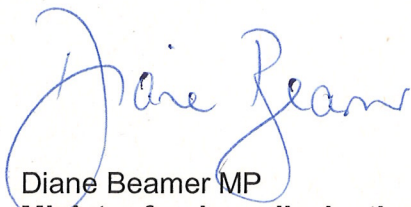


ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979
DETERMINATION OF DEVELOPMENT APPLICATION NO. 492-11-2003
(FILE NO. S03/03434)
MIXED USE COMMERCIAL/RETAIL/TOURIST ACCOMMODATION

I, the Minister Assisting the Minister for Infrastructure and Planning (Planning Administration), pursuant to Section 80 (1) (a) of the *Environmental Planning & Assessment Act, 1979*, and clause 10(2) of State Environmental Planning Policy No. 71 – Coastal Protection, 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 encourage good coastal urban design and a high standard of architecture
- (2) To ensure compliance with planning controls,
- (3) To maintain the amenity of the local area and landowners



Diane Beamer MP
Minister for Juvenile Justice
Minister for Western Sydney
Minister Assisting the Minister for Infrastructure and Planning
(Planning Administration)

Sydney, - 27 / 1

2004 5

SCHEDULE 1**PART A—TABLE**

Application made by:	Resort Corp Pty Ltd PO Box 7917, Gold Coast Mail Centre Bundall Qld 9726
Application made to:	Minister for Infrastructure and Planning
Development Application:	No. 492-11-2003
On land comprising:	Lot 4 Section 4, DP 172565 30 Marine Parade, Kingscliff NSW 2487
For the carrying out of:	Development described in Condition A1, Part A, Schedule 2
Estimated Cost of Works	\$1,900,000.00
Type of development:	State Significant Development
S.119 Public inquiry held:	No
BCA building class:	
Approval Body / Bodies:	Council
Determination made on:	
Determination:	A development consent is granted subject to the conditions in the attached Schedule 2.
Date of commencement of consent:	This development consent commences on the date identified in the formal notification letter accompanying the Determination.
Date consent is liable to lapse	This consent will lapse 5 years from the date of commencement of consent, unless: ▪ a shorter period of time is specified by the Regulations or ▪ a condition in Schedule 2, or ▪ the development has physically commenced.

PART B—NOTES RELATING TO THE DETERMINATION OF DA NO. 492-11-2003***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:

- (1) for a development application, within 12 months after the date on which the applicant received this notice, or

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*.

Legal notices

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

Section 94 Conditions

This development consent contains a levy for development imposed under section 94 of the Act. The imposing of levies where imposed in accordance with Tweed Shire Council's Section 94 Contribution Plan. The Tweed Shire Council Section 94 Contribution Plan may be inspected at the following locations:

- Civic and Cultural Centres, Tumbulghum Road, Murwillumbah; and
- Tweed Heads Branch Office, Brett Street, Tweed Heads.

The specific public amenity or service or both are identified in the monetary contributions conditions in Part B of Schedule 2.

PART C—DEFINITIONS

In this consent,

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

Applicant means company identified in Part A of this schedule 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 Tweed Shire Council.

DA No. 492-11-2003 means the development application and supporting documentation submitted by the applicant on 25 November 2003.

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.

SCHEDULE 2

CONDITIONS OF CONSENT

DEVELOPMENT APPLICATION NO. 492-11-2003

PART A—ADMINISTRATIVE CONDITIONS

A1 Development Description

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

- (1) Erection of a four (4) storey building;
- (2) Ground floor comprises 286sqm of commercial/retail with guest gym and lobby;
- (3) Four tourist accommodation units; two (2) three (3) bedroom units at level 1, 8 space car parking and one (1) three (3) bedroom unit at level 2 and one (1) three (3) bedroom unit at level 3.

A2 Development in Accordance with Plans

The development shall be generally in accordance with development application number 492-11-2003 submitted by the applicant on 25 November 2003, and in accordance with the supporting documentation submitted with that application, including, but not limited to, the following:

Statement of Environmental Effects entitled Statement of Environmental Effects – Proposed mixed commercial/retail & tourist accommodation comprising 4 units prepared by Darryl Anderson Consulting Pty Ltd, dated November 2003				
Architectural (or Design) Drawings prepared by Pacific Project Groups Architecture				
Drawing No.	Revision	Name of Plan	Date	Rev. Date
DA01	-	Site Plan	30/9/2003	-
DA02	A	Ground Floor Plan	30/9/2003	Sept 2004
DA03	A	First Floor Plan	30/9/2003	Sept 2004
DA04	A	Second Floor Plan	30/9/2003	Sept 2004
DA05	A	Third Floor Plan	30/9/2003	Sept 2004
DA06	A	Roof Plan	30/9/2003	Sept 2004
DA07	-	Elevations	30/9/2003	-
DA08	A	Sections	30/9/2003	Sept 2004
DA09	A	Sun Study June 21 3pm	30/9/2003	Sept 2004
DA10	A	Sun Study December 22 6:30pm	30/9/2003	Sept 2004

A3 Prescribed Conditions

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

PART B—PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

B1 Erosion and Sedimentation Control

Soil erosion and sediment control measures shall be designed in accordance with the document *Managing Urban Stormwater—Soils & Construction* (NSW Department of Housing, 1998) and the *Tweed Urban Stormwater Quality Management Plan*. Details are to be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate for below ground works.

