

Consent 82/149

THE COURT ORDERS:

10431 of 19 81

GEOFFREY TWIBILL AND ASSOCIATES

Applicant

THE COUNCIL OF THE SHIRE OF WARRINGAH

Respondent

Order

1. That the application be allowed.
2. That development consent be granted in respect of the development application dated 4th June, 1981 for a retirement village comprising aged persons housing at Bayview South, subject to the conditions as set out in the Annexure to this Order with the following amendments thereto:

i) Omit Condition 18(b) and insert instead the following:

(b) The Village Centre shall be completed before more than 50% of the self-contained units are residentially occupied or within four (4) years of the first residential occupation of the first available self-contained unit - whichever event first occurs.

ii) Omit Condition 34 and insert instead the following:-

34. The buildings comprising the development shall be classified for the purposes of Ordinance 70 as follows:

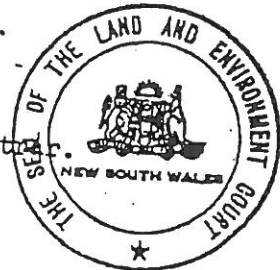
- (a) Hostel - Class III;
- (b) Village Centre - Class IX(b);
- (c) Self-contained units - (i) *Class* single detached units; and (ii) Class II for all other units.

3. That the exhibits be returned.
4. That there be no order as to costs.

ORDERED: 9th March, 1982.

*[Handwritten signature]*

*[Handwritten signature]*  
Assistant Registrar



COPY

SUGGESTED CONDITIONS OF CONSENT FOR A HOME FOR THE AGED  
ON LOT 9 D.P. 19980 AND LOT B F.P. 387362 CABBAGE TREE  
ROAD AND GULIA STREET BAYVIEW

1. Compliance with Council's Health and Building Department requirements and no work of any kind, clearing or vegetation removal, pursuant to this Consent, to be done on the site except for the purpose of surveying and foundation testing until after a valid Building Approval has been issued.
2. Landscaped, communal, visitor's car parking and the like areas being kept permanently available for such use and not being allocated to any one person or persons. Visitors' parking to be clearly marked as such.
3. No trees to be removed prior to release of approved building plans. Then, all trees outside the envelope of the buildings and hardsurfaced areas not to be removed without Council's further written consent.
4. The colour, texture and substance of all external components of the buildings and hardsurfaced areas being to Council's satisfaction, details to be included on building plans.
5. The proposed height and materials of all fences being to Council's satisfaction, details to be included on building plans.
6. Compliance with Council's car parking policy, especially that all dimensions of accessway and parking bays be clear of all obstructions.
7. The buildings shall be connected to the reticulated sewerage system prior to occupation.
8. All parking areas on approved building plans being used solely for this purpose.
9. No signs to be displayed without a separate approval from Council.
10. Construction hours being confined to:- Monday to Friday 7a.m. to 5p.m., Saturday 7a.m. to 1p.m., no work on Sunday. This to apply to any work creating noise or other inconvenience.
11. Compliance with Warringah Shire Council's Tree Preservation Order adopted under Clause 44 of Shire of Warringah Planning Scheme Ordinance.

12. Landscaping plans shall be submitted to Council together with any Building Application required, or when no Building Application is required, prior to the commencement of the development approved by this consent. The plans shall indicate all existing trees, specifying those trees to be retained and those proposed to be removed. It shall specify details of proposed planting, including common and botanical names and height and spread at maturity. Such landscaping shall be designed and executed to Council's specification, and shall be completed within 12 months of occupation and shall thereafter be maintained in perpetuity to Council's satisfaction by the existing or future owners of occupiers of the property.
13. The separate titles of all lots the subject of this Consent being consolidated into one lot, at the owner's expense, prior to commencement of construction.
14. The development shall be generally in accordance with the plans as tendered to the Land & Environment Court as Exhibit 2 as amended by Exhibit H.
15. The development shall remain as housing for aged or disabled persons as defined in SEPP No. 5 for the life of the development except as otherwise permitted.
16. Strata titling of any part of the development shall be prohibited unless the lots in any strata subdivision are subject to a registered restriction as to user consistent with this consent.
17. (a) Provision shall be made to assure residents of priority of admission to suitable nursing home accommodation off site as and when required. Evidence of such provision shall be provided to the reasonable satisfaction of Council prior to the occupation of any part of the development.  
(b) Occupiers of self-care units shall be given priority to purchase or reside in hostel units as they become available.  
(c) A majority of the hostel units shall be occupied only by persons who have been certified by a qualified Medical Practitioner <sup>as being in</sup> need due to health or other factors of hostel accommodation and the care and supervision provided therewith.

