



Issued: 26 June 2018 10:29 AM

JUDGMENT/ORDER

COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2017/00282995

TITLE OF PROCEEDINGS

First Applicant	Eugene Marchese
First Respondent	Central Coast Council ABN 73149644003

DATE OF JUDGMENT/ORDER

Date made or given	21 June 2018
Date entered	25 June 2018

TERMS OF JUDGMENT/ORDER

The final orders to give effect to the parties' agreement under s 34(3) of the Land and Environment Court Act 1979 are:

- (1) The appeal is upheld.
- (2) Consent is granted to development application 52565/2017, for the construction of coastal protection works at:
 - (a) Lot 6 DP 8854, with a street address of 29 Pacific Street Wamberal
 - (b) Lot 5 DP 8854, with a street address of 31 Pacific Street Wamberal
 - (c) Lot 4 DP 8854, with a street address of 33 Pacific Street Wamberal
 - (d) Lot 3 DP 8854, with a street address of 23a Ocean View Drive Wamberal
 - (e) Lot 2 DP 8854, with a street address of 23b Ocean View Drive Wamberal
 - (f) Lot 4 DP 524938, with a street address of 25c Ocean View Drive Wamberalsubject to the conditions contained in the annexure marked "A" to this agreement.

SEAL AND SIGNATURE



Signature	S. Froh
Capacity	Registrar
Date	26 June 2018

If this document was issued by means of the Electronic Case Management System (ECM), pursuant to Part 3 of the Uniform Civil Procedure Rules (UCPR), this document is taken to have been signed if the person's name is printed where his or her signature would otherwise appear.

FURTHER DETAILS ABOUT Applicant(s)

First Applicant
Name Eugene Marchese
Address Level 1
53 Walker Street
NORTH SYDNEY NSW 2060

Telephone
Fax
E-mail
Client reference

Legal representative for plaintiffs

Name Stefano Laface
Practicing certificate number 47637
Address AJL Legal Level 1
43 Belgrave Street
MANLY NSW 2095

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FURTHER DETAILS ABOUT Respondent(s)**First Respondent**

Name Central Coast Council
ABN 73149644003
Address 3 Hely Street
WYONG NSW 2259
Frequent User Identifier CCCC

ATTACHMENTS TO ORDERS

(282995.17 Gray C Annexure A.pdf)

[attach.]

Annexure "A"
Eugene Marchese v Central Coast Council
 Conditions of Consent

1... PARAMETERS OF THIS CONSENT

1.1. Approved Plans and Supporting Documents

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

Architectural Plans (ECM Doc No. 25897185)

Drawing	Description	Sheets	Issue	Date
S01	Title Sheet	1	G	31/05/2018
S02	Principal Plan (Concept)	2	G	31/05/2018
S03	Erosion and Sediment Control and Waste Management Plan	3	G	31/05/2018
S04	Concept Section 1	4	G	31/05/2018
S05	Concept Section 2	5	G	31/05/2018
S06	Concept Section 3	6	G	31/05/2018
S07	Concept Section 4	7	G	31/05/2018
S08	Concept Section 5	8	G	31/05/2018
S09	Concept Section 6	9	G	31/05/2018
S10	Concept Section 7	10	G	31/05/2018
S11	Concept Section 8	11	G	31/05/2018
S12	East Elevation	12	G	31/05/2018

Supporting Documentation

Document	Title	Date
ECM Doc No. 24799375	Survey Plan, prepared by Clarke Dowdle & Associates	24 June 2016
ECM Doc No. 24798604	Statement of Evidence, prepared by Dr AnneMarie Clements of Anne Clements & Associates Pty Limited.	30 March 2017
ECM Doc No. 24798588	Aboriginal Archaeological Due Diligence Assessment	3 March 2017
ECM Doc No. 24798622	Statement of Environmental Effects for Construction of New Coastal Protection Works at 29, 31 & 33 Pacific Street and 23a, 23b & 25c Ocean View Drive Wamberal	Issue A 27 July 2017
ECM Doc No. 25220331	Geotechnical Advice, prepared by Pells Sullivan Meynink	1 November 2017
ECM Doc No. 25220325	Construction of Coastal Protection Works at 29, 31 & 33 Pacific Street and 23a, 23b & 25c Ocean View Drive Wamberal: Revised Design, prepared by Horton Coastal Engineering	1 November 2017
ECM Doc. No. 25897182	Development Application No 52565/2017 to Central Coast Council for Construction of Coastal Protection Works at 29, 31 & 33 Pacific Street and 23a, 23b & 25c Ocean View Drive Wamberal: Response to Email of Martin Ball dated 16 May 2018	31 May 2018
ECM Doc No. 25897183	Seawall Structural Design, prepared by James Taylor & Associates	31 May 2018
ECM Doc. No 25897184	Additional Geotechnical Advice, prepared by JK Geotechnics	31 May 2018
ECM Doc. No. 25897186	Owners Consent – Strata Plan No. 5039 (No. 25 Pacific Street, Wamberal) 25897186	23 May 2018
ECM Doc No. 25897197	Photomontages	4 June 2018

