



Land and Environment Court New South Wales

Case Name: **Zabaleta v Northern Beaches Council**

Medium Neutral Citation: [2024] NSWLEC 1278

Hearing Date(s): Conciliation Conference on 23 April 2024

Date of Orders: 28 May 2024

Date of Decision: 28 May 2024

Jurisdiction: Class 1

Before: Byrne AC

Decision: The Court orders that:
(1) The appeal is upheld.
(2) Development consent is granted to development application No DA2022/1650 for alterations and additions to a dwelling house including swimming pool at 8 Barooka Road, Church Point NSW 2105, known as Lot A in DP 391997, subject to the conditions of consent in **Annexure A**.

Catchwords: DEVELOPMENT APPEAL – alterations and additions to dwelling house – steep land – conciliation conference – agreement between the parties – orders

Legislation Cited: *Environmental Planning and Assessment Act 1979*, s 4.16, 8.7
Land and Environment Court Act 1979, ss 34, 34AA

Environmental Planning and Assessment Regulation 2021, s 38
Pittwater Local Environmental Plan 2014, cl 2.3, 7.7
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
State Environmental Planning Policy (Resilience and Hazards) 2021
State Environmental Planning Policy (Transport and Infrastructure) 2021

Texts Cited: Pittwater 21 Development Control Plan

Category: Principal judgment

Parties: Jose Maria Eduardo Zabaleta (First Applicant)
Alison Partin (Second Applicant)
Northern Beaches Council (Respondent)

Representation: Counsel:
C Morton (Solicitor) (Applicants)
R O’Gorman-Hughes (Respondent)

Solicitors:
Sparke Helmore Lawyers (Applicants)
Northern Beaches Council (Respondent)

File Number(s): 2023/315498

Publication Restriction: Nil

JUDGMENT

- 1 **COMMISSIONER:** This is a Class 1 Development Appeal pursuant to s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the refusal by the Northern Beaches Council (the Council) of DA2022/1650 (the Development Application) for alterations and additions including swimming pool (the Proposed Development) at 8 Baroona Road, Church Point NSW 2105, known as Lot A in DP 391997 (the Site).
- 2 The Court arranged a conciliation conference under s 34AA of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on site and at Court. I presided over the conciliation conference.
- 3 At the conciliation conference, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties and which addressed the Council's contentions. This decision involved Council approving an application to amend the Applicants' plans pursuant to s 38(1) of the *Environmental Planning and Assessment Regulation 2021*. The agreed position is for the Court to uphold the Class 1 appeal and grant consent to the Proposed Development on the land subject to conditions.
- 4 Section 34(3) of the LEC Act requires me to dispose of the proceedings in accordance with the parties' decision if it is a decision that the Court could have made in the proper exercise of its functions.
- 5 There are jurisdictional prerequisites which require my satisfaction before the power to grant consent under s 4.16(1)(a) of the EPA Act can be exercised by the Court. The parties outlined jurisdictional matters of relevance in these proceedings in an agreed Statement (the Statement) provided to the Court. The statutory planning controls relevant to the Site and the proposed development are listed in the Council's Statement of Facts and Contentions.
- 6 Regarding jurisdiction and taking into account the parties' advice in the Statement, I am satisfied in regard to the following relevant matters that apply.

State Environmental Planning Instruments

7 I have considered the jurisdictional issues raised by the following State Environmental Planning Instruments which apply to the Site as set out in the Statement at pars (26) to (34) and am satisfied that no jurisdictional impediments arise preventing the Court from allowing the appeal and granting consent to the Development Application:

- (1) State Environmental Planning Policy (Resilience and Hazards) 2021
- (2) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- (3) State Environmental Planning Policy (Transport and Infrastructure) 2021

Pittwater Local Environmental Plan 2014 (PLEP)

8 The Site is zoned C4 Environmental Living pursuant to the PLEP. The Proposed Development is permissible with consent within this zone.

9 The parties' Statement sets out each of the relevant objectives of the C4 zone. I have considered and accept the parties' analysis and agreement that the proposal in the Amended Plans before the Court is consistent with the objectives of the C4 zone pursuant to cl 2.3(2) of the PLEP.

10 I am satisfied that as set out in the Statement the Proposed Development does not give rise to any other non compliances of relevant clauses of the PLEP such as to give rise to a jurisdictional error preventing the making of an order for the grant of development consent.

11 I note in particular that the Site is steep land, and a portion of the Site is identified as Pittwater Geotechnical Hazard H1 pursuant to cl 7.7 of the PLEP.

