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Please Quote: DA 37986/2009
16 March 2011

Howard Leslie & Assoc
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TERRIGAL NSW 2260

Gosford City Council

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Notice of Determination of a Development Application
issued under the *Environmental Planning and Assessment Act, 1979*
section 81(1)(a)

Development Application No: 37986/2009 Part 1

Applicant: Howard Leslie & Assoc

Property: LOTS: 13 & 14 DP: 746757, No 42 & 44 Terrigal Esplanade TERRIGAL

Proposal: Demolition & Commercial and Residential Development

Date from which this consent operates

Subject to Section 83 of the Act this consent becomes effective and operates from 16 March 2011.

Consent to Lapse on

Five (5) Years from date of Consent

Imposition of Conditions

Subject to the provisions of Section 80A of the Act this Consent has been granted subject to conditions annexed to this consent.

On behalf of the consent authority
Peter Wilson
General Manager

Per: *J Bruton*

Date: 16 March 2011

1. PARAMETERS OF THIS CONSENT

1.1 Approved Plans and Supporting Documents

The development shall be implemented substantially in accordance with the plans and supporting documents listed below as submitted by the applicant and to which is affixed a Council stamp "*Development Consent*" unless modified by any following condition.

Architectural Plans by Howard Leslie and Associates

| Drawing | Description | Sheets | Issue | Date |
|----------------|--------------------|--------|-------|----------|
| 09404-1 of 11 | Site analysis plan | 1 | - | Nov 2009 |
| 09404-2 of 11 | Survey plan | 1 | - | Nov 2009 |
| 09404-3 of 11 | Basement plan | 1 | - | Nov 2009 |
| 09404-4 of 11 | Ground floor plan | 1 | - | Nov 2009 |
| 09404-5 of 11 | Level 1 plan | 1 | A | 11/12/10 |
| 09404-6 of 11 | Level 2 plan | 1 | A | 11/12/10 |
| 09404-7 of 11 | Level 3 plan | 1 | A | 11/12/10 |
| 09404-8 of 11 | Roof plan | 1 | A | 11/12/10 |
| 09404-9 of 11 | Elevations | 1 | A | 11/12/10 |
| 09404-10 of 11 | Elevations | 1 | A | 11/12/10 |
| 09404-11 of 11 | Shadows | 1 | - | Nov 2009 |

1.2 Building Code of Australia

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

2. PRIOR TO ISSUE OF THE CONSTRUCTION CERTIFICATE

2.1 No activity is to be carried out on site until a Construction Certificate has been issued. Other than:

- a Site investigation for the preparation of the construction, and/or
- b Implementation of environmental protection measures, such as erosion control etc that are required by this consent.

2.2 Basement storey is to be provided with exit design that complies with BCA Part D1.

2.3 All work required to be carried out within a public road reserve must be separately approved by Council, under Section 138 of the Roads Act 1993.

Engineering plans for the required work within a public road must be prepared and designed by a suitably qualified professional, in accordance with Council's "Civil Construction Specification", "GCC Design Specification for Survey, Road and Drainage Works" and "Policy 'D6.46 Erosion Sedimentation Control'".

The required works to be designed are as follows:

Heavy-duty vehicle crossing that has a minimum width of 4m paved finish surface the same as the existing footway and being constructed upon a 200mm thick concrete reinforced with 1 layer of SL72 steel fabric top and bottom.

The piping of all stormwater from within the site to Council's drainage system located in Kurrawyba Ave.

The engineering plans must be approved by Council prior to the issuing of a Construction Certificate required under this consent.

- 2.4 A dilapidation report must be submitted to Council prior to issue of a Construction Certificate and/or approval of engineering plans under the Roads Act. The report must document and provide photographs that clearly depict any existing damage to the road, kerb, gutter, footpath, driveways, street trees, street signs or any other Council assets in the vicinity of the development.
- 2.5 A security deposit of \$29,700.00 must be paid into Council's trust fund prior to the issue of a Construction Certificate. The payment of the security deposit is required to cover the cost of repairing damage to Council's assets that may be caused as a result of the development. The security deposit will be refunded upon the completion of the project if no damage was caused to Council's assets as a result of the development.
- 2.6 Satisfactory arrangements must be made for the provision of water and sewer services to the land. A copy of the Certificate of Compliance under Section 307 of the Water Management Act 2000, must be obtained from the Water Authority (Council) prior to the issue of a Construction Certificate. Contributions may be applicable to the Section 307 Certificate.

