



Land and Environment Court
New South Wales

Case Name: Allambie Heights Village Ltd v Northern Beaches Council

Medium Neutral Citation: [2022] NSWLEC 1216

Hearing Date(s): 2 September 2021. Agreed Conditions received 27 October 2021.

Date of Orders: 21 April 2022

Decision Date: 21 April 2022

Jurisdiction: Class 1

Before: Adam AC

Decision: The Court orders that:
(1) Leave is granted for the Applicant to rely on the amended Development Application filed on 26 August 2021 which became Exhibit A.
(2) The Applicant is to pay the Respondent's costs thrown away as a result of the amendment to DA 2020/0552 as agreed or assessed pursuant to s 8.15 (3) of the Environmental Planning and Assessment Act 1979.
(3) The Applicant's written request prepared by Planning Ingenuity dated 31 March 2021 pursuant to cl 4.6 of the Warringah Local Environmental Plan 2011 seeking to vary the height of buildings development standard in cl 40 (4) (a) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 is upheld.
(4) The Appeal is upheld.
(5) Development consent is granted to DA 2020/0552 for demolition works, and construction of a seniors living development comprising 24 independent living units, a communal building, landscaping and associated works at 181 Allambie Heights Road, subject to the

conditions in Annexure A

(6) The exhibits are retained with the exception of exhibits C, 2 and 4.

Catchwords:

DEVELOPMENT APPLICATION – demolition works – construction of a Seniors Living Development – reliance on new plans – cl 4.6 variation in height limit – location of Asset Protection Zones – access to Sydney Water land – impacts on adjacent bushland – effects on aquatic environment and biota of Curl Curl Creek – conditions to address off-site impacts.

Legislation Cited:

Biodiversity Conservation Act 2016, s 7.13
Biodiversity Conservation Regulation 2017, cl 7.3
Environmental Planning and Assessment Act 1979, ss 1.3, 4.15, 8.7, 8.15
Environmental Planning and Assessment Regulation 2000, cl 55, 64
Fisheries Management Act 1994
Land and Environment Court Act 1979, s 34
Rural Fires Act 1997, s 100B
State Environmental Planning Policy (Housing) 2021, Pt 5, Sch 7A, cl 2
State Environmental Planning Policy (Seniors Living) 2004, cl 40
Warringah Local Environmental Plan 2011, cl 4.3, 4.6, Sch 5

Cases Cited:

Amazonia Hotels Pty Ltd v Council of the City of Sydney [2014] NSWLEC 1247
Ballina Shire Council v Palm Lake Works Pty Ltd [2020] NSWLEC 41
Cday Electrical Services Pty Ltd v Burwood Council [2016] NSWLEC 1506
Chami v Lane Cove Council [2015] NSWLEC 1003
Hoxton Park Residents Action Group Inc v Liverpool City Council (2011) 81 NSWLR 638; [2011] NSWCA 349
Initial Action Pty Ltd v Woollahra Municipal Council (2018) 236 LGERA 256; [2018] NSWLEC 118
Jonah Pty Ltd v Pittwater Council (2006) 144 LGERA 408; [2006] NSWLEC 99
Kouflidis v Salisbury City Corporation (1982) 29 SASR 321
Pocket Herbs and Produce Pty Ltd v Tweed Shire

Council [2021] NSWLEC 1253
Renaldo Plus 3 Pty Limited v Hurstville City Council
[2005] 315
Transport Action Group Against Motorways Inc v Roads
& Traffic Authority & Anor (1999) 46 NSWLR 598;
[1999] NSWCA 196
Wehbe v Pittwater Council (2007) 156 LGERA 446;
[2007] NSWLEC 827
Winter Group Architects Pty Ltd v Ku-ring-gai Council
[2005] NSWLEC 546

Category: Principal judgment

Parties: Allambie Heights Village Ltd (Applicant)
Northern Beaches Council (Respondent)

Representation: Counsel:
P Lalich (Solicitor) (Applicant)
S Patterson (Solicitor) (Respondent)

Solicitors:
HWL Ebsworth Lawyers (Applicant)
Wilson Webb Staunton Beattie (Respondent)

File Number(s): 2020/350618

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal against the refusal by Northern Beaches Council (Respondent) of Development Application DA 2020/0552 made by the Applicant (Allambie Heights Village Limited) pursuant to s 8.7 of the *Environmental Planning & Assessment Act 1979* (EPA Act). The Development Application was lodged with Council by the Applicant on 28 May 2020. The Development Application was notified, as required, for the period 2 June 2020 - 5 July 2020. As a result, 112 objections were received, raising a large number of issues. (Details of the proposal and the actions of the Respondent are derived from the Statement of Facts and Contentions (SOFAC) which became Exhibit 1).
- 2 The submissions made by the objectors are included in Exhibit 2, Tab 3, Folio 9-199. The DA was also referred to the appropriate internal departments of

Council, whose responses are in Exhibit 2, Tab 4, Folio 200-245. Referral of the DA was also made to three agencies external to Council - the Natural Resources Access Regulator (NRAR), the NSW Rural Fire Service (RFS) and Ausgrid. The responses of these agencies are in Exhibit 3 Tab 4, Folio 246 - 250. An assessment of the DA was prepared by Council and placed on the agenda of the Northern Beaches Local Planning Panel (NBLPP) meeting for 18 November 2020, with a recommendation for refusal. (The Development Assessment Report is Exhibit 2, Tab 7, Folio 317 - 371).

- 3 The NBLPP viewed the site and its surrounds on 18 November 2020, and at the public meeting which followed the inspection, the Panel heard from 5 objectors and four representatives of the Applicant (Exhibit 2, Tab 8, Folio 379) (Written submissions from objectors made to the NBLPP form Exhibit 2, Tab 6, Folio 251-318).
- 4 The Panel, on behalf of Council, refused the Development Application:

“DECISION ON DEVELOPMENT APPLICATION

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **refuses** Application No. DA2020/0552 for demolition works and construction of a Seniors Living Development at Lot 2615 DP 752038, 181 Allambie Road, Allambie Heights for the following reasons:

1. The proposed development is contrary to the Environmental Planning and Assessment Act 1979 NSW having regard to s 4.15 (1)(b),(c),(d) and (e) given the insufficient information provided with the development application to address the likely impacts of the development on the adjacent natural environment, the suitability of the site and matters raised by the public with respect to the likely impacts that would be caused.