1.2. Carry out all building works in accordance with the Building Code of Australia.

- 1.3 Prior to the appointment of any certifying authority, to ensure adequate provision is made for landscaping within and/ or adjacent to the revetment wall, as illustrated on the photomontages supporting the development application, a Landscape Plan is required to be submitted to Central Coast Council for approval prior to the issue of a Construction Certificate.

This Landscape Plan must be prepared by a qualified Landscape Architect or Landscape Designer, clearly identifying the following: -

- a. The scale to which they are drawn and the true north point;
- b. The location of the approved revetment wall and boundary lines;
- c. The finished ground levels relative to Australian Height Datum (AHD);
- d. A Planting Schedule including:
 - i. Botanical and common names of all proposed plant species;
 - ii. Mature height and diameter of all proposed species; and
 - iii. The pot size and number of all proposed species.

2... PRIOR TO ISSUE OF ANY CONSTRUCTION CERTIFICATE

- 2.1. To ensure adequate provision is made for the disposal of waste during demolition and construction, a Waste Management Plan is required to be submitted to Central Coast Council's Waste Servicing Division for approval prior to the issue of a Construction Certificate.

Note: The Waste Management Plan must be prepared in accordance with the former Gosford City Council Development Application Guide and Chapter 7.2 – Waste Management of Gosford Development Control Plan 2013 for all site preparation, demolition, construction, use of premises and on-going management of waste. All major demolition and construction components are required to be identified with an estimated volume of waste indicated. Ensure a figure is provided for residual waste to cover those materials that are unable or not feasible to separate.

- 2.2. All conditions under this section must be met prior to the issue of any Construction Certificate.
- 2.3. No activity is to be carried out on-site until the Construction Certificate has been issued, other than:
 - a) Site investigation for the preparation of the construction, and / or
 - b) Implementation of environmental protection measures, such as erosion control and the like that are required by this consent
 - c) Demolition
- 2.4. Submit evidence to the Certifying Authority demonstrating compliance with the recommendations within the Geotechnical Reports, Coastal Engineering Reports and the Structural Design Reports supporting this development and contained within Condition 1.1 of this Consent.
- 2.5. Prior to the release of the Construction Certificate the registered proprietors of the following parcels of land must enter into a deed of indemnity and release and instrument under s.88E of the *Conveyancing Act 1919* to ensure indemnity and release is provided in the format approved by Council in respect to Section 6.2 (Coastal Frontage) of *Gosford Development Control Plan 2013*:
 - a) Lot 6 DP: 8854 (No. 29 Pacific Street, Wamberal)
 - a) Lot 5: DP 8854 (No. 31 Pacific Street, Wamberal)
 - b) Lot 4: DP 8854 (No. 33 Pacific Street, Wamberal)
 - c) Lot 3: DP 8854 (No. 23a Ocean View Drive, Wamberal)
 - d) Lot 2: DP 8854 (No. 23b Ocean View Drive, Wamberal)
 - e) Lot 4: DP 524938 (No. 25c Ocean View Drive, Wamberal)

The deed of indemnity and release and instrument under s.88E of the *Conveyancing Act 1919* shall be prepared by Council's solicitor at the cost of each registered proprietor respectively. The authority empowered to release, vary or modify the instrument under s.88E is Central Coast Council.

- 2.6. Submit to the Principal Certifying Authority a Traffic and Pedestrian Management Plan prepared by a suitably qualified professional.

The Plan must be prepared in consultation with Central Coast Council, and where required, the approval of Central Coast Council's Traffic Committee obtained.

The Plan must address, but not be limited to, the following matters:

- Ingress and egress of vehicles to the subject site (s);
- Loading and unloading, including construction zones;
- Predicted traffic volumes, types and routes;
- Pedestrian and traffic management methods;
- Public access to Wamberal Beach during the construction phase; and
- Other relevant matters.

