

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



RAAF (LANDINGS)
Ex Servicemen's Charitable
Trust Pty Limited
FUND



Bezzina Builders Pty Limited

No. 10973 of 2001

Rosecorp Pty Ltd

Applicant

**Ku-ring-gai Municipal
Council**

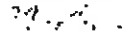
Respondent

The Court orders by consent that:

1. The appeal is upheld.
2. Development application to erect housing for older people and people with a disability on lot 1 DP 858405, known as 440 Bobbin Head Road, North Turrumurra is approved subject to the conditions in annexure A.
3. The exhibits are returned except Exhibits 10, A and C.

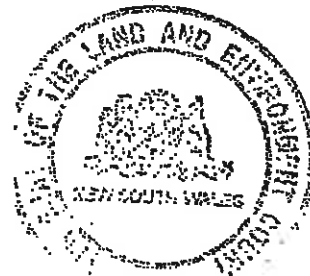
Ordered: 21 May 2002

By the Court



**M Greenwood
Registrar**

Order



Conditions of development consent

Annexure A

Rosecorp Pty Ltd v Ku-ring-gai Municipal Council

GENERAL CONDITIONS

1. Development consent is granted for a development pursuant to State Environmental Planning Policy No. 5 – Housing for Aged Persons and People with a Disability comprising 220 dwellings, carparking for 286 vehicles, community facilities and associated landscaping to be constructed in accordance with plans drawn by Stephen Bowers Architect Pty Limited numbered DA01C and DA02B-DA14B.
2. All building works shall comply with the Building Code of Australia.
3. Deleted
4. The submission of the approved plans to Sydney Water, before any work is commenced to ensure that the proposed structure meets that Authority's By-Laws. Failure to submit these plans before commencing work will render the owner liable to a penalty and may result in the demolition of work.
5. Should any evidence of aboriginal relics be found on the site during clearing, earthworks or construction activities, all work shall cease on the site and the Council and the National Parks and Wildlife Service shall be notified immediately for further investigation and advice.
6. Deleted
7. Any stage of the development shall not be occupied unless the relevant stage of the development has been completed in accordance with all relevant conditions of consent and the approved plans and an Occupation Certificate has been issued.
8. The opening of any public footway, roadway, road shoulder or any part of the road reserve shall not be carried without a Road Opening Permit being obtained from the Council (upon payment of the required fee) beforehand.
9. It is a condition of consent that the applicant, builder or developer or person who does the work on this residential building project arrange the Builders Indemnity Insurance and submit the Certificate of Insurance in accordance with the requirements of Part 6 of the *Home Building Act 1989* to the Council or other Principal Certifying Authority for endorsement of the plans accompanying the Construction Certificate. It is the responsibility of the applicant, builder or developer to arrange the Builder's Indemnity Insurance for residential building work over the value of \$5,000 and to satisfy the

Council or other Principal Certifying Authority by the presentation of the necessary Certificate of Insurance so as to comply with the applicable requirements of Part 6 of the *Home Building Act 1989*. The requirements for the Builder's Indemnity Insurance does not apply to commercial or industrial building work or for residential work less than \$12,000, nor to work undertaken by persons holding an Owner/Builder's Permit issued by the Department of Fair Trading (unless the owner/builder's property is sold within 7 years of the commencement of the work).

10. Deleted

1. Prior to commencing any construction or subdivision work, the following provisions of the Environmental Planning & Assessment Act, 1979 (the 'Act') are to be complied with:

- (a) A Construction Certificate is to be obtained in accordance with Section 81A(2)(a) of the Act.
- (b) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 81A(2)(b) of the Act.
- (c) Council is to be notified in writing, at least two (2) days prior to the intention of commencing buildings works, in accordance with Section 81A(2)(c) of the Act.
- (d) Should the development be certified by a Principal Certifying Authority other than Council, a fee of \$15.00 for each Part 4A Certificate is to be paid to Council on lodgement of those Certificates with Council.

- 12. For the purpose of health and amenity, the disposal of backwash and/or the emptying of a swimming pool into a reserve, watercourse, easement or stormwater drainage system is prohibited. These waters are to discharge via a permanent drainage line into the Sydney Water's sewer. Permission is to be obtained from the Sydney Water prior to the emptying of any pool to the sewer.
- 13. To ensure compliance with the relevant standards, an effective and approved safety fence with self closing gate complying with the minimum requirements of Australian Standard 1926-1986 'Fences and Gates for Private Swimming Pools' shall be provided to the Principal Certifying Authority's satisfaction in the location indicated on the approved plans prior to any water being placed in the pool.
- 14. For safety purposes, depth markers shall be provided at both ends of the pool.
- 15. For safety purposes, prior to the pool being filled a weather resistant poster detailing expired air resuscitation (mouth to mouth) methods shall be affixed

within plain sight of the pool. A sign/notice with the words 'YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL' shall be erected in clear view and in close proximity to the pool.

