



Land and Environment Court
of New South Wales

CITATION : Minnici v Warringah Council [2009] NSWLEC 1098

PARTIES :

APPLICANT
Frank Minnici

RESPONDENT
Warringah Council

FILE NUMBER(S) : 11108 of 2008

CORAM: Bly C

KEY ISSUES: CONSENT ORDERS - DEVELOPMENT APPLICATION :-
mixed commercial retail and residential development, residential
amenity, traffic and parking, streetscape

LEGISLATION CITED: Environmental Planning and Assessment Act 1979
Warringah Local Environmental Plan 2000

DATES OF HEARING: 30-31/03/2009

DATE OF JUDGMENT: 3 April 2009

LEGAL REPRESENTATIVES:

APPLICANT
Mr I. Hemmings, barrister
Instructed by HPL Lawyers

RESPONDENT
Mr K. Webber, solicitor
of Wilshire Webb Staunton Beattie

JUDGMENT:

**THE LAND AND
ENVIRONMENT COURT
OF NEW SOUTH WALES**

Bly C

3 March 2009

11108 of 2008 Frank Minnici v Warringah Council

JUDGMENT

1 This appeal relates to a development application for the development of land at 5 and 5A Lawrence Street and 18 Marmora Street, Freshwater. The proposed development involves the demolition of a number of existing structures, the construction of three-storey retail and commercial building fronting Lawrence street, the construction of two three-storey residential flat buildings each containing five dwellings and the construction of a two-storey detached dwelling. Car parking for the commercial building is to be provided in a basement with access of Lawrence Street. Car parking for the residential flat buildings and the detached dwelling is to be provided in a basement with access off Marmora Street.

2 The irregular shaped site has an area of almost 2050 square metres with a frontage to Lawrence Street of about 20 m and a frontage to Marmora Street of about 7 m.

3 Adjoining the site in Lawrence Street is retail and commercial development. Marmora Street is generally characterised by detached single dwellings although the site is joined to the north by a church.

4 The site is subject to the provisions of the *Warringah Local Environmental Plan 2000*. That part of the site that is to be developed with the commercial and residential flat buildings is included in the H2 Locality. That part of the site that is to be developed with the detached dwelling house the access ramp to the residential basement and the central open space is included in the H1 Locality. The proposal is permissible with development consent.

5 The application was advertised and a large number of objections were received.

6 In May 2008 the development was the subject of an assessment report prepared by Miss A Sutherland, a council town planner. That report contains an analysis of the requirements of s 79C of the *Environmental Planning and Assessment Act 1979* and concludes that the proposal satisfies the applicable controls and that subject to a number of amendments it should be approved.

7 The application was also considered by Council's Independent Hearing and Assessment Panel. The panel recommended that the application be refused for reasons essentially comprising failure to comply with the desired future character statements for the H1 and H2 Localities and adverse amenity impacts on residents of Marmora Street.

8 The panel's recommendation was subsequently adopted by the Council and the development application was refused on 10 June 2008.

9 The proposal has since been modified and the council has now decided that it no longer objects to the application and has entered into consent orders.

10 The consent orders hearing began on-site when I had the opportunity of inspecting the site and its environs relevantly including Lawrence Street and Marmora Street. I also inspected the site of the adjoining church and the adjoining dwelling at 20 Marmora Street (Mr and Mrs. Jander). Following the inspection I heard from a number of concerned residents.

11 When the hearing continued in Court, all of the usual documents were tendered including the consent orders, a bundle of documents containing original residents objections, the council officers report and the panel's report. I was also provided with the applicant's statement of environmental effects and a very large bundle of more recently obtained written objections.

12 The principal matters of concern to the objectors are essentially as follows:

- The proposal fails to meet the requirements of the LEP and in particular does not comply with the character statements for the H1 and H2 localities.
- The proposal, especially three-storey residential flat buildings with a driveway into basement would be out of character with the Marmora Street streetscape.
- The proposal would introduce medium density development into a single dwelling locality and the residents of this kind of development would not fit in with the local community.
- The proposal would introduce additional traffic into Marmora Street thus adversely affecting local amenity including the pedestrian friendly environment.
- The proposal would generate additional demand for on street parking where this is already at a premium.
- The proposal would adversely affect the church's activities by placing additional demand on on-street parking and by introducing additional traffic into Marmora Street.
- The proposal would adversely affect the amenity of the dwelling house at 20 Marmora Street.

13 In relation to these concerns, I was assisted by the materials provided by the council and the applicant. I was also assisted by the oral evidence of Mr G. Shiels the council's consultant town planner and Mr R Player the applicant's consultant town planner.

14 As a consequence of the parties having entered into consent orders there are no matters in dispute between the parties that require resolution by the Court. Despite this I wish to comment on what appeared to be the three main matters of concern.

15 In relation to traffic and car parking I understand that the council's traffic engineers have no objection to the proposal. More particularly the number of car parking spaces provided for both the residential and commercial components (70 spaces) exceeds Council's minimum standard (59 spaces).

16 I understand that the residential component will generate some 5 to 10 vehicle trips (two-way per hour) in addition to the existing 25 vehicle trips in Marmora Street. Being a local road Marmora Street has an environmental goal of a maximum of 200 vehicle trips and the proposal does not cause

an increase of the total number of vehicle trips to anything like this number. In these circumstances I do not accept that refusal of the application for reasons of car parking and traffic is warranted.

17 As for the presentation of the development in the streetscape I note that the two residential flat buildings are appropriately located in the H2 Locality, with Building C positioned some 20 m and more from the site's frontage (at the driveway). This setback area is contained within the H1 Locality and is predominantly landscaped except for the access driveway to the basement that is positioned towards the eastern boundary of the site. The proposed detached dwelling house is also positioned about 20 m from the site's frontage in the H1 Locality.

18 The Desired Future Character Statement for the H1 Locality provides that:

The Freshwater Beach Locality will remain characterised by detached style housing in landscaped settings interspersed by existing apartment style housing...

Future development will maintain the visual pattern and predominant scale of existing detached style housing in the locality... the streets will be characterised by landscaped front gardens and consistent front building setbacks.

19 Mr Shiels and Mr Player agreed that the proposal is appropriately responsive to this statement. Whilst the front setback of the proposed detached dwelling house is set back behind the typical front building setbacks in Marmora Street this is compensated by the provision of extensive landscaping in the setback area. Similarly whilst the access driveway is uncharacteristically long and in part wide, at the street crossover it is little different to what otherwise would be provided for a detached dwelling house. Again taking into account the landscaped setting that is to be provided I agree that this is a reasonable outcome.

20 More generally I accept that the manner in which this development responds to the interface between two localities and to the Marmora Street streetscape is sufficiently responsive to the H1 Locality statement that refusal of the application in this regard would not be warranted.

21 In the H1 Locality a minimum rear building setback of 6 m is required. This setback area is to be landscaped. Clause 63A of the LEP contains objectives for the rear building setback requirement that, relevantly are:

*To create a sense of openness in rear yards, and
To preserve the amenity of adjacent land, and
To maintain the visual continuity and pattern of buildings, rear gardens and landscape elements, and
To provide opportunities to maintain privacy between dwellings and
To provide opportunities for the planting of substantial native trees.*

22 Mr and Mrs Jander's main concerns involve adverse impacts on the amenity of their rear yard and impacts resulting from the driveway on the rooms in their house that overlook it. Their rear yard comprises their principal private open space (about 11x9m) that is affected at the rear by an existing very tall brick wall associated with adjoining commercial development. (This wall also affects the proposed detached dwelling house). They are particularly concerned that the open outlook to the west that is presently available over the subject land would be replaced with built form resulting in the further enclosure or *boxing in* of their backyard.