12 The parties agree in the Statement and I accept that the Development Application, as amended, has been designed, sited and will be managed to avoid any geotechnical risk or significant adverse impact on the development and the land surrounding the development (see Amended Geotechnical Assessment). The parties also agree that the Development Application, as

amended, will appropriately manage waste water, stormwater and drainage across the Site so as not to affect rate, volume and quality of water leaving the land (see drawing no. DA.21 Roof & Stormwater Concept Plan and drawing no. DA.22 of the Amended Plans).

Public Participation

- 13 The Development Application went through an extensive notification process in October 2022 and February 2023. Fifteen submissions were received and considered by the parties. The appeal was commenced on 5 October 2023 from the Council's actual refusal of the Development Application.
- 14 On 27 October 2023, the Court granted the Applicants leave to rely on amended plans and documents listed in its Notice of Motion filed 20 October 2023.
- 15 The Earlier Amended Architectural Plans were informally notified between 6 March 2024 and 13 March 2024. Seven submissions were received and have been considered by the parties, raising the following concerns:
 - (1) Inconsistency between plans;
 - (2) Incompatibility with the streetscape and character;
 - (3) Insufficient landscape area in front setback;
 - (4) Water runoff;
 - (5) Traffic and car parking impacts;
 - (6) Traffic management during construction;
 - (7) Waste management;
 - (8) Biodiversity impacts;
 - (9) Use of dwelling house;

- (10) Potential for damage to road during construction;
 - (11) Potential geotechnical impacts during excavation; and
 - (12) Proposed front building line.
- 16 The parties agree that the further amendments made to the Earlier Amended Architectural Plans, reflected in the Amended Plans, reduce environmental impacts of the Development Application and therefore did not require renotification.
- 17 On 20 April 2024, the Applicants provided the Respondent with the Amended Plans. The parties advise that the amendments made to the Development Application were made in response to concerns of the Respondent and objectors and in the opinion of the parties' experts, will result in a development on the Site that is consistent with the desired future character of the locality, achieves relevant objectives of the Zone C4 Environmental Living under the PLEP, and is consistent with the relevant controls of the Pittwater 21 Development Control Plan.
- 18 Consistent with the public interest, I am satisfied that the resident objectors have been accorded procedural fairness and their reasonable concerns considered by the parties in reaching the s 34 agreement.

Conclusion

- 19 For these reasons, based on the evidence before me, and my observations on Site, I am satisfied that there is no jurisdictional impediment to the making of the proposed orders, and the decision is one that the Court could have made in the proper exercise of its functions.
- 20 As the parties' decision is a decision that the Court could have made in the proper exercise of its functions, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision. In making the orders to give effect to the agreement between the parties, I was not required to, and have not, made any merit assessment of the issues that were originally in dispute between the parties.

Notations

21 The Court notes that:

- (1) Northern Beaches Council, has agreed pursuant to s 38(1) of the Environmental Planning and Assessment Regulation 2021, to the Applicants amending Development Application No DA2022/1650 in accordance with the following documents:

- (a) Amended plans prepared by JJ Drafting Australia Pty Ltd, revision I, dated 20 April 2024 (Amended Plans):

Plan No.	Rev.	Title	Drawn by	Date
DA.01	I	Cover Page	JJ Drafting Australia Pty Ltd	20/04/2024
DA.02	I	Site Analysis Plan	JJ Drafting Australia Pty Ltd	20/04/2024
DA.03	I	3D Projection – Viewsharing	JJ Drafting Australia Pty Ltd	20/04/2024
DA.04	I	Photomontage – Viewsharing	JJ Drafting Australia Pty Ltd	20/04/2024
DA.05	I	Garage Floor Plan	JJ Drafting Australia Pty Ltd	20/04/2024
DA.06	I	Pool Terrace Floor Plan	JJ Drafting Australia Pty Ltd	20/04/2024
DA.07	I	Ground Floor Plan	JJ Drafting Australia Pty Ltd	20/04/2024
DA.08	I	First Floor Plan	JJ Drafting Australia Pty Ltd	20/04/2024
DA.09	I	Second Floor Plan	JJ Drafting Australia Pty Ltd	20/04/2024
DA.10	I	Elevation Sheet 1	JJ Drafting Australia Pty Ltd	20/04/2024
DA.11	I	Elevations Sheet 2	JJ Drafting Australia Pty Ltd	20/04/2024
DA.12	I	Elevations Sheet 3	JJ Drafting Australia Pty Ltd	20/04/2024
DA.13	I	Elevations Sheet 4	JJ Drafting Australia Pty Ltd	20/04/2024
DA.14	I	Elevations Sheet 5	JJ Drafting Australia Pty Ltd	20/04/2024
DA.15	I	Driveway Profile & Section A	JJ Drafting Australia Pty Ltd	20/04/2024
DA.16	I	Dwelling Section C	JJ Drafting Australia Pty Ltd	20/04/2024

