



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

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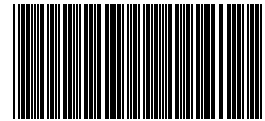
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D0001XQNTZ

19 April 2024

NOTICE OF ORDERS MADE

Case number 2023/00287015
Case title Rebecca Sorensen v MAITLAND CITY COUNCIL

On 19 April 2024 the following orders (and/or directions) were made:

The Court orders:

- (1) The Applicant is directed to file the amended development application the subject of Order (4) within 7 days of the date of this Order.
- (2) The Applicant is to pay the Respondent's costs thrown in accordance with s 8.15(3) of the Environmental Planning and Assessment Act 1979 as agreed or assessed.
- (3) The appeal is upheld.
- (4) Development Application No DA/2022/1286 as amended, for subdivision – one into two lots; demolition of existing shed and pool cabana; decommission existing driveway crossover on Grange Avenue; stormwater drainage and associated works; and utility installation at Lot 9116 in DP 874539 known as 10 Hermitage Close, Thornton, is determined by a grant of consent subject to conditions contained in Annexure A.

For the Registrar

Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: DA/2022/1286

Development: Subdivision – 1 into 2 lots; demolition of existing shed and pool cabana; decommission existing driveway crossover on Grange Avenue; stormwater drainage and associated works; and utility installation

Site: Lot 9116 in DP 874539 known as 10 Hermitage Close, Thornton

The above development application has been determined by the granting of consent subject to the conditions specified in this consent.

Date of determination: 16 April 2024

Date from which consent takes effect: Date of Determination

TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the “applicant” means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the “site”, means the land known as Lot 9116 in DP 874539 known as 10 Hermitage Close, Thornton The conditions of consent are as follows:

General Conditions

APPROVED PLANS AND SUPPORTING DOCUMENTATION

1. Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.

Plan Ref No.	Sheet No.	Revn No.	Revision Date	Prepared by: (consultant)
2203332 – Proposed Subdivision at Lot 9116 DP 874539, 10 Hermitage Close Thornton	1 of 1	A	14/03/2024	Sorensen Design & Planning
2303407 – Proposed Building Envelope at 10 Hermitage Close Thornton	1 of 1	N/A	11/03/2024	Sorensen Design & Planning

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Condition reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

SUBDIVISION WORK**Before issue of a subdivision works certificate****2. Drainage Design**

Prior to the issue of the Subdivision Works Certificate, design prepared in accordance with Council's Manual of Engineering Standards for the inter-allotment drainage shall be provided to the Certifier for approval.

Condition Reason: To ensure appropriate stormwater management

Before subdivision work commences**3. SWC for inter-allotment drainage**

Prior to the commencement of construction of the inter-allotment drainage works, a Subdivision Works Certificate for the works shall be approved by the Certifier.

Condition Reason: To ensure Subdivision Works Certificate is obtained prior to commencement of subdivision works.

During subdivision work

No additional conditions have been applied to this stage of development.

Before issue of a Subdivision Certificate**CONTRIBUTIONS & FEES****4. 7.11 Contributions**

Pursuant to Section 7.11 of the Environmental Planning and Assessment Act 1979 and the Maitland City Wide Development Contributions Plan 2016, a contribution of \$8,716 shall be paid to the Council.

The contribution is calculated from Council's adopted Development Contributions Plan in the following manner:

Facility	Per additional Lot
2016 Aquatics Facilities	\$1,171
2016 Competition Netball Courts Maitland Park	\$272
2016 Recreation & Open Space Facilities	\$979
2016 Multipurpose Centre Floor Space	\$768
2016 Library Floor Space	\$742
2016 Road & Traffic Facilities	\$3,880
2016 Cycleways/Shared Paths	\$692
2016 Plan Management/Administration	\$212
Total	\$8,716

Any outstanding component of the contribution will be indexed quarterly in accordance with the provisions of the abovementioned Development Contributions Plan. Reviewed rates will apply following release of CPI indices by the Australian Bureau of Statistics for each quarter. Please refer to Council's web page for the current rates applicable.

Payment of the above amount is required prior to issue of the Subdivision Certificate for the development.

The above condition has been applied to ensure that:

- a) Where the proposed development results in an increased demand for public amenities and services, payment towards the cost of providing these facilities/services is made in accordance with Council's adopted contributions plan prepared in accordance with the provisions of Section 7.11 of the Environmental Planning and Assessment Act, 1979.
- b) Council's administration expenses are met with respect to the processing of the application.

Condition reason: To outline contributions payable to Council under Clause 4.17 of the Environmental Planning & Assessment Act.

5. Payment of Subdivision Certificate and house numbering fees.

Prior to the issue of the Subdivision Certificate, "house numbering" and "subdivision certificate" fees, in accordance with Council's *Schedule of Fees and Charges*, shall be paid to Council.