B2 Stormwater and Drainage Works Design

Prior to the issue of a Construction Certificate for below ground works, the applicant shall submit to the PCA:

- (1) Final design plans of the permanent stormwater drainage systems, prepared by a qualified practicing Civil Engineer and in accordance with the *Tweed Urban Stormwater Quality Management Plan*. New development is required to comply with table 5.4 of the plan;
- (2) The applicant shall include detailed stormwater management plan (SWMP) for the occupational stage of the development, prepared in accordance with Section D7.07 of the *Tweed Shire Council Aus-Spec D7 – Stormwater Quality*.
- (3) Specific requirements:
 - (a) An oil/grit arrestor shall be installed to remove pollutants generated from undercover car parking areas, and must satisfy the following sizing requirements:
 - (i) Storage volume must be available for the combined Sediment Tank and Oil Storage Capacity to retain no less than 0.5 cubic metre per 1000 square metre of undercover area;
 - (ii) The minimum retained volume of any Oil/Grit arrestor is 0.75 cubic metres.
 - (b) The stormwater manhole at the junction of the private and public stormwater lines shall be constructed by the applicant to Councils specifications and shall be located clear of the main traffic paths in Marine Parade. The applicant shall submit details of the connection, its exact location and restoration requirements for Marine Parade.

B3 Discharge Management

Discharge management of stormwater will be implemented according to Section 3.4 of the Stormwater management Plan prepared by Cozens Regan Williams Prove Pty Ltd, dated September 2003

B4 Dilapidation Reports

A Dilapidation Report detailing the current structural condition of the existing and adjoining buildings, infrastructure and roads shall be prepared and endorsed by a qualified structural engineer. The report is to advise if it will be necessary to enter onto the adjoining land to carry out any work and if so consent from the affected landowners will be required for the specific work.

The report shall be submitted to the satisfaction of the Certifying Authority prior to the issue of the Construction Certificate for below ground works.

A second Dilapidation Report shall be prepared by a suitably qualified person at the completion of the works to ascertain if any structural damage has occurred to the adjoining buildings, infrastructure and roads. The report shall also be submitted to the satisfaction of the Principal Certifying Authority and should be compared with the earlier report to ascertain if any change has occurred

A copy of both reports is to be forwarded to the Director and Council.

Monetary Contributions and Contributions-in-lieu

B5 Monetary Contributions

In accordance with Division 6 of Part 4 of the Act, the Applicant shall pay the following monetary contributions:

(1) Amount of Contribution

Contribution Category	Rate of Contribution	Amount
Deficit car spaces	\$11,500 per car space	82,225.00
Tweed Road Contribution Plan: S94 Plan No. 4 (Ver. 4.0)		23,026.00
Heavy Haulage Component		
Open Space (Casual) S94 Plan No. 5		87.00
Community Facilities (Tweed Coast) S94 Plan No. 15		1,476.00
Emergency Facilities (Surf Lifesaving) (Remshire) S94 Plan No. 16		349.00
Extension to Council Administration Offices & Technical Support Facilities S94 Plan No. 18		676.21
Cycleways S94 Plan No 22		584.00
Regional Open Space (Casual) S94 Plan No. 26		115.00
TOTAL		\$108,538.21

(2) Heavy Haulage

Payment of Heavy Haulage (Extractive materials) provisions of Tweed Road Contribution Plan No 4 – Version 4.1. The contribution shall be based on the following formula:-

$$\text{\$Con}_{\text{Trcp} - \text{Heavy}} = \text{Prod.} \times \text{Dist.} \times \text{\$Unit} \times (1 + \text{Admin.})$$

where:

$\text{\$Con}_{\text{Trcp} - \text{Heavy}}$ heavy haulage contribution

and:

Prod.	Projected demand for extractive material to be hauled to the site over life of project in tonnes
Dist.	Average haulage distance of product on Shire roads (trip one way)
\$Unit	the unit cost attributed to maintaining a road as set out in Section 6.4 (currently 2.5c per tonne per kilometre)
Admin	Administration component – 5% - see Section 6.5

(3) Timing and Method of Payment

The contribution shall be paid in the form of cash or bank cheque, made out to Council. For accounting purposes, the contribution may require separate payment for each of the categories above and you are advised to check with Council.

Evidence of the payment to Council shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate for below ground works.

(4) Indexing

The contribution for land will be adjusted in accordance with the latest annual valuations.

B6 Water Management Act 2000

A certificate of compliance under Sections 305, 306 and 307 of the Water Management Act 2000 is to be obtained from Council to verify that the necessary requirements for the supply of water and sewerage to the development have been made with Tweed Shire Council.

Pursuant to clause 146 of the Environmental Planning and Assessment Regulation 2000, a Construction Certificate for below ground works shall not be issued by a Certifying Authority unless all Section 64 Contributions have been paid and the certifying authority has sighted Council's "Contributions Sheet" and a "Certificate of Compliance" signed by an authorised officer of Council.

The following contributions will be required to be paid in order to obtain a "Certificate of Compliance"

Contribution Category	Amount
Water	1,315.00
Sewer	1,053.00
Total	\$2,368.00

These charges are to remain fixed for a period of twelve (12) months from the date of this consent and thereafter in accordance with the rates applicable in Council's adopted Fees and Charges Policy current at the time of payment.

B7 Disabled Access

Access and facilities for people with disabilities shall be provided in accordance with Part D3 of the BCA's Access Policy. Prior to the issue of a Construction Certificate for below ground works, a certificate certifying compliance with this condition from an appropriately qualified person shall be provided to the Certifying Authority.

