

**Killcare Wagstaffe Trust Inc**  
**PO Box 4009 Wagstaffe 2257**



30<sup>th</sup> March 2009

The General Manager  
Gosford City Council  
PO Box 21  
Gosford 2250

**Objections to Proposal to modify or extinguish positive covenant and restriction to user**  
**276 Empire Bay Drive, Empire Bay**  
**Empire Bay Substation IR7241457**

The Trust would like to register an objection to the proposed development on the following grounds

The development consent for the Service Station, granted by the Land and Environment Court in 2003 also applied to the land included in this proposal. The judgement imposed conditions that included a vegetation buffer zone along Empire Bay Drive of 30m, regeneration of the swamp mahoganies that were removed and the retention of the swamp mahoganies on Wards Hill Road side of the site.

I reproduce the relevant sections of that judgement here for your benefit.

56 Mr Travers conceded that the existing regrowth swamp mahoganies on the east side of the service station driveways and parking areas need not be removed. They would survive if the existing table drain, the one to be removed, was filled with appropriate soils. The Court has formed the opinion this should be done.

83 The applicant in exhibit T volunteered additional bush regeneration near the Wards Hill Road and Empire Bay Drive intersection. This was only in front of the proposed stormwater detention pond and was only about 8 m wide. With the detention pond, that must remain unbuilt upon, the width is about 22 m parallel

to the property boundary. It seemed to the Court that the 30 m setback requirement from Empire Bay Drive was reasonable in that critical location and a width of 30 m bushland regeneration with the detention pond inside it should be required. The building and its ultimate single pylon sign would still be obvious to passersby, but the proposed setting and that of the Wards Hill turnoff to the Bouddi Peninsula would be enhanced in the way sought by the control plan.

86 Given that the canopy areas and the buildings proposed are offset at an angle to Empire Bay Drive with the nearest part of the canopy 11 m from the site boundary and the nearest point of the building 26 m from the site boundary, the Court has formed the opinion that acceptable visual impact of the proposal could be achieved with the landscape proposals as amended at the end of the hearing, plus further conditions. Those conditions are that the 30 m landscape buffer be added at the northeastern corner of the site as previously referred to, and that the new turf area noted on exhibit T north of the building between it and Empire Bay Drive be retained as a permanent unbuilt-upon landscaped area.

87 Also as previously referred to, the existing swamp mahoganies in the table drain east of the service station driveways and parking area must be retained and also the existing vegetation in the road reserve, except those needed to be removed to construct the left in and left out access from Empire Bay Drive.

We note that these conditions were not adhered to by the Service station development and that they appear to be disregarded in this current proposal. In particular the current regrowth of Swamp Mahoganies along the drain along Wards Hill Rd will have to be substantially removed to accommodate the new building.

This is completely unacceptable to us.

Yours Sincerely

David Legge