- (d) Domiciliary assistance such as meals, laundry and home help shall be available to all residents as and when required including those in self-care units.
  - (e) Adequate arrangements shall be made for the provision of medical and home nursing services to residents as and when required. Permanent arrangements shall be made to have a medical practitioner on call for emergencies and a physiotherapist to visit as needed.
  - (f) Prior to occupation of any part of the development, documentary evidence shall be furnished to Council of the existence of a Contractual commitment by the proprietor or operator of the development to provide the facilities referred to in this condition to residents' on a continuing basis.
18. (a) The hostel shall be completed within three (3) years of the occupation of the first self-contained unit ~~which must be~~ and shall conform to the definition of hostel contained in clause 2 of SEPR No 5.
- (b) The Village Centre shall be completed before any of the self-contained units are occupied.
19. At least one live-in administrator shall be resident on-site, such administrator to be experienced in nursing or social work.
20. All self-care and hostel units shall be equipped with an emergency communication device connected to the administrator's residence and to the office.
21. Prior to release of the approved building plans the applicant shall furnish a report from a practicing Geotechnical Engineer acceptable to Council to the effect that the design of the foundations of the Village Centre will overcome any probability that the site of the Centre would be affected by landslip or site instability, and a certificate from a Structural Engineer that the Village Centre, if erected in accordance with the said Geotechnical Engineers recommendations, will be structurally adequate.
22. A courtesy car, mini-bus or other vehicle shall be made available to residents in a form and at times as may be reasonably required by Council's Community Services Planner or other appropriate officer.

23. Each habitable floor of the hostel shall contain a furnished common room containing tea making facilities and amenities for use by the hostel occupants.
24. The external materials of all buildings shall be of a dark tone, of low reflective quality and having a colour which blends with the landscape of the area to the Council's reasonable satisfaction.
25. A tree survey shall be submitted at building application stage identifying all major trees on the site and further identifying those proposed to be removed to permit the erection of buildings, driveways, pathways or car parking areas and those in the immediate vicinity of buildings, driveways, pathways or car parking areas shall be retained.
26. Minimum setback of buildings to site boundaries shall be 4m but to average not less than 7.5m with 7.5m as the minimum setback for the hostel and the buildings on the eastern boundary.
27. Treatment of all driveways, pathways and car parking surfaces shall blend with the landscape of the area, details shall be provided at building application stage provided that this condition shall not be deemed to impose any more onerous obligation upon the applicant than is provided by the treatment of the foregoing elements in the existing Bayview Village.
28. No excavation, filling, clearing or removal of vegetation shall take place prior to the approval of landscaping details referred to in Condition 12 except for the purpose of Surveying and foundation testing.
29. A consulting room shall be provided within the Village Centre for use by medical practitioners and the like.
30. Vehicular access from Gullia Street shall be restricted to emergency fire-fighting vehicles only. A locking post type vehicle barrier capable of being removed to allow access by emergency vehicles shall be erected at the end of Gullia Street, and a key for same shall be supplied to the relevant fire-fighting authorities.
31. Access for the disabled shall be provided to units, hostel and Village Centre in accordance with the provisions of Clause 10(4) of the SEPP No. 5.

32. Compliance with the reasonable recommendations of the Board of Fire Commissioners.
33. No more than one person, who is not an aged person, shall reside in any dwelling or hostel unit with an aged person for a period of more than thirty (30) nights in any calendar year, except with the written approval of Council's Community Services Planner or other appropriate officer.
34. The buildings comprising the development shall be classified for the purpose of Ordinance 70 as follows:-
  - (a) Self-contained units and hostel - Class 1X(a).
  - (b) Village Centre - Class IX(b)
35. Minimum width of the access road from Cabbage Tree Road shall be 6.0m to its first "T" junction with the internal road system.
36. A standing area behind kerb of 12m (for 2 vehicles) shall be provided with a maximum grade of 5.0% the applicant shall provide a plan, long section and cross section at 15m intervals, with maximum grades shown on proposal to the reasonable satisfaction of the Shire Engineer.
37. Council's standard vehicular crossing design shall be complied with.
38. Details of design and construction of proposed storm-water retention basins shall be submitted with the building application and shall be to the reasonable satisfaction of the Shire Engineer.