Traffic & Parking

B8 Number of Car Spaces

The number of car spaces to be provided for the development shall comply with the table below. Details confirming the parking numbers shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for below ground works.

Car parking allocation	Number
Residential Car parking spaces	7
Number of residential car spaces to be disabled spaces	1
Total residential car parking spaces	8

B9 Car Park Layout

- (1) The layout of the car park shall comply with Australian Standard AS2890.1: 1993 *Parking Facilities Part 1: Off Street Parking*. All parking spaces are to be linemarked.
- (2) Car parking space Number 8 shall be in accordance with AS2890 figure 5.2.
- (3) Details demonstrating compliance with these requirements shall be submitted to the satisfaction of the Certifying Authority prior the issue of a Construction Certificate for below ground works.

PART B—PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE FOR ABOVE GROUND WORKS

B10 Details of Materials, Colours and Finishes

Final design details of the proposed external materials and finishes, including schedules and a sample board of materials and colours, shall be submitted to and approved by the Director prior to the issue of a Construction Certificate for above ground works.

B11 Reflectivity

The visible light reflectivity from building materials used on the facades of the buildings shall not exceed 20% and shall be designed so as not to result in glare that causes any nuisance or interference to any person or place. A report demonstrating compliance with these requirements is to be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for above ground works.

B12 Outdoor Lighting

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 for above ground works.

Landscaping

B13 Landscape Plan

In order to maintain visual amenity and ecological integrity, a landscape plan will be submitted to and approved by Council prior to the issue of a Construction Certificate for above ground works. The landscape plan will provide detail of actual plant species to be planted in each area of the site.

Ecologically Sustainable Development (ESD) – Commercial

B14 Energy Star Ratings

All classes of appliances that are available with an energy label or a Minimum Energy Performance Standard to be installed within the premises are to have an energy star rating of 3 stars or more (excluding clothes dryers which are to have a rating of 2.5 stars or more). The applicant shall submit to the Certifying Authority a statement demonstrating compliance with the requirements of this condition.

B15 Water Ratings

All water fixtures installed within the premises are to have an AAA water rating or more. The applicant shall submit to the Certifying Authority a statement demonstrating compliance with the requirements of this condition.

Health

B16 Mechanical Ventilation

All mechanical ventilation systems shall be installed in accordance with Part F4.5 of the Building Code of Australia and shall comply with Australian Standards AS1668.2 and AS3666 *Microbial Control of Air Handling and Water Systems of Building*, to ensure adequate levels of health and amenity to the occupants of the building and to ensure environment protection. Details shall be submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for above ground works.

B17 Design of Food Premises

The fitout of the food premises shall be carried out in accordance with *The National Code for the Construction and Fitout of Food Premises*. Details of compliance with the relevant provisions of the Code shall be prepared by a suitably qualified person and submitted to the satisfaction of the Certifying Authority prior to the issue of a Construction Certificate for above ground works.

Waste Management

B18 Storage and Handling of Waste

The design and management of facilities for the storage and handling of waste must comply with the requirements of Council's Policy. Details are to be submitted to the satisfaction of the Council prior to the issue of a Construction Certificate for above ground works.

B19 Section 138 Permit – Roads Act, 1993

Notwithstanding the issue of this development consent, separate consent from Council under Section 138 of the Roads Act 1993, must be obtained prior to any works taking place on a public road including the construction of a new driveway access (or modification of access). Applications for consent under Section 138 must be submitted on Council's standard application form and be accompanied by the required attachments and prescribed fee.

Compliance**B20 Compliance Report**

Prior to the issue of a Construction Certificate for above ground works, the Applicant, or any party acting upon this consent, shall submit to Council a report addressing compliance with all relevant conditions of this consent.

PART C—PRIOR TO COMMENCEMENT OF WORKS

Notification of Works

C1 Notice of Commencement

At least 48 hours prior to the commencement of any works on the site, a "Notice of Commencement of Building or Subdivision Work and Appointment of PCA" shall be submitted to Council and the Department.

This includes that prior to the commencement of works the Applicant shall submit to Council,

- (1) a construction certificate for the building work which has been issued by the certifying authority; and
- (2) evidence that the person having the benefit of the development consent has:
 - (a) appointed a principal certifying authority for the building work, and
 - (b) notified the principal certifying authority that the person will carry out the building work as an owner-builder, if that is the case and
- (3) evidence that the principal certifying authority has, no later than 2 days before the building work commences:
 - (a) notified the consent authority and the Council of his or her appointment, and
 - (b) notified 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, and
- (4) evidence that the person having the benefit of the development consent, if not carrying out the work as an owner-builder has;
 - (a) notified the principal certifying authority of any such appointment and
 - (b) unless that person is the principal contractor, notified the principal contractor of any critical state inspection and other inspections that are to be carried out in respect of the building work

Structural Works

C2 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 Building Code of Australia,
- (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).