23 In response to these concerns the applicant has provided plans that amend the design and set back

(rear and side) setbacks of the dwelling house. More particularly the house is, at ground floor level, to be set back 1.9 m and at first floor level to be set back 2.9 m from the rear boundary. These are the worst-case instances, because that part of the house at ground floor level within 3.8 m of the common side boundary is set back 6 m from the rear boundary. At first floor level the setback is about 6 m. Also, taking into account that the house has a stepped configuration the other side setbacks vary between 2.9 m and 1 m and generally averaging in excess of 2 m by comparison with a more common 900 mm setback. In this context applicant drew my attention to the proposed landscaping arrangements along the common boundary that include hedging plants, 2-3 m high that will grow above the 1.8 m high fence as well as a number of medium sized canopy trees, 6-8m high.

24 Mr Shiels and Mr Player both acknowledged that the sense of openness would be affected but not to the extent that the amenity of the rear yard at No.20 would be unreasonably affected. The design of the house results in their being no loss of privacy and the setbacks has now proposed provide opportunities for appropriate landscaping. Beyond amenity impacts, whilst the pattern of buildings might be interrupted there are no consequences of concern. More generally they also agreed that taking into account the house's compliance with the applicable height control, its considerable articulation and setbacks and landscaping its physical relationship to No. 20 is appropriate.

25 By positioning the proposed house towards the rear of the site this results in several west-facing windows in No. 20 overlooking the proposed driveway and private open space and towards proposed Building C some 20 m distance. Mr and Mrs. Jander were concerned about noise impacts from the driveway and its appearance.

26 The Desired Future Character statement for the H2 Locality requires that:

Development that adjoins residential land is not to reduce the amenity enjoyed by adjoining occupants. In this regard the built form of development in the villages to provide a transition to adjacent residential development, including reasonable setbacks from side and rear boundary is particularly above the ground floor level.

27 As for the relationship to Building C across the open space, recognizing that in the H2 Locality larger scale buildings are to be anticipated I agree with Mr Shiels that the landscaped private open space will provide the necessary and sufficient transition.

28 As for noise impacts, the applicant has agreed to a condition that requires the provision of an appropriate side (dividing) fence that Mr Shiels and Mr Player agree should reasonably mitigate such impacts from the driveway. As for the appearance of the driveway and cars using it, this should be mitigated by the landscaping (described above) that is to be provided along the boundary.

29 The question of whether approval of the proposed development would create an adverse precedent was also raised. However, given the unique circumstances of this case I do not accept that this is arises, particularly as I am satisfied that the proposal warrants approval.

30 As referred to above, during the proceedings the applicant tendered amended plans and leave is granted to rely on these.

Orders

31 The orders of the Court are therefore, by consent, that:

1. The appeal is upheld.
2. Development consent is granted to Development Application No.856/2007 for the

demolition of existing buildings and construction of a mixed use development comprising basement car parking, three-storey retail/commercial building, 10 residential apartments in two buildings and a detached dwelling and stratum subdivision at 5 and 5A Lawrence Street and 18 Marmora Street, Freshwater being Lots A & B in DP 37558 and Lot 9 in DP 103521 respectively subject to the conditions in Annexure A hereto.

3. No order as to costs in relation to the amended plans or these consent orders.

4. Exhibits A, B, E and 5 are retained

T A Bly
Commissioner of the Court
 ljr

Annexure 'A'
Conditions of Consent

Minnici v Warringah Council

CONDITIONS THAT IDENTIFY APPROVED PLANS

1. Approved Plans And Supporting Documentation

The development is to be carried out in compliance with the following plans and documentation listed below except where amended by other conditions of consent and as amended by SK01, SK02, SK03 and SK04 all dated 31 March 2009:

Drawing Number	Issue	Dated	Prepared By
DA02, DA03, DA04, DA05, DA06, DA10, DA15, DA16, DA17	A	5 September 2007	Blackmore Design Group
DA01, DA14, DA18, DA19	B	19 March 2008	Blackmore Design Group
DA08, DA09, DA11, DA12, DA13	C	27 February 2009	Blackmore Design Group
DA07, DA20	D	27 February 2009	Blackmore Design Group

No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

Note: Further information on Construction Certificates can be obtained by contacting Council's Call Centre on 9942 2111, Council's website or at the Planning and Assessment Counter.

Reason: *To ensure the work is carried out in accordance with the determination of Council*

and approved plans. (DACGBapasd)

1.A. The parapet of the single storey element of Building D as shown on SK01-SK04 is to be reduced in height by 850mm.

2. Approved Stormwater Plan

The stormwater drainage works are to be generally in accordance with the drainage plan submitted by Thomsonkane, drawing number 6134-1h DAH-00 P6, DAH-01 P5, DAH-02 P6, DAH-03 P6, DAH-05 P6, DAH-06 P5, DAH-07 P5 and DAH-08 P1 dated 19.02.08 and 15.11.07 and DAH-04 P6 dated 28.04.08.

Reason: To ensure appropriate provision for stormwater disposal arising from the development. (DACEBasp)

3. Approved Landscaping Plan

Landscaping works on the site are to be undertaken generally in accordance with the Landscaping plans numbered LC01 Issue C and LC02 Issue B prepared by Selena Hannan Landscape Design dated 27/02/2009.

Reason: To ensure appropriate landscaped area and landscaping amenity at the final inspection stage of the development. (DACLBalp)

3.A. The landscape plan is to be amended to reflect the relocation of Building D and to include additional native canopy trees in that increased setback

4. Building Code of Australia

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Reason: Prescribed - Statutory. (DACGBbca)

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

5. Front fence

Prior to the issue of the Construction Certificate, plans of the front fence are to be submitted to the Certifying Authority. The front fence, which is to have a maximum height of 1.65m is to extend along the Marmora Street frontage of the site and the length of the 6.5m front setback of No. 16 Marmora Street, Freshwater.

Reason: To minimise the visual impact of the security gates and front fence.

6. Deleted

7. Changes to Windows – Building D

All windows on the first floor of the eastern elevation of Building D are to be either obscure glass or are to have a minimum sill height of 1.7m from the first floor, floor level. Amended plans which satisfy these requirements are to be submitted to the Certifying Authority prior to

the issue of the Construction Certificate.

Reason: *To protect the privacy of adjoining development to the east.*

8. Acceptable form of Security Bonds

Council will accept a bank guarantee in lieu of cash for the purpose of any security bond imposed by these conditions of consent. Such bank guarantee shall be in a form acceptable to Council and shall not have an expiry date. The bank guarantee shall be in place prior to the issuing of any Construction Certificate and shall remain in place until the submission of the Final Occupation certificate or termination of any maintenance period.