39. Easements to drain water shall be provided where necessary, and piped where appropriate, to the reasonable satisfaction of the Shire Engineer.
40. The following vehicle crossings shall be provided in accordance with the appropriate details shown on Council's Plan No. A4 3330:-  
One (1) crossing six (6) metres wide in Cabbage Tree Road...
41. Construction of approved kerb laybacks shall be in accordance with the details shown on Council Plan A4 2276.
42. Public utilities and services shall be adjusted as necessary to comply with the above.
43. Submission of three copies of engineering plans, sections, etc. for all road and drainage works.
44. Construction and drainage of internal roads/pathways/-parking areas shall be to the reasonable requirements of the Shire Engineer.
45. Buildings shall be located clear of any pipeline, natural watercourse or Council easement. Footings of any building adjacent to an easement shall be a minimum of 300mm below the invert of the pipe and may rise by 300mm for each 300mm removed therefrom.

46. Survey plan showing Lot 9 incorporated with adjoining Lot B as one complete parcel of land shall be submitted prior to building approval.
47. Details shall be provided of the proposed creek and pond system showing stormwater design, calculations and proposed treatment.
48. Additional communal recreation facilities shall be provided in the hostel to the reasonable satisfaction of Council's Community Services Planner.
49. Not less than one (1) pedestrian pathway (which may include steps) with a gradient not exceeding 1:12 (excluding steps) shall be available to provide access between buildings within the development.
50. Compliance with Fire Control Officer's requirements as set out in letter of 16.02.1982 from Council to applicant (Exhibit M).



IN THE LAND AND  
ENVIRONMENT COURT  
OF NEW SOUTH WALES

10431 of 1981  
STATE SUPERANNUATION  
BOARD

Applicant

THE COUNCIL OF  
THE SHIRE OF  
WARRINGAH

Respondent

Order

THE COURT ORDERS BY CONSENT THAT:

1. Pursuant to section 102(3) of the Environmental Planning and Assessment Act 1979, and with the consent of the parties, that the consent issued by the then Senior Assessor of this Court on 9th March 1982, to G. Twibill and Associates, for the development of a retirement village on land having frontage to Cabbage Tree Road, South Bayview, be modified by deleting condition 14, as it appears in that consent and substituting in lieu thereof the following new condition 14.
  - "14. (a) The development shall be generally in accordance with exhibit 2 as tendered to the Land and Environment Court in March 1982 as amended by the following:
 

The drawings subject to the respondents building approval No 1464/86 dated 4th March 1986, excluding therefrom drawings A01.R1 dated November 1984 (revision 19.1.85) and AH.38 dated November 1984 and adding thereto drawing No WD.11 dated 6th August 1986.
  - (b) The 112 self-contained units not included in stage 1 shall be the subject of a separate application under the Environmental Planning and Assessment Act 1979 before any building approval is given for the same."
2. The parties are to file with this Court, copies of plans uplifted and which are to serve as a permanent Court record of the details of these orders.



# THE COUNCIL OF THE SHIRE OF WARRINGAH

File No: PF 810/77 RM.CM/4647d  
Enquiries: Mr C Chapman, Town Planning Dept  
8.30-10.30am, Mon-Fri

Telephone: (02) 982 0331

18th July 1991

Hawden Property Group  
Suite 5, 19-23 Bridge Street  
PYMBLE NSW 2073

Dear Sir/Madam

Re: Modification of Development Consent No 82/149 issued by the  
Land & Environment court for a home for Aged and Disabled at  
No 93 Cabbage Tree Road, Bayview

Council on 10th July, 1991 considered the above application and  
resolved that you be advised that no objections were raised to the  
Land and Environment Court modifying Consent No 82/149 for Home for  
the Aged on Lot 20, DP 632081, No 93 Cabbage Tree Road, Bayview in  
the following manner:

1. Condition 14 being modified to read:

"14. (a) The development shall be generally in accordance  
with exhibit 2 as tendered to the Land and  
Environment Court in March 1982, as amended by the  
following:-

The drawings subject to the Respondent's building  
approval no. 1464/86 dated 4.3.86, excluding  
therefrom drawings A01.R1 dated November 1984  
(revision 19.1.1985) and AH.38 dated November,  
1984 and adding thereto drawing no. WD.11 dated  
6.8.86 and plans numbered wd 10.10, dated  
1.11.1990; PG 07, dated 25.1.1991; and plans  
unnumbered, undated, submitted 1.3.1991.