The Applicant must submit a copy of the final Plan to Council, prior to the commencement of work.

3... PRIOR TO COMMENCEMENT OF ANY WORKS

- 3.1. All conditions under this section must be met prior to the commencement of any works.

- 3.2. Appoint a Principal Certifying Authority for the building work:

- a) The Principal Certifying Authority (if not Council) is to notify Council of their appointment and notify the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work no later than two (2) days before the building work commences.
- b) Submit to Council a Notice of Commencement of Building Works or Notice of Commencement of Subdivision Works form giving at least two (2) days' notice of the intention to commence building or subdivision work. The forms can be found on Council's website: www.centralcoast.nsw.gov.au

- 3.3. Erect a sign in a prominent position on any work site on which building, subdivision or demolition work is being carried out. The sign must indicate:

- a) The name, address and telephone number of the Principal Certifying Authority for the work; and
 - b) The name of the principal contractor and a telephone number at which that person can be contacted outside of working hours; and
 - c) That unauthorised entry to the work site is prohibited.
 - d) Remove the sign when the work has been completed.
- 3.4. Submit both a Plumbing and Drainage Inspection Application, with the relevant fee, and a Plumbing and Drainage Notice of Work in accordance with the *Plumbing and Drainage Act 2011* (to be provided by licensed plumber). These documents can be found on Council's website at: www.centralcoast.nsw.gov.au

Contact Council prior to submitting these forms to confirm the relevant fees.

This condition only applies if installation/alteration of plumbing and/or drainage works are proposed (excludes stormwater drainage).

- 3.5. Provide toilet facilities at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site. Each toilet must:
- a. Be a standard flushing toilet connected to a public sewer, or
 - b. Have an on-site effluent disposal system approved under the *Local Government Act 1993*, or
 - c. Be a temporary closet approved under the *Local Government Act 1993*.
- 3.6. Prevent public access to the construction site as required by Clause 298 of the *Work Health and Safety Regulation 2011* when building work is not in progress or the site is unoccupied. Site fencing specifications are outlined under Australian Standard AS1725.1-2010 - *Chain-link fabric fencing - Security fencing and gates*. The use of barbed wire and/or electric fencing is not to form part of the protective fencing to construction sites.

A separate application made under the *Roads Act 1993* will need to be lodged with Council if a hoarding or construction site fence must be erected on a road reserve or a public place.

- 3.7. Install a hoarding or construction site fence between the work site and any public place to prevent any materials from or in connection with the work falling onto the public place. The use of barbed wire and/or electric fencing is not to form part of the hoarding or construction site fence.

A separate application made under the *Roads Act 1993* will need to be lodged with Council if the hoarding or construction site fence must be erected on the road reserve or a public place.

- 3.8. Provide certification to the Principal Certifying Authority that the structural engineer's details have been prepared in accordance with the recommendations of the geotechnical report(s) listed as supporting documentation in this development consent.
- 3.9. Undertake demolition involving asbestos in accordance with the *Work Health and Safety Act 2011*.

The person having the benefit of this consent must ensure that the removal of:

- a. more than 10m² of non-friable asbestos or asbestos containing material is carried out by a licensed non-friable (Class B) or a friable (Class A) asbestos removalist, and

friable asbestos of any quantity is removed by a licensed removalist with a friable (Class A) asbestos removal licence.

The licensed asbestos removalist must give notice to the regulator before work commences in accordance with Clause 466 of the *Work Health and Safety Regulation 2011*.

- 3.10. Induct all relevant personnel and contractors involved in the construction of the project of the relevant legislative requirements in relation to Aboriginal heritage management.
- 3.11. Obtain written approval from relevant land owners and/or Authorities for access to the beach for construction works. Provide a copy of relevant approvals to Council.
- 3.12. Notify the intention to commence works by giving written notice to the owner of the adjoining property affected by the proposed excavation and/or structural protective

works. The required notice must be accompanied by details of the proposed work at least seven (7) days prior to the commencement of proposed excavation and/or structural protection works.

- 3.13. Submit a dilapidation report to Council, the Accredited Certifier and relevant adjoining property owners. The report is to be prepared by a suitably qualified person detailing the structural characteristics of all buildings located on properties immediately adjoining the site boundaries and any Council asset in the vicinity of the development. The report must document and provide photographs that clearly depict any existing damage to the improvements erected upon allotments immediately adjoining the development site and to the road, kerb, footpath, driveways, water supply and sewer infrastructure, street trees and street signs or any other Council asset in the vicinity of the development.