Reason: Information, Protection of infrastructure and the environment. (DACECasb)

9. Bond for Construction, Excavation and Associated Works

A bond of \$10,000 shall be deposited with Council prior to the issue of the Construction Certificate as security against damage to Council's road(s) fronting the site caused by the transport and disposal of materials and equipment to and from the site.

Reason: *To ensure adequate protection to Council infrastructure. (DACECbceaw)*

10. Provision of Electricity

Prior to the issue of the Construction Certificate, evidence is to be submitted to the Certifying Authority that notification has been received from Energy Australia of electricity supply requirements for the development.

Reason: *To ensure that services have been provided as required by this Consent. (DACECpe)*

11. Pump-Out System Design for Stormwater Disposal

The design of the pump-out system for stormwater disposal will be permitted for drainage of basement areas only, and must be designed in accordance with all relevant Australian Standards and Codes by a suitably qualified professional.

Engineering details demonstrating compliance with this requirement and certified by an appropriately qualified and practising hydraulic engineer shall be provided to the Certifying Authority prior the issue of the Construction Certificate.

Note: The following Standards and Codes applied at the time of determination:

- Australian/New Zealand Standard AS/NZS 3500.3:2003 - Plumbing and drainage - Stormwater drainage
- Australian/New Zealand Standard AS/NZS 3500.3:2003/Amdt 1:2006 - Plumbing and drainage - Stormwater drainage
- National Plumbing and Drainage Code.

Reason: *To ensure adequate provision is made for the discharge of stormwater from the excavated parts of the site. (DACECpsdsd)*

12. Shoring of Adjoining Property

If it is proposed to provide shoring to support an adjoining property or Council land, owner's consent for the encroachment from the affected property owner shall be provided with the engineering drawings that are to be submitted prior to the issue of the Construction Certificate.

Council approval is required if temporary rock anchors are to be used within Council land.

Reason: Council owners consent for ancillary works, and to ensure the protection of adjoining properties and Council land. (DACECsap)

13. Bond for Engineering Construction Works - Stormwater

A Bond of \$5,000 shall be deposited with Council prior to the issue of the Construction Certificate against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure. (DACECbecs)

14. Structures Located Adjacent to Council Pipeline or Council Easement

All structures are to be located clear of any Warringah Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Policy Building Over or Adjacent to Constructed Council Drainage Systems and Easements. Structural details prepared by a suitably qualified Civil Engineer are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure. (DACECslajp)

15. Sub-Soil Seepage

All sub-soil seepage drainage shall be discharged via a suitable silt arrester pit, directly to Council's nearest stormwater drainage line being [INSERT]. Details of all plans compliant with the provisions of Australian/New Zealand Standard AS/NZS 3500.3.2003 Plumbing and drainage - Stormwater drainage and Australian/New Zealand Standard AS/NZS 3500.3.2003 / Amdt 1:2006 Plumbing and drainage - Stormwater drainage are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate drainage and stormwater management on site to protect amenity of residents. (DACECsss)

16. Vehicle Crossings Application - Formwork Inspection

An application for street levels shall be made with Council subject to the payment of fee applicable at the time of payment. The fee includes all Council inspections relating to the driveway construction and must be paid prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property. (DACECvcafi)

17. Waterproofing/Tanking of Basement Level

The basement area is to be permanently tanked or waterproofed. Details of the waterproofing/tanking are to be prepared by a suitably qualified Engineer and submitted and approved by the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent ingress of sub-surface flows into the basement area. (DACECwtbl)

18. Bond for Engineering Construction Works - Kerb and Gutter, Footpath and Vehicular Crossings

A Bond of \$10 000 shall be deposited with Council prior to the issue of the Construction Certificate against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter and any footpath works required as part of this consent.

***Reason:** To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure. (DACECbekgf)*

19. Bond for Silt and Sediment Control

The payment of \$10 000 shall be deposited with Council prior to the issue of the Construction Certificate as security to ensure that there is no transmission of material, soil etc off the site and onto the public road and/or drainage systems.

***Reason:** To ensure appropriate security against environmental damage. (DACECbssc)*

20. Car parking Details

Vehicular access and the internal layout of the car parks is to comply with Australian/New Zealand Standard AS/NZS 2890.1:2004 Parking facilities - Off-street car parking and Australian Standard AS2890.2:2002 Parking facilities - Off-street commercial vehicle facilities where relevant. Plans demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

***Reason:** To ensure the adequate provision of car parking. (DACECcpd)*

21. Development/Construction Security Bond

A bond (determined from cost of works) of \$5 000 must be deposited with Council and an inspection fee paid of \$200 prior to the issue of any Construction Certificate. This bond is to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

***Reason:** To ensure adequate protection to Council infrastructure. (DACECdcsb)*

22. Damage to Public Infrastructure

The applicant shall bear the cost of all restoration works to Council's property damaged during the course of this development. The applicant shall advise Council, in writing, of any existing damage to Council property. A dilapidation survey of Council's assets, including photographs and written record, must be prepared by a suitably qualified person and submitted to Council prior to the issue of the Construction Certificate.

Note: This documentation will be used to resolve any dispute over damage to infrastructure. It is in the applicant's interest for it to be as full and detailed as possible.

***Reason:** To ensure the protection of existing built public infrastructure. (DACECdpi)*

23. BASIX Certification

The development shall fully comply with the schedule of BASIX Commitments specified within BASIX Certificate No. 188829M. Plans and specifications that reflect those commitments identified on the BASIX Certificate to be satisfied prior to the issue of the Construction Certificate, shall be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: To ensure the development complies with the requirements of the SEPP (Building sustainability index: BASIX 2004). (DACGCbc)

24. Parking for People with Disabilities

Of the required number of car parking spaces at least one car-parking space must be provided for use by persons with a disability in both the retail/commercial component of the development and the residential component of the development.

The car parking spaces and access from the car parking spaces to other areas within the building are to comply with the Disability Discrimination Act 1992 and Australian/New Zealand Standard AS/NZS 2890.1:2004 Parking facilities Part 1: Off-street car parking and the relevant provisions of Australian Standard AS 1428.2-1992 Design for Access and Mobility - Enhanced and additional requirements - Buildings and facilities. Details demonstrating compliance with these requirements are to be submitted prior to the issue of the Construction Certificate.

Reason: To ensure equity of access and appropriate facilities are available for people with disabilities in accordance with Federal legislation. (DACGCppd)

25. Reflectivity Index of Glazing

The reflectivity index (expressed as a percentum of the reflected light falling upon any surface) of external glazing for windows, walls or roof finishes of the proposed development is to be no greater than 20%. Written confirmation of the reflectivity index of materials is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Note: The reflectivity index of glazing elements can be obtained from glazing manufacturers. Glass with mirrored or reflective foil finishes is unlikely to achieve compliance with this requirement.

Reason: To ensure that excessive glare or reflectivity nuisance from glazing does not occur as a result of the development. (DACGCrig)

26. Roofing Materials - Reflectivity

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. The metal roof shall not be of light colours such as off white, cream, silver or light grey colours. Details are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that excessive glare or reflectivity nuisance from roofing materials does not occur as a result of the development. (DACGCrmr)

27. Section 94A Contribution

\$90,000 is to be paid to Warringah Council as a Section 94A levy prior to the issue of the Construction Certificate.