Construction Management

C3 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 Director. 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 (see also C4 below);
- (5) waste management;
- (6) erosion and sediment control (see also B1);

C4 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 Council. 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,
- (2) Identification of all potentially affected sensitive receivers including residences, schools, and properties containing noise sensitive equipment,
- (3) The construction noise objective specified in the conditions of this consent,
- (4) The construction vibration criteria specified in the conditions of this consent,
- (5) Determination of appropriate noise and vibration objectives for each identified sensitive receiver,
- (6) Noise and vibration monitoring, reporting and response procedures,
- (7) Assessment of potential noise and vibration from the proposed construction activities including noise from construction vehicles and any traffic diversions,
- (8) Description of specific mitigation treatments, management methods and procedures that will be implemented to control noise and vibration during construction
- (9) Justification of any proposed activities outside the construction hours specified in the conditions of this consent.
- (10) Construction timetabling to minimise noise impacts including time and duration restrictions, respite periods, and frequency,
- (11) Procedures for notifying residents of construction activities that are likely to affect their amenity through noise and vibration,
- (12) Contingency plans to be implemented in the event of non-compliances and/or noise complaints,

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

C5 *Construction Waste Management Plan*

Prior to the commencement of works, the Applicant shall submit to the satisfaction of the PCA a Waste Management Plan prepared by a suitably qualified person in accordance with Council's policy. The Applicant shall submit a copy of the plan to the Department and Council.

C6 *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.

Hazardous Materials

C7 *Removal of Hazardous Materials*

All hazardous materials shall be removed from the site and shall be disposed of at an approved waste disposal facility in accordance with the requirements of the relevant legislation, codes, standards and guidelines, prior to the commencement of any building works. Details demonstrating compliance with the relevant legislative requirements, particularly the method of containment and control of emission of fibres to the air, are to be submitted to the satisfaction of the PCA prior to the removal of any hazardous materials.

C8 *Site Audit*

Prior to the commencement of building works, a Site Audit conducted by a suitably qualified person shall be undertaken to ascertain that all identified hazardous materials have been removed from the site and shall be submitted to the PCA.

C9 *Termite Control*

Prior to the commencement of works, the Applicant shall submit to the satisfaction of the PCA documentation confirming the building shall be protected from termite attack in accordance with the provisions of Australian Standard AS 3660.1. The submitted documentation shall include:

- (1) details of the proposed methods to be used; and
- (2) certification of works performed;

A durable notice must be permanently fixed to the building in a prominent location, such as in the electrical meter box indicating:-

- (3) the method of protection;
- (4) the date of installation;
- (5) where a chemical barrier is used, its life expectancy as listed on the National Registration Authority label; and
- (6) the need to maintain and inspect the system on a regular basis.

C10 *On-Site Toilets*

Prior to commencement of works, a temporary builder's toilet is to be provided at the rate of one (1) closet for every twenty (20) persons or part thereof employed at the site. Each toilet provided must be:-

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- (1) a standard flushing toilet connected to a public sewer, or
 - (2) if the requirement pursuant to (1) is not practicable, an accredited sewage management facility to the satisfaction of Council.

Compliance

C11 Compliance Report

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

PART D—DURING CONSTRUCTION

Site Maintenance

D1 Inspections – Certifying Authority

Compliance certificate/s shall be issued by the Principal Certifying Authority and submitted to Council in accordance with the mandatory inspection requirements of the *Building Legislation Amendment—Quality of Construction Act, 2002* for each stage of construction, such as the following:

- (1) Internal drainage, prior to slab preparation;
- (2) Water plumbing rough in, and/or stackwork prior to the erection of brick work or any wall sheeting;
- (3) External drainage prior to backfilling;
- (4) Foundations;
- (5) Footings;
- (6) Damp proof courses and waterproofing installation;
- (7) Structural concrete, including placing of reinforcement and formwork prior to pouring;
- (8) Structural beam and column framing;
- (9) Timber wall and roof framing; and
- (10) Stormwater disposal.

Any Compliance Certificate issued for the above stages of construction shall certify that all relevant ancillary or dependent work has been undertaken in accordance with the Building Code of Australia and any other conditions of consent.

The certifying authority is to be given 24 hours notice for any of the inspections prior to the next stage of construction.

D2 Erosion and Sediment Control

All erosion and sediment control measures are to be effectively maintained at or above design capacity for the duration of the construction works and until such time as all ground disturbed by the works has been stabilised and rehabilitated so that it no longer acts as a source of sediment.

D3 Disposal of Seepage and Stormwater

Any seepage or rainwater collected on-site during construction shall not be pumped to the street stormwater system unless separate prior approval is given in writing by Council.

Structural Works

D4 Setting Out of Structures

The buildings shall be set out by a registered surveyor to verify the correct position of each structure in relation to property boundaries and the approved alignment levels. The

registered surveyor shall submit a plan to the PCA certifying that structural works are in accordance with the approved development application.

Construction Management

D5 *Approved Plans to be On-site*

A copy of the approved and certified plans, specifications and documents incorporating conditions of approval and certification shall be kept on the site at all times and shall be readily available for perusal by any officer of the Department, Council or the PCA.

D6 *Site Notice*

A site notice(s) shall be prominently displayed at the boundaries of the site for the purposes of informing the public of project details. The notice(s) is to satisfy all but not be limited to, the following requirements:

- (1) Minimum dimensions of the notice are to measure 841mm x 594mm (A1) with any text on the notice to be a minimum of 30 point type size;
- (2) The notice is to be durable and weatherproof and is to be displayed throughout the works period;
- (3) The approved hours of work, the name of the site/project manager, the responsible managing company (if any), its address and 24 hour contact phone number for any inquiries, including construction/noise complaint are to be displayed on the site notice; and
- (4) The notice(s) is to be mounted at eye level on the perimeter hoardings/fencing and is to state that unauthorised entry to the site is not permitted.