Condition reason: To ensure all applicable fees are paid.

6. Section 50 – Prior to Subdivision Certificate

A Section 50 Application under the Hunter Water Act 1991 must be lodged with Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Registered Certifier, prior to the issue of a Subdivision Certificate.

Condition reason: To ensure HWC requirements are met.

7. Requirement for a Subdivision Certificate

Prior to issue of the Subdivision Certificate, plans and/or documents of survey/title, shall be submitted to Council. The applicant will be required to submit documentary evidence that the property has been developed in accordance with the plans approved by this development consent and of compliance with the relevant conditions of consent.

Condition reason: To ensure all survey and title plans are submitted to Council in accordance with the approved plans and conditions of consent.

8. Utility Service

Prior to the issue of a Subdivision Certificate, underground water, sewerage, electrical power and communication infrastructure shall be provided to each allotment. Documentary evidence, confirming that services are available to each allotment, shall be provided to Council.

Condition reason: To ensure essential services are provided to each allotment.

9. Civil Works

Prior to issue of the Subdivision Certificate, all necessary civil works required for compliance with this consent and the Subdivision Works Certificate (where applicable), shall be provided in accordance with Council's Manual of Engineering Standards.

Condition reason: To ensure compliance with Council's Manual of Engineering Standards.

10. Demolition of structures prior to subdivision

Prior to the issue of a Subdivision Certificate, demolition of the existing shed, covered pool area and concrete areas is to be completed. Documentary evidence is to be provided to Council as part of the Subdivision Certificate application.

Condition reason: To ensure the land is suitable for intended use.

11. Demolition works

All demolition works are to be carried out in accordance with Australian Standard AS 2601-2001.

Condition reason: To ensure demolition works are undertaken per the Australian Standards.

12. Demolition / construction to cease where contamination encountered during works

In the event of an undisclosed or unidentified contamination being found on-site or any potentially contaminating infrastructure (e.g. underground storage tanks) or soils (e.g. staining, odours, asbestos) being identified during works, a qualified and experienced consultant must inspect, review and advise on remediation or mitigation prior to further construction proceeding. Council must be notified if this occurs and must be provided with any resulting reports and recommendations.

Condition reason: To ensure works cease were undisclosed or unidentified contamination is uncovered during works.

13. Removal of asbestos to be in accordance with NSW WorkCover requirements

Where any demolition, alteration or renovation works encounter asbestos or products containing asbestos, then the materials encountered shall be managed in accordance with the provisions of the NSW Work Cover Authority.

Condition reason: To ensure asbestos is appropriately managed per the provisions of the NSW Work Cover Authority.

14. Rubbish Generated from the Development For all construction sites

Rubbish generated from the development is to be suitably contained on site at all times. No rubbish shall be stockpiled in a manner which facilitates the rubbish to be blown off site.

Condition reason: Ensuring proper waste management and preventing environmental pollution during the construction process.

15. Recycling/disposal of demolition waste

Demolition material shall be recycled as far as is practicable and any demolition waste disposed of only at an authorised landfill facility.

Condition reason: To ensure demolition material is recycled or disposed of appropriately.

16. Excavation for Residential Building Works.

All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards and must be properly guarded and protected to prevent them from being dangerous to life or property.

Condition reason: To ensure excavations and backfilling is executed safely.

17. Excavation for Residential Building Works.

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 having benefit of the development consent:

- i) Must preserve and protect the building from damage, and
 - ii) If necessary, must underpin and support the building in an approved manner, and
- 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 condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land. (Includes a public road and any other public place).

Condition reason: Prescribed conditions of development consent pursuant to Section 4.16(11) of the Environmental Planning & Assessment Act 1979 and Section 74 of the Environmental Planning & Assessment Regulation 2000:

18. Fill material

Filling material, shall be limited to the following:

- a. virgin excavated natural material (VENM);
- b. excavated natural material (ENM) certified as such in accordance with Protection of the Environment Operations (Waste) Regulations 2005.

Note: Under no circumstances shall contaminated fill material including but not limited to putrescible wastes, (such as timber, paper, green waste, food etc), oil products (including petrol, bitumen, asphaltic concrete etc), plastic, and the like, be deposited on the land unless expressly authorised by this development consent.

Condition reason: To limit the type of fill material being deposited on site.

19. Surface Water Collection from Swimming Pools and Spas

Prior to issue of the Subdivision Certificate the swimming pool surrounds and/or paving must be constructed so as to ensure water from the pool overflow or surge does not

discharge onto neighbouring properties. Details demonstrating compliance must be provided to the Registered Certifier.

