

**ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979**  
**DETERMINATION OF DEVELOPMENT APPLICATION NO. 296-12-2004**  
**(FILE NO. 9036838)**

**ERECTION OF ROOF TOP SWIMMING POOL AND SPA POOLS**

I, the Minister for Infrastructure and Planning, pursuant to Section 80 (1) (a) of the *Environmental Planning & Assessment Act, 1979*, and clause 10 of State Environmental Planning Policy No. 71, determine the development application referred to in the attached Schedule 1, by granting consent to the application subject to the conditions of consent in the attached Schedule 2.

The reasons for the imposition of conditions are:

- (1) to maintain the amenity of the local area; and
- (2) to ensure that the type bulk, scale and size of the development is appropriate for the location,

Craig Knowles MP  
**Minister for Infrastructure and Planning**  
**Minister for Natural Resources**

Sydney,

2005

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Diane Beamer MP

**Minister for Juvenile Justice**

**Minister for Western Sydney**

**Minister Assisting the Minister for Infrastructure and Planning  
(Planning Administration)**

Sydney,

2005

## SCHEDULE 1

### PART A—TABLE

<b>Application made by:</b>	Provincial Planning P.O. Box 3237 Rouse Hill NSW 2155
<b>Application made to:</b>	Minister for Infrastructure and Planning
<b>Development Application:</b>	No. 296-12-2004
<b>On land comprising:</b>	No 15 Nelson Road Nelson Bay
<b>For the carrying out of:</b>	The construction of a swimming pool, two spa pools and associated timber decking
<b>Estimated Cost of Works</b>	\$ 18,000
<b>Type of development:</b>	State Significant Development
<b>S.119 Public inquiry held:</b>	No
<b>BCA building class:</b>	N/A
<b>Approval Body / Bodies:</b>	
<b>Determination:</b>	Development consent is granted subject to the conditions in the attached Schedule 2.
<b>Date of commencement of consent:</b>	This development consent commences on the date identified in the formal notification letter accompanying the Determination.
<b>Date consent is liable to lapse</b>	This consent will lapse 5 years from the date of commencement of consent, unless: <ul style="list-style-type: none"><li>▪ a shorter period of time is specified by the Regulations; or</li><li>▪ the development has physically commenced.</li></ul>

### PART B—NOTES RELATING TO THE DETERMINATION OF DA NO. 296-12-2004

#### ***Responsibility for other approvals / agreements***

The applicant is solely responsible for ensuring that all additional consents and agreements are obtained from other authorities, as relevant.

#### ***Appeals***

The applicant has the right to appeal to the Land and Environment Court under Section 97 of the *Environmental Planning and Assessment Act, 1979*. The right to appeal is only valid for a development application, within 12 months after the date on which the applicant received this notice.

#### ***Appeals—Third Party***

A third party right to appeal to this development consent is available under Section 123, subject to Section 101, of the *Environmental Planning and Assessment Act, 1979*.

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***Legal notices***

Any advice or notice to the consent authority shall be served on the Director-General.

***Swimming Pools Act 1992***

This application has been assessed in accordance with the Environmental Planning and Assessment Act 1979.

It is the responsibility of the applicant/owner to ensure compliance with the Swimming Pools Act 1992.

This Act applies to swimming pools (both outdoor and indoor) that are situated, or proposed to be constructed or installed, on premises on which a residential building, a moveable dwelling, a hotel or a motel is located.

***Local Government Act 1993***

It is the responsibility of the applicant/owner to ensure compliance where relevant, with the Local Government Act 1993.