This amount has been calculated using the Warringah Section 94A Development Contributions Plan. The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

The basis for the contributions is as follows:

<i>Warringah Section 94A Development Contributions Plan</i>		
Contribution based on total development cost of	\$	9,000,000.00
Contribution - all parts Warringah	Levy Rate	Contribution Payable Council Code
Total S94A Levy	0.95%	\$85,5006923
S94A Planning and Administration	0.05%	\$4,5006924
Total	1.0%	\$90,000

Reason: *To retain a level of service for the existing population and to provide the same level of service for the population resulting from new development. (dacgcS94ac)*

28. Structural Adequacy of Adjoining Buildings

A certificate from an appropriately qualified and practicing Structural Engineer, certifying the structural adequacy of the adjoining properties numbers 16 and 20 Marmora Street, 22-26 Albert Street and 9 Lawrence Street and their ability to withstand the proposed excavation works, shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate. The certificate shall detail any measures required to be incorporated into the work to ensure that no damage will occur to adjoining premises during the course of the works, and that the completed works will be structurally adequate.

Reason: *To ensure the protection and structural integrity of adjoining properties, and that common law property rights are recognized. (DACGCsaab)*

29. Structural Design Certificate

Structural drawings and certificate from a qualified structural engineer, certifying that the design is in accordance with all relevant Australian Standards and design codes shall be submitted to the Certifying Authority prior to issue of the Construction Certificate.

Reason: *To ensure the safety and structural adequacy of the approved development and compliance with the appropriate Australian Standards. (DACGCsdc)*

30. Construction Management Program

A Construction Management Program shall be submitted to the Certifying Authority prior to the issue of a Construction Certificate. The program shall detail:

- (a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- (b) Arrangements for truck access and anticipated number of truck movements;
- (c) The proposed phases of construction works on the site, and the expected duration of each construction phase;

- (c) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- (d) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process.
- (e) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- (f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- (g) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- (h) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent;
- (i) Proposed protection for Council and adjoining properties;
- (j) The location and operation of any on site crane;

Reason: *To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community. (DACGCcmp)*

31. Design for Access & Mobility – Retail and Commercial Component

The development must be designed to comply with the requirements of Australian Standard AS1428.2-1992 Design for Access and Mobility - Enhanced and additional requirements - Buildings and facilities and the access requirements of the Building Code of Australia. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: *To ensure equitable access to members of the community to all public facilities. (DACGCdam)*

32. Design for Access & Mobility – Residential Component

Building C must be designed to comply with the requirements of Australian Standard AS1428.2-1992 Design for Access and Mobility - Enhanced and additional requirements - Buildings and facilities and Units 7 and 9 must be designed to comply with the requirements of AS4299 – Adaptable Housing. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: *To ensure equitable access to members of the community to all public facilities. (DACGCdam)*

33. Dilapidation Survey

A dilapidation survey of adjacent buildings must be conducted prior to any site work. The lateral extent of the survey must cover the likely “zone of influence” of any excavation or construction induced vibration. The survey must be properly documented. The dilapidation report must be submitted to Council and the Certifying Authority prior to the issue of the Construction Certificate.

Reason: *Proper management of records. (DACGCds)*

34. Long Service Levy

Payment of the Long Service Levy is required prior to the release of the Construction Certificate. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work.

The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

Reason: *Prescribed - Statutory. (DACGCsl)*

35. Exhaust Fumes from Car Park

Any exhaust ventilation from the car park is to be ventilated away from the property boundaries of the adjoining dwellings in accordance with the provisions of the relevant Australian Standards. Details demonstrating compliance are to be submitted prior to the issue of the Construction Certificate.

Note: The following Australian Standard applied at the time of determination:

- Australian Standard AS1668.1:1998 - The use of ventilation and air-conditioning in buildings - Fire and smoke control in multi-compartment buildings.

Reason: *To preserve community health and ensure compliance with acceptable standards. (DACHCefcp)*

36. High Quality Lighting

External lighting is to be provided for security that complies with the relevant Australian Standard. Details are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Note: The following Australian Standard at the time of determination:

- Australian Standard AS4282 - 1997 Control of the obtrusive effects of outdoor lighting.

Reason: *To ensure lighting provides security and amenity. (DACHChql)*

37. Noise from Plant

A certificate from an appropriately qualified Acoustic Engineer is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate certifying that the development and all sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level during the day and evening and not exceeding the background level at night (10.00pm -6.00 am) when measured at the boundary of the property, and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.

Reason: *To comply with best practice standards for residential acoustic amenity. (DACHCnp)*

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

38. Public Liability Insurance - Works on Public Land

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$10 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Warringah Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land. (DACE Dplwip)

39. Road Opening Permit

The developer/applicant is to obtain a "Road Opening Permit" from Council and pay all appropriate charges prior to commencement of any work on Council property. The developer/applicant shall be responsible for all public utilities and services in the area of the work, and as such shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

Reason: Statutory requirement (Roads Act 1993). (DACE Drop)

40. Special Permits

Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development are to occur entirely on the property. The applicant, owner or builder must apply for specific permits available from Council's Customer Service Centre for the undermentioned activities on Council's property pursuant to Section 138 of the Roads Act 1993. A minimum of forty-eight (48) hours notice is required for all permits except work zones, which may require additional assessment time. (See below)

Permit for on-street mobile plant

Restrictions apply to the hours of operation and the area of operation for on street mobile plant equipment (for example cranes, concrete pumps, cherry pickers). Separate permits are required for each occasion and each piece of equipment. It is the responsibility of the applicant, owner and builder to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

Hoarding Permit

Permits are required to erect Class A, Class B and Class C hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

Storage of building materials and building waste containers (skips) on Council's property

Permits to utilise Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice being given.

Kerbside restrictions, work zones

Existing kerbside restrictions apply. An application must be made to Council for the alteration of existing kerbside restrictions or the provision of a construction zone.

Reason: *Proper management of public land. (DACEDsp)*

41. Excavation/Building Works

No excavation or building works shall be carried out until a Construction Certificate has been issued.

Reason: *To ensure compliance with statutory provisions. (DACGDebw)*

42. Home Building Act

(1) Building work that involves residential building work (within the meaning and exemptions provided in the Home Building Act 1989) must not be carried out unless the Principal Certifying Authority for the development to which the work relates:

(a) in the case of work to be done by a licensee under that Act:

(i) has been informed in writing of the licensee's name and contractor licence number, and

(ii) is satisfied that the licensee has complied with the requirements of the Home Building Act, or

(b) in the case of work to be done by any other person:

(i) has been informed in writing of the person's name and owner-builder permit number, or

(ii) has been given a declaration, signed by the owner of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner-builder work in section 29 of that Act, and is given appropriate information and declarations under paragraphs (a) and (b) whenever arrangements for the doing of the work are changed in such a manner as to render out of date any information or declaration previously given under either of those paragraphs.

Note: The amount referred to in paragraph (b)(ii) is prescribed by regulations under the Home Building Act 1989. As at the date on which this Regulation was gazetted, that amount was \$3,000. As those regulations are amended from time to time, that amount may vary.

(2) A certificate purporting to be issued by an approved insurer under Part 6 of the Home Building Act 1989 that states that a person is the holder of an insurance policy issued for the purposes of that Part is, for the purposes of this clause, sufficient evidence that the person has complied with the requirements of that Part.