16. The works shall be erected in conformity with the approved plans and specifications and in accordance with the conditions of approval set out herein.
17. For the purpose of ensuring the compliance with the terms of the approval, an approved copy of the plan and this Consent and Construction Certificate shall be kept on site at all times.
18. For the purpose of safety and amenity of the area, no building materials, plant or the like are to be stored on the public road or footpath without the written approval being obtained from the Council beforehand. The pathway shall be kept in a clean, tidy and safe condition during building operations. Council reserves the right, without notice, to rectify any such breach and to charge the cost against the applicant/owner/builder, as the case may be.
19. **HOURS OF WORK:** For the purpose of residential amenity, noise generating work carried out in connection with building and construction operation, including deliveries of building materials and equipment, is restricted to the following hours: Mondays to Fridays inclusive: 7.00am to 5.30pm. Saturdays: 8.00am to 12.00 noon. Sundays and Public Holidays: Not Permitted. The use of the following items of plant on the site is also restricted to the above mentioned hours: compressors, bulldozers, power operated woodworking machines, excavators and loaders, jackhammers, Ramset guns, concrete mixers and concrete delivery wagons, hoists, winches, welding and rivetting plant.

Whilst work on Saturdays may be performed until 5.30pm, such work or any associated activities shall not involve the use of any noise generating processes or equipment.
20. For the purpose of public safety, a sign shall be erected on the site prior to any work commencing which is clearly visible from a public place stating that unauthorised entry to the site is not permitted and showing the name of the builder or another person responsible for the site and a telephone number for contact outside working hours. The sign may only be removed on satisfactory completion of the works.
21. A sign shall be erected in a prominent position on the site which states the name and contact details of the Principal Certifying Authority.
22. All excavations shall be properly guarded and protected with hoardings or fencing to prevent them from being dangerous to life and property.
23. Any excavation of rock involving hydraulic or compressed air rock hammers or other excavation equipment shall comply with the requirements

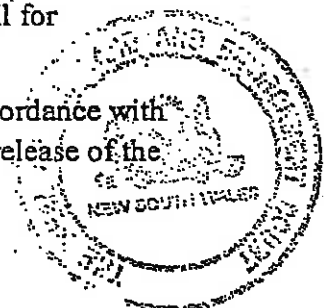
of Council's Code for the Control and Regulation of Noise on Building Sites.

24. To maintain the residential amenity all electricity supply services to the site are to be provided underground.
25. The developer shall submit to Council a letter from Telstra and Optus confirming that satisfactory arrangements have been made for the provision of underground telephone services, prior to the release of the Subdivision Certificate or Occupation. Application shall be made to Optus, Network Operations, Facsimile No 9837 9060, Phone No 9837 9010, or Telstra Phone No 12 455.
26. Air conditioning equipment shall not be used in such a manner that emits noise that can be heard within a habitable room in any other residential premises (regardless of whether any door or window to that room is open)
 - (a) before 8:00am or after 10:00pm on Saturday, Sunday or Public Holidays, or
 - (b) before 7:00am or after 10:00pm on any other day
27. The creation of a Restriction as to use of land under Section 88E of the Conveyancing Act 1919, restricting the occupation of the premises to:
 - (a) People 55 or over or people who have a disability;
 - (b) People who live with people 55 or over or people who have a disability;
 - (c) Staff employed to assist in the administration of and provision of services to housing provided in this development.
28. The development is to remain as Housing for Aged or Disabled Persons within the meaning of State Environmental Planning Policy No 5 at all times.
29. Advertising, signage, marketing or promotion of the sale of the dwellings in this development shall make clear reference to the fact that this is a SEPP5 development and that at least one occupier shall be aged 55 years or over or have a disability.
30. The burning of building refuse and like matter on the site is prohibited.
31. Under no circumstances shall building materials, demolition waste, fill, soil or any other material from any source be placed or stored within any public reserve.
32. For the purpose of health and amenity during construction, effective measures are to be taken at all times to prevent any nuisance being caused by noise, vibrations smells, fumes, dust, smoke, waste water products and the like.

33. To prevent pollution, all vehicles making a delivery during construction to or from the site are to be covered to prevent loose materials, dust etc falling from the vehicles.
34. Topsoil shall be stripped from areas to be developed and stock-piled within the site. Stock-piled topsoil on the site shall be located outside drainage lines and be protected from run-on water by suitably positioned diversion banks. Where the period of storage will exceed 14 days stock-piles are to be sprayed with an appropriate emulsion solution or seeded to minimise particle movement.
35. Your attention is directed to the operation of the Commonwealth Disability Discrimination Act 1992, which may impose greater obligations on providing access to disabled persons other than compliance with the Building Code of Australia. You are advised to seek advice from the Human Rights and Equal Opportunity Commission (phone (02) 9284 9600) in respect of your application.
36. External paved access for vehicles and pedestrians being provided with material which will provide some contrast to the finish of the pavement to the satisfaction of the Principal Certifying Authority.
37. No parking space to be separately sold or leased out except where such parking space has been provided in excess of the minimum number of spaces required to comply with Council's requirements.
38. All visitor parking is to be fully accessible for use at all times.
39. Appropriate transport is to be provided for the daily use of residents of the Retirement Village development and a form detailing usage and times shall be required.
40. The support services and facilities as set out in the Statement of Environmental Effects and Support Services Statement accompanying the application are to be provided to the development and its residents.
41. All common area community facilities on site to be made available to all residents of the development.
42. That the boundary of the *Darwinia biflora* to be retained should be delineated, using landscaped features, which are aimed to deter persons entering the *Darwinia biflora* population.
43. The 'entry radius' around the kerbline off Bobbin Head Road shall be large enough to adequately cater for left turning buses entering the site.
44. The developer should liaise with the National Parks & Wildlife Service as requested by the Regional Development Advisory Committee prior to finalising the access driveway design.