D7 *Contact Telephone Number*

The applicant shall ensure that the 24 hour contact telephone number is continually attended by a person with authority over the works for the duration of the development.

D8 *External Lighting*

External Lighting shall comply with AS4282: 1997 *Control of the Obtrusive Effects of Outdoor Lighting*. Upon installation of lighting, but before it is finally commissioned, the applicant shall submit to the evidence from an independent qualified practitioner demonstrating compliance in accordance with this condition.

D9 *Protection of Trees – Street Trees*

All street trees shall be protected at all times during construction. Any tree on the footpath, which is damaged or removed during construction, shall be replaced, to the satisfaction of Council.

D10 *Dust Control Measures*

Adequate measures shall be taken to prevent dust from affecting the amenity of the neighbourhood during construction. In particular, the following measures must be adopted:

- (1) All vehicles carrying spoil or rubble to or from the site shall at all times be covered to prevent the escape of dust or other material,
- (2) Covers are to be adequately secured,
- (3) Cleaning of footpaths must be carried out regularly,

-
- (4) Roadways must be kept clean,
 - (5) Gates are closed between vehicle movements,
 - (6) Gates are fitted with shade cloth,
 - (7) The site is hosed down when necessary,
 - (8) Wheel washes shall be installed for all vehicles exiting the site; and
 - (9) All battered areas are to be top soiled and grassed, or other suitable protection provided as soon as filling is placed adjacent to neighbouring properties.

Public Safety

D11 Manual for Uniform Traffic Control Devices

Where construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with Australian Standard AS 1742-1991 (Manual for Uniform Traffic Control Devices).

D12 Public Risk Liability

The developer shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

D13 Building Materials

Building materials used in the construction of the building are not to be deposited or stored on Council's footpaths or road reserves, unless prior approval is obtained from Council.

D14 Footpath obstruction

Building activities shall not be permitted to impact the amenity of any existing footpath dining activities.

Noise and Vibration

D15 Hours of Work

The hours of construction, including the delivery of materials to and from the site, shall be restricted as follows:

- (1) between 7:00 am and 7:00 pm, Mondays to Fridays inclusive;
- (2) between 7:00 am and 7:00 pm, Saturdays;
- (3) no work on Sundays and public holidays.

Works may be undertaken outside these hours where:

- (1) the delivery of materials is required outside these hours by the Police or other authorities;
- (2) it is required in an emergency to avoid the loss of life, damage to property and/or to prevent environmental harm;
- (3) the work is approved through the Construction Noise and Vibration Management Plan; and

-
- (4) residents likely to be affected by the works are notified of the timing and duration of these works at least 48 hours prior to the commencement of the works.

D16 Construction Noise Objective

The construction noise objective for the Project is to manage noise from construction activities (as measured by a L_{A10} (15minute) descriptor) so it does not exceed the background L_{A90} noise level by:

- (1) not more than 20dB(A) for a construction period of four weeks and under;
- (2) not more than 10dB(A) for a construction period of greater than four weeks and not exceeding 26 weeks; and
- (3) not more than 5dB(A) for a construction period greater than 26 weeks.

Background noise levels are those identified in the approved Construction Noise and Vibration Management Plan. The Applicant shall implement all feasible noise mitigation and management measures with the aim of achieving the construction noise objective.

Any activities that have the potential for noise emissions that exceed the objective must be identified and managed in accordance with the approved Construction Noise and Vibration Management Plan.

If the noise from a construction activity is substantially tonal or impulsive in nature (as described in Chapter 4 of the NSW Industrial Noise Policy), 5dB(A) must be added to the measured construction noise level when comparing the measured noise with the construction noise objective.

D17 Construction Noise Management

The Applicant shall:

- (1) schedule rock breaking, rock hammering, sheet piling, pile driving and any similar activity only between the following hours unless otherwise approved in the Construction Noise and Vibration Management Plan:
 - (a) 9 am to 12 pm, Monday to Friday;
 - (b) 2pm to 5pm Monday to Friday; and
 - (c) 9 am to 12 pm, Saturday
- (2) ensure that wherever practical, and where sensitive receivers may be affected, piling activities are completed using bored piles. If driven piles are required they must only be installed where approved in the Construction Noise and Vibration Management Plan.

D18 Vibration Criteria

Vibration caused by construction at any residence or structure outside the subject site must be limited to:

- (1) for structural damage vibration, German Standard DIN 4150 Part 3 Structural Vibration in Buildings. Effects on Structures; and
- (2) for human exposure to vibration, the evaluation criteria presented in British Standard BS 6472- Guide to Evaluate Human Exposure to Vibration in Buildings (1Hz to 80 Hz) for low probability of adverse comment.

These limits apply unless otherwise approved in the Construction Noise and Vibration Management Plan.

D19 Shake Down requirements

Prior to and during construction provide a "shake down" area along the haul route located immediately before the intersection with the road reserve. The "shake down" area is to be 10 metres long minimum 3.0 metres wide, constructed of minimum 50mm diameters crushed rock; or other such device approved by the Director of Engineering Services at Council.

Plumbing

D20 Plumbing

- (1) A plumbing permit is to be obtained from Council prior to commencement of any plumbing and drainage work.
- (2) The whole of the plumbing and drainage work is to be completed in accordance with the requirements of the NSW Code of Practice for Plumbing and Drainage.

