|---|-------------|
| <b>Drawing No.</b>  | <b>Revision</b> | <b>Name of Plan</b>   | <b>Date</b> |
| 34432   | A1              | Detail and levels over part of Lot 2 DP 382581 adjoining Frederick Drive at Oyster Cove | 8.10.2002   |

**A3 Subdivision Certificate**

An application under Part 4A of the Act shall be submitted to the consent authority along with a plan of subdivision prepared by a registered surveyor, for certification prior to the issue of the Subdivision Certificate.

**A4 Prescribed Conditions**

The Applicant shall comply with the prescribed conditions of development consent under clause 98 of the Regulation.

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

There are no conditions in respect of this part.

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

There are no conditions in respect of this part.

## **PART D—DURING CONSTRUCTION**

There are no conditions in respect of this part.

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

### ***E1 Easements***

All easements pertaining to Lot 2 DP 382581, being (A) Right of Carriageway, (B) Right of Way and (C) Easement for Watermain are to remain unaffected by the proposed subdivision. Details of the easements are to be submitted with the application for Subdivision Certificate.

### ***E2 Monetary Contributions***

In accordance with Division 6 of Part 4 of the Act, the Applicant shall pay the following monetary contributions:

#### **(1) Amount of Contribution**

| <b>Contribution Category</b> | <b>Rate of Contribution</b> | <b>Amount</b>      |
|------------------------------|-----------------------------|--------------------|
| Roads and/or intersections   | \$86 per daily vehicle trip | \$12,900.00        |
| <b>TOTAL</b>                 |                             | <b>\$12,900.00</b> |

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

The contribution shall be paid in the form of cash or bank cheque, made out to Council. Evidence of the payment to Council shall be submitted prior to the issue of the Subdivision Certificate.

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

The amount of contribution payable under this condition has been calculated on the basis of costs as at the date of consent. In accordance with the provisions of the Contributions Plan, this amount shall be INDEXED at the time of actual payment in accordance with movement in the Consumer Price Index as published by the Australian Bureau of Statistics. In this respect you should consult with Council prior to the payment of the contribution.

### ***E3 Requirements of Public Authorities for Connection to Services***

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

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

There are no conditions relevant to this part.

**PART G—POST OCCUPATION**

There are no conditions in respect of this part.

**PART H—GENERAL TERMS**

There are no conditions in respect of this part.

**ADVISORY NOTES*****AN1 Access Requirements***

Access to the proposed Subdivision from Oyster Cove Road is via a Right of Carriageway. The constructed road within that easement does not constitute public road. Therefore, neither the Department, the Council nor the Department of Lands has any responsibility for the future maintenance of this access way.

***AN2 Excavation – Aboriginal Relics***

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

***AN3 Excavation – Historical Relics***

Should any historical relics be unexpectedly discovered then all excavations or disturbance to the area is to stop immediately and the Heritage Council of NSW shall be informed in accordance with Section 146 of the *Heritage Act, 1977*.

***AN4 Street Numbering***

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

***AN5 Effluent Disposal***

Any future development on the lots created may require the prior approval of Council. A separate application is also to be submitted to Council for installation of an on-site sewage management system. This application is to be made in accordance with the provisions of Council's Effluent Disposal Policy.