(b) The 112 self contained units not included in stage  
1 shall be the subject of a separate application  
under the Environmental Planning and Assessment  
Act 1979 before any building approval is given for  
the same."

2/...

All correspondence to be addressed  
General Manager/Shire Clerk  
Civic Centre, Pittwater Road, Dee Why, 2099  
DX 9118 Dee Why Fax: (02) 971 4522

2. The addition of the following conditions:-

51. The visitors car parking and access aisles being kept permanently available for such use and not being allocated to any one person or persons. Visitors parking to be clearly marked as such.
52. Restoration and maintenance to approved levels and safe condition of the footway reserve(s) adjoining the site in Cabbage Tree Road to Council's reasonable satisfaction.
53. All design and/or construction of works shall comply with the Standard Specifications of the Council of the Shire of Warringah. Copies of these are available at the prescribed fee from the Public Works Division of the Council.
54. All fences, letter boxes and any other structures erected on the street alignment to conform to the approved back of footpath levels.
55. Provision to Council of a "Deed of Agreement for Cosmetic Driveway Indemnifying Council against Liability" signed by the owners, for the brick paved crossings shown on drawing wd 10.10, dated 1.11.1990.
56. Sign applications being submitted for any temporary pole and permanent wall signs on the subject land prior to display."

Should you have any enquiries regarding the above decision, would you please contact the abovementioned enquiry officer who will be pleased to assist you.

Yours faithfully

R Kay

CHAIRMAN, DEVELOPMENT UNIT  
CORPORATE SERVICES DIVISION

Per: Mrs R Miller



CONSENT NO. 82/149

## CONDITIONS OF CONSENT FOR A HOME FOR THE AGED ON LOT 9 DP 19980 AND LOT B, FP 387362 CABBAGE TREE ROAD AND GULIA STREET BAYVIEW

1. Compliance with Council's Health and Building Department requirements and no work of any kind, clearing or vegetation removal, pursuant to this Consent, to be done on the site except for the propose of surveying and foundation testing until after a valid Building Approval has been issued.
2. Landscaped, communal, visitor's carparking and the like areas being kept permanently available for such use and not being allocated to any one person or persons. Visitors' parking to be clearly marked as such.
3. No trees to be removed prior to release of approved building plans. Then, all trees outside the envelope of the buildings and hardsurfaced areas not to be removed without Council's further written consent.
4. The colour, texture and substance of all external components of the buildings and hardsurfaced areas being to Council's satisfaction, details to be included on building plans.
5. The proposed height and materials of all fences being to Council's satisfaction, details to be included on building plans.
6. Compliance with Council's car parking policy, especially that all dimensions of accessway and parking bays be clear of all obstructions.
7. The buildings shall be connected to the reticulated sewerage system prior to occupation.
8. All parking areas on approved building plans being used solely for this purpose.
9. No signs to be displayed without a separate approval from Council.
10. Construction hours being confined to:- Monday to Friday 7am to 5pm., Saturday 7am. to 1pm.; no work on Sunday. This to apply to any work creating noise or other inconvenience.
11. Compliance with Warringah Shire Council's Tree Preservation Order adopted under Clause 44 of Shire of Warringah Planning Scheme Ordinance.

COPY

Applied by Pittwater Council

~~26/10/93~~ COPY

12. Landscaping plans shall be submitted to Council together with any Building Application required, or when no Building Application is required, prior to the commencement of the development approved by this consent. The plans shall indicate all existing trees, specifying those trees to be retained and those proposed to be removed. It shall specify details of proposed planting, including common and botanical names and height and spread at maturity. Such landscaping shall be designed and executed to Council's specification, and shall be completed within 12 months of occupation and shall thereafter be maintained in perpetuity to Council's satisfaction by the existing or future owners or occupiers of the property.
13. The separate titles of all lots the subject of this Consent being consolidated into one lot, at the owner's expense, prior to commencement of construction.
14. (a) The development shall be generally in accordance with exhibit 2 as tendered to the Land and Environment Court in March 1982, as amended by the following:-

The drawings subject to the Respondent's building approval no. 1464/86 dated 4.3.86, excluding therefrom drawings A01.R1 dated November 1984 (revision 19.1.1985) and AH.38 dated November, 1984 and adding thereto drawing no. WD.11 dated 6.8.86.