D21 National Plumbing and Drainage Code

Back flow prevention devices shall be installed wherever cross connection occurs or is likely to occur in accordance with Australian Standard AS 3500.1. The devices shall be maintained in working order and inspected for operational function at intervals not exceeding 12 months in accordance with Section 4.7.2 of AS 3500.

D22 Cleansing

A hose tap shall be provided adjacent to a grease arrester for cleaning purposes and shall be fitted with a RPZD for the purpose of back flow prevention.

D23 Overflow relief

Overflow relief gully is to be located clear of the building and at a level not less than 150mm below the lowest fixture within the building and 75mm above finished ground level.

D24 Hot Water Installations

All hot water installations shall deliver hot water at the outlet of sanitary fixtures used primarily for personal hygiene purposes at a temperature not exceeding 50°C. A certificate certifying compliance with the above is to be submitted to Council by the licensed plumber on completion of works.

D25 Pre-treatment

Pre-treatment devices must be serviced by a Council approved waste contractor. The applicant will be required to enter into a service agreement with this waste contractor. Pre-treatment device service frequency will be approved by Council's Manager Water.

D26 Plumbing Inspections

All inspection openings in sanitary plumbing stackwork shall be readily accessible by way of suitable access panels or the like.

Ecologically Sustainable Development

D27 Water Conservation

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- (1) Water saving showerheads shall be fitted to all showers within the development to reduce water consumption and promote energy efficiency.
 - (2) Dual flush water closet suites are to be installed in accordance with Local Government Water and Sewerage and Drainage Regulations 1993.

General

D28 Ramps

The full width concrete foot paving on Marine Parade is not to be altered to provide ramps into the shops. The shops are to ensure all ramps or steps are contained internally if the floor slab is higher than the footpath level on the site boundary with Marine Parade.

D29 Kerbing

Existing layback crossover in Marine Parade and access ramps in Hungerford Lane are to be removed and replaced with upright kerb. Kerb and gutter for full frontage of the site to Hungerford Lane may alternatively be bonded.

D30 Driveway Entrance

The driveway entrance shall be graded to ensure Q100 storm water runoff from the Hungerford Lane kerb and gutter does not enter the site.

D31 Hungerford Lane

The area behind the kerb to the boundary in Hungerford Lane is to be concreted to form a narrow off road pathway.

D32 Awnings

No part of the building other than the pedestrian awnings and associated screens and anchors are to protrude beyond the confines of the property boundary.

D33 Building Height

On completion of the building documentation from a surveyor will provide evidence that the overall height of the building does not exceed RL 18.4 metres (excluding a lift over run, vent pipes, toilet exhaust fans, kitchen exhaust fans, or car park exhaust fans which shall be no greater than 1.5m above this nominated height). No other ancillary facilities are permitted to be located on the roof.

Compliance

D34 Compliance Certificate

In the event that Council is not utilised as the inspection/Certifying authority, within seven (7) days of building works commencing on the site a Compliance Certificate in the prescribed form is to be submitted to Council together with the prescribed fee, by the nominated principal certifying authority to certify the following:

- (1) All required erosion and sedimentation control devices have been installed and are operational.
- (2) All conditions of consent required to be complied with prior to work commencing on the site have been satisfied.
- (3) That the licensee has complied with the provisions of section 98(1) (b) of the Environmental Planning and Assessment Amendment Regulations 2000.

D35 *Compliance Report*

The Applicant, or any party acting upon this consent, shall, for the duration of construction period, submit to Council a three monthly report addressing compliance with all relevant conditions of this consent.

PART E—PRIOR TO SUBDIVISION OR STRATA SUBDIVISION

There are no conditions in respect of this part.

PART F—PRIOR TO OCCUPATION OR COMMENCEMENT OF USE

Engineering

F1 Fire Safety Certificate

A Fire Safety Certificate shall be furnished to the PCA for all the Essential Fire or Other Safety Measures forming part of this approval prior to issue of an Occupation Certificate. A copy of the Fire Safety certificate must be submitted to the consent authority and Council by the PCA.

F2 Annual Fire Safety Statement

An Annual Fire Safety Statement must be provided to Council and the NSW Fire Brigade commencing within 12 months after the date on which the consent authority initial Fire Safety Certificate is received.

F3 Mechanical Ventilation

Following completion, installation and testing of all the mechanical ventilation systems, the applicant shall provide evidence to the satisfaction of the PCA, prior to the issue of the Occupation Certificate, that the installation and performance of the mechanical systems complies with:

- (1) The Building Code of Australia;
- (2) Australian Standard AS1668 and other relevant codes;
- (3) The development consent and any relevant modifications; and,
- (4) Any dispensation granted by the New South Wales Fire Brigade.

F4 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,
- (2) The drawings listed on the Inspection Certificate have been checked with those listed on the final Design Certificate/s.

F5 Plumbing

Prior to the issue of an Occupation Certificate, a backflow containment device will be installed adjacent to Councils water meter installation at the property boundary in accordance with AS3500 by the owner of the property at the owners expense.

F6 Road Damage

The cost of repairing any damage caused to Council or other Public Authority's assets in the vicinity of the subject site as a result of construction works associated with the approved development, is to be met in full by the applicant/developer and to the satisfaction of the Director of Engineering Services at Council prior to the issue of an Occupation Certificate.