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## PART C—DEFINITIONS

In this consent,

**Act** means the *Environmental Planning and Assessment Act, 1979* (as amended).

**Applicant** means Provincial Planning or any party acting upon this consent.

**Approval Body** has the same meaning as within Division 5 of Part 4 of the Act,

**BCA** means the Building Code of Australia.

**Certifying Authority** has the same meaning as Part 4A of the Act.

**Council** means Port Stephens Council.

**DA No. 296-12-2004** means the development application and supporting documentation submitted by the applicant on 2 December 2004

**Department** means the Department of Infrastructure, Planning and Natural Resources or its successors.

**Director** means the Director of the Urban Assessments (or its successors) within the Department.

**Director-General** means the Director-General of the Department.

**Minister** means the Minister for Infrastructure and Planning.

**PCA** means a Principal Certifying Authority and has the same meaning as Part 4A of the Act.

**Regulations** means the *Environmental Planning and Assessment Regulations, 2000* (as amended).

**Subject Site** has the same meaning as the land identified in Part A of this schedule.

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**SCHEDULE 2**  
**CONDITIONS OF CONSENT**  
**DEVELOPMENT APPLICATION NO. 296-12-2004**

**PART A—ADMINISTRATIVE CONDITIONS**

**A1 Development Description**

Development consent is granted only to carrying out the development described in detail below:

- The construction of a pool measuring approximately 8.5m X 4.0m above unit 9. The pool will be of 1.2 metres above existing floor level
- The construction of a spa pool 2.9m X 2.9 m attached to the swimming pool above unit 9
- The construction of a spa pool 2.4m X 2.4m above unit 10
- Associated timber decking/ landing area.

**A2 Development in Accordance with Plans**

The development shall be generally in accordance with development application number 296-12-2004 submitted by the applicant on 2 December 2004 and in accordance with the supporting documentation submitted with that application, including, but not limited to, the following:

Statement of Environmental Effects and supporting documentation prepared by Provincial Planning, dated November 2004.		
Plans prepared by CMT Architects		
Drawing No.	Name of Plan	Date
DA – 02	Rooftop Terrace / Section A-A	Not dated
DA - 03	Elevations	Not dated
DA - 04	Elevations	Not dated

**A3 Child Safety**

The proposed swimming pool shall be surrounded by a fence having a maximum height of 1200mm, measured from the outside of the enclosure with any space beneath not exceeding 100mm:

that forms a barrier between the swimming pool; and

- the remainder of the premises
- any place adjacent to or adjoining the premises; and

that contains within its bounds no structure apart from the swimming pool and such other structures that are wholly ancillary to the swimming pool; and

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that is designed, constructed and installed in accordance with Australian Standard 1926.1 - Fences and Gates for Private Swimming Pools and the Swimming Pools Act 1992 and regulations.

#### ***A4 Landscaping***

It is the responsibility of the pool owner to ensure that the pool fencing continues to provide the level of protection required. Due regard shall be given to the effect that any landscaping or landscaping features will have on the future effectiveness of security fencing.

#### ***A5 Noise***

The pool pump/filtration system shall be sited well clear of adjacent dwellings and shall be effectively acoustically treated and shall only be operated between the following hours:

- Monday to Saturday 7:00am - 8:00pm
- Sunday and Public Holidays 8:00am - 8:00pm

Should noise levels exceed 5dBA above the ambient noise level measured at the nearest dwelling, the pool filtration motor must be enclosed in an effective sound proof unit.

#### ***A6 Air resuscitation notice***

A poster prepared by the Royal Life Saving Society on expired air resuscitation shall be exhibited in a prominent position adjacent to the pool.

#### ***A7 Discharge of Pool Waste Water***

Swimming pool waste water shall be discharged into the waste water drainage of Hunter Water in accordance with their requirements. A development application to Hunter Water may be required for improvements to existing developments. Adequate barriers and drainage systems shall be provided to ensure that water from pool overflow or spill does not impact on adjacent properties and apartments below.

#### ***A7 BCA***

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

#### ***A8 Compliance***

The developer shall ensure that all contractors are aware of the conditions of consent and that these contractors are able to comply with the relevant conditions.

#### ***A9 Inconsistency between documents***

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

#### ***A10 Prescribed Conditions***

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The Applicant shall comply with the prescribed conditions of development consent under clause 98 of the Regulation.

***A11 PCA Inspection of Works***

The building works are to be inspected by the principal certifying authority to monitor compliance with the development approval and the relevant standards of construction.

Documentary evidence of compliance with the development approval and relevant standards of construction is to be maintained by the principal certifying authority.