A minimum radial clearance of 1.0m is to be provided around the existing / proposed sewer inspection opening within the site.

The existing / proposed sewer inspection opening shall be located within the proposed driveway and outside the building.

- 2.7 Design of the following engineering works within private property:

Driveways/ramps and car parking areas must be designed according to the requirements of the current Australian Standard AS2890 for the geometric designs, and industry Standards for pavement designs. The driveway from Kurrawyba Ave shall have a minimum crest height of 3.82m AHD.

Nutrient/pollution control measures must be designed in accordance with Council's DCP165 - Water Cycle Management. A nutrient/pollution control report including an operation and maintenance plan shall accompany the design.

The design of these details and any associated reports shall be included in the construction certificate.

- 2.8 Piping of all stormwater from impervious areas within the site to Council's drainage system located in Kurrawyba Ave.
- 2.9 The minimum floor level of all commercial / retail and habitable rooms in the development must be RL 3.82m AHD.
- 2.10 All building materials used or located below RL 3.82m AHD must be of a type that is able to withstand the effects of immersion.
- 2.11 The verandah posts for the proposed verandah area within Terrigal Esplanade and Kurrawyba Ave road reserves shall be non load bearing and easily removable (completely detachable), and be a minimum 600mm clear of the existing water mains.

- 2.12 The existing footway / pavers levels in Terrigal Esplanade and Kurrawyba Ave are not to be altered except at the proposed vehicle access cross over.
- 2.13 A minimum clearance of 3.0m shall be maintained between the existing footway level and the underside of the verandah.
- 2.14 Pursuant to section 80A(1) of the Environmental Planning and Assessment Act 1979 and Council's Section 94 Contributions Plan No 69 Car Parking Terrigal a contribution of \$186,480.00 shall be paid to Council. The contributions are subject to quarterly review as detailed in the contributions plan.

The total contribution amount is to be paid prior to the issue of a Construction Certificate.

The basis of the calculation and the total amount is subject to quarterly review. An adjustment amount will become payable if the contribution is not paid prior to the next review.

A copy of the Contributions Plan may be inspected at the office of Gosford City Council, 49 Mann Street, Gosford NSW.

- 2.15 Details of privacy/acoustic screening between the commercial and residential uses at level 2 being submitted and approved by Council. The screens are to be designed so as to be visually compatible with the development and not visible from the street.
- 2.16 Glass balustrades shall be provided to the roof-top terrace as detailed in red on the approved plans.

3. PRIOR TO COMMENCEMENT OF ANY WORKS

- 3.1 A construction certificate for the building work is to be issued and the person having the benefit of the development consent must appoint a principal certifying authority prior to the commencement of any building works.

The principal certifying authority (if not the Council) is to notify Council of their appointment and notify the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work no later than 2 days before the building work commences.

- 3.2 A copy of the stamped approved plans must be kept on site for the duration of site works and be made available upon request to either the Principal Certifying Authority or an officer of the Council.
- 3.3 Site works are not to commence until the sediment control measures have been installed in accordance with the approved plans.
- 3.4 A sign is required to be erected in a prominent position on any work site on which building or demolition work is being carried out. The sign shall indicate:
 - a) The name, address and telephone number of the principal certifying authority for the work; and
 - b) The name of the principal contractor and a telephone number at which that person may be contacted outside of working hours; and
 - c) That unauthorised entry to the work site is prohibited.

The sign is to be removed when the work has been completed.

- 3.5 Temporary closet accommodation being provided throughout the course of building operations by means of a chemical closet complying with the requirements of the Department of Environment and Climate Change or temporary connections to Council's sewer where available, such connections to be carried out by a licensed plumber and drainer.

- 3.6 Public access to the construction site is to be prevented, when building work is not in progress or the site is unoccupied.

These prevention measures must be in accordance with the NSW WorkCover publication titled, '*Site Security and Public Access onto Housing Construction Sites*' and installed prior to the commencement of any demolition, excavation or building works and be maintained throughout construction. The use of barbed wire and/or electric fencing is not to form part of the protective fencing to construction sites.