45. That the developer work with the local bus companies to explore whether current bus routes can be extended/modified to service the Retirement Village, and provide proof to Council of these negotiations and the outcomes and resolutions reached.
46. The secondary access point at the southern end of the site connecting onto Du Faur Street is only for natural emergency purposes and there will be no day to day ingress or egress available from this point.
47. For the purpose of residential amenity, all trade waste and waste storage areas are to be graded and drained to the Sydney Water's sewer.
48. The buildings adjoining bushland are to be constructed in accordance with Australian Standards AS 3959 for Development in Bushfire Affected Regions.
49. To ensure ease of access to the subject property, the roads providing access for fire fighting appliances and trade waste vehicles shall be designed to facilitate the use of a vehicle, having the following dimensions.
- | | |
|--------------------------|-----------|
| Wheel base | 5.0m |
| Overall length | 8.8m |
| Track | 2.5m |
| Overall width | 6.0m |
| Loaded rear axle weight | 22 tonnes |
| Lifting clearance height | 5.2m |
| Turning Circle | 16.2m |
| Maximum Gradient | > 1:6 |
50. Land disturbance shall not extend beyond three metres from the extent of the approved development works, other than the access corridor, and approved underground service routes.
51. Only locally occurring native species shall be planted and/or maintained within the Asset Protection Zones. Planting over the rest of the site shall utilise non invasive species.
52. Development and rehabilitation works shall be planned to minimise the area of exposed and disturbed soil at any one time.
53. Natural vegetation, specifically identified as being retained on the approved construction plans and the approved landscape plan shall not be removed.
54. No encroachment upon land adjoining the site including the National Park shall be permitted for any activity, storage or disposal of materials.
55. All trees to be retained on site as identified in the approved construction and landscape plans shall be inspected and monitored by a qualified Arborist before, and during development works to ensure their long term survival. Regular reports from the Arborist to the Principal Certifying Authority shall be required at four (4) week intervals.

56. The developer shall appoint a person responsible for the continued effectiveness of the Soil Erosion and Drainage Management Plan. Such a person must anticipate and implement changing erosion and sediment control requirements as construction progresses. This may involve the removal or addition of sediment controls, establishment of new drainage paths and progressive stabilisation. In addition, regular inspection and maintenance of erosion and sediment control works is required to ensure their continued effective performance.
57. On completion of construction work tree and rock shelf protection and erosion and sediment control measures shall be removed.
58. All builders refuse, spoil and/or material unsuitable for use in landscape areas shall be removed from the site on completion of the building works.
59. Any part of the landscape works found faulty, damaged, dying or dead within a period of twelve (12) months from the completion of building works shall be replaced by the applicant or the owner at the time of replacement.
60. A water pollution control pond shall be designed and constructed on site in a location to receive and treat all contaminated normal flows and first flush runoff flows emanating from the site to the satisfaction of the Principal Certifying Authority.
61. The access driveway off Bobbin Head Road and the construction site are to be regularly watered to prevent dust nuisance to dwellings in the adjoining Eden Ridge residential complex during the construction phase of the development.
62. For water runoff quality improvement there is to be no usage of blue metal or other crushed volcanic rock, other than for road pavement on the subject site and washed crushed or round river gravel or other material approved by Council shall be used instead.
63. To reduce stormwater runoff, all visitor parking areas in the development are to be constructed with pervious pavements.
64. Approval is to be obtained from Council as the roads authority under the Roads Act 1993 for any proposed works in the public road prior to the commencement of those works. This includes drainage, footpath and intersection works. All works are to be designed in accordance with Council's Specification for Road and Drainage Works. Plans and specifications for such works are to be submitted to the Council for approval.
65. For the purpose of Council inspections Engineering fees in accordance with the following schedule will be payable to Council prior to the release of the approved plans.



Submission of Engineering Plans per A1 plan sheet (resubmission 20% extra)	\$160.00
Drainage Pipelines per metre (minimum \$73.70)	25.00
Inter allotment Drainage per metre (minimum \$73.70)	20.00
Drainage Structures (ie. pits etc.) each	85.00
Common Driveways per metre (minimum \$68.00)	7.50
Detention Structures and Special < 50m ³ of storage	135.00
<u>Inspection Fee</u>	80.70
A re-inspection fee of	120.00

per visit may be charged where remedial work is unprepared at the requested time of inspection or where remedial work is unsatisfactory and a further inspection is requested. Engineering fees must be paid prior to the final approval of the works.

66. The keeping of cats and dogs in the development is prohibited with the exception of dogs that were in the ownership of the resident during the 12 months before moving to the development.
67. The developer shall implement the Emergency Incident and Emergency Evacuation Plan prepared by Conacher Travers and included in a report dated 2 April 2002 prepared by Graham Swain of Conacher Travers
68. All ponds shall be drained and dried annually to prevent the permanent colonisation of the introduced Mosquito Fish.