REASONS FOR DETERMINATION:

The Panel was of the view that the site is capable of Seniors Living Housing however given the lack of crucial information with respect to the intensification of the development and the likely impacts it would have on the adjacent Many Warringah War Memorial Park and the recognised biodiversity values contained within the park and the Manly Dam Catchment the Panel is unable grant a development consent to the proposal in the absence of crucial information. The Panel encourages the applicant to engage in formation discussions with the Council with respect to the submission of an updated biodiversity development assessment report (BDAR) that addresses the current biodiversity values contained within the park and how those values interrelate with the requirements to provide an appropriate asset protection zone for bushfire risk mitigation.”

(From Exhibit 2, Tab 8, folio 379)

- 5 In the Reasons for Determination, the Panel considered that potentially the proposal might be able to be approved and suggested that further discussions between the parties should occur.
- 6 The Respondent wrote to the Applicant on 24 November 2020 providing the notice of determination by the Panel.
- 7 The Applicant then initiated the appeal against the refusal; the Court assigned the matter to a s 34 conciliation conference under the provisions of the *Land and Environment Court Act 1979*. A number of residents made written submissions to the conciliation conference; some individuals made several submissions. All of the submissions prepared for the conciliation conference appear in Exhibit 2, Tab 11, folio 388 – 461. The s 34 conciliation conference commenced on 9 March 2021, but no agreement between the parties was achieved and the conference was terminated on 23 April 2021. Subsequently, the matter was listed by the Court for hearing.
- 8 Subsequent to the termination of the s 34 conciliation, and prior to the hearing, the parties continued without prejudice discussions (as suggested by the NBLPP). As a result of these discussions the Applicant sought to amend its proposal in response to Council's concerns and provided amended architectural plans and supporting documentation. The Council notified residents of the suggested amendments (Exhibit 2, Tab 11, Folio 468 - 469). In its notification, Council stressed the without prejudice nature of the plans and documentation, so the Applicant was not compelled to rely on them, and might continue to rely on the existing plans, or seek to rely on differently amended plans. Council also advised that the without prejudice status of the documents meant that the recipients could not make them available to any other person, except with prior consent from the Applicant. Submissions received in response to the notification are in Exhibit 2, Tab 14, Folio 470 - 477.
- 9 I have described the passage of the proposal since the DA was first submitted to illustrate that it had been subject to considerable scrutiny and a large number of citizens had raised concerns. A number of objector submissions drew attention to the fact that the current application was not the first which had been proposed. The previous proposals are not relevant to the assessment of

the current proposal, but the objectors' comments show that some of the objectors have been involved in gathering information and making submissions for far longer than the time the current application has been under consideration.

- 10 In seeking submissions, a consent authority is not conducting a popularity poll. The number of submissions is not unimportant as it demonstrates the strength of public interest, but more weight would be placed on the content of submissions identifying issues and providing the basis for the arguments advanced. In the case of many of the submissions made by objectors in this matter, there is information derived from many years of involvement with the local environment.
- 11 The development application sought approval for demolition works and construction of a seniors living development comprising 24 independent living units in two buildings. The site has the street address of 181 Allambie Road, Allambie Heights, with a legal identity of Lot 2615, DP 752038.



Figure 1: Aerial image of the subject site (Source Six Maps). From Exhibit A, Tab 1, page 7.

- 12 The site has been used for social housing providing 55 units (the William Charlton Village), since 1966:



Figure 2: Land use composition and nearby key sites/features. From Exhibit A, Tab 1, Page 11.

- 13 The figure illustrates the location of other seniors and persons with a disability accommodation in the vicinity of the proposal.
- 14 The bushland to the west and south west of the site is part of the catchment of the Manly Dam and is Crown Land managed by the Council. Long known under the name of Manly Warringah War Memorial Park, it has, since 2017, been a State Park, under the name of the Manly Warringah War Memorial State Park. The part of the park adjacent to the site includes part of the catchment of Curl Curl Creek, which flows into Manly Dam. Potential impacts of the proposal on the environments and biota of Curl Curl Creek were the focus of many of the concerns raised by the objectors.

The hearing

- 15 Owing to COVID restrictions, it was not possible to conduct a site inspection at the commencement of the hearing, as would have been customary under pre COVID circumstances. The hearing itself, including the submissions from the objectors and the examination of the experts was conducted remotely using MS Teams.

- 16 During case management discussions with the parties, prior to the hearing, it was agreed that the Applicant would obtain drone footage of the site and its surrounds. This was done during the day before the hearing (on 1 September 2021) and shown at the start of the hearing. (The drone imagery was also supplied to the Court on a USB stick, which became Exhibit B). The drone imagery was of great assistance, and I am grateful to the Applicant for having obtained it at such short notice.
- 17 The objectors' submissions were well prepared and contained many helpful images. The objectors also coordinated their submissions, so that each concentrated on a particular theme. Necessarily, there was some overlap between submissions, so that each could stand alone, but overall, there was minimum repetition. I am grateful to the objectors for the time they put into preparing submissions such that overall, the presentation ran much more smoothly than is sometimes the case.
- 18 The discussions between the parties that had been encouraged by NBLPP (see [4] above) continued up until the hearing. At the start of the hearing, the Applicant indicated that it wished to rely on an amended application. This was not opposed by the Respondent, and the amended application and associated documents became Exhibit B. The objectors had been aware that changes to the application would be proposed but had not been aware of all the details. The changes to the application in the amended documents were in large part responses to concerns raised by the Council and in the submissions from the objectors. Mr Lalich spoke to the proposed changes and pointed out where they would occur when showing the drone footage.
- 19 A major concern of both the Council and the objectors was that the original proposal would have had unacceptable impacts on bushland and biodiversity. One of the components of the concern was that the Asset Protection Zone, (APZ) required by the RFS, was, in the original proposal, located within the adjoining reserve rather than within the site, which is held by the Applicant on a lease from the Crown.
- 20 The proposal includes the demolition of a number of existing structures and the removal of trees, and the construction of a seniors housing development of 24

independent living units in two buildings (A and B), a communal building including a gym, spa and activity spaces, with associated landscaping and drainage works.

- 21 The amended proposal is summarised in the Amended Statement of Environmental Effects (Exhibit A, Tab 1) as; relocation of a total of four dwellings (two at ground level and two at first floor level) from the western end of building B to the eastern end of building B (one on the ground level and one at first floor level) and two to the western end of building A (one at the ground level and one on the first floor); relocation of the communal building; realignment of the vehicle and pedestrian access to accommodate these changes to the building locations.
- 22 As a consequence of these changes, the APZ is located within the site and does not extend into the adjacent reserve.
- 23 The proposed changes are illustrated in Exhibit A (Tab 7 (Bushfire Management Plan. Annexure 1 figure 5):



Figure 3: The amended layout of buildings and Asset Protection Zones (APZs). From Attachment A to Exhibit D. Figure prepared by Total Earth Care.