(3) If arrangements for doing residential building work are changed while the work is in progress so that the information submitted to Council is out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council), has given the Council written notice of the updated information.

Reason: *Prescribed - Statutory. (DACGDhba)*

43. Notice of Commencement

At least 2 days prior to work commencing on site Council must be informed, by the submission

of a Notice of Commencement in Accordance with Section 81A of the Environmental Planning and Assessment Act 1979 of the name and details of the Principal Certifying Authority and the date construction work is proposed to commence.

Reason: *Legislative requirement for the naming of the PCA. (DACGDnc)*

44. Site Sign

(1) A sign must be erected in a prominent position on any work site on which work involved in the erection or demolition of a building is being carried out:

- (a) stating that unauthorised entry to the work site is prohibited;
- (b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
- (c) showing the name, address and telephone number of the Principal Certifying Authority for the work.

(2) Any such sign must be maintained while to building work or demolition work is being carried out, but must be removed when the work has been completed.

(3) This condition does not apply to building works being carried out inside an existing building.

Reason: *Statutory requirement. (DACGDss)*

45. Toilets

(1) Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

(2) Each toilet provided:

- (a) must be a standard flushing toilet, and
- (b) must be connected:
 - (i) to a public sewer; or
 - (ii) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council, or
 - (iii) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.

(3) The provision of toilet facilities in accordance with this clause must be completed before any other work is commenced.

(4) In this clause:

accredited sewage management facility means a sewage management facility to which Division 4 Sub-division 5 of the Local Government (General) Regulation 2005 applies, being a sewage management facility that is installed or constructed to a design or plan the subject of a certificate of accreditation referred to in of the Regulation.

approved by the Council means the subject of an approval in force under the Local Government (General) Regulation 2005.

public sewer has the same meaning as it has in the Local Government (General) Regulation 2005.

sewage management facility has the same meaning as it has in the Local Government (General) Regulation 2005.

Reason: *To ensure adequate facilities are provided for workers on the site. (DACGDt)*

46. Waste Collection Contract

Prior to the commencement of work, written evidence is to be submitted to the Certifying Authority that there is a contract with a licensed contractor for the removal of demolition waste.

Reason: *To maintain the property in a safe and hygienic state. (DACHDwcc)*

47. Protection of Trees During Works

All trees that are to be specifically nominated to be retained by notation or condition as a requirement of development consent shall be maintained and protected during demolition, excavation and construction on the site. Details of required protection methods shall be provided to the Certifying Authority by an appropriately qualified person prior to commencement of any works on the site.

Reason: *To ensure compliance with the requirement to retain significant planting on the site. (DACLDptdw)*

CONDITIONS THAT MUST BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

1. Applicant's Cost of Work on Council Property

The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

Reason: *To ensure the proper management of public land. (DACEEacwcp)*

2. Prohibition on Use of Pavements

No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without prior Council Approval.

Reason: *To ensure public safety and amenity on public land. (DACEEpup)*

3. Traffic Control During Road Works

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with Council's Minor Works Policy and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works.

Reason: *Public Safety. (DACEEtdrw)*

4. Vehicle Crossings

The provision of 2 vehicle crossings, 6 metres wide to Lawrence Street and 3 metres wide to Marmora Street, in accordance with Warringah Council Drawing No A4-3330/1 Normal and specifications. An authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

For details see Warringah Council's website <<http://www.warringah.nsw.gov.au>> or phone (02) 9942 2111.

Reason: *To facilitate suitable vehicular access to private property. (DACEEvc)*

5. Footpath Restoration

The applicant shall reinstate the concrete paving to the Lawrence Street frontage of the site. The works shall be in accordance with the following:

- (a) All footpath works are to be constructed in accordance with Council's Minor Works Specification.
- (b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Council's specification for footpath.
- (c) The preferred crossfall of the footpath is to be 3% (1 in 33.3) rising from the top of the existing kerb. The maximum allowable crossfall of the footpath is to be 5% (1 in 20).
- (d) All costs associated with the works are to be borne by the applicant.

Reason: *To ensure compliance of footpath works with Council's specification for engineering works. (DACEEfc)*

6. Installation and Maintenance of Sediment Control

Techniques used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Soils and Construction Manual Volume 1 - Managing Urban Stormwater. All techniques shall remain in proper operation until all development activities have been completed and the site fully stabilised.

Reason: *To protect the environment from the effects of sedimentation and erosion from development sites. (DACEImsc)*

7. Layback Construction

A layback, 6 metres wide to Lawrence Street and 3 metres wide to Marmora Street (excluding the wings), is to be constructed in accordance with Warringah Council Drawing No A4-2276 and specifications.

Reason: *To facilitate suitable vehicular access to private property. (DACEElc)*

8. Maintenance of Road Reserve

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: *Public Safety. (DACEEmrr)*

9. Notification of Inspections

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Prior to connection into Council's existing stormwater pit

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification. Council approval or acceptance of any stage of the work must be obtained in writing, and will only be issued after completion of the work to the satisfaction of Council and receipt of the required certification.

Reason: *To ensure new Council infrastructure is constructed to Council's requirements. (DACEEni)*

10. Structural Adequacy and Excavation Work

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required.

All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
(b) comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

Before excavation, the responsible person must notify their intention to the adjoining owner/s and shall at the same time furnish to such owner/s particulars of the work proposed to be carried out.

Reason: *Safety. (DACEEsaew)*

11. Plant & Equipment Kept Within Site

All plant and equipment used in the erection of the building, including concrete pumps, wagons, lifts, mobile cranes, etc, shall be situated within the boundaries of the site and so placed that all concrete slurry, water, debris and the like shall be discharged onto the building site, and is to be contained within the site boundaries. This condition shall be complied with during demolition and building work.

Reason: *To ensure public safety and amenity on public land. (DACGEpekws)*

12. Plans on Site

A copy of all stamped approved plans, specifications and documents (including the Construction Certificate if required for the work incorporating certification of conditions of approval) shall be kept on site at all times so as to be readily available for perusal by any officer of Council or the Certifying Authority.

Reason: *To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information and to ensure ongoing compliance. (DACGEpos)*

13. Protection of Public Places

(1) If the work involved in the erection or demolition of a building:

(a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or

(b) building involves the enclosure of a public place,

a hoarding and site fencing must be erected between the work site and the public place.

(2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.

(3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

(4) Any such hoarding, fence or awning is to be removed when the work has been completed.

(5) No access across public reserves or parks is permitted.

Note: Prior to the erection of any temporary fence or hoarding over property owned or managed by Council, written approval must be obtained.

Reason: To ensure public safety and the proper management of public land. (DACGEppp)

14. Removal of All Temporary Structures/Material and Construction Rubbish

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from site.

Reason: To ensure bushland management. (DACGErtsmc)

15. Construction Hours

Building construction shall be restricted to within the hours of 7.00 am to 5.00 pm Monday to Friday and on Saturday to within the hours of 8.00 am to 1.00 pm inclusive, with no work on Sundays and Public Holidays.