- 3.7 A suitable hoarding or fence is to be erected between the building or site of the proposed building and any public place to prevent any materials from or in connection with the work, falling onto the public place.

If it is intended or proposed to erect the hoarding or fence on the road reserve or public place, a separate application made under the *Roads Act 1993* will need to be lodged with Council together with the associated fee.

- 3.8 Prior to commencement of any demolition work, the property's sewer connection must be disconnected at the Inspection Shaft and capped.

- 3.9 Separate application for a vehicular access crossing, accompanied by the current fee as prescribed in Council's Schedule of Fees and Charges shall be submitted to Council. The application form can be obtained by contacting Council's Customer Service Staff or visit Council's web site www.gosford.nsw.gov.au

4. DURING WORKS

- 4.1 Clearing of land, excavation, and/or earthworks, building works, and the delivery of building materials shall be carried out between the following hours:

Mondays to Fridays - 7:00am to 6:00pm

Saturdays - 8:00am to 4:00pm except as noted in Clause 'b'

a No work is permitted on Sundays and Public Holidays

b No work is permitted on:

- Saturdays when a public holiday is adjacent to that weekend.
- Construction industry awarded rostered days off.
- Construction industry shutdown long weekends.

Clause b does not apply to works of a domestic residential nature as below:

- i Minor renovation or refurbishments to single dwelling construction.
- ii Owner occupied renovations or refurbishments to single dwelling construction.
- iii Owner builder construction of single dwelling construction; and/or
- iv Any cottage constructions, single dwellings or housing estates consisting of predominantly unoccupied single dwellings.

- 4.2 Erosion and Siltation control measures must be undertaken and maintained in respect to any part of the land where the natural surface is disturbed or earthworks are carried out.

The controls shall comply with Council's Code of Practice of Erosion and Sedimentation Control.

- 4.3 A report prepared by a registered Surveyor is to be submitted to the Principal Certifying Authority at each floor level of construction of the building (prior to the pouring of concrete) indicating that the finished floor level is in accordance with the approved plans.
- 4.4 To minimize the opportunity for crime, the development must incorporate the following:
 - a Adequate lighting to AS1158 is to be provided to common areas.
 - b The ceiling of the car park must be painted white.
 - c The development must be designed to avoid foot holes or natural ladders so as to minimize unlawful access to the premises.
 - d Adequate signage within the development to identify facilities, entry/exit points and direct movement within the development.
- 4.5 Building materials must not be stored nor construction work carried out on the road reserve unless associated with a separate approval under the *Roads Act 1993*.
- 4.6 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 is responsible to notify the neighbour and responsible for the protection and preservation of the adjoining allotment of land.
- 4.7 This development is subject to Council's DCP106 – Controls for Site Waste Management. The Waste Management Plan submitted as supporting documentation with this development consent is required to be implemented during all stages of demolition and construction.
- 4.8 Buildings are to be demolished in a safe and systematic manner in accordance with the requirements of Australian Standard *AS 2601-2001 - Demolition of Structures*, and disposed of in an approved manner.
- 4.9 Hazardous waste such as asbestos cement sheeting being handled, conveyed and disposed of in accordance with guidelines and requirements of Workcover New South Wales. Disposal of asbestos material at Council's Waste Depot requires prior arrangement for immediate land filling.
- 4.10 Mechanical ventilation systems comprising water cooling, evaporative cooling, or warm water systems must be registered with Council on completion of the installation.
- 4.11 Impervious surface areas including pathways and driveways are to be graded and drained to prevent water run-off affecting adjoining properties.
- 4.12 All roof water being drained to a stormwater drainage system as per engineering design to rainwater tanks and/ or Council drainage system.
- 4.13 The works within the road reserve that required approval under the Roads Act shall be constructed in accordance with Council's 'Civil Construction Specification', 'GCC Design Specification for Survey, Road and Drainage Works' and Policy 'D6.46 Erosion Sedimentation Control'.
- 4.14 The engineering works within private property that formed part of the Construction Certificate shall be constructed in accordance with Council's 'Civil Construction Specification', 'GCC Design Specification for Survey, Road and Drainage Works' and Policy 'D6.46 Erosion Sedimentation Control'.