- 24 This map shows the location of bushland areas which would remain, the location of buildings and the APZs. To the north of the site there is an above ground Sydney Water pipeline:



Figure 4: Image 6 from Exhibit D. The water pipeline is visible in the background.

- 25 Sydney Water is supportive of granting a licence to the Applicant for access to the Sydney Water land for purposes of management of the APZs (Exhibit A, Tab 14). The conditions of consent which have been proposed and which would apply if consent were granted include a deferred commencement condition requiring the granting of a licence by Sydney Water which would permit a portion of Sydney Water land to be managed as an Inner Protection Area.

26 Mr Patterson indicated that the Respondent did not oppose the substitution of the plans in the original application by the amended plans, as “the amendments are ameliorative” (transcript 02/09/21, page 8, line 37). However, he was of the view that the changes were more than minor and should be the subject of a costs order under s 8.15 (3) of the EPA Act. Mr Lalich did not disagree.

27 Accordingly, I granted leave to the Applicant to rely upon the amended application, plans and associated documents in Exhibit A. The Applicant is to pay the Respondent’s costs thrown away, pursuant to s 8.15(3) of the EPA Act as agreed or assessed. Mr Patterson also provided consent from Council for the Applicant to upload the amended plans on the Department of Planning's portal as required by cl 55(1) of the Environmental Planning and Assessment Regulation 2000 (EPA Reg).

The variation request to modify the permitted maximum building height

28 The Local Environmental Plan applicable to the site is the Warringah Local Environmental Plan 2011 (WLEP 2011). The Northern Beaches Local Government Area (LGA) was created by the amalgamation in 2016 of the previous Manly, Pittwater and Warringah LGA’s. Within what was the former Warringah LGA, WLEP 2011 continues to apply. Under WLEP 2011, the site is zoned R2-Low Density Residential, and under the zoning table for Zone R2 in WLEP 2011, development of a residential flat building is not permitted. The residential buildings proposed constitute residential flat buildings. However, development of the type proposed is permitted under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (HSPD 2004).

29 HSPD 2004 cl 40(4)(a) imposes a maximum height limit of 8 metres for any building in a proposed seniors living development in a residential zone where residential flat buildings are not permitted.

30 HSPD 2004 defines height and ground level differently from the definitions in a standard instrument LEP.

"height" in relation to a building, means the distance measured vertically

from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.

"ground level" means the level of the site before development is carried out pursuant to this Policy.

Definitions from HSPD 2004 cl 3.

- 31 Part of the proposed development exceeds the maximum height limit of 8 metres by 0.65 metres.
- 32 Clause 4.6 of WLEP 2011 provides an avenue for approval, by the consent authority, of a deviation from a development standard. The 8-metre height limit in cl 40(4)(a) HSPD 2004 is a development standard, to which exemptions can be granted under cl 4.6 WLEP 2011.

4.6 Exceptions to development standards

(1) The objectives of this clause are as follows--

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating--

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless--

(a) the consent authority is satisfied that--

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

- (b) the concurrence of the Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider--
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

.....

- 33 The Court, acting as consent authority for purposes of the appeal, is able to consider granting an exemption if the Applicant has made a written request which adequately addresses the matters required to be addressed by cl 4.6. The Applicant's written request was prepared by Planning Ingenuity Pty Ltd and is included in the Revised Application, Exhibit A at Tab 1, Annexure C. Clause 40 (4)(a) of HSPD 2004 does not expressly exclude application of cl 4.6 WLEP 2011. (Variation Request, Exhibit A, Tab 1, Annexure C, page 50). Clause 4.6 (2) refers to 'any other planning instrument'. HSPD 2004 is an environmental planning instrument. The necessary approach to consideration of cl 4.6 modification applications has been provided by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) 236 LGERA 256; [2018] NSWLEC 118 ('*Initial Action*'). The Applicant's written request pursuant to cl 4.6 WLEP 2011 to vary the development standard for height of buildings in cl 40(4)(a) of HSPD 2004 was not opposed by the Respondent. Nevertheless, the Court, acting as consent authority and standing in the shoes of council, is required to make an independent assessment of the case made by the applicant for variation in the height standard. I must form two positive opinions of satisfaction under cl 4.6 WLEP 2011 in order to enliven the power under cl 4.6 (2) to grant consent notwithstanding the contravention of the 8-metre building height standard in cl 40(4)(a) of HSPD 2004.
- 34 The Applicant made reference to the judgement of Preston CJ in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 ('*Wehbe*'). This matter included an objection under SEPP 1 which was the predecessor to the request mechanism in cl 4.6 Standard Instrument LEPs. In *Initial Action*, at [16], Preston CJ stated that *Wehbe* was applicable to consideration of cl 4.6 requests.

- 35 The Applicant considered that compliance with the 8-metre height standard was unreasonable and unnecessary as the objectives of the standard were achieved. The Applicant also argued that there were sufficient environmental planning grounds to justify contravention of the development standard, providing 10 reasons why this was so.
- 36 These can be briefly summarised. Firstly, the 0.65 metre contravention of the 8-metre height limit is restricted to the southern part of a portion of building A and is the result of the slope of the ground surface and the need to design the building without internal stairs or ramps to maximise occupant amenity and usability. The contravention is compatible with the character of the streetscape and locality. There is no adverse impact on solar access for neighbouring properties, as all shadows will fall within the subject site only, and there are no privacy impacts as the area of the exceedance does not contain any windows that would allow views of neighbouring properties and does not result in any view loss for neighbouring buildings. The proposed development meets the objective of the development standard as well as the objectives of the R2 Low Density Residential zone, and of s 1.3 of the EPA Act.
- 37 The Applicant also drew attention to *Initial Action* at [86] - [87] where Preston CJ clarified that a cl 4.6 request did not need to achieve a better planning outcome than that proposed in the original application.
- 38 Clause 4.6(4)(a) (ii) requires consideration of the objectives for the standard.
- 39 There are no specific objectives provided in HSPD 2004 cl 40 (4)(a) and no objectives relating to building height elsewhere in HSPD 2004. The Applicant drew attention to *Winter Group Architects Pty Ltd v Ku-ring-gai Council* [2005] NSWLEC 546 ('*Winter*'), a matter also involving a seniors development. At [10] Murrell C suggested that the objectives of a height control (expressed as a restriction to two storeys rather than a numerically defined height) were:
- “...to control impacts on adjoining neighbours to ensure that the proposed development is not overbearing in terms of bulk, scale and height and also in terms of overshadowing impacts and privacy concerns.”
- 40 The Applicant considered also the objectives of WLEP 2011 cl 4.3:

4.3 Height of buildings

(1) The objectives of this clause are as follows--

(a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

(c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

(d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.

