



**Land and Environment
Court**
of New South Wales

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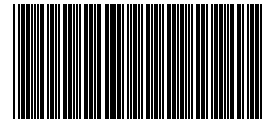
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Your Ref:



D000140K8Q

20 March 2019

NOTICE OF ORDERS MADE

Case number 2018/00215027
Case title Dax McBurney v Northern Beaches Council

On 20 March 2019 the following orders (and/or directions) were made:

(1) The Applicant is granted leave to amend the development application which is the subject of these proceedings in accordance with the amended drawings and other amended material set out in condition 1 in Annexure "A".

(2) The appeal is upheld.

(3) Development Application No. 2017/1348, which was lodged with the Respondent on 22 December 2017, for construction of a tennis court at 5 Bibbenluke Avenue, Duffys Forest, is approved subject to the conditions contained in Annexure "A".

For the Registrar

Annexure A
McBurney v Northern Beaches Council
 Conditions of Consent

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans		
Drawing No.	Dated	Prepared By
Stormwater Drainage and Landscape Plan Revision 4	18.02.19	ACOR Consultants Pty Ltd
Tennis Court Sections Revision 2	18.02.19	ACOR Consultants Pty Ltd
Structural Services Concrete Slab Plan and Details Revision 3	18.02.19	ACOR Consultants Pty Ltd
Tree Removal Plan Revision 1	06-07.03.2019	ACOR Consultants Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Assessment Report	16 June 2017	Waratah (G. Turner)
Biodiversity Management Plan	December 2017	Ecological Australia
Flora and Fauna Assessment	December 2017	Ecological Australia
Waterway Impact Statement	December 2017	Ecological Australia
Bushfire Assessment	15 February 2019	Building Code & Bushfire Hazard Solutions
Preliminary Landslip Risk Assessment	31 October 2017	Crozier Geotechnical Consultants

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	4 December 2017	Dax McBurney

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
NSW Rural Fire Service	Response NSW Rural Fire Service	4 March 2019

(NOTE: A copy of the above referenced document is attached as "Attachment A".)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other Department, Authority or Body's.

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 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 following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,

- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes 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.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) 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.
 - (iv) 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.

In this clause, allotment of land includes a public road and any other public place. Reason: Legislative Requirement

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 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).

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) 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 stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. 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.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolishedThe person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerage areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

5. Policy Controls

Northern Beaches Council Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 385,000.00		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 3,657.50
Section 94A Planning and Administration	0.05%	\$ 192.50
Total	1%	\$ 3,850.00

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.

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To provide for contributions in accordance with Northern Beaches Council's Development Contributions Plan.

6. Security Bond

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security 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.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.warringah.nsw.gov.au/your-council/forms).

Reason: To ensure adequate protection of Council's infrastructure. Stormwater Discharge from the Tennis Court

The stormwater runoff from the tennis court shall discharge to a suitably designed outlet that prevents erosion and sedimentation of the downstream environment such as a level spreader or energy dissipator.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the protection of environmentally sensitive land (DACNECPCC1)

7. Stormwater Discharge from the Tennis Court

The stormwater runoff from the tennis court shall discharge to a suitably designed outlet that prevents erosion and sedimentation of the downstream environment such as a level spreader or energy dissipator.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the protection of environmentally sensitive land (DACNECPCC1)

8. No Bright Lighting

No bright tennis court lighting is to be installed to reduce the impact of light spillage on adjoining natural areas. A modest amount of low lighting may be used for safety purposes only.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to issue of a Construction Certificate.

Reason: Bright lighting would illuminate the adjoining natural areas and impact upon nocturnal fauna

9. Project Ecologist

A Project Ecologist is to be employed for the duration of the approved works to ensure all bushland protection measures are carried out according to the conditions of consent.

The Project Ecologist will provide certification that conditions relating to the Biodiversity Management Plan are carried out. The Project Ecologist will ensure that all conditions relating to the biodiversity management of the property are fully implemented.

The Project Ecologist must have one of the following memberships/accreditation

- o Practising member of the NSW Ecological Consultants Association OR
- o Biodiversity Assessment Method assessor accreditation under the NSW Biodiversity Conservation Act 2016

Reason: To ensure bushland management.

10. Implementation of Biodiversity Management Plan

All recommended mitigation measures in the Biodiversity Management Plan (Ecological Australia 2017) are to be implemented. Minor amendment to exclusion zones is to be based on the agreed revised location plan.