CONDITIONS TO BE COMPLIED WITH PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

69. Deleted
70. A CASH BOND/BANK GUARANTEE of \$20,000 shall be lodged with Council as a Landscape Establishment Bond prior to the release of the Construction Certificate to ensure that the landscape works are installed and maintained in accordance with the approved landscape plan or other landscape conditions.

Fifty percent (50%) of the this bond will be refunded upon issue of the final Certificate of Compliance, where landscape works as approved have been satisfactorily installed. The balance of the bond will be refunded 3 years after issue of the building certificate, where landscape works has been satisfactorily established and maintained.

It is the responsibility of the applicant to notify Council in relation to the refunding of the bond at the end of the 3 year period. Where a change of ownership occurs during this period it is the responsibility of the applicant to make all arrangements regarding transference of the bond and to notify Council of such.

71. A CASH BOND/BANK GUARANTEE of \$20,000.00 shall be lodged with Council prior to the release of the Construction Certificate to ensure the trees required to be maintained and protected as identified in the approved construction and landscape plans remain in the same condition as found prior to commencement of site development work.
- The bond will be returned following issue of the final Certificate of Compliance, provided the trees are undamaged.
- In the event that any specified trees are found damaged, dying or dead as a result of any negligence by the applicant or its agent, or as a result of the construction works at any time during the construction period, Council will have the option to demand the whole or part thereof of the bond.
72. The Long Service Levy is to be paid to Council in accordance with the provisions of Section 34 of the Building and Construction Industry Payments Act 1986.
73. The applicant must ensure that the road, footway and sediment control fencing adjacent to the site are adequately maintained during construction works. The payment of a cash bond of \$10,000 shall be made prior to the release of building approval to ensure the performance of these works and the repair to any damage to Bobbin Head Road by vehicles servicing the site to the reasonable satisfaction of Council's Director Engineering Services. The developers representative on site shall be given 4 hours written notice to complete the outstanding work. Upon non compliance, Council will engage emergency staff to complete the require works and deduct the cost from this cash bond.
74. Wheelchair accessible WC facilities shall be indicated on the Construction Certificate plans on the first floor of the common area and to the pool house as required by Clause 13A(2)C of SEPP5 and the Building Code of Australia.
75. Submission for approval with the Construction Certificate of a Soil and Erosion Control Plan prepared in accordance with the NSW Department of Housing document 'Managing Urban Stormwater – Soils and Construction' (1998). Such controls are to include but not be limited to appropriately sized sediment basins, diversion systems, appropriate controls for each stage of works identified and barrier fencing which maximises and protects areas which are not to be disturbed.
76. Deleted.
77. Submission for approval with the Construction Certificate of plans and specifications for the following stormwater management provisions within the subject site. Designs are to meet the requirements of Council's Stormwater Management Manual and/or Australian Rainfall and Runoff as appropriate:

- (a) Deleted
- (b) The three water quality ponds at the downstream end of the site are to cater for the catchment of the subject property. The size of the ponds is to be maximised and to be at least the size as proposed in the Development Application documentation. The low flow travel paths and hydraulic residence times are to be maximised.
- (c) The provision of a readily maintainable gross pollutant trap at the immediate upstream end of the three water quality ponds at the downstream end of the site. The GPT should be designed to capture all litter, floating debris, organic debris, especially leaves, and coarse sediment.
- (d) The provision of an irrigation system which utilises the captured storm water in the proposed water quality pond system for outdoor watering purposes on the site. Stormwater re-use by irrigation of all common landscaped areas is to be designed so that on an average annual basis the volume of re-used stormwater is commensurate with the total irrigation need of those areas as determined by a suitably qualified and experienced horticulturalist.
- (e) Deleted
- (f) Deleted
- (g) The provision of a detention system which is designed to ensure that the post-development discharge rates from the subject site into the downstream natural watercourse do not exceed the pre-development discharge rates for the 1, 5 and 100 year design average recurrence interval storms for all durations. This is to be demonstrated by the use of suitable time-area computer modelling.
- (h) A suitably designed discharge structure at the downstream natural watercourse which dissipates flows to a pre-development state of flow.
- (i) Provision of new trunk drainage systems to convey runoff from
 - 1. The Du Faur Street catchment.
 - 2. The eastern adjoining site, being 430-438 Bobbin Head Road through the subject site. The imposition of this condition of consent does not affect any obligation of the owners of 430-438 Bobbin Head Road to contribute to the cost of these works.
 - 3. Deleted

These systems are to be designed in accordance with Council's Stormwater Management Manual and cater for both minor and

major flows. In addition the designing engineer is to certify that major flows are conveyed through the site providing at least 300mm and 150mm freeboard above the design overland flood flow to all habitable floor areas and garages respectively and without exceeding a velocity-depth product of $0.4\text{m}^2/\text{s}$ at any location. Approval of the design of the above trunk drainage systems is to be obtained from Council in writing prior to the issue of the Construction Certificate.