- 41 The Applicant considered that these objectives would be appropriate to apply in the context of the cl 4.6 request. Addressing the more specific objectives of WLEP 2011 rather than the generalisations in *Winter*, the Applicant considered height and scale of the development (relevant to the zone objectives (a) and (b)) were compatible with (and indeed less than) existing development in the area.
- 42 The Applicant considered that zone objective (c) was met given the nature and location of the proposed development relative to other buildings in the neighbourhood
- 43 Clause 4.6(4)(ii) also requires the consent authority to be satisfied that granting consent would be in the public interest because it is consistent with the objectives of the zone in WLEP 2011, which are:

Zone R2 Low Density Residential

1 Objectives of zone

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

- 44 The Applicant argues that the proposal will assist with meeting the housing needs of the community. This could be said of probably all proposed housing developments, and no specific data on need in the locality were provided.
- 45 The development as proposed includes facilities for the residents above those required just for accommodation.

- 46 The objectors might not consider that the proposal is “in harmony with the natural environment” of Warringah, but the objectives for the development of Zone R2 relate to visual issues from a human perspective, and evidence of visual impacts was not provided. Given the generality of the zone objectives, what is proposed is not obviously contrary to them.
- 47 Clause 4.6 (4)(b) requires that before a consent authority has the power to grant development consent for a development application for which a cl 4.6 variation request has been made, the concurrence of the Secretary of the Department of Planning and Environment must be obtained. Under cl 64 of the EPA Reg, the Secretary gave written notice attached to Planning Circular PS 20 - 002 issued on 5 May 2020 to each consent authority, that they might assume the Secretary’s concurrence for exceptions from development standards granted in respect to applications under cl 4.6, subject to conditions in the table to the notice.
- 48 The consent authority is required to consider whether a modification request gives rise to any matter of significance for State or Regional Environmental Planning. The proposed contravention of the height standard does not raise any such issues.
- 49 Consent authorities are required to consider the public benefit of maintaining the development standard. The Applicant argued that there is no public benefit in maintaining strict compliance. I consider that given the exceedance is limited to a small part of one building and given the setting of the proposed development and its distance from existing development, the Applicant’s position is justified.
- 50 I therefore uphold the Applicant’s cl 4.6 request.
- 51 I note the lack of opposition from the Respondent to the cl 4.6 request and that the built form was not subject to any objections by the Council officers in their submission to the NBLPP, and that the Panel raised no issues relating to the built component of the building. The objectors’ primary concerns are the natural environment and the construction process rather than the building if completed.

52 I note that subsequent to the hearing, HSPD 2004 was repealed as from November 2021 and replaced in the new consolidated State Environmental Planning Policy (Housing) 2021 as Pt 5. Schedule 7A of the 2021 SEPP includes savings provisions in cl 2(1)(a):

2 General savings provision

(1) This Policy does not apply to the following matters—

(a) a development application made, but not yet determined, on or before the commencement date,

.....

53 Thus, the application is to be assessed under the provisions of HSPD 2004.

54 Granting the request to modify the height standard removes a bar to the Court's jurisdiction to consider the matter further.

The Objectors' Submissions

55 Six of the objectors were chosen to address the Court. Their submissions for the purpose of the Court proceedings were included in Exhibit 3. Cross reference to earlier submissions made by the same objector, included within the Respondent's bundle (Exhibit 2), were helpfully included in Exhibit 3. I will briefly summarise the major points made by each of the speakers in the order of their presentations.

Mr. David Beharrell

56 Mr Beharrell is a community representative on the Manly Warringah War Memorial State Park Advisory Committee and spoke on behalf of the committee. Mr Beharrell said that the park is a significant community and recreational asset enjoyed by members of the local and regional communities and is also a place of remembrance. The State Park is managed by Northern Beaches Council, in which task it is guided by a plan of management.

57 The proposal before the Court is not on State Park land but is adjacent to it, and the proposed development "will impact the integrity of the State Park" [transcript 02/09/21, page 20, line 26], so the committee objects to the development for a number of reasons, including inconsistency with some of the planning controls. Mr Beharrell acknowledged that the committee's submission had been prepared before they were aware of additional information that had

become apparent that morning. The committee considered that the restriction of the APZ to the site should be maintained in perpetuity.

- 58 The committee remained concerned that there would be loss of vegetation and impacts on the downstream environment both during the construction and operational phases of the development.

Ms Jacqui Marlow

- 59 Ms Marlow is a member of the Save Manly Dam Committee, which has obtained funding for research on the flora and fauna of the Manly Dam area. The Committee had employed Dr Brad Law to investigate the mammals and birds, and Dr Arthur White to investigate the frogs and reptiles. Both Dr Law and Dr White are well respected ecologists with many years of experience in the Sydney region. Their reports were subsequently provided to the Court as additions to Exhibit 3.
- 60 Ms Marlow pointed out that despite the intensive studies they had not detected a number of species known from the Narrabeen Lagoon catchment to the north. In particular, no koalas, southern brown bandicoots or platypus had been detected in the Manly Dam catchment. She put this down to the proximity to suburbs. She did stress that the studies demonstrate the importance of the area for eastern pygmy possums with the highest density occurring about 50 metres west of the proposed development, but she stressed that the population of eastern pygmy possums in the Manly Dam catchment was enigmatic and very little was known about it.
- 61 She also stressed the importance of the Manly Dam area to residents from all over Sydney and referred to information provided by Ms Crawford (a council officer) (transcript 02/09/21, page 17, line 40-41) about the popularity of the trails in the State Park for mountain biking, a use that had increased during the COVID outbreak.

Mr Greg Wallis

- 62 Mr Wallis addressed potential impacts downstream of the development and spoke to his written submission in Exhibit 3 folio 12-25 and took the Court on an illustrated walk from the subject site down the tributary creek to Curl Curl

Creek. The relationship of the site to Curl Curl Creek was depicted in Figure 3 in his submission at folio 16 and is reproduced below:



Figure 5: An overview of the upper catchment of Manly Dam and Curl Curl Creek showing the walking tracks and creek lines within part of the reserve. The proposed development at 181 Allambie Road shown in pink. From Figure 3, Exhibit 3, Folio 16, submission of Mr Wallis.

- 63 Mr. Wallis drew attention to the importance of Curl Curl Creek as a habitat for *Galaxias brevipinnis*, a small native fish species, and the only fish in the upper reaches of the Creek, and two species of crayfish, *Euastacus spinifer*, the Sydney giant spiny crayfish, and the Sydney spiny crayfish, *Euastacus australasiensis*. (The genus *Euastacus* contains a number of species in eastern Australia, and is not to be confused with the yabby, *Cherax destructor*, native west of the Dividing Range.)