Demolition and excavation works shall be restricted to within the hours of 8.00 am to 5.00 pm Monday to Friday only. (Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

Where it is necessary for works to occur outside those hours allowed by these conditions, approval for such will be subject to issue of a permit on each occasion from Council's Customer Services Centre. Such permit must be obtained and the appropriate fee paid at least two (2) clear working days in advance of each relevant date. Such occurrence shall be limited to two occasions per calendar month and shall only be approved if public safety or convenience is at risk.

Note: Failure to obtain a permit for work outside of the approved hours will result in on the spot fines being issued, or Council pursuing any action required (including legal proceedings) to have the out of hours work cease, without prior warning.

Reason: *To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACGEch)*

16. Demolition Works

All Demolition Work shall be carried out in a safe manner by trained personnel under the management of a licensed demolisher who is registered with the WorkCover Authority, in accordance with all relevant Acts, Regulations and Australian Standards.

Note: The following Australian Standard applied at the time of determination

- Australian Standard AS2601.2001 - Demolition of Structures

Reason: *To ensure a satisfactory standard of demolition works. (DACGEdw)*

17. Excavation / Backfilling

All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.

All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

Reason: *To ensure that work is undertaken in a professional and responsible manner and protect adjoining property and persons from potential damage. (DACGEeb)*

18. Support for Neighbouring Buildings

(1) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- (a) must preserve and protect the building from damage;
- (b) if necessary, must underpin and support the adjoining building in an approved manner Subject to adjoining owner's consent; and
- (c) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(2) The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

(3) In this clause, allotment of land includes a public road and any other public place.

Reason: *To ensure adjoining owner's property rights are protected and protect adjoining properties from potential damage. (DACGEg)*

19. Health and Safety

The work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements.

Reason: *To ensure the health and safety of the community and workers on the site. (DACGEhs)*

20. Sediment and Erosion Control Signage

A durable sign, which is available from Council, shall be erected during building works in a prominent location on site, warning of penalties should appropriate erosion and sedimentation control devices not be maintained.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites. (DACHEsecs)

21. Dust emission and air quality

Materials must not be burnt on site.

Vehicles entering and leaving the site with soil or fill material must be covered.

Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the Landcom's Managing Urban Stormwater: Soils and Construction (The 'Blue Book'). Odour suppression measures must be carried out so as to prevent nuisance occurring at neighbouring properties.

Reason: To ensure residential amenity is maintained in the immediate vicinity. (DACHEdeaq)

22. Site Stabilisation

Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully re-turfed and the site must be maintained in a safe and clean state until such time as new construction works commence.

Reason: To retain topsoil and minimise dust pollution. (DACHEss)

23. Waste Management Plan

Material to be removed from the site must be source separated on site to maximise recycling, and the material disposed of to an appropriate disposal and recycling facility in accordance with the approved Waste Management Plan.

Reason: To maximise reuse and recycling of material and protect the environment from illegal dumping. (DACHEwmp)

24. Noise and Vibration

Noise emissions and vibration must be minimised where possible and work is to be carried out in accordance with Department of Environment and Climate Change (formerly) Environment Protection Authority guidelines for noise emissions from construction/demolition works and must also comply with the provisions of the Protection of the Environment Operations Act 1997. This Condition must be complied with during demolition and building work.

Reason: To ensure residential amenity is maintained in the immediate vicinity. (DACHEnv)

25. Removing, Handling and Disposing of Asbestos

Any works involving asbestos based products in relation to removal, handling and disposing of material must be undertaken in accordance with all relevant Acts, Regulations, Guides and Codes.

Note: The following standards applied at the time of determination:

- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)] and
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)]

Reason: *To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily. (DACHErhda)*

26. Protection of Trees

All trees which are not listed as exempt or noxious in Warringah that are not indicated for removal on Landscape Concept Plan Drawing Number LC01C prepared by Selena Hannan Landscape Design Dated 27.2.2009 are to be protected. Tree Nos. 1, 2 and 3, as identified on the Landscape Concept Plan, are on an adjoining property. As concurrence of the property owners has been obtained, these trees may be removed, however permission to access the property is to be sought from the owners prior to works being undertaken.

Reason: *Protection of existing environmental infrastructure and community assets. (DACLEpt)*

27. Trees

(1) Tree roots of 50mm or greater in diameter encountered during excavation, shall only be cut following consultation with a qualified Arborist. Tree roots between 10mm and 50mm in diameter, severed during excavation, shall be cut cleanly by hand.

Reason: Protection of trees.

(2) Underground services should use common trenches as far away from tree roots as possible. If the services need to be run within the protection zone, all utility pipes are to be laid using appropriate directional boring techniques. Directional Boring shall be carried out at least 600mm beneath natural ground to avoid damage to tree/trees root system. Entry and exit points are to be located outside the protected area. No tree roots are to be severed, or damaged during this work. Should problems arise, work is to cease until those problems are resolved and confirmed in writing by Council's Tree Management Officer.

Reason: Protection of trees.

(3) All overhead utility services are to be located outside the canopies of existing trees.

Reason: Protection of trees.

(4) The following guidelines are to be complied with at all times:

- (a) The applicant shall ensure that at all times during the development period no activities, storage or disposal of materials shall take place beneath the canopy of any tree covered under Council's Tree Preservation Order unless specifically approved by Council.
- (b) Trees marked for retention are not to be damaged or used to display signage, or as fence or cable supports for any reason.
- (c) Siting of sheds, stockpiles and vehicle parking should be sited so that they are remote from trees.

(d) Site personnel are to be made aware of tree requirements and protective measures. Paving materials placed within the dripline of any tree should be of a porous material.

Reason: Protection of trees.

(5) During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

The presence of any of these symptoms or signs may be considered by Council as a breach of the Conditions of Development Approval.

Reason: Protection of trees.

(6) All trees on neighbouring properties (other than those which have been approved to be removed) are to be protected from adverse impacts caused by the works. Any excavations or changes of level occurring within the canopy of trees on neighbouring properties shall only be undertaken following consultation by a suitably qualified Arborist.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees. (DACLEt)

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

CONDITIONS

75. Easement for Drainage

An easement for drainage (under the provisions of Section 88B of the Conveyancing Act) is to be created on the title to ensure all Council drainage infrastructure is located within the appropriate easement(s), prior to the issue of the Occupation Certificate. Dimensions and

location of the easement for drainage shall be in accordance with Council's "Building Over or Adjacent to Constructed Council Drainage system and Easements" Policy, PAS-PL 130. The terms of such easement, (available from Warringah Council), are to be prepared by a registered surveyor to Warringah Council's standard requirements at the applicant's expense. Warringah Council shall be nominated as a party to release, vary or modify such restriction.

Reason: To comply with Council's standards and Statutory requirements of the Conveyancing Act 1919.

76. Easement to Drain Water – Overland flow path

An easement to drain water shall be created in favour of Council over the overland flow path to encompass the 1 in 100 year recurrence frequency predicted water surface level. The easement is to be created on the title, prior to the issue of the Occupation Certificate. The terms of such easement, (available from Warringah Council), are to be prepared by a registered surveyor to Warringah Council's standard requirements at the applicant's expense. Warringah Council shall be nominated as a party to release, vary or modify such restriction.

Reason: To identify flood affected areas on the property title.