- (j) Details of carwashing bays, including water supply, to be provided within the development. Carwashing bays are to be clearly signposted as such and located at convenient positions around the development so that all units have convenient access to such a bay. Wash effluent from these bays is to be directed to the sewer system. Stormwater runoff is not to be directed to the sewer system which requires the carwashing bays to have roofed covers or other stormwater diversion means. Approval of the carwashing bay is to be obtained from Sydney Water and furnished prior to the release of the Construction Certificate.
- (k) Provision of a new trunk drainage pipe to convey runoff from Bobbin Head Rd along the northern boundary of the site to the stream. The pipe size is to be upgraded one size beyond the design requirement for the development and extended to intercept Bobbin Head Road surface flow with a new inlet pit. Design is to be carried out by a suitably qualified and experienced hydraulic engineer.

78 Deleted.

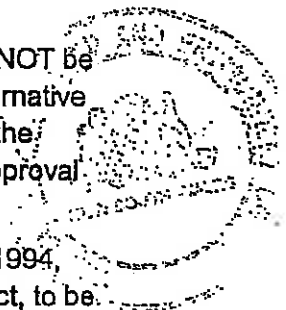
79. Provision to Council prior to the issue of a Construction Certificate of a \$10,000.00 bond to cover the restoration by Council of any damage to Council's infrastructure in the public road or drainage reserves along the frontage or within close proximity to the subject development caused as a result of construction works relating to the subject development. The bond shall be refundable following completion of all works relating to the proposed development upon the reasonable assessment and approval by Council's Development Engineer. Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in the following circumstances:

- (a) Where the damage constitutes a hazard in which case Council may make use of the bond immediately following non-performance by the developer with subclause (b).
- (b) The damage has not been repaired by the Applicant within 48 hours of the issue by Council in writing of instructions to undertake such repairs.

- (c) Non hazardous damage shall be repaired within a reasonable time as ordered by Council.

CONDITIONS TO BE COMPLIED WITH PRIOR TO WORK COMMENCING

80. Prior to the commencement of any work, the Principal Certifying Authority shall be notified in writing of the name and contractor licence number of the owner/builder who intends to carry out the approved works.
81. So as to minimise glare, all roofing material is to be of subdued colour which is compatible with the surrounding environment. A schedule of external finishes is to be submitted to and approved by the the principal certifying authority prior to the commencement of work.
82. To protect the public a temporary 1.8 metre high chain mesh, or similar, fence is required surrounding the construction works and maintained throughout the construction work.
83. To enable the 'ageing in place' philosophy to be achieved in Ku-ring-gai:
- (a) Prior to the occupation of each relevant stage, documentary evidence is to be provided to Council's satisfaction, of an agreement with suitably qualified service provider/s for the provision of the following services if and when required by any of the residents of the development:
- Personal care, including bathing and dressing;
 - Housekeeping, including cleaning and laundry;
 - Home delivered meals; and
 - 24 hour a day monitored emergency call system.
- (b) The documentary evidence is to include the following details:
- Proposed cost to residents of each of the services listed in (a) above; and
 - Proposed means of altering the cost to residents of these services. This may include: linking costs to the Consumer Price Index or a proportion of the Aged Pension; or by selecting a new service provider.
- (c) A comprehensive residents' manual is to be provided to all residents which includes information of relevance to them, such as doctors, churches and other community services and facilities.
84. Access for construction purposes associated with this building shall NOT be taken or gained through the adjoining public reserve. Should no alternative access exist, then application for access to the construction site via the public reserve shall be submitted to Council for consideration and approval before the commencement of works.
85. A Compliance Certificate pursuant to Section 73 Sydney Water Act 1994, as evidence of compliance with the provisions of Division 9 of that Act, to be



obtained from Sydney Water prior to the commencement of any work on the site.

86. A plan and specification of the landscape works, in accordance with the landscape concept plan in the Statement of Environmental Effects, for the site shall be submitted and approved by the Council, before the issuing of the construction certificate. The landscape plan shall comply with the standard detailed in Council's document 'Preparing a Landscape Plan'.

CONDITIONS TO BE COMPLIED WITH PRIOR TO OCCUPATION

87. A footpath to Council standards shall be constructed on the western side of the entry in Bobbin Head Road to the nearest bus stop. A bus shelter to be called **"The Landings bus stop"** and designed in a manner that is architecturally compatible with the Landings architecture shall be erected at the bus stop on the eastern side of Bobbin Head Road. Details of the footpath and bus shelter shall be submitted and approved by Council prior to their construction.
88. To ensure compliance with the consent, a final report from a Registered Surveyor shall be submitted to the Principal certifying Authority confirming floor/ceiling levels and boundary setbacks.
89. A Surveyor's Certificate is to be submitted to the Principal Certifying Authority confirming compliance with the following:
- (a) Maximum floor space ratio 0.236:1.
 - (b) Number of car parking spaces 286.
 - (c) Maximum built-upon area 40,000 square metres.
90. Deleted
91. All units to be equipped with an emergency communications device. Such facilities shall be monitored at all times 24 hours a day.
92. Deleted
93. An easement for the purpose of access is to be created over the defined private roadway granting full and unimpeded access for Council, its contractors and their vehicles for the purpose of collecting waste from the property. All waste is to be collected from within the development.
94. Deleted
95. A maintenance plan shall be prepared for the site - including the Asset Protection Zones. The maintenance plan shall be submitted and approved by the Principal Certifying Authority.
96. Prior to the release of an Occupation Certificate, a suitably qualified and experienced stormwater/hydraulic engineer is to provide certification that all stormwater management works including the following have been constructed in accordance with the approved plans and will perform in accordance with the design intent:
- (a) Deleted.