Condition reason: To mitigate potential nuisance caused by water discharge from the pool onto neighbouring properties

20. Waste Water from Swimming Pools and Spas

Prior to issue of the Subdivision Certificate evidence demonstrating that all swimming pool waste water is disposed within the proposed new property boundary as follows:

- a. Where a Hunter Water sewer is available – waste water must be drained or pumped to the sewer.
- b. Where a Hunter Water sewer is not available (such as rural areas) – waste water must be disposed of as follows:

Chlorinated pool waste water:

- i. Discharging to a rubble pit measured 600mm wide x 600mm deep x 3m long, located not less than 3m from any structure or property boundary; or
- ii. Discharging to a tail out drain to disperse the water over a large grassed area or paddock, provided that the land fall does not direct water to buildings on the subject or adjoining properties, or create a nuisance to an adjoining property owner.

Saltwater pool waste water:

- i. Discharging as per point (ii) above.

All pool types:

- i. Must not be discharged to a septic tank or an on- site sewage management installation or disposal area;
- ii. Must not be discharged into a reserve, watercourse, easement or storm water drainage system

Condition reason: To mitigate potential nuisance caused by wastewater discharge from the pool onto neighbouring properties.

21. Swimming Pool Warning Notice

Prior to issue of the Subdivision Certificate, a warning notice complying with the provisions of the Swimming Pools Regulation 2018, must be displayed and maintained in a prominent position in the immediate vicinity of the swimming pool, in accordance with Section 17 of the Swimming Pools Act 1992.

Council also recommends that all owners and/or users of swimming pools obtain a copy of the 'Cardiopulmonary Resuscitation Guideline' known as "Guideline 7: Cardiopulmonary Resuscitation" published by the Australian Resuscitation Council.

Condition reason: To ensure compliance with safety regulations for swimming pools

22. Swimming Pool Fence Design

Prior to issue of the Subdivision Certificate the swimming pool or spa must be fenced so that the pool is effectively isolated from the dwelling and adjoining lands. The swimming pool fence & gate must:

- a. Strictly adhere to the design and location approved with the development consent, and any conditions of the development consent.
- b. Strictly comply with AS1926 'Swimming Pool Safety' – Part 1: Safety barriers for swimming pools.
- c. Have a minimum effective height of 1.2m.

- d. Be self-closing and self-latching. All gates must open outwards from the swimming pool enclosure.
- e. The filtration equipment including any cover, housing or pipe work, must not be located within a distance of 900mm from the outside face of the swimming pool safety fencing enclosure, nor within 300mm from the inside of the swimming pool safety fencing enclosure (where footholds are possible).
- f. Boundary fencing forming part of the swimming pool safety fencing must maintain a minimum effective height of 1.8m and a 0.9m non climbable zone (measured from the top of the inside of the barrier).

The swimming pool safety fencing must be installed prior to the swimming pool being filled with water. The Principal Certifying Authority, or an accredited certifier must inspect the swimming pool safety fencing.

Condition reason: To ensure safety and compliance with regulations regarding swimming pool barriers.

23. Street Trees

Prior to issue of a Subdivision Certificate. and at no cost to Council, two (2) street trees of a suitable species (one fronting Grange Avenue and one fronting Hermitage Close) are to be planted in a position that is clear of utilities and drainage lines and set back a minimum of 2m from any driveways. A Section 138 Approval is required prior to the commencement of these works.

Condition reason: To ensure street trees are planted per Council's Manual of Engineering Standards.

24. Restriction on Title – Building Envelope.

A restriction on the title of lot 2, under Section 88B of the Conveyancing Act, shall be created which restricts building(s) to single storey only and being confined to a building envelope as follows:

- a) Front setback from Grange Avenue frontage to be a minimum 6.0 metres excluding any non-habitable structure providing shelter to the ground floor front door that may extend a maximum of 1.5 metres into that front setback area for a maximum width measured parallel with the front boundary, of 4 metres;
- b) Side setbacks to northern and southern boundary minimum 1.5m;
- c) Rear setback minimum 4m;
- d) Site coverage maximum 60%.

Condition reason: To ensure appropriate restrictions are applied to the subject site.

25. Restriction on Title – Inter-allotment Drainage.

Any easement shall be created under Section 88B of the Conveyancing Act, and in accordance with Council's Manual of Engineering Standards, to cover the inter-allotment stormwater drainage line.

Condition reason: To ensure appropriate restrictions are applied to the subject site.

26. Authority to release, vary or modify drainage easements (MCC)

The authority empowered to release, vary or modify easements to drain water required by this consent, shall be nominated as "the owners of the lots burdened and benefitted, only with the consent of Maitland City Council".

Condition reason: To ensure appropriate restrictions are applied to the subject site.