Upon inspection of each stage of construction, the principal certifying authority is also required to ensure that adequate provisions are made for the following measures, to ensure compliance with the development approval:

DRAFT

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## **PART B—PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE**

### ***B1 Structural Adequacy***

Assessment shall be made by a qualified structural Engineer demonstrating the capability of the existing building to structurally accommodate the approved development both during and after construction when filled to capacity.

### ***B2 Outdoor Lighting***

In order to ensure that users and residents in and around the pool area use the roof terrace in a safe manner outdoor lighting shall be installed on the roof terrace. All outdoor lighting shall comply with, where relevant, AS/NZ1158.3: 1999 *Pedestrian Area (Category P) Lighting* and AS4282: 1997 *Control of the Obtrusive Effects of Outdoor Lighting*. Details demonstrating compliance with these requirements are to be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate.

## **PART C—PRIOR TO COMMENCEMENT OF WORKS**

### ***C1 Structural Details***

Prior to the commencement of construction, the Applicant shall submit to the satisfaction of the PCA structural drawings prepared and signed by a suitably qualified practising Structural Engineer that comply with:

- (1) the relevant clauses of the BCA,
- (2) the relevant development consent,
- (3) drawings and specifications comprising the Construction Certificate, and
- (4) the relevant Australian Standards listed in the BCA (Specification A1.3).

### ***C2 Construction Management Plan***

Prior to the commencement of any works on the site, a Construction Management Plan shall be submitted to and approved by the Certifying Authority. The Plan shall address, but not be limited to, the following matters where relevant:

- (1) hours of work,
- (2) contact details of site manager,
- (3) traffic management
- (4) noise and vibration management
- (5) waste management

The Applicant shall submit a copy of the approved plan to the Department and Council.

### ***C3 Noise and Vibration Management Plan***

Prior to the commencement of any works on the site, a Noise and Vibration Management Plan prepared by a suitably qualified person shall be submitted to and approved by the Certifying Authority. The Plan shall address, but not be limited to, the following matters:

- (1) Identification of the specific activities that will be carried out and associated noise sources,

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- (2) Identification of all potentially affected sensitive receivers including residences, schools, and properties containing noise sensitive equipment,
  - (3) Determination of appropriate noise and vibration objectives for each identified sensitive receiver,
  - (4) Noise and vibration monitoring, reporting and response procedures,
  - (5) Description of specific mitigation treatments, management methods and procedures that will be implemented to control noise and vibration during construction
  - (6) Justification of any proposed activities outside the construction hours specified in the conditions of this consent.
  - (7) Construction timetabling to minimise noise impacts including time and duration restrictions, respite periods, and frequency,
  - (8) Procedures for notifying residents of construction activities that are likely to affect their amenity through noise and vibration,

The Applicant shall submit a copy of the approved plan to the Department and Council.

#### ***C4 Contact Telephone Number***

Prior to the commencement of the works, the Applicant shall forward to the Department and Council a 24 hour telephone number to be operated for the duration of the construction works.

#### ***C5 Compliance Report***

Prior to the commencement of works, the Applicant, or any party acting upon this consent, shall submit to the Department a report addressing compliance with all relevant conditions of this consent.

#### ***C6 Construction***

Construction work is only to be carried out between the hours of 7:00am and 5:00pm Monday to Friday. No work is to take place on Saturdays, Sundays or Public Holidays.

### **PART D – DURING CONSTRUCTION**

#### ***D1 Structural Inspection Certificate***

A Structural Inspection Certificate or a Compliance Certificate must be submitted to the satisfaction of the PCA prior to the issue of an Occupation Certificate and/or use of the premises. A copy of the Certificate with an electronic set of final drawings (contact consent authority for specific electronic format) shall be submitted to the consent authority and the Council after:

- (1) The site has been periodically inspected and the Certifier is satisfied that the Structural Works is deemed to comply with the final Design Drawings; and,

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- (2) The drawings listed on the Inspection Certificate have been checked with those listed on the final Design Certificate/s.

## **ADVISORY NOTES**

### ***AN1 Structural Capability for Existing Structures***

The structural capabilities of an existing structure will need to meet the requirements of the BCA and may require engaging a structural engineer.

### ***AN2 Hunter Water***

A developer charge will be payable according to the additional demand placed on Hunter Water's water and wastewater systems.