- 4.15 The location of all electrical fixtures and/or gas outlets are to be at a minimum height of RL 1.8m AHD for the basement and RL 3.82m AHD for the ground floor.
- 4.16 An appropriately qualified person shall be engaged to undertake soil and water analysis to determine whether Acid Sulphate Soils (ASS) are present and if they occur in such concentrations as to warrant the preparation of a management plan.

If an ASS Management Plan is required the applicant shall implement the plan.

5. PRIOR TO ISSUE OF THE OCCUPATION CERTIFICATE

- 5.1 Application for an Occupation Certificate must be submitted to and approved by the Principal Certifying Authority prior to occupation of the building.
- 5.2 The premises not being occupied until an occupation certificate has been issued.
- 5.3 Lots 13 & 14 DP746757 must be consolidated into a single allotment under one Certificate of Title prior to the issue of an Occupation Certificate.
- 5.4 The driveway, vehicle manoeuvring area and six (6) car parking spaces as shown on the approved plan must be properly constructed, graded, drained, sealed and line marked including directional arrows with impervious paving material, in accordance with Australian Standard 2890.1-2004 Off Street Parking.
- 5.5 The street number is to be at least 100mm high and be clearly visible from the street frontage.
- 5.6 Mail receptacles shall be provided and appropriately numbered for each dwelling unit in the development, as well as for the managing body, in consultation with Australia Post.
- 5.7 Mechanical ventilation systems comprising water cooling, evaporative cooling, or warm water systems must be registered with Council on completion of the installation.
- 5.8 Impervious surface areas including pathways and driveways are to be graded and drained to prevent water run-off affecting adjoining properties.
- 5.9 All roof water being drained to a stormwater drainage system to rainwater tanks and or to Council drainage system.
- 5.10 Works within the road reserve that required approval under the Roads Act are to be completed in accordance with Council's 'Civil Construction Specification', 'GCC Design Specification for Survey, Road and Drainage Works' and Policy 'D6.46 Erosion Sedimentation Control', and documentary evidence for the acceptance of such works obtained from the Roads Authority prior to the issue of an Occupation Certificate.

Note 1: A maintenance bond shall be paid on completion of the works in accordance with Section 1.07 Maintenance of the 'Civil Construction Specification'.

- 5.11 Any damage not shown in the dilapidation report submitted to Council before site works had commenced, will be assumed to have been caused as a result of the site works undertaken and must be rectified at the applicant's expense, prior to release of the Occupation Certificate.

5.12 The internal engineering works within private property that formed part of the Construction Certificate shall be completed in accordance with Council's 'Civil Construction Specification', 'GCC Design Specification for Survey, Road and Drainage Works' and Policy 'D6.46 Erosion Sedimentation Control', prior to the issue of an Occupation Certificate.

5.13 Prior to the issue of an Occupation Certificate the Deposited Plan must be amended to include a Section 88B Instrument under the Conveyancing Act 1919 for the following restrictive covenants; with the Council having the benefit of these covenants and having sole authority to release and modify. Wherever possible, the extent of land affected by these covenants shall be defined by bearings and distances shown on the plan of subdivision.

To create a Restriction as to User over all lots containing a nutrient/pollution facility restricting any alteration to such a facility, or the erection of any structure over the facility or the placement of any obstruction over the facility.

5.14 A Section 88E instrument under the Conveyancing Act 1919 must establish the following positive covenants; with the Council having the benefit of these covenants and having sole authority to release and modify. Contact Council for wording of the covenant(s).

To ensure on any lot containing a nutrient/pollution control facility that:

The facility will remain in place and fully operational,

The facility is maintained in accordance with the operation and maintenance plan so that it operates in a safe and efficient manner,

Council staff are permitted to inspect and repair the facility at the owners cost,

Council is indemnified against all claims of compensation caused by the facility.

5.15 One car parking space being allocated to each of the two (2) residential residencies.

5.16 A separate application be made through Council's Property Officer for licences for all dining areas and balconies over Council's road reserve.

6. ONGOING OPERATION

6.1 Nothing associated with the business is to be located on the footpath or adjoining public area, including the parking of vehicles, storage of goods, materials, waste or the like.