- (b) Deleted
 - (c) Proposed water quality/detention ponds with the site and associated gross pollutant trap.
 - (d) Deleted.
 - (e) Deleted.
 - (f) Deleted.
 - (g) Trunk drainage systems conveying flows from the eastern adjoining catchment, being 430-438 Bobbin Head Road, and the Du Faur Street catchment including both minor and major flow pipes/paths. In addition the designing engineer is to certify that major flows are conveyed through the as-constructed site providing at least 300mm and 150mm freeboard above the design overland flood flow to all habitable floor areas and garages respectively and without exceeding a velocity-depth product of 0.4m²/s at any location.
 - (h) Car washing bays.
97. Prior to the release of an Occupation Certificate for the relevant stage of the works, written approval is to be obtained from Council for the following completed works. Council is to be provided with works-as-executed drawings prepared by a Registered Surveyor and the relevant engineers certification for such works:
- (a) **The trunk drainage systems traversing the subject site for the Du Faur Street catchment and from Bobbin Head Road along the northern boundary.**
 - (b) deleted.
98. The on-site stormwater management system and the three proposed water quality ponds are to be subject to the following on-going maintenance programme. This programme is to be incorporated into a positive covenant, with Council named as the prescribed authority, which is to be registered on the title of the subject property(s) prior to the issue of an occupation certificate:
- (a) Deleted.
 - (b) **Proposed water quality ponds**

Maintenance Performance Measure : Macrophytes are sustained and meet design densities. Macrophyte density harvested as required to maintain design density. Permanent water shows signs of health and is not stagnant. Sediment and debris accumulation not to exceed 20% of design permanent storage volume. No litter and only minor amount of organic debris within basin. No weed growth nor algal blooms nor exotic fauna within basins. Any design safety measures intact.

Maintenance Timing : Performance measure met at least annually.

(c) Proposed detention facility

Maintenance Performance Measure : Available detention storage volume within 90% of design volume. Control discharge facility(s) not blocked and meets design intent.

Maintenance Timing : Performance measure met at least annually.

(d) Deleted

The creation on the title of the subject property(s) of suitable drainage easements which cover the following proposed drainage systems:

(a) The conveyance of Council stormwater runoff from the Du Faur Street catchment through the subject site. The easement is to cover the proposed piped system. In addition a Restriction-on-Use on the title of the subject property is to be created over the 100 year ARI flood zone associated with the trunk drainage system from the Du Faur Street catchment which does not permit the placement of any structures, walls, fences, fill or other items additional to those approved in condition 1 which may impede the 100 year ARI flood, within that zone. other than those approved by the Ku-ring-gai Council. Ku-ring-gai Council is to be named as the authority empowered to release, vary or modify the restriction. Council's approval to the proposed easement and restriction is to be obtained prior to registration.

(b) Deleted

(c) The conveyance of Council stormwater runoff from Bobbin Head Road along the northern boundary of the subject site.

Deleted.

BUILDING CONDITIONS

101-116 deleted

DEPARTMENT OF LAND AND WATER CONSERVATION CONDITIONS

General Terms Of Approval

Rivers And Foreshores Improvement Act 1948

Part 3a Permit

In accordance with the Environmental Planning and Assessment Act 1979 and Regulation 1994 (as amended) the Department of Land and Water Conservation (DLWC) has an approval role in relation to a Development Application (DA) lodged with Ku-ring-gai Council.

The DA relates to a proposed development at Lot 1 DP 858405, 440 Bobbin Head Road, North Turramurra, NSW, hereinafter referred to as "the Site".

Under Land and Environment Court proceedings NO. 10973 of 2002, Rosecorp Pty Limited v Ku-ring-gai Municipal Council, hearing dates: 16, 17 and 18 April 2002, Senior Commissioner Roseth handed down a judgment on 18 April 2002 in relation to the status of the watercourse at the Site for the purposes of the Part 3A of the Rivers and Foreshores Improvement Act 1948 (R&FI Act). Part of the watercourse at the Site was deemed to be a "river", such part being hereinafter referred to as "the Stream".

A permit issued under Part 3A of the R&FI Act is required to carry out works, including excavations on in or under, the area hereinafter referred to as "Protected Land" being in, or within 40 metres of the top of the bank of, or within a radius of 40 metres of the upstream extent of, the Stream, or works that will, or are likely to, obstruct or detrimentally affect the flow of the Stream.

Pursuant to Part 3A of the R&FI Act, DLWC, having reviewed the documentation associated with the DA, proposes to grant an approval to DA 807/01 (subject to conditions). DLWC's General Terms of Approval, for inclusion as conditions of consent, are set out below.

- 1A The works shown on the approved plans are permitted within the Riparian Zone and within the Protected Land.

1. Requirement for Permit

Any work which requires a permit under Part 3A of the R&FI Act ("Part 3A permit") is not to commence until such time as a Part 3A permit has been applied for, and subsequently issued by DLWC. Any work the subject of a Part 3A permit must be carried out in accordance with drawings and any other documentation required by these conditions, and approved by DLWC, and which will accompany the Part 3A permit.