- 64 Mr Wallis was concerned about possible changes in the flow regime in the Creek as a result of increased impermeable areas in the subject land, and quicker pulses of run off rather than slow infiltration.

Ms Ann Collins

- 65 Ms Collins is a local resident and a committee member of the Save Manly Dam Catchment Committee and a community representative on the Manly Warringah War Memorial State Park Advisory Committee. She strongly agreed with the submissions of the three proceeding speakers.

- 66 She was critical of the consultation process for the proposal:

“There's a new statement of the environmental effects which I hadn't even seen until this morning. This feels like a process of approval by attrition where you exhaust all the volunteers who provide objections. In particular, the trust made up predominantly of war vets who are unable to keep submitting - everyone's exhausted from having to resubmit and resubmit on very similar issues.”

Transcript 2/09/2021 page 34, line 7 – line 12

- 67 She also questioned the nature of the proposed development – “I wonder if 24 luxury living spaces are considered as public use” (transcript 02/09/21 Page 33 line 25-26) and was critical of the management over the years of the site and in particular, she suggested there had been a failure to prevent the spread of weeds on the site, contrary to the requirements of the crown lease to maintain the area.

Mr Malcolm Fisher

- 68 Mr Fisher spoke to the importance of protecting the water quality in Manly Dam which she considered was the “last place in Sydney where you can still swim in fresh clear unpolluted water” (transcript 02/09/21 page 35, line 30). Maintaining the water quality in the catchment would also benefit the aquatic species in the waterways. He was critical of the lack of surveys of the aquatic fauna and downstream habitats.

Ms Ann Sharp

- 69 Ms Sharp highlighted the planning context of the development.

“The context of this development within the catchment is highly relevant to the issue of site compatibility, and that I understand really is the key issue because the development application is submitted under the seniors housing

SEPP. The site is not suitable for this proposed development for a number of reasons that include the increase in impervious area from 10% to 60% of land at the headwaters of the Curl Curl Creek, and the bushfire prone issue which is an absolute constraint being next to the reserve, and the removal of vegetation in the environmentally sensitive catchment area.”

(Transcript 02/09/2021, page 39, line 16 - line 41)

- 70 She also highlighted the need to approach assessment through the lens of the precautionary principle:

“The precautionary principle is relevant to this development. It's important to take into account the likely, as well as the potential environmental impacts that will occur and the cumulative impacts that will occur in the future. So again, I was - we are concerned that a number of the environmental and planning issues raised in the public submissions were not considered adequately. This is clearly stormwater management. The fact that the land to be developed is within a group A catchment and currently undeveloped with less than 10% impervious area, in our view the development does not satisfy the stormwater quality objectives and criteria for environmentally sensitive catchments that applies to this development and the resulting increase in pollutant loads would degrade Curl Curl Creek. The heritage conservation area that Curl Curl Creek is located in the heritage conservation area - it flows through it - so the impacts and the likely impacts on that area need to be considered, but because there's no information or a consideration of the impacts on the park, that still has not been included as a matter of - it hasn't been considered adequately.

Again, bushfire hazards and the requirement for hazard reduction, future asset protection, and removal of vegetation are in direct conflict with the conservation values of the heritage conservation area. The site compatibility criteria, the development is not compatible with the surrounding land use for conservation, and it would have a negative impact on the natural environment, and that impact is also - it would be a result of the human impact with the adjoining development which is 24 three-bedroom apartments. The stormwater management plan acknowledges that there is currently no inground drainage infrastructure on the area of the site being considered for development.”

Transcript 02/09/2022 page 39, line 16 – 43.

- 71 She also considered it important that the State Park was on the heritage schedule of WLEP 2011.
- 72 One matter raised by several of the objectors, which gave rise to their concerns about the construction phase of the development if it were to be approved, was the construction, several years ago, of the Manly Vale school. The school site was, like the proposed site at Allambie Heights, on high land above a steep bushland fall. A heavy rainfall event while the school was being built resulted in silt laden stormwater heavily impacting the creek which received drainage from the school site.

Expert Evidence

- 73 The only joint expert report tendered during the hearing was that dealing with ecological issues which became Exhibit D. The report was dated 1 September 2021, the day before the hearing. (Given this timing the objectors when they gave their evidence were not aware of the contents of this report). The report was prepared by Mr Robert Blackall and Mr Brendan Smith, the experts for the respondent, and Mr Andrew McGahey of Total Earth Care for the Applicant.
- 74 The experts had the benefit of the latest version of the plans for the proposal, and also the Biodiversity Development Assessment Report (BDAR) and the BDAR Addendum (Exhibit A, Tab 11 and Tab 12 respectively), the Bushfire Management Plan (Exhibit A, Tab 7), the Biodiversity Management Plan (Exhibit A, Tab 10) (all plans prepared by Total Earth Care), and the Bushfire Hazard Assessment prepared by Australian Bushfire Consulting Services (Exhibit A, Tab 10).
- 75 The experts were in complete agreement in relation to the contentions relevant to their area of expertise.
- 76 Specifically, the contentions (in Exhibit 1) that were addressed by the experts were:

“B.1 – CONTENTIONS THAT WARRANT THE REFUSAL OF THE APPLICATION

Impact on Bushland and Biodiversity

1. The proposed development should be refused as the footprint is in proximity to the western portion of the site, and the APZ extends into adjoining land parcels, which are covered with high quality native vegetation and threatened species habitats.”

- 77 The experts were agreed that they could not comment on particular (d)- regional form and scale of the development and its suitability to the site area. However, in relation to the other particulars of the contention there was agreement that the amended design and revised plans had removed the need for the APZ to extend into the council managed reserve (particular (a)); The direct and indirect impacts on the native vegetation have been avoided or minimised to an acceptable level, and a biodiversity offset obligation had been calculated regarding the residual impacts as identified in the BDAR, (particular (b)); a Biodiversity Management Plan will be implemented. Passive recreation

areas are identified in the Landscape Concept Plan and new pedestrian walkways originally proposed will not be directed into the remnant bushland on the site (particulars (c) and (d)).

“APZ

2. The proposed development should be refused as a part of the required APZ is located on land external to the site and the proposal relies on ongoing management of vegetation on land within the adjoining public reserve and Sydney Water pipeline corridor.”

- 78 The experts agreed that the APZ to the south west does not rely on land within the adjoining public reserve (particular (a)) and the extent of impact of the APZ on areas mapped on the Biodiversity Values map is unlikely to result in a serious and irreversible impact (particular (b)).