77. Restriction as to User (Overland flow path)

A restriction as to user shall be created on the title over the overland flow path, restricting any alteration to the levels and/or any construction on the land, prior to issue of the Occupation Certificate. The terms of such restriction, (available from Warringah Council), are to be prepared by a registered surveyor to Warringah Council's standard requirements at the applicant's expense. Warringah Council shall be nominated as a party to release, vary or modify such restriction.

Reason: To ensure no modification of the overland flow path without Council's approval.

78. Authorisation of Legal Documentation Required for On-site Stormwater Detention

The original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved drainage plan) and hydraulic engineer's certification must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land. (DACEFaldsd)

79. Creation of Positive Covenant and Restriction as to User

Where any conditions of this Consent require the creation of a positive covenant and/or restriction as to user, the original completed request forms (Department of Lands standard forms 13PC and/or 13RPA), shall to be submitted to Warringah Council for authorisation. A certified copy of the documents shall be provided to Warringah Council after final approval and registration has been affected by the "Department of Lands" prior to issue of the Interim/Final Occupation Certificate.

Reason: To identify encumbrances on land. (DACEFcpcru)

80. Registration of Encumbrances for On-site Stormwater Detention

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted to Council prior to the issue of an Interim/Final Occupation Certificate.

Reason: To identify encumbrances on land. (DACEFreosd)

81. Reinstatement of Kerb

Prior to the issue of an Interim/Final Occupation Certificate all redundant laybacks and vehicular crossings shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

Reason: To facilitate the preservation of on street parking spaces. (DACEFrk)

82. Restriction as to User for On-site Stormwater Detention

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land prior to the issue of an Interim/Final Occupation Certificate. The terms of such restriction are to be prepared to Council's standard requirements (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgment with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such restriction.

Reason: To ensure no modification to the on-site stormwater detention structure without Council's approval. (DACEFrusd)

83. Stormwater Disposal Certification

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified professional. The certification is to be submitted to the Principal Certifying Authority prior to the issue of an Interim/Final Occupation Certificate.

Note: The following Standards and Codes applied at the time of determination:

- Australian/New Zealand Standard AS/NZS 3500.3:2003 - Plumbing and drainage - Stormwater drainage
- Australian/New Zealand Standard AS/NZS 3500.3:2003/Amdt 1:2006 - Plumbing and drainage - Stormwater drainage
- National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for disposal of stormwater arising from the development. (DACEFsd)

84. Undergrounding of Telecommunications Services

All telecommunications services to the development must be provided underground prior to the issue an Interim/Final Occupation Certificate.

Reason: Provision of telecommunication facilities in a manner that facilitates the future underground provision of cable services. (DACEFuts)

85. On-Site Stormwater Detention Compliance Certification

Upon completion of the on-site stormwater detention (OSD) system, certification from a

consulting engineer and a “work as executed” (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans. The Compliance Certificate is to be submitted to the Principal Certifying Authority prior to the issue of an Interim/Final Occupation Certificate.

Reason: *To ensure stormwater disposal is constructed to Council’s satisfaction. (DACEFosdcc)*

86. Positive Covenant for the Maintenance of Stormwater Pump-out Facilities

A Positive Covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the property title to ensure the on-going maintenance of the stormwater pump-out facilities on the property being developed.

Warringah Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Warringah Council’s Authorised Officer shall sign these documents prior to the submission to the Land & Property Information Department. Evidence of the registration of the instrument referred to in this condition is to be provided to Council prior to the issue of an Interim/Final Occupation Certificate.

Reason: *To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard. (DACEFpcmsp)*

87. Positive Covenant for On-site Stormwater Detention

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council prior to the issue of an Interim/Final Occupation Certificate. The terms of the positive covenant are to be prepared to Council’s standard requirements, (available from Warringah Council), at the applicant’s expense and endorsed by Council prior to lodgment with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

Reason: *To ensure ongoing maintenance of the on-site stormwater detention system. (DACEFpcosd)*

88. Access for People with Disabilities– Retail and Commercial Component

Prior to the issue of an Interim/Final Occupation Certificate provision shall be made for access to and within the retail/commercial building on the site (Building A) for persons with a disability in accordance with the provisions of Australian Standard AS 1428.2-1992 Design for Access and Mobility - Enhanced and additional requirements - Buildings and facilities and the Access requirements of the Building Code of Australia.

Reason: *Equitable access for people with a disability. (DACGFapd)*

89. Design for Access & Mobility – Residential Component

Prior to the issue of an Interim/Final Occupation Certificate provision shall be made for access to and within Building C for persons with a disability in accordance with the provisions of Australian Standard AS 1428.2-1992 Design for Access and Mobility - Enhanced and additional requirements - Buildings and facilities. Units 7 and 9 shall comply with the

requirements of AS4299 – Adaptable Housing.

Reason: *To ensure equitable access to members of the community to all public facilities.*
(DACGCdam)

90. Garbage and Recycling Facilities

Prior to the issue of an Interim/Final Occupation Certificate, garbage facilities are to be constructed in accordance with Warringah Council's Code for Waste Handling in Residential Buildings. All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Reason: *To ensure the provision of appropriate waste facilities for residents and protect community health, and to ensure efficient collection of waste by collection contractors.*
(DACGFgrf)

91. House / Building Number

Prior to the issue of an Interim/Final Occupation Certificate, the house/building number is to be affixed to the buildings.

Reason: *Proper identification of buildings.* (DACGFhbn)

92. Occupation Certificate Required

An Interim / Final Occupation Certificate shall be obtained in relation to the approved works prior to any use or occupation of those parts of the building.

Note: In issuing an Interim / Final Occupation Certificate the Principal Certifying Authority must be satisfied that the requirements of Section 109H of the Environmental Planning and Assessment Act 1979 have been satisfied.

Reason: *To ensure compliance with the provisions of the Environmental Planning and Assessment Act.* (DACGFocr)

93. Sydney Water

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: *To ensure compliance with the statutory requirements of Sydney Water.* (DACGFsw)

94. BASIX Compliance Certification

Prior to the issue of an Interim/Final Occupation Certificate, all the selected BASIX commitments as detailed in the BASIX Certificate, lodged with the Development Application, must be completed.

Reason: To ensure the development complies with the requirements of the SEPP (Building sustainability index: BASIX 2004). (DACGFbcc)

95. Consolidation of Lots

Prior to the issue of an Interim/ Final Occupation Certificate Lots 9 Sec 2 DP 10321, Lot A and B DP 375558 are to be consolidated into one lot and evidence of the registration of the appropriate survey plan by Land & Property Information is to be submitted to the Principal Certifying Authority.

Reason: To ensure the orderly development of land. (DACGFcl)

96. Access and Egress from Lawrence Street

Vehicles are not permitted to turn right into, or out of, the driveway on Lawrence Street. Signs shall be erected in this regard prior to the issue of the Occupation Certificate.

Reason: To ensure safe vehicular access and egress.

97. Car parking Layout

All car spaces are to be line marked in accordance with the car parking layout on the approved plans prior to the issue of an Interim/Final Occupation Certificate.