DA.17	I	Dwelling Section B & D	JJ Drafting Australia Pty Ltd	20/04/2024
DA.18	I	Pool Profile	JJ Drafting Australia Pty Ltd	20/04/2024
DA.19	I	Driveway Turning Circle	JJ Drafting Australia Pty Ltd	20/04/2024
DA.20	I	Front Building Line Compliance	JJ Drafting Australia Pty Ltd	20/04/2024
DA.21	I	Roof & Stormwater Concept Plan	JJ Drafting Australia Pty Ltd	20/04/2024
DA.22	I	Erosion & Sediment Control/Waste Management Plan	JJ Drafting Australia Pty Ltd	20/04/2024
DA.23	I	Existing Landscaped Area Calculation Plan	JJ Drafting Australia Pty Ltd	20/04/2024
DA.24	I	New Landscaped Area Calculation Plan	JJ Drafting Australia Pty Ltd	20/04/2024
DA.25	I	BASIX & Specifications	JJ Drafting Australia Pty Ltd	20/04/2024
DA.26	I	Shadow Diagram June 21 9:00 am	JJ Drafting Australia Pty Ltd	20/04/2024
DA.27	I	Shadow Diagram June 21 12 noon	JJ Drafting Australia Pty Ltd	20/04/2024
DA.28	I	Shadow Diagram June 21 3:00 pm	JJ Drafting Australia Pty Ltd	20/04/2024
DA.29	I	Existing Ground Floor Plan	JJ Drafting Australia Pty Ltd	20/04/2024
DA.30	I	Existing First Floor Plan	JJ Drafting Australia Pty Ltd	20/04/2024
DA.31	I	Existing Elevations Sheet 1	JJ Drafting Australia Pty Ltd	20/04/2024
DA.32	I	Existing Elevation Sheet 3	JJ Drafting Australia Pty Ltd	20/04/2024
DA.33	I	Existing Elevation Sheet 4	JJ Drafting Australia Pty Ltd	20/04/2024
1 of 1	I	Openings Schedule	JJ Drafting Australia Pty Ltd	20/04/2024
1 of 1	I	Schedule of Colours & Materials	JJ Drafting Australia Pty Ltd	20/04/2024
1 of 3	I	Landscape Plan	JJ Drafting Australia Pty Ltd	20/04/2024
2 of 3	I	Landscape Plan	JJ Drafting Australia Pty Ltd	20/04/2024
3 of 3	I	Landscape Plan	JJ Drafting Australia Pty Ltd	20/04/2024

- (b) Amended Geotechnical Assessment, version 4, prepared by AscentGeo Geotechnical Consulting dated 22 April 2024 (Amended Geotechnical Assessment);

- (c) Amended Arboricultural Impact Appraisal and Method Statement, revision C, prepared by Ezigrow Arboricultural Consulting dated 21 April 2024;
- (d) BASIX Certificate No. A1744509 prepared by JJ Drafting Australia Pty Ltd issued 22 April 2024; and
- (e) Waste Management Plan prepared by JJ Drafting Australia Pty Ltd dated 22 April 2024.

Orders

22 The Court orders:

- (1) The appeal is upheld.
- (2) Development consent is granted to development application No DA2022/1650 for alterations and additions to a dwelling house including swimming pool at 8 Baroona Road, Church Point NSW 2105, known as Lot A in DP 391997, subject to the conditions of consent in **Annexure A**.

I certify that this and the preceding 6 pages are a true copy of my reasons for judgment.



.....
L Byrne

Acting Commissioner of the Court

Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: DA2022/1650

Development: Alterations and additions to a dwelling house including a swimming pool

Site: 8 Baroona Road CHURCH POINT NSW 2105

The above development application has been determined by the granting of consent subject to the conditions specified in this consent.

Date of determination: 28 May 2024

Date from which consent takes effect: Date of determination.

TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the “applicant” means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the “site”, means the land known as 8 Baroona Road CHURCH POINT NSW 2105.