Note: Should the cost of damage repair work not exceed the road maintenance bond, Council will automatically call up the bond to recover the costs. Should the repair costs exceed the bond amount, a separate invoice will be issued.

Easements

F7 Creation of Easement

- (1) Prior to the issue of an Occupation Certificate, the creation of easements for services, rights of carriageway and restrictions as to user as may be applicable under Section 88B of the Conveyancing Act including the following:
 - (a) Easement for sewer, water supply and drainage over all services private property;
 - (b) The provision of a right of way over Lot 23 DP 1064172.
- (2) Pursuant to Section 88BA of the Conveyancing Act (as amended) the Instrument creating the right of carriageway/easement to drain water shall make provision for maintenance of the right of carriageway/easement by the owners from time to time of the land benefited and burdened and are to share costs equally or proportionally on an equitable basis.
- (3) Any Section 88B Instrument creating restrictions as to user, rights of carriageway or easements which benefit Council shall contain a provision enabling such restrictions, easements or rights to way to be revoked, varied or modified only with the consent of Council

F8 Registration of Easements

Prior to the issue of an Occupation Certificate, the applicant shall provide to the PCA evidence that all easements required by this consent, approvals, and other consents have been or will be registered on the certificates of title.

PART G—POST OCCUPATION

Fire Safety

G1 Annual Fire Safety Certification

The owner of the building shall certify to Council every year that the essential services installed in the building for the purpose of fire safety have been inspected and at the time of inspection are capable of operating to the required minimum standard. This purpose of this condition is to ensure that there is adequate safety of persons in the building in the event of fire and for the prevention of fire, the suppression of fire and the prevention of spread of fire.

Traffic and Parking

G2 Unobstructed Driveways and Parking Areas

All driveways and parking areas shall be unobstructed at all times. Driveways and car spaces shall not be used for the manufacture, storage or display of goods, materials or any other equipment and shall be used solely for vehicular access and for the parking of vehicles associated with the use of the premises.

G3 Vehicular Access

Signs shall be exhibited in a prominent location on the site advising that all vehicles entering or leaving the site are to be driven in a forward direction at all times.

Noise

G4 Operational Noise

The LA 10 noise level emitted from the premises shall not exceed the background noise level (LA90) in any Octave Band centre frequency (31.5Hz – 8KHz inclusive) by more than 5dB(a) between 7.00 am and 12.00 midnight, at the boundary of any affected residence. Notwithstanding the above, noise from the premises shall not be audible within any habitable room in any residential premises between the hours of 12.00 midnight and 7.00 am week days and 12.00 midnight and 8.00 am weekends.

G5 Noise Control – Plant and Machinery

Noise associated with the operation of any plant, machinery or other equipment on the site, shall not exceed 5dB(A) above the background noise level when measured at the boundary of the site.

G6 Noise Control – Amplified Music

Live or amplified music shall not be audible within any residential premises.

Public Access

G7 Public Way to be Unobstructed

- (1) The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances.
- (2) No items or good are to be stored or displayed outside the confines of the premises.

G8 *Waste Management*

All wastes shall be collected, stored and disposed to the satisfaction of the Director of Environment and Community Services. Waste shall be presented at the kerb in council approved wheelie bin for collection. A screened, graded and drained bin storage area shall be provided within the boundary of the property.

G9 *Street Numbering*

Street numbers and the building name(s), if any, will need to be clearly displayed at either end of the ground level frontages in accordance with Council's Policy, prior to the occupation of the building(s) or commencement of the use.

If street numbers or a change to street numbers are required, a separate application shall be made to Council.

Tourist Facilities

G10 *Occupation Period*

The tourist facility approved by this consent will not be occupied by any proprietor or occupier of the unit for longer than forty two (42) consecutive days or an aggregate one hundred and fifty (150) days in any twelve (12) month period. Such periods are to be calculated from the date of the first occupation of the tourist facility.

G11 *Occupancy Register*

A register will be kept by the owner or proprietors to record the occupancies and will be available at any time for inspection by an authorised officer of Council.

G12 *Occupancy Restrictions*

The occupancy restrictions will be incorporated into a Management Agreement for the Tourist Facility. A copy of the Management Agreement will be provided to Council prior to occupancy of the development.

G13 *Swimming Pools*

All swimming pools shall be maintained and operated in accordance with the *Public Swimming Pool and Spa Pool Guidelines (NSW Health, 1996)*.

General

G14 *Ventilation*

Any cooking gases from commercial premises shall be ducted internally within the building and discharged above the roof in accordance with AS1668.

Compliance

G15 *Compliance Report*

The Applicant, or any party acting upon this consent, shall submit to Council a three monthly report addressing compliance with all relevant conditions of this consent.

PART H—GENERAL TERMS

Council – Section 138

H1 Public Risk Liability

Where the construction work is on or adjacent to public roads, parks or drainage reserves the development shall provide and maintain all warning signs, lights, barriers and fences in accordance with AS 1742-1991 (*Manual for Uniform Traffic Control Devices*). The contractor or property owner shall be adequately insured against Public Risk Liability and shall be responsible for any claims arising from these works.

H2 Waste Removal

The surrounding road carriageways are to be kept clean of any material carried onto the roadway by construction vehicles. Any work carried out by Council to remove material from the roadway will be at the Developers expense and any such costs are payable prior to the issue of an Occupation Certificate.