(as amended)
- (b) The 112 self contained units not included in stage 1 shall be the subject of a separate application under the Environmental Planning and Assessment Act 1979 before any building approval is given for the same.

(as amended)
15. The development shall remain as housing for aged or disabled persons as defined in SEPP No. 5 for the life of the development except as otherwise permitted.
16. Strata titling of any part of the development shall be prohibited unless the lots in any strata subdivision are subject to a registered restriction as to user consistent with this consent.
17. (a) Provision shall be made to assure residents of priority of admission to suitable nursing home accommodation off site as and when required. Evidence of such provision shall be provided to the reasonable satisfaction of Council prior to the occupation of any part of the development.

- (b) Occupiers of self-care units shall be given priority to purchase or reside in hostel units as they become available.
- (c) A majority of the hostel units shall be occupied only by persons who have been certified by a qualified Medical Practitioner or social worker as being in need due to health or other factors of hostel accommodation and the care and supervision provided therewith.
- (d) Domiciliary assistance such as meals, laundry and home help shall be available to all residents as and when required including those in self-care units.
- (e) Adequate arrangements shall be made for the provision of medical and home nursing services to residents as and when required. Permanent arrangements shall be made to have a medical practitioner on call for emergencies and a physiotherapist to visit as needed.
- (f) Prior to occupation of any part of the development, documentary evidence shall be furnished to Council of the existence of a Contractural commitment by the proprietor or operator of the development to provide the facilities referred to in this condition to residents' on a continuing basis.
18. (a) The hostel shall be completed within three (3) years of the occupation of the first self-contained unit and shall conform to the definition of hostel contained in Clause 2 of SEPP No. 5.
- (b) The Village Centre shall be completed before more than 50% of the self-contained units are residentially occupied or within four (4) years of the first residential occupation of the first available self-contained unit - whichever event first occurs. *part of original consent*
- (as amended)
19. At least one (1) qualified nurse shall be available at all times to administer the Retirement Village and to provide nursing or social care to the residents of the Retirement Village.
- (as amended)
20. All self-care and hostel units shall be equipped with an emergency communication device connected to the administrator's residence and to the office.



21. Prior to release of the approved building plans the applicant shall furnish a report from a practicing Geotechnical Engineer acceptable to Council to the effect that the design of the foundations of the Village Centre will overcome any probability that the site of the Centre would be affected by landslip or site instability, and a certificate from a Structural Engineer that the Village Centre, if erected in accordance with the said Geotechnical Engineers recommendations, will be structurally adequate.
22. A courtesy car, mini-bus or other vehicle shall be made available to residents in a form and at times as may be reasonably required by Council's Community Services Planner or other appropriate officer.
23. Each habitable floor of the hostel shall contain a furnished common room containing tea making facilities and amenities for use by the hostel occupants.
24. The external materials of all buildings shall be of a dark tone, of low reflective quality and having a colour which blends with the landscape of the area to the Council's reasonable satisfaction.
25. A tree survey shall be submitted at building application stage identifying all major trees on the site and further identifying those proposed to be removed to permit the erection of buildings, driveways, pathways or car parking areas and those in the immediate vicinity of buildings, driveways, pathways or car parking areas shall be retained.
26. Minimum setback of buildings to site boundaries shall be 4m but to average not less than 7.5m with 7.5m as the minimum setback for the hostel and the buildings on the eastern boundary.
27. Treatment of all driveways, pathways and carparking surfaces shall blend with the landscape of the area, details shall be provided at building application stage provided that this condition shall not be deemed to impose any more onerous obligation upon the applicant than is provided by the treatment of the foregoing elements in the existing Bayview Village.
28. No excavation, filling, clearing or removal of vegetation shall take place prior to the approval of landscaping details referred to in Condition 12 except for the purpose of Surveying and foundation testing.
29. A consulting room shall be provided within the Village Centre for use by medical practitioners and the like.
30. Vehicular access from Gulia Street shall be restricted to emergency fire-fighting vehicles only. A locking post type vehicle barrier capable of being removed to allow access by emergency vehicles shall be erected at the end of Gulia Street, and a key for same shall be supplied to the relevant fire-fighting authorities.