“B.2 – CONTENTIONS THAT MAY BE RESOLVED BY CONDITIONS OF CONSENT

Pedestrian walkways

4. The inclusion of pedestrian walkways into the native bushland area of the site mapped on the Biodiversity Values map will have an unreasonable impact on wildlife corridors and native vegetation. These elements could be deleted by condition of consent.”

- 79 The experts agreed that the pedestrian walkway had been removed from the amended landscape concept plan drawing, thus resolving the contention.

“APZ

5. Planning for Bush Fire Protection 2019 indicates APZs should be contained wholly within development sites and this will facilitate appropriate management by the development site owner in perpetuity. Should the proposal be suitably amended to restrict the required APZs to the site a condition of consent will be imposed in this regard.”

- 80 The experts agreed that the design had removed the need for an APZ to extend beyond the site boundary and that Sydney Water is willing to grant a licence agreement to the Applicant to manage an APZ for the life of the buildings. The need for an agreement is confirmed in the General Terms of Agreement issued by the RFS.

“B.3 – CONTENTIONS THAT RELATE TO A LACK OF INFORMATION

Native vegetation and threatened species habitat

7. The location of the proposed APZ within the adjoining Sydney Water land to the north (APZ (3) of Map 2), relies on the written agreement of Sydney Water and the impact on native vegetation and threatened species habitat has not been properly assessed in the BDAR.”

- 81 The experts agreed that Sydney Water will enter into a licence agreement for management of land associated with the pipeline. Additional Biodiversity Offset Credit obligations associated with management of the pipeline APZ are to be created, under s 7.13 of the *Biodiversity Conservation Act 2016*.
- 82 The authors of the joint report on ecological issues were called to give evidence. The Respondent sought leave to call Mr. David Hellot, a senior catchment officer for the Northern Beaches Council who is a water engineer. Mr Patterson indicated that Mr Hellot was called for the purpose of providing input that may benefit the Court in relation to matters raised in the oral evidence of the objectors.
- 83 Mr Lalich had no objection to Mr Hellot being called for this purpose and I granted leave for him to appear.
- 84 Mr Patterson indicated that following the input of the objectors in their submissions, the Respondent had formed the opinion that amendments to the proposed draft conditions were required (Transcript 02/09/2021 lines 1 -19). Mr. Blackall indicated that the Respondent considered that conditions on use of chemicals, use of low nutrient soil and issues regarding to the carwash bay would be needed and would be developed (transcript 02/09/2021, lines 21 -31).
- 85 Mr Hellot indicated that there had been discussion about what had been referred to as a retention basin, better termed a detention basin, for stormwater drainage on the site. This discussion included the size of the basin and the nature of the bottom. This was not to be concrete but would allow filtration of the water to reduce movement of silt and pollutants off the site (transcript 02/09/32021, page 66, lines 8 - 49).
- 86 Ms Sharp in her submission suggested that there should be demonstration that what was proposed met Sydney Water's NorBE requirement (Neutral or Beneficial Effect on water quality).
- 87 Mr Hellot said the council had not done a formal full NorBE assessment, but that MUSIC modelling had been carried out, and that the comparison of the pre and post-construction run off water quality with installation of the detention

basin showed a post construction improvement in water quality (Transcript page 67 lines 6 – 23).

- 88 Mr Hellot and Mr McGahey agreed that monitoring the construction phase to avoid occurrence of events similar to those that had occurred at the Manly Vale School would be essential.

“WITNESS HELLOT: That's right. I don't have the text just right in front of me but in the conditions we are linking basically styles of monitoring program. We are asking council to be made aware a certain time before rain events, or if a rain event is forecast we should be made aware and that give us the possibility to check the sediment and the ..(not transcribable).. and the urgent control measures beforehand and make sure that we find some forms of covering of ..(not transcribable).. that was one of the main issues that the school project, from all experience the sediment that the community had been reporting ..(not transcribable).. during the construction activity at the school was strongly linked to a poor management practice during the construction.

WITNESS MCGAHEY: That's been our experience too when I have been managing stormwater on big construction sites. If we can actually deal with the silt before it becomes silt, so actually when it's a dust and it's dry and before it gets wet, that's been a key thing. Yeah, so we're not over it's a 3000 litre detention tank during the construction phase which is going to be a reasonable size for the development. Obviously it's been sized by experts but it's not it's not capable of taking everything but we can do our best to clean the site as best we can prior to a storm event occurring.”

Transcript page 67 line 33 to page 68, line 1.

Consideration

- 89 I am required, when exercising the functions of the consent authority, to take into account s 4.15 (1) (b) of the EPA Act:

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

- 90 “The likely impacts of that development” should not be interpreted narrowly; they encompass not just the direct and immediate impacts of a proposed development on the site where construction will occur but also off - site impacts. (*Ballina Shire Council v Palm Lake Works Pty Ltd* [2020] NSWLEC 41 at [6] per Preston CJ).

- 91 Basten JA held in *Hoxton Park Residents Action Group Inc v Liverpool City Council* (2011) 81 NSWLR 638; [2011] NSWCA 349 at [44]:

“The impact must be one flowing from the development the subject of the development application: the question is how remote a ‘likely’ impact must be, in order to disqualify it from the scope of the consideration”

and at [46]

“Some such limitation must follow from the concept of ‘impact’: as remoteness from the development increases, impact is likely to decrease, until it no longer has practical significance in terms of approving or refusing to approve the application. Further, the likelihood of a particular impact may diminish with remoteness. ‘Likely’ in this context has the meaning of a ‘real chance or possibility’ rather than more probable than not...”

- 92 There must be a connection between the likely impact and the development proposed, and the consideration required by s 4.15 (1) (b) EPA Act is restricted to areas “in the locality”. The relevant locality may vary in size between projects because of the nature of the environment likely to be subject to impacts and the nature of the proposed development.
- 93 The submissions of the objectors, both written and as presented in Court, were particularly focused on off- site impacts in the Curl Curl Creek catchment. These submissions influenced the approach of both parties to the development of appropriate conditions to be applied if the project were approved. The development proposed is permissible with consent, so that concerns from objectors about it being at the luxury end of the market do not give rise to questions for my consideration, and the vicinity is already (and has been for some considerable time) part of a seniors living precinct.
- 94 The Respondent is bound by the contentions included in the SOFAC (Exhibit 1), unless it has sought leave to amend the existing contentions or make deletion or addition to the contentions (Mr Patterson transcript page 75, lines 45-46). Council has not sought any such leave.
- 95 As a consequence, at the end of the evidence, the contentions had been almost completely resolved, and the outstanding issues could be addressed by conditions which could be imposed
- 96 Both parties agreed that the submissions of the objectors, both before and during the hearing, required that the conditions needed strengthening, and during the course of the hearing discussions continued between the parties as to appropriate additions and changes to conditions. Although the scope of changes had been generally agreed, further work was required on the detailed wording. Conditions agreed by both parties were provided on 8 September 2021.