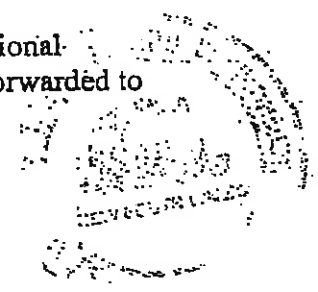
2. Cessation of Works

If, in the opinion of a DLWC officer, any work is being carried out in such a manner that it may damage or detrimentally affect the Stream, or damage or interfere in any way with any work, such work shall cease immediately upon oral or written direction of such officer.

3. Work as Executed Plans

If requested by DLWC, work as executed survey plans of a professional standard, and including information required by DLWC, shall be forwarded to DLWC within 14 days of such request.

4. Remedial Works



If any Part 3A permit condition is breached, the permit holder shall follow DLWC directions to address the breach and shall rehabilitate the Site as directed by, and to the satisfaction of, DLWC.

5. **Disposal of Vegetation**

Any vegetation or other material removed from the area of operations shall be disposed of to an appropriate site where the debris cannot be swept back into the Stream during a flood.

6. **Notification of Cessation of Works**

When the works subject to a Part 3A permit are to cease, DLWC must be notified 1 month in advance of the cessation of the works.

7. **Plans**

A set of plans of an acceptable industry standard, and additional to those submitted with the DA, must be prepared in consultation with and with the approval of DLWC and must be submitted to DLWC prior to the issue of the Part 3A permit, and must include:

- a) At least two representative cross section drawings at right angles to each other through all work components, being basins, drainage outlet structures, drainage channels, pollution control devices, sediment and erosion control devices (temporary or permanent), Stream stabilisation/protection works and any other structure, located in, or within 40 metres of the top of the bank of, or the upstream extent of, the Stream. The cross sections are to extend for a distance sufficient, and be of sufficient scale, to fully indicate the nature of the structure and its relationship with the surrounding environment. The cross sections are to address all existing temporary and/or partially completed and/or proposed works, and the location of any plantings for landscaping.
- b) A plan drawing showing the location of the cross sections as required above, the top of the bank of the Stream and the extent of Protected Land at the Site.

8. **Site Rehabilitation - Vegetation**

Site rehabilitation must protect any remnant local native riparian vegetation in the Riparian Zone at the Site and restore any part of the Riparian Zone disturbed by the development to a state that is reasonably representative of the natural vegetation communities and habitat of the Stream and as required in the *Vegetation Management Plan*.

Riparian Zones so protected and/or restored must be fully structured (to the extent required by the *Vegetation Management Plan*) and must be made up of a mix of native tree, shrub, groundcover and grass species local to the area. Revegetation must consist of a diverse range of local native plant species, planted at appropriate densities to achieve an effective and full riparian

vegetation structure. These densities are to consist of at least 1 tree and 1 shrub (on average) alternately planted at 1m spacings and in addition, groundcover plants at 4 per square metre provided those densities do not conflict with the Bushfire Management Plan. Revegetation is to be carried out over all areas in the Riparian Zone that are temporarily occupied by soil and water management controls, once those controls have been decommissioned and the ground surfaces restored to the correct profile and stabilised.

9. Soil Suitability

In the event that any soil is required to be imported to the Site for application to Protected Land, such soil is to be weed free, and similar to that which occurs naturally in local riparian areas. Any soil deemed suitable for the purposes of this condition must be suitable for the establishment and on-going viability of riparian vegetation. Prior to the soil being used on the Site, such soil must be tested and certified by a NATA registered soils laboratory as to the soil's similarity to the naturally occurring local soil and for its suitability for the establishment and on-going viability of riparian vegetation. Documentation arising from this testing and certification must be provided to DLWC prior to the placement of any soil.

Soil Structure

The structure of the soils in the Riparian Zone must be suitable for the vegetative rehabilitation of the Site. Such soils are therefore not to be proof-rolled or subjected to other unsuitable compaction.

Maintenance of Riparian Zone

The Riparian Zone must be maintained for a period of at least two years after final planting, where such plantings take place under this DA. Maintenance must include sediment and erosion control, watering, weed control, replacement of plant losses, disease and insect control, mulching and any other requirements necessary for achieving successful vegetation establishment.

Maintenance Report

If any plantings are to take place in the Riparian Zone under this DA, a report is to be submitted to DLWC every six months up until the end of the two-year maintenance period detailing progress in establishing the Riparian Zone.

13. Designation of Riparian Zone

A Riparian Zone 40 metres wide measured horizontally as projected from the top of the bank of the Stream shall be maintained along both sides of the Stream. Additionally, a Riparian Zone of 40 metres radius, measured horizontally from the upstream extent of the Stream, but not such that it produces a bulbous planform shape to the Riparian Zone, shall be maintained.

Selection of Species

No exotic plant species, other than temporary sterile cover crops, are to be planted within the Riparian Zone. All exotic plant species are to be progressively removed prior to final planting with local native plant species as described in the *Vegetation Management Plan*.

15. Public Access Way

Any public access way and fire trail other than those shown on the approved plans are to be located outside the Riparian Zone.

Works and Activities not to compromise implementation of the *Vegetation Management Plan* required under the consent for DA807/01
The Applicant must ensure that all works and activities at the Protected Land in no way compromise the implementation of the *Vegetation Management Plan*.