In the event that access to an adjoining property(s) for the purpose of undertaking the dilapidation report is denied, submit evidence in writing demonstrating that all steps were taken to obtain access to the adjoining property(s).

4... DURING WORKS

- 4.1. All conditions under this section must be met during works.
- 4.2. Carry out construction or demolition works during the construction phase of the development only between the hours as follows:

7.00am and 5.00pm Monday to Saturday

No construction or demolition works associated with the development are permitted to be carried out at any time on a Sunday or a public holiday.

- 4.3. During the construction phase of the development, if any Aboriginal object (including evidence of habitation or remains), is discovered during the course of the work:

- a) All excavation or disturbance of the area must stop immediately in that area, and
- b) The Office of Environment and Heritage must be advised of the discovery in accordance with section 89A of the *National Parks and Wildlife Act 1974*.

Note: If an Aboriginal object is discovered, an Aboriginal heritage impact permit may be required under the *National Parks and Wildlife Act 1974*.

- 4.4. Implement and maintain all erosion and sediment control measures 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.
- 4.5. Keep a copy of the stamped approved plans on-site for the duration of site works and make the plans available upon request to either the Principal Certifying Authority or an officer of Council.
- 4.6. Notify Council when plumbing and drainage work will be ready for inspection(s) and make the work accessible for inspection in accordance with the *Plumbing and Drainage Act 2011*.

This condition only applies if installation/alteration of plumbing and/or drainage works are proposed (excludes stormwater drainage).

- 4.7. Place all building materials, plant and equipment on the site of the development during the construction phase of the development so as to ensure that pedestrian and vehicular access within adjoining public roads, footpaths and reserve areas, is not restricted and to prevent damage to public infrastructure. Further, no construction work is permitted to be carried out within the road reserve unless the works are associated with a separate approval issued under the provisions of the *Roads Act 1993*.
- 4.8. Do not carry out construction work or store building materials on the road reserve unless they are associated with a separate approval under the *Roads Act 1993*.

- 4.9. Action the following when an excavation extends below the level of the base of the footings of any building, structure or work on adjoining land:
- a. notify the owner of the adjoining land, and
 - b. protect and support the building, structure or work from possible damage from the excavation, and
 - c. underpin the building, structure or work where necessary, to prevent any such damage.

These actions must be undertaken by the person having the benefit of the development consent at their own expense.

- 4.10. Demolish buildings in a safe and systematic manner in accordance with AS2601-2001: *The demolition of structures*. Waste materials must be disposed of at a waste management facility.
- 4.11. No fill other than as shown on the approved plans is permitted.
- 4.12. Implement all recommendations of the geotechnical report(s) listed as supporting documentation in this development consent. Furthermore, the geotechnical engineer must provide written certification to the Principal Certifying Authority that all works have been carried out in accordance with the recommendations contained within the geotechnical report(s).
- 4.13. Do not access the development site through a public reserve unless a temporary access licence is obtained from Council. A copy of the licence must be available for viewing on site at all times during work.

The Temporary Access Application form can be found on Council's website at: www.gosford.nsw.gov.au

- 4.14. Within 1 week following completion of the seawall development, revegetate the area disturbed by the construction of the seawall with native species of local provenance. Revegetation works shall be undertaken by a suitably qualified and experienced Bush Regenerator or Ecologist in accordance with the Coastal Dune Management Manual:

NSW Department of Land and Water Conservation (2001), Coastal Dune Management: A Manual of Coastal Dune Management and Rehabilitation Techniques, Coastal Unit, DLWC, Newcastle.

Species for planting in this area should include appropriate densities of *Carpobrotus glaucescens*, *Spinifex sericeus* and *Acacia longifolia subspecies sophorae*. No topsoil is to be imported as fill material, only clean sand.

Plants in the revegetation area must be watered and maintained until a minimum of 90% of plants have successfully established.

- 4.15. Comply with all solid waste commitments detailed within the Waste Management Plan required by Condition 2.2 of this Consent.
- 4.16. All waste materials to be appropriately stored prior to transfer to a licensed waste facility.
- 4.17. Provide beach access with collapsible stairs (ie. each step being independent of the other) for the designated storm event.
- 4.18. Screen all deleterious material (eg. vegetation, rocks and debris) from the excavated sand and place the clean sand seaward of the location from where it was removed. The excavated sand must be placed at a location approved by Council.