- 97 The development proposed is to occur on land leased by the Applicant from the Crown. Although the development is to be built within the subject site, the Applicant is required to demonstrate that off-site impacts directly attributable to the development are prevented or minimised. The land adjacent to the site is the Manly Warringah War Memorial State Park, managed by the Respondent. The development now proposed by the Applicant addresses off-site impacts on Curl Curl Creek through the provisions for managing run off in terms of water quality and quantity.
- 98 The catchment is an important location for visitation and the carrying out of various recreational activities. This usage has impacts which require managing, independent of any impacts attributable to the proposed development. The proposed conditions of consent requiring the appointment of an aquatic ecologist and for the monitoring of the areas downstream of the proposed development will result in scrutiny of possible impacts off- site of the proposed development but will also contribute to monitoring and management of other activities in the catchment.
- 99 Future environmental management, both of the development site, and downstream of it, will have to meet statutory obligations, but major aspects will also be governed by a number of management plans.
- 100 Such plans have long been recognised as important vehicles for the management of potential environmental impacts of projects (*Transport Action Group Against Motorways Inc v Roads & Traffic Authority & Anor* (1999) 46 NSWLR 598; [1999] NSWCA 196 at [122]).
- 101 Management plans must appropriately address matters arising as a consequence of the particular circumstances of the site or area to which they apply.
- 102 In *Renaldo Plus 3 Pty Limited v Hurstville City Council* [2005] 315 ('Renaldo'), Brown SC developed (at [54]), planning principles for determining whether the plans of management proposed to be applied to a particular development are appropriate. The wording of the sixth principle regarding incorporation of Management Plans within the conditions of consent, was changed slightly in *Amazonia Hotels Pty Ltd v Council of the City of Sydney* [2014] NSWLEC 1247

– but the change was not substantive, and the principle is satisfied, as are the other *Renaldo* principles.

- 103 The inclusion of the subject site on the Biodiversity Values Map required that the development application be assessed (*Biodiversity Conservation Act 2016*, Biodiversity Conservation Regulation 2017 cl 7.3) through the Biodiversity Offsets Scheme pathway.
- 104 The BDAR (Exhibit A, Tab 7) discussed avoid and minimise options, and included the biodiversity credit calculation required for residual impacts to be offset. The credit obligations are listed in Conditions 16 - 19.
- 105 The ecological studies and associated plans do not provide for the maintenance and management of species and communities within the waterways external to the site, except through management of water quality and quantity entering from the site, and through the reports of the project ecologist.
- 106 I accept the objectors' evidence that the waterways have ecological and conservation significance, and that among the important species present are the two crayfish species and the climbing galaxias. What did surprise me was the apparent absence of council and agency reports on the ecology of the waterways. I was not taken to any correspondence to or from Crown Lands regarding the development proposed or any potential impacts within the area leased by the Applicant or the State Park. Similarly, I was not made aware of any correspondence to or from Fisheries NSW who, under the *Fisheries Management Act 1994*, have responsibilities for the conservation and management of much of the biota and environment of waterways. There was little discussion of the consequences of the listing of the Manly Dam Conservation Area in Sch 5 of WLEP 2011, as designated on the Heritage Map Sheet 008A in WLEP 2011.
- 107 Without the work of the objectors and their organisations in both studying the biota and obtaining funding to commission reports, little would be known about the ecology of the Curl Curl Creek system. In addition to the reports of Dr Law and Dr White already referred to, there has been detailed study of the climbing galaxias over a number of years by Sonya Ku, who had made several

submissions, and was the author of the report, commission by the Save Manly Dam Catchment Committee from consultants Humble Carson, Status of Catchment Indicator Species for Aquatic Biodiversity, *Galaxias Brevipinnis* Status Report, Action Plan and Catchment Citizen Science Strategy (Exhibit 3 folio 42-65).

- 108 The agreed conditions include both deferred consent conditions and operational conditions which address monitoring and addressing off site impacts.
- 109 Deferred commencement condition 1 requires that the Applicant must provide an Environmental Management Plan (EMP) requiring that all foreseeable off-site impacts should be considered prior to construction commencing and an effective plan should be developed to manage impacts on the natural environment and to prevent foreseeable adverse impacts on sensitive environments.
- 110 The conditions require the engagement of a project ecologist (aquatic specialist) who will have input into the EMP. The EMP is also required to provide for adaptive management.
- 111 The deferred commencement conditions require that stormwater drainage plans are to be submitted to the Respondent for approval before construction can commence.
- 112 Amongst the operational conditions, Condition 25) requires the engagement of a project ecologist (aquatic freshwater specialist) to carry out additional ecological investigations for the duration of the onsite works. This specialist is to have experience in the Sydney region and knowledge of *Galaxias brevipinnis*.
- 113 Condition 32) requires the appointment of a project ecologist to ensure all biodiversity protection measures are carried out in accordance with the conditions of consent and of the approved BDAR.
- 114 Conditions 38) bright lighting, 39) chemical use, 40) landscaping work, 41}, carwash bay, go beyond measures dealing with these topics ordinarily applied

in other approvals, and address issues raised in submissions and during the hearing.

- 115 Limiting erosion during construction was of particular concern to the parties and the objectors. Condition 55) provides for the project ecologist to design a water quality and sampling program to monitor effectiveness of erosion and sediment control. Site inspections are to be carried out at least weekly but more frequently during rain periods or when rain is expected.
- 116 The RFS issued General Terms of Approval (GTAs) and a Bush Fire Safety Authority under s 100B of the *Rural Fires Act 1997* to Council on 15 October 2021.
- 117 The conditions as a whole are more onerous than those, that in my experience, are applied to many other developments. This is appropriate given the sensitivity and importance of the broader area within which the development is situated.
- 118 The plans of management (and related documents) will guide the environmental management of the site during and after the construction phase and have input into management of adjacent areas.
- 119 The measures in the conditions will be effective only if there is strict compliance and monitoring. I must assume that the parties agreed to the conditions in good faith and that the conditions will be applied. The Court should assume that conditions will be obeyed has long been settled. The authorities extend back to at least the decision of the Supreme Court of South Australia in *Kouflidis v Salisbury City Corporation* (1982) 29 SASR 321 (*'Kouflidis'*), as was explained by Moore SC (as he then was) in *Chami v Lane Cove Council* [2015] NSWLEC 1003 at [154]:
- “the position has always been clear since then that a consent authority granting an approval for a development subject to conditions is required to assume that those conditions will be obeyed.”
- 120 In *Jonah Pty Ltd v Pittwater Council* (2006) 144 LGERA 408; [2006] NSWLEC 99 (*'Jonah'*) at [35], Preston CJ confirmed that the line of authority which can be traced from *Kouflidis* remained the applicable law in New South Wales.