31. Access for the disabled shall be provided to units, hostel and Village Centre in accordance with the provisions of Clause 10(4) of the SEPP No. 5.
32. Compliance with the reasonable recommendations of the Board of Fire Commissioners.
33. No more than one person, who is not an aged person, shall reside in any dwelling or hostel unit with an aged person for a period of more than thirty (30) nights in any calendar year, except with the written approval of Council's Community Services Planner or other appropriate officer.
34. The buildings comprising the development shall be classified for the purposes of Ordinance 70 as follows:
  - (a) Hostel - Class III;
  - (b) Village Centre - Class IX(b);
  - (c) Self-contained units - (i) Class I for single detached units; and (ii) Class II for all other units.

(as amended)
35. Minimum width of the access road from Cabbage Tree Road shall be 6.0m to its first "T" junction with the internal road system.
26. A standing area behind kerb of 12m (for 2 vehicles) shall be provided with a maximum grade of 5.0% the applicant shall provide a plan, long section and cross section at 15m intervals, with maximum grades shown on proposal to the reasonable satisfaction of the Shire Engineer.
37. Council's standard vehicular crossing design shall be complied with.
38. Details of design and construction of proposed stormwater retention basins shall be submitted with the building application and shall be to the reasonable satisfaction of the Shire Engineer.
39. Easements to drain water shall be provided where necessary, and piped where appropriate, to the reasonable satisfaction of the Shire Engineer.
40. The following vehicle crossings shall be provided in accordance with the appropriate details shown on Council's Plan No. A4 3330:-  
One (1) crossing six (6) metres wide in Cabbage Tree Road.
41. Construction of approved kerb laybacks shall be in accordance with the details shown on Council Plan A4 2276.
42. Public utilities and services shall be adjusted as necessary to comply with the above.

43. Submission of three copies of engineering plans, sections, etc. for all road and drainage works.
44. Construction and drainage of internal roads/pathways/-parking areas shall be to the reasonable requirements of the Shire Engineer.
45. Buildings shall be located clear of any pipeline, natural watercourse or Council easement. Footings of any building adjacent to an easement shall be a minimum of 300mm below the invert of the pipe and may rise by 300mm for each 300mm removed therefrom.
46. Survey plan showing Lot 9 incorporated with adjoining Lot B as one complete parcel of land shall be submitted prior to building approval.
47. Details shall be provided of the proposed creek and pond system showing stormwater design, calculations and proposed treatment.
48. Additional communal recreation facilities shall be provided in the hostel to the reasonable satisfaction of Council's Community Services Planner.
49. Not less than one (1) pedestrian pathway (which may include steps) with a gradient not exceeding 1:12 (excluding steps) shall be available to provide access between buildings within the development.
50. Compliance with Fire Control Officer's requirements as set out in letter of 16.02.1982 from Council to applicant (Exhibit M).

X

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

No. 10431 of 1981

**United Super Investments  
Pty Limited  
(ACN 069 965 948)**

Applicant

**Pittwater Council**

Respondent

Order

**The Court orders by consent that:**

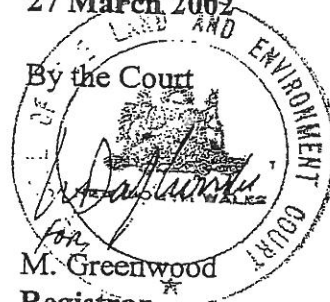
1. The appeal be upheld.
2. The development consent granted by the Court in proceedings No. 10431 of 1981 be modified by:
  - (a) the deletion of Condition 14(b); and
  - (b) the insertion of a Condition 14(b) in lieu thereof, in the following terms:

*"14(b) Any desired redesign or relocation of the 112 self-contained units not included in stage 1 shall be the subject of a separate application under Section 96 of the Environmental Planning and Assessment Act 1979 before any construction certificate is given for the same."*

3. Each party pay their own costs.

Ordered: 27 March 2002

By the Court



for  
M. Greenwood

Registrar

njn