5... PRIOR TO ISSUE OF ANY OCCUPATION CERTIFICATE

- 5.1. All conditions under this section must be met prior to the issue of any Occupation Certificate.
- 5.2. Submit a Certificate of Compliance for all plumbing and drainage work and a Sewer Service Diagram showing sanitary drainage work (to be provided by licensed plumber) in accordance with the *Plumbing and Drainage Act 2011*.

This condition only applies if installation/alteration of plumbing and/or drainage works are proposed (excludes stormwater drainage).

- 5.3. Provide certification from a geotechnical engineer to the Principal Certifying Authority that all works have been carried out in accordance with the recommendations contained within the geotechnical report(s) listed as supporting documentation in this development consent.
- 5.4. Prior to the issue of an Occupation Certificate, a 'Positive Covenant' under s.88E of the *Conveyancing Act 1919*, shall be created on the title of each parcel of the land listed below, requiring the respective registered proprietor (s) of each parcel of land to ensure the continued maintenance and performance of the seawall approved under this development consent. The terms of the positive covenant are to be prepared to Council's standard requirements. Central Coast Council shall be nominated as the party to release, vary or modify the covenant.

Land:

- f) Lot 6 DP: 8854 (No. 29 Pacific Street, Wamberal)
 - g) Lot 5: DP 8854 (No. 31 Pacific Street, Wamberal)
 - h) Lot 4: DP 8854 (No. 33 Pacific Street, Wamberal)
 - i) Lot 3: DP 8854 (No. 23a Ocean View Drive, Wamberal)
 - j) Lot 2: DP 8854 (No. 23b Ocean View Drive, Wamberal)
 - k) Lot 4: DP 524938 (No. 25c Ocean View Drive, Wamberal)
- 5.5. Rectify to the satisfaction of Council any damage not shown in the dilapidation report submitted to Council before site works had commenced. Any damage will be assumed to have been caused as a result of the site works undertaken and must be rectified at the developer's expense.
- 5.6. Revegetate and stabilise all areas disturbed by construction activities associated with the development so as to prevent erosion and dust nuisance occurring.

6.. ONGOING OPERATION

- 6.1. If the whole-of-bay seawall solution is implemented for Wamberal Beach, as provided within the Gosford Beaches Coastal Zone Management Plan, dated 3 April 2017, prepared

by Worley Parsons Services Pty Ltd as amended from time to time, and the removal of the proposed works is required due to an incompatibility of the two designs then, at that time, the seawall approved under this development consent must be removed at the cost of the registered properties of the land subject of this development consent.

6.2. The registered proprietor (s) of the land must ensure the continued maintenance and performance of the seawall approved under this development consent.

7.. PENALTIES

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

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

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

Warnings as to Potential Maximum Penalties

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

ADVISORY NOTES

- a) Although Central Coast Council currently endorses the strategy of a revetment wall and associated sand nourishment maintenance for Wamberal Beach, the timing of the revetment wall construction is not certain and depends upon the availability of finance. Council is actively pursuing funding for the construction of the revetment wall and associated sand nourishment. However, there is no guarantee as to when or if funding can be secured.
- b) Discharge of sediment from a site may be determined to be a pollution event under provisions of the *Protection of the Environment Operations Act 1997*. Enforcement action may commence where sediment movement produces a pollution event.
- c) The following public authorities may have separate requirements in the following aspects:
 - i. Jemena Asset Management for any change or alteration to the gas line infrastructure
 - ii. Ausgrid for any change or alteration to electricity infrastructure or encroachment within transmission line easements
 - iii. Telstra, Optus or other telecommunication carriers for access to their telecommunications infrastructure
 - iv. Central Coast Council in respect to the location of water, sewerage and drainage services.
 - v. Carry out all work under this Consent in accordance with SafeWork NSW requirements including the *Workplace Health and Safety Act 2011 No 10* and subordinate regulations, codes of practice and guidelines that control and regulate the development industry.
- d) **Dial Before You Dig**
Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures. (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property

via contacting the Dial Before You Dig service in advance of any construction or planning activities.

- e) Telecommunications Act 1997 (Commonwealth)
Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the *Criminal Code Act 1995 (Cth)* and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800 810 443.

- f) Install and maintain backflow prevention device(s) in accordance with Council's WS4.0 Backflow Prevention Containment Policy. This policy can be found on Council's website at: www.centralcoast.nsw.gov.au

This condition only applies if installation/alteration of plumbing and/or drainage works are proposed (excludes stormwater drainage)