Details demonstrating compliance are to be certified by the project ecologist and submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Biodiversity/Vegetation Conservation and Management.

11. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

12. Tree protection

(a) Existing trees which must be retained

- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
- ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 50mm diameter unless

directed otherwise by a qualified Arborist on site.

iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.

iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause

E1 Private Property Tree Management and AS 4373 Pruning of amenity trees

v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

(c) Trees authorised for removal

i) The trees referred to as trees 1-5 on the approved tree removal plan are authorised for removal.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAD01) Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with:

- o Soil Erosion Sediment Control Plan And Waste Management Plan prepared by ACOR Consultants dated May 2017;
- o Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site (DACNED06)

13. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with:

- o Soil Erosion Sediment Control Plan And Waste Management Plan prepared by ACOR Consultants dated May 2017;
- o Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site (DACNED06)

14. Bushland Protection Fencing

Prior to the commencement of any onsite building works or commencement of vegetation clearance/modification, the boundary between the asset protection zone / natural bushland and construction area is to be surveyed and marked clearly on the ground.

A temporary 2.0 metre steel mesh fence is to be erected on the surveyed boundary between the natural bushland area the construction area for the duration of construction work.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to commencement of works.

Reason: To ensure that the vegetation in the restricted development area is protected during and after construction.

15. Trees Condition

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.

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. (DACLA03)

16. Protection of landscape features and sites of significance

- a) All natural landscape features, including natural rock outcrops, natural vegetation, soil and watercourses, are to remain undisturbed during demolition, excavation and construction works, except where affected by works detailed on approved plans.
- b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

17. Fauna and Tree Hollow re-location

During any vegetation and tree clearance for and construction works the Project Ecologist is to be present to re-locate any displaced fauna that may be disturbed during

this activity.

Tree hollows are to be salvaged from trees within the development area and placed within the retained vegetation / Conservation Areas adjoining the site. This is to be done by a qualified and experienced Arborist, under the direction of the Project Ecologist.

Details prepared by the project ecologist in writing demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: Habitat replacement

18. Required Planting

Trees shall be planted in accordance with the following schedule:

Minimum No. of Trees Required.	Species	Location	Minimum Pot Size
4	<i>Eucalyptus haemastoma</i>	Within the site and located to be compliant with Bushfire management requirements	200mm

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To maintain environmental amenity. (DACLAF01)

19. Weed Removal and Management

No weeds are to be imported on to the site.

All invasive and priority weeds on the site include Whisky Grass and Crofton Weed are to be removed and managed continuously, in accordance with the Biosecurity Act 2015.

Details demonstrating the removal and management of weeds are to be prepared by the project ecologist in writing and submitted to the Principal Certifying Authority prior to occupation certificate.

Reason: Weed management and biosecurity

McBurney v Northern Beaches Council

Attachment A



NSW RURAL FIRE SERVICE



The General Manager
Northern Beaches Council
PO Box 882
MONA VALE NSW 1660

Your reference: DA2017/1348
Our reference: D19/585

4 March 2019

Attention: Phil Lane

Dear Sir/Madam,

Proposed Tennis Court – 5/1196894 – 5 Bibbenluke Ave Duffys Forest

Reference is made to Council's correspondence dated 20 February 2019 seeking advice regarding bush fire protection in relation to the above application in accordance with Section 4.14 of the *Environmental Planning and Assessment Act 1979*.

The New South Wales Rural Fire Service (NSW RFS) is aware the development is subject of an appeal to the Land and Environment Court and advises there is no objection to the proposal subject to the recommended conditions as stated in the report by Building Code & Bushfire Hazard Solutions, dated 15th February 2019 as follows:

1. The grades where the fire trail enters and exits the tennis court are below 15 degrees.
2. The entire tennis court surface is capable of carrying a 15 tonne fire fighting appliance.
3. 3.5 metre wide gates are to be installed at each end of the tennis court.
4. The court and boundary gates of the property are to be clearly signposted to show where the fire trail is on the property.
5. The gates to be left open and the net removed at all times when the court is not in use.

If you have any queries regarding this advice, please contact Peter Eccleston, Development Assessment and Planning Officer, on 1300 NSW RFS.

Yours sincerely,

Nika Fomin
Manager
Planning and Environment Services (East)

Postal address
NSW Rural Fire Service
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