Reason: To clearly identify car parking spaces in accordance with the approved plans. (DACGFcpl)

98. Fire Safety Matters

At the completion of all works, a Fire Safety Certificate will need to be compiled which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000. (DACGFfsm)

99. Noise Impact of Plant

All sound producing plant, equipment, machinery or fittings associated with or forming part of the mechanical ventilation system and/or the refrigeration system, shall be sound insulated and/or isolated so that the noise emitted does not exceed 5 dB(A) above the background level (LA90) during the day when measured at the nearest affected residence. For assessment purposes, the above LAeq sound levels are to be adjusted in accordance with Environment Protection Authority's NSW Industrial Noise Policy guidelines for tonality, frequency weighting, and impulsive characteristics where necessary, at any time the plant is in operation,

at the boundary of the site.

A report and certification prepared by an appropriately qualified or accredited person shall be submitted to the Principal Certifying Authority demonstrating compliance with this condition prior to the issue of an Interim / Final Occupation Certificate.

Note: The method of measurement of sound shall be carried out in accordance with Australian Standard AS1055.1 - 1997 Acoustics - Description and measurement of environmental noise - General procedures.

Reason: To ensure that noise generated from the development does not result in offensive noise to any other party. (DACHFnip)

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

100. Allocation of Spaces 44 car parking spaces shall be provided and maintained at all times for the commercial /retail component of the development and 19 car parking spaces shall be provided and maintained at all times for the residential component of the development. Of the required number of car parking spaces at least 2 car-parking spaces must be provided for use by persons with a disability (one space in the commercial/retail component of the development and one space in the residential component of the development). The spaces shall be allocated in the following proportions: 17	-	Residential (excluding visitor spaces)	
2	-	Residential - Visitors	
44	-	Building A	

The dwelling in Building D is to be allocated two carparking spaces.

The 44 spaces available for the commercial/retail component of the development are to be allocated to each shop/office or business premises generally in accordance with the minimum car parking requirements of Schedule 17 of Warringah Local Environmental Plan 2000 unless a communal carparking area is provided for the visitors or customers of Building A. If a communal area of carparking is provided for visitors to the commercial/retail component of the development, all retail/commercial tenancies must be allocated at least 2 spaces for staff parking.

Car-parking provided shall only be used in conjunction with the uses contained within the development. Each car parking space allocated to a particular residential unit or tenancy shall be line marked and numbered or signposted to indicate the unit/tenancy to which it is allocated.

Reason: To ensure that adequate parking facilities to service the development are provided on site. (DACGGas)

101. Loading Within Site

All loading and unloading operations shall be carried out wholly within the confines of the site and within the approved loading areas, at all times.

Reason: *To ensure that deliveries can occur safely within the site and does not adversely affect traffic or pedestrian amenity. (DACGGlws)*

102. Separate Development Application for Signs

A separate Development Application for any proposed signs (other than exempt and complying signs under Council's exempt and complying controls) must be submitted for the approval of Council prior to the erection or display of any such signs.

Reason: *Control of signage. (DACGGsdas)*

103. Separate Development Application for other uses

A separate development application is to be submitted for uses of Building A other than 'shops', 'offices' and 'business premises' as defined in Warringah Local Environmental Plan 2000. A separate development application is to be submitted for any uses which prepare and handle food for consumption on site or takeaway.

The shops may be open for business only between the following hours:

7am to 7pm Monday to Sunday

Reason: *To ensure the uses within the development are in accordance with the consent.*

104. Space Enclosure

No parking spaces, or access thereto shall be constrained or enclosed by any form of structure such as fencing, or the like, without prior consent from Council.

Reason: *To ensure that minimum dimensions for parking spaces are not reduced or that vehicle maneuvering is compliant with relevant standards. (DACGGse)*

105. Visitor Carparking

Visitor carparking must be permanently available and clearly marked. The visitor car parking spaces area not to be reallocated.

Reason: *To ensure visitor carparking is available at all times and is clearly identified. (DACGGvc)*

106. Visitors Sign

A sign, legible from the street, shall be permanently displayed to indicate that visitor parking is available on the site and the visitor car parking spaces shall be clearly marked as such.

Reason: *To ensure that visitors are aware that parking is available on site and to identify those spaces to visitors. (DACGGvs)*

107. Commercial Waste Collection

Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

Reason: *To ensure the acoustic amenity of surrounding properties. (DACGGcwc)*

108. Commercial Waste and Recycling Storage

Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed. (DACGGcwsr)

109. Delivery Hours

No deliveries, loading or unloading associated with the premises are to take place between the hours of 10pm and 6am on any day.

Reason: To ensure the acoustic amenity of surrounding properties. (DACGGdh)

110. Noise Generation

Noise from the combined operation of all mechanical plant and equipment shall not generate noise levels that exceed 5dB(A) above the ambient background noise level measured at the nearest residential property boundary when measured in accordance with the Environment Protection Authority's NSW Industrial Noise Policy.

Reason: Health & amenity. (DACHGng)

CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE

111. Allocation of Parking and Visitor Parking

Carparking provided shall only be used in conjunction with the units and tenancies contained within the development in the case of Strata subdivision, and shall be individually allocated to residential units as part of their unit entitlement.

Visitor parking facilities required by this consent are to be designated as common property on the strata plan, and under no circumstances shall Strata By-Laws be created to grant exclusive use of nominated Visitors Parking spaces to occupants/owners of units or tenancies within the building.

Reason: Provision of adequate on site parking facilities to service the development. (DACGHavp)

112. Release of Subdivision Certificate

To enable the lodgement of the linen plan at the NSW Land and Property Information Department the Subdivision Certificate shall not be issued until the Final Occupation Certificate for the approved development.

Reason: To ensure that the plans relate to approved development. (DACGHrsc)

113. Subdivision Certificate Application

Prior to the issue of the Subdivision Certificate, a completed Subdivision Certificate form, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919 are to be submitted to Council. Nine copies of the final plan of subdivision are to be submitted. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: *Statutory requirement of the Conveyancing Act 1919. (DACGHsca)*

114. Lawrence St Median Strip

The extension to the median strip in Lawrence Street and shown on plan DA07D, shall be constructed by the Applicant at its cost, but only if approval is granted by the local traffic committee

Reason: *Traffic safety*

115. Right of Carriageway

The Applicant agrees to grant Lot 8/1/10321 a right of carriage way over a triangular portion of current Lot 394/752038 measuring approximately 1m x 1m in the north western corner, subject to Lot A/256986 granting a right of way in favour of Lot 8/1/10321

Reason: *To preserve neighbour amenity*

116. Tree Protection

The brush box tree on the road reserve in Marmora Street adjacent to the proposed access driveway and depicted as tree 13 in the Tree Report dated 9 July 2007 by S Hannan Landscape Design ("tree report") shall be retained and the driveway construction works are not to cause injury or damage to the tree. To this end the driveway works shall be undertaken in accordance with the recommendations as set out in the tree report.

Reason: *Tree protection*

117. Acoustic Fencing

An acoustic barrier, being a lapped and capped timber fence (the fence), shall be erected at the applicant's expense on the boundary between numbers 18 and 20 Marmora Street. The fence shall be 1.8 metres in height from the southern most point of the boundary to 9 metres from the northern most point of the boundary. For the remaining 9m of the boundary, the fence shall taper down to be 1 metre in height for the majority of the 9 metre length.

Reason: *To preserve neighbour amenity*

T A Bly
Commissioner of the Court
ljr

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[Previous Page](#) | [Back to Caselaw Home](#) | [Top of Page](#)

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