The conditions of consent are as follows:

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA.02	I	Site Analysis Plan	JJ Drafting	20 April 2024
DA.05	I	Garage Floor Plan	JJ Drafting	20 April 2024
DA.06	I	Pool Terrace Floor Plan	JJ Drafting	20 April 2024
DA.07	I	Ground Floor Plan	JJ Drafting	20 April 2024
DA.08	I	First Floor Plan	JJ Drafting	20 April 2024
DA.09	I	Second Floor Plan	JJ Drafting	20 April 2024
DA.10	I	Elevation Sheet 1	JJ Drafting	20 April 2024
DA.11	I	Elevations Sheet 2	JJ Drafting	20 April 2024
DA.12	I	Elevations Sheet 3	JJ Drafting	20 April 2024
DA.13	I	Elevations Sheet 4	JJ Drafting	20 April 2024
DA.14	I	Elevations Sheet 5	JJ Drafting	20 April 2024
DA.15	I	Driveway Profile & Section A	JJ Drafting	20 April 2024
DA.16	I	Dwelling Section C	JJ Drafting	20 April 2024
DA.17	I	Dwelling Section B & D	JJ Drafting	20 April 2024
DA.18	I	Pool Profile	JJ Drafting	20 April 2024
DA.21	I	Roof & Stormwater Concept Plan	JJ Drafting	20 April 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Arboricultural Impact Appraisal and Method Statement	Rev C	Ezigrow	21 April 2024
BASIX Certificate	A1744509	JJ Drafting Australia Pty Ltd	22 April 2024
Geotechnical Report – AG 22376	4	AscentGeo Geotechnical	22 April 2024

		Consulting	
Landscape Plan – 1 of 3	I	JJ Drafting	20 April 2024
Landscape Plan – 2 of 3	I	JJ Drafting	20 April 2024
Planting Schedule – 3 of 3	I	JJ Drafting	20 April 2024
Schedule of Colours & Materials	I	JJ Drafting	20 April 2024
Waste Management Plan	-	JJ Drafting Australia Pty Ltd	22 April 2024

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Aboriginal Heritage Office	Aboriginal Heritage Office	8 August 2023
Ausgrid	Ausgrid Referral Response	4 August 2023

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and

- (iii) stating that unauthorised entry to the work site is prohibited.
Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place. Reason:

Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday, ◦No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges

paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$9,750.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$975,000.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

6. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

Reason: To ensure adequate protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. **Amendments to Approved Plans**

The following amendments are to be made to the approved plans:

- Any new sandstone walls that meet the existing sandstone substructure shall match into the existing. All retaining walls shall be sandstone and 'match into existing'.
- A black palisade 1m high fence is to be atop the retaining wall adjacent to the entry hall on the western side of the rear addition. Is it be designed and arranged in such a way that trafficable access to that roof is not available.
-

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

8. **On Slab Landscape Planters**

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections. The following soil depths are required to support landscaping: 300mm for groundcovers, perennials, grasses and lawn; 600mm for shrubs; and 1m for small trees.

Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and ensure waterproofing and drainage is installed.

9. **Retaining wall excavation works near existing tree 7 - Spotted Gum**

To preserve existing tree 7 - Spotted Gum, the extent of excavation near this tree shall not exceed the alignment of the retaining wall as shown on the approved Plans and as shown on the approved section B (drawing DA.17).

Reason: To ensure no unauthorised excavation near tree 7.

10. **No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

Details demonstrating compliance are to be submitted to the Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation.

11. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to TfNSW standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

12. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by AscentGeo Geotechnical Consulting Ref: AG 22376 dated 22 April 2024 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

13. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

14. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by JJ Drafting, drawing number 1030/22 DA.21 Revision I dated 20/04/24.

Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. The design of the OSD system is to be in accordance with Section 9.3.1 of Council's Water Management for Development Policy
2. The increase in impervious area must include the proposed garage roof area.
3. The OSD tank must include an access grate over the orifice plate with step irons if the depth exceeds 1.2 metres.
4. An overflow pipe is to be provided within the OSD tank connected to the outlet pipe.
5. Orifice plate details.
6. Outlet pipe details with connection to the kerb.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater management arising from the development.

15. **Submission Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to Civil Engineering plans for the design of the driveway crossing include retaining walls which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

1. 5.5 metre wide driveway crossing.
2. Retaining wall details on either side of the crossing. The walls must be located a minimum of 1.5 metres behind the existing kerb.
3. Long section in accordance with Council profile Maximum High.
4. Reinstatement of existing layback and crossing to kerb and turf.
5. Connection of stormwater pipeline from OSD tank to kerb.
6. Services plan with service authority approval for any affected services as a result of the proposed works.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

16. Structural Adequacy and Excavation Work

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To provide public and private safety.

17. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

18. External Finishes to Roof

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

19. Sydney Water "Tap In"

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifier demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website www.sydneywater.com.au for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

Reason: To ensure compliance with the statutory requirements of Sydney Water.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

20. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-

2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:

- a) works under Appendix 7 - Schedule of works and responsibilities
- b) works under Appendix 8 - Tree management plan
- c) the tree protection fencing shall be placed at 4 metres distance from tree 7,
- d) all existing ground levels from the tree protection fencing and upslope shall be retained without any alteration.

All tree protection measures specified must: be in place before work commences on the site; be maintained in good condition during the construction period; and remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) above in items a) b) c) and d) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

21. Tree Removal Within the Property

This consent approves the removal of existing prescribed trees on the subject site impacted by development works, as identified in the Arboricultural Impact Assessment, approved Plans, or as listed below:

- a) tree 3,
- b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

22. Pre-Construction Dilapidation Report

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property: 10 Baroona Road CHURCH POINT

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain

access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

DURING BUILDING WORK

23. **Tree and Vegetation Protection**

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
- ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

c) The arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as compliant to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

24. Wildlife Protection

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

25. Native Landscaping

Any new landscaping is to incorporate a minimum 50% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the relevant section of the Native Planting Guide available on Council's website.

Details demonstrating compliance are to be provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To ensure compliance with the requirement to retain and protect native planting on the site.

26. Protection of Habitat Features

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

27. Road Reserve

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

28. Removing, Handling and Disposing of Asbestos

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

29. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

30. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

31. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

Reason: To demonstrate the proposal complies with the approved plans.

32. **Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

33. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

34. Traffic Control During Road Works

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with TfNSW Traffic Control At Work Sites Manual and to the satisfaction of the Roads Authority.

Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works.

Reason: Public Safety.

35. Vehicle Crossings

The Applicant is to construct one vehicle crossing 5.5 metres wide in accordance with Northern Beaches Council Drawing Maximum High Profile and the Roads Act application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. The redundant layback and crossing are to be restored to kerb and grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Certifier. Reason:

To facilitate suitable vehicular access to private property.

36. Aboriginal Heritage

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Planning, Housing and Infrastructure.

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the Department of Planning, Housing and Infrastructure.

Reason: Aboriginal Heritage Protection.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

37. Certification of Civil Works in Council Land

The Applicant shall submit certification by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) that the completed works have been constructed in accordance with this consent and the approved Section 138 plans. The certification shall be submitted to Council for approval prior to the release of any security deposits.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure compliance of works with Council's specification for engineering works.

38. Landscape Completion

Landscape works are to be implemented in accordance with the approved Landscape Plan(s)

(Landscape Plans, drawing 1 of 3 and drawing 2 of 3, by JJ Drafting dated 20/04/2024 and Planting Schedule drawing 3 of 3, by JJ Drafting dated 20/04/2024), and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) proposed landscape works within the road reserve are not approved under this development consent, and shall be subject to a section 138 application for works within the road reserve,
- c) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- d) mass planting shall be installed at minimum 1metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- e) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- f) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

Prior to the issue of an Occupation Certificate, details (from a landscape architect, landscape designer or qualified horticulturalist) shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

39. Condition of Retained Vegetation

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

40. No Weeds Imported On To The Site

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of any

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

41. Stormwater Drainage Disposal Certification

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the authority to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure satisfactory management of stormwater.

42. Post-Construction Dilapidation Report

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

43. Waste Management Confirmation

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the

Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

44. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures

The Applicant shall lodge the Legal Documents Authorisation Application with Council. The application shall include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), and Civil Engineers' certification.

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgment with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

45. Retaining Walls in Road Reserve

The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Public and Private Safety.

46. Geotechnical Certification Prior to Occupation Certificate

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

47. House / Building Number

House/building number is to be affixed to the building to be readily visible from the public domain.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Proper identification of buildings.

48. Swimming Pool Requirements

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifier, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To protect human life.

ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

49. **Swimming Pool/Spa Motor Noise**

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

50. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan(s) and any conditions of consent.

The approved landscape planted areas consisting of lawn, planting at grade, and planting/lawn on structure, shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

51. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.