Vegetation Management Plan

The Applicant must, prior to establishing the Riparian Zone, and prior to the issue of any Part 3A permit, submit a *Vegetation Management Plan* to the satisfaction of DLWC indicating how such zone is to be established. No works are to be commenced on Protected Land until DLWC has approved the *Vegetation Management Plan* and a Part 3A permit has been issued to the Applicant.

18. Water Quality Protection

The Applicant must ensure that the amount of dirty water and sediment that enters the river from the Site is minimised.

19. Site Water & Sediment Runoff Management

The soil and erosion control plan under condition 75 shall be provided to DLWC for its approval insofar as it relates to Protected Land.

20. **Water Quality Pond and Sediment and/or Detention Basin Location**
Where the water quality pond or sediment and/or detention basin is located on Protected Land, a complete list of calculations is to be provided to DLWC, to the satisfaction of DLWC, prior to the issue of the Part 3A permit. The format for the calculations must be in accordance with that provided in Appendix 1 of the NSW Department of Housing's publication *Managing Urban Stormwater: Soils and Construction (3rd Ed.)(1998)*.
21. **Drainage Outlet Structures**
Any outlet structure, whether it be pipeline, spillway, the main drainage line across the Site, or any other outlet structure, if proposed to be located on Protected Land, is to be designed and constructed in such a way that it does not compromise the stability of the Stream, or Riparian Zone habitat and ecological functions. The design of any such outlet structure is to be undertaken in consultation with, and with the approval of, DLWC. The main drainage line across the Site is not to be piped or channelled within the Stream or to any extent that erodes the Stream.
22. **Implementation of the Soil and Erosion Control Plan**
The requirements of the *Soil and Erosion Control Plan* must be implemented prior to any other works commencing on the Protected Land.
23. **Maintenance of Erosion and Sediment Control Measures**
All erosion and sediment control measures within the Protected Land are to be inspected and maintained as required on a weekly basis and immediately following any rainfall events to ensure the efficient operation of these devices. This obligation remains until the Protected Land has been fully stabilised.
24. **Decommissioning of all Sediment and Erosion Controls**
Decommissioning of all sediment and erosion controls on Protected Land must be documented in detail to the satisfaction of DLWC. Decommissioning must meet the requirements outlined in the NSW Department of Housing's publication *Managing Urban Stormwater: Soils and Construction (3rd Ed.)(1998)*. The timeframes for the decommissioning of the sediment and erosion controls are to be cross-referenced to the implementation of any Riparian Zone plantings.
25. **Cash Bond or Bank Guarantee**
The applicant for a Part 3A permit is, as a pre-condition to the granting of the Part 3A permit, to provide a cash bond or bank guarantee, prior to the issue of any Part 3A permit, to cover the cost of decommissioning any temporary sediment and erosion controls on Protected Land and for the restoration and maintenance of the Riparian Zone as required by these conditions. Costings are to be based on industry standard rates and final estimates are to be approved by DLWC.
Any bank guarantee is to be provided from a bank licensed pursuant to the Banking Act 1959 (Cth) and is to be provided in favour of DLWC. In the case of either cash or a bank guarantee, the moneys will be held until such time as the restoration works and any specified maintenance period is complete. The sum held may be reduced on application to DLWC, subject to the satisfactory completion of stages of restoration. DLWC may at any time, and more than once and without notice to the Part 3A permit holder, demand all or part of the moneys available under the bank guarantee, if in its opinion, the Part 3A

permit holder has failed at any time to satisfactorily decommission temporary sediment and erosion controls, restore the Riparian Zone in accordance with these conditions, or meet the performance criteria set out in the *Vegetation Management Plan*.

General Advice

- A. A Part 3A permit, subject to conditions, will be issued for the proposed works upon application, and upon payment of the appropriate permit fee.
- B. Any Part 3A permit granted for works the subject of this DA will be for a period of one year.
- C. Three sets of drawings, as required in these General Terms of Approval, are to be provided to DLWC to allow Part 3A permit preparation.
- D. The rehabilitation of the area to the satisfaction of DLWC is the responsibility of the Part 3A permit holder and the owner or occupier of the land.
- E. The Part 3A permit holder and the owner or occupier of the land are responsible for any excavation or soil removal undertaken by any other person or company at this site.
- F. Any Part 3A permit granted is not transferable to any other person or company without written approval from DLWC and does not allow operations at any other site.
- G. Any Part 3A permit granted does not give the holder the right to occupy any land without the consent from the owner(s), nor does it relieve the Part 3A permit holder of any obligation which may exist to also obtain permission from local government and other authorities who may have some form of control over the Site of the work and/or the activities proposed to be undertaken.
- H. These General Terms of Approval are issued with the proviso that operations shall be carried out on freehold land. Should operations be on Crown Land, any Part 3A permit is rendered invalid for such Crown Land and has no force or effect on the same, and the occupier of Crown Land should contact the Lands NSW branch of DLWC.
- I. To issue a Part 3A permit, DLWC will require full details on land ownership of all areas affected by the proposed works, and authorisation for the works by relevant land owners.
- J. Should any of the above conditions not be complied with, DLWC may issue a Stop Order on Part 3A permit related operations at the Site until the conditions have been complied with.



Dr John Roseth
Senior Commissioner