6.2 The sound level output from the development or business shall not exceed 5dBA above the ambient noise level measured at the boundary of the property.

6.3 No materials, waste matter or products shall be stored outside the building or the approved waste storage area, at any time.

6.4 All external lights shall be operated and maintained in accordance with the Australian Standard AS4282 - Control of the Obtrusive Effects of Outdoor Lighting so as not to cause a nuisance or adverse impact on the amenity of residents of the surrounding area or to motorists on nearby roads.

6.5 The operation of all mechanical plant equipment and machinery (i.e. air conditioning unit and/or heat pump) shall not give rise to offensive noise as defined in the Protection of the Environment Operation Act 1997.

6.6 Maintenance of the nutrient/pollution control facilities in accordance with the operation & maintenance plan.

6.7 No roofing is permitted above the roof-top pergolas.

7. OTHER APPROVALS

Nil

8. ADVICE

- 8.1 The public authorities may have separate requirements and should be consulted in the following aspects:
- a *Australia Post* for the positioning and dimensions of mail boxes in new commercial and residential developments;
 - b *Jemena Asset Management* for any change or alteration to the gas line infrastructure;
 - c *Energy Australia* for any change or alteration to electricity infrastructure or encroachment within transmission line easements;
 - d *Telstra, Optus* or other telecommunication carriers for access to their telecommunications infrastructure.
 - e *Gosford City Council* in respect to the location of water, sewerage and drainage services.
- 8.2 All work carried out under this Consent should be done in accordance with WorkCover requirements including the Occupational Health and Safety Act 2000 No 40 and subordinate regulations, codes of practice and guidelines that control and regulate the development industry.
- 8.3 Separate application being made for connection to Council's sewerage system.
- 8.4 It is the sole responsibility of the owner, builder and developer, to ensure that the proposed building or works complies with the requirements of the *Disability Discrimination Act*.
- NOTE: The *Disability Discrimination Act* (DDA) is a Federal anti-discrimination law. The DDA covers a wide range of areas including employment, education, sport and recreation, the provision of goods, services and facilities, accommodation and access to premises. The DDA seeks to stop discrimination against people with any form of disability including physical, intellectual, sensory, psychiatric, neurological, learning, disfigurement or presence in the body of a disease-causing organism. Whilst this development consent issued by Council is in accordance with the relevant provisions of the current *Building Code of Australia*, it does not indicate nor confirm that the application complies with the requirements of the DDA.
- 8.5 A fee for the approval of engineering plans under the Roads Act 1993 applies. The amount of this fee can be obtained by contacting Council's Customer Services on (02) 4325 8222.
- 8.6 The inspection fee for works associated with approvals under the Roads Act is calculated in accordance with Council's current fees and charges policy.
- 8.7 Developers should make early application for a Section 307 Certificate under the Water Management Act 2000 from the Water Authority (Council). For a copy of the application form 'Application for Certificate under Section 305' contact Customer Service on (02) 4325 8200 or visit Council's web site www.gosford.nsw.gov.au to download a form from the Water & Sewerage forms index.

- 8.8 The residents, caretaker or Body Corporate will be responsible for placing the Mobile garbage/recycling containers at a suitable location at the kerbside. This will be no earlier than the evening prior to the collection day and returned to the building no later than the evening on collection day.

9. PENALTIES

Failure to comply with this development consent and any condition of this consent may be a **criminal offence**. Failure to comply with other environmental laws may also be a **criminal offence**.

Where there is any breach Council may without any further warning:

- Issue Penalty Infringement Notices (On-the-spot fines);
- Issue notices and orders;
- Prosecute any person breaching this consent, and/or
- Seek injunctions/orders before the courts to retain and remedy any breach.

Warnings as to Potential Maximum Penalties

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

10. REVIEW OF DETERMINATION

- 10.1 Subject to provisions of Section 82A of the Act the applicant may make an application seeking a review of this determination, providing it is made in time for Council to determine the review within twelve (12) months of this determination.

11. RIGHT OF APPEAL

- 11.1 Sections 96(6) or 97 of the Act, where applicable, confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court exercisable within 60 days or 12 months respectively, from the date of determination.

- 11.2 To ascertain the date upon which the determination becomes effective refer to Section 83 of the Act.