H3 Road Works

The owner or contractor must not undertake any work within the public road reserve without giving Council's Engineering Services Division forty eight (48) hours notice of proposed commencement. Failure to comply with this condition may result in a stop work notice being issued and/or rejection of the works undertaken.

H4 Kerb Work

Where the kerb is to be removed for driveway laybacks, stormwater connections, pram ramps and any other reason, the kerb must be sawcut on each side of the work to enable a neat and tidy joint to be constructed.

H5 Public Infrastructure

Any damage caused to public infrastructure (roads, footpaths, water and sewer mains, power and telephone services etc) during construction of the development shall be repaired to the satisfaction of the Director of Engineering Services at Council prior to the issue of an Occupation Certificate.

H6 Kerb Replacement

Prior to occupation of the building, all disused invert crossings are to be removed and replaced with kerb and gutter and all disused driveway across the footpath are to be removed and replaced with topsoil and turf to the satisfaction of the Director, Engineering Services at Council.

H7 Carpark

Rear parking area to be sealed with concrete.

H8 Footpath Damage

Any damage caused to Marine Parade footpath is to be sawcut, removed and reinstated to existing levels.

H9 Traffic flow

The development works are not to impede traffic flows on either Hungerford Lane or Marine Parade.

ADVISORY NOTES

AN1 Requirements of Public Authorities for Connection to Services

The applicant shall comply with the requirements of any public authorities (e.g. Energy Australia, Telstra Australia, AGL, etc) in regard to the connection to, relocation and/or adjustment of the services affected by the construction of the proposed structure. Any costs in the relocation, adjustment or support of services shall be the responsibility of the applicant. Details of compliance with the requirements of any relevant public authorities are to be submitted to the satisfaction of the PCA prior to the issue of the Construction Certificate.

AN2 Compliance with Building Code of Australia

The applicant is advised to consult with the PCA about any modifications needed to comply with the BCA prior to submitting the application for a Construction Certificate.

AN3 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.

AN4 Application for Hoardings and Scaffolding

A separate application shall be made to Council for approval under Section 68 of the *Local Government Act, 1993*, to erect a hoarding or scaffolding in a public place. Such an application shall include:

- (1) Architectural, construction and structural details of the design in accordance with Council's relevant requirements,
- (2) Structural certification prepared and signed by a suitably qualified practising structural engineer.

The applicant shall provide evidence of the issue of a Structural Works Inspection Certificate and structural certification shall be submitted to the satisfaction of the PCA prior to the commencement of works.

AN5 Use of Mobile Cranes

The applicant shall obtain all necessary permits required for the use of mobile cranes on or surrounding the site, prior to the commencement of works. In particular, the following matters shall be complied with to the satisfaction of the PCA:

- (1) For special operations including the delivery of materials, hoisting of plant and equipment and erection and dismantling of on site tower cranes which warrant the on street use of mobile cranes, permits must be obtained from Council:
 - (a) at least 48 hours prior to the works for partial road closures which, in the opinion of Council will create minimal traffic disruptions, and
 - (b) at least 4 weeks prior to the works for full road closures and partial road closures which, in the opinion of Council, will create significant traffic disruptions.
- (2) The use of mobile cranes must comply with the approved hours of construction and shall not be delivered to the site prior to 7.30am without the prior approval of Council.

AN6 Movement of Trucks Transporting Waste Material

The applicant shall notify the Roads and Traffic Authority's Traffic Management Centre (TMC) of the truck route(s) to be followed by trucks transporting waste material from the site, prior to the commencement of the removal of any waste material from the site.

AN7 Noise Generation

Any noise generated during the construction of the development shall not exceed the limits specified in the *Protection of the Environment Operations Act, 1997* or exceed approved noise limits for the site.

AN8 Excavation – Aboriginal Relics

Should any Aboriginal relics be unexpectedly discovered then all excavations or disturbance to the area is to stop immediately and the National Parks and Wildlife Service shall be informed in accordance with Section 91 of the *National Parks and Wildlife Act, 1974*.

AN9 Excavation – Historical Relics

Should any historical relics be unexpectedly discovered then all excavations or disturbance to the area is to stop immediately and the Heritage Council of NSW shall be informed in accordance with Section 146 of the *Heritage Act, 1977*.

AN10 Compliance with Conditions

The applicant will be required to submit, documentary evidence that the property has been developed in accordance with plans approved by Development Application No. 492-11-2003 and of compliance (or a Compliance Certificate) with the conditions of that consent, prior to the issuing of Occupation Certificate.

AN11 Compliance with National Code for Construction and fitout of food premises

An applicant shall obtain a certificate from a suitably qualified tradesperson, certifying that the kitchen, food storage and food preparation areas have been fitted in accordance with the *National Code for the Construction and Fitout of Food Premises*. The applicant shall provide evidence of receipt of the certificate to the satisfaction of the PCA prior to the occupation of the building(s) or commencement of the use.

AN12 Stormwater drainage works or effluent systems

A construction certificate for works that involve any of the following:

- (1) water supply, sewerage and stormwater drainage work
- (2) management of waste,

as defined by Section 68 of the Local Government Act, 1993 will not be issued until prior separate approval to do so has been granted by Council under Section 68 of that Act. Applications for these works must be submitted on Council's standard Section 68 application form accompanied by the required attachments and the prescribed fees.

AN13 Retail/Commercial units

The approved retail/commercial units are not to be used for restaurant or café use without prior development consent

Footpath dining activities shall not be carried out without the prior approval of Council.