- 121 In *Cday Electrical Services Pty Ltd v Burwood Council* [2016] NSWLEC 1506 (per Dickson C), the Council had raised concerns about the practicality of policing compliance with the conditions of consent. Dickson C, at [40] referred to what Preston CJ said in *Jonah* at [35], where he concluded that the Court should approach its decision making with the view that conditions will be complied with.
- 122 Acting Commissioner Clay in *Pocket Herbs and Produce Pty Ltd v Tweed Shire Council* [2021] NSWLEC 1253 observed:
- “A final observation. Ms Paszkowski quite understandably complained of the need of her and potentially other neighbours to “police” the activities of the Applicant to ensure compliance and to inform the Council of a potential breach when necessary. The difficulty is that Councils rely upon complaints from members of the public to inform them of issues which require the Council’s intervention. It will always be the case that neighbours of developments will have to observe and report if there are breaches of conditions of development consent so that a council can take any necessary action. It can be said, however, that the Applicant is undoubtedly now well aware of the consequences of a breach of the conditions of development consent.”
- (Ms Paszkowski was a near neighbour of the applicant and in her submission had complained of noise impacts for a number of years).
- 123 In the present case, the Council is responsible for the management of the State Park and is thus itself a neighbour to the development. As has been made very clear throughout the proceedings, there are a large number of concerned citizens who take a close interest in the environment, and would, I have no doubt, continue to raise concerns with Council if there were to be possible breaches of the conditions.
- 124 I have no reason to doubt that it will be in the interests of the parties and the broader community that there is compliance with all the conditions.

Outcome

- 125 The concerns of the Respondent, and at least some of the concerns of the objectors, are addressed by the conditions agreed between the parties. These conditions incorporate requirements for a number of management plans. The conditions and the management plans that will apply to the development address the reduction and management of environmental impacts on and off site. The Applicant has agreed to conditions under which they will contribute to research on, and monitoring of, the state of streams in the Curl Curl Creek

catchment, within the State Park. The results of these studies should contribute to the continuing development and application of the management plan for the State Park.

126 I consider that the application of the plans of management which form part of the conditions will not pose an unreasonable burden and that the planning principles established in *Renaldo* (at [54]) are satisfied.

127 Development consent should be granted for the proposal subject to the conditions of consent agreed upon by the parties.

Orders

128 The Court orders that:

- (1) Leave is granted for the Applicant to rely on the amended Development Application filed on 26 August 2021 which became Exhibit A.
- (2) The Applicant is to pay the Respondent's costs thrown away as a result of the amendment to DA 2020/0552 as agreed or assessed pursuant to s 8.15 (3) of the *Environmental Planning and Assessment Act 1979*.
- (3) The Applicant's written request prepared by Planning Ingenuity dated 31 March 2021 pursuant to cl 4.6 of the Warringah Local Environmental Plan 2011 seeking to vary the height of buildings development standard in cl 40 (4) (a) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 is upheld.
- (4) The Appeal is upheld.
- (5) Development consent is granted to DA 2020/0552 for demolition works, and construction of a seniors living development comprising 24 independent living units, a communal building, landscaping and associated works at 181 Allambie Heights Road, subject to the conditions in Annexure A
- (6) The exhibits are retained with the exception of exhibits C, 2 and 4.

.....

Paul Adam

Acting Commissioner of the Court

(Annexure A)(455557, pdf)

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Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: DA2020/0552

Development: Demolition works and construction of a Seniors Living Development

Site: Lot 2615 DP 752038, 181 Allambie Road, ALLAMBIE HEIGHTS NSW 2100

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

Date of determination: 21 April 2022

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 Lot 2615 DP 752038, 181 Allambie Road, ALLAMBIE HEIGHTS NSW 2100.

The conditions of consent are as follows:

DEFERRED COMMENCEMENT CONDITIONS**1) Environmental Management Plan (EMP)**

The applicant must provide an Environmental Management Plan (EMP) to describe all the environmental management activities and control measures that will be implemented to avoid environmental impacts. All foreseeable off-site impacts should be considered prior to construction occurring and an effective plan should be developed to manage impacts on the natural environment, and to prevent foreseeable adverse impacts on sensitive environments.

The EMP must demonstrate that the staging of works and erosion control measures mitigate the impacts to the downstream environment.

The EMP shall incorporate the Project Ecologist's (aquatic freshwater specialist) recommendations regarding the management of the downstream environment, the Soil and Water Management Plan and proposed staging of works.

The EMP is to provide for an adaptive management of the environmental impacts during the construction of the development.

The adaptive management is to include the following:

- (a) The Project Ecologist's (aquatic freshwater specialist) Site and off-site monitoring protocols based on observed and measures parameters including water quality, channel morphology, stability after high flow events, progress in establishing riparian native plant communities, measuring fish and wildlife use and presence.
- (b) Monitoring of off-site impacts and reporting to Council on such impacts:
 - (i) following the monitoring protocols and at agreed upon intervals, and
 - (ii) in circumstances where unanticipated impacts are identified by the Applicant or Project Ecologist.
- (c) Mitigation measures which are to be engaged if monitoring reaches an agreed trigger level; and
- (d) Quarterly meetings with Council to discuss the effectiveness of the EMP and any necessary amendments to ensure its continued efficacy.

The EMP is to be submitted to Council for approval.

Evidence required to satisfy these conditions must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the *Environmental Planning and Assessment Regulation 2000*.

Reason: To protect native vegetation, wildlife, habitats and receiving waterways.

2) **Stormwater Drainage / On site Stormwater Detention**

Stormwater drainage plans detailing the provision of On Site Stormwater Detention are to be submitted to Council for written approval detailing disposal of stormwater from the site in accordance with Council's Water Management Policy.

The following information is to be submitted also to support the stormwater drainage plans.

- (a) The stormwater drainage plans are to detail the minimum information required for major developments as detailed in section 3.3 of the Council's On Site Stormwater Detention Technical Specification.
- (b) A DRAINS model is to be submitted to Council for review as required by section 4.4 of Council's On Site Stormwater Detention Technical Specification.
- (c) The stormwater drainage plans are to be certified by a civil engineer with RPENG accreditation or NER accreditation

Reason: To ensure adequate provision is made for stormwater drainage from the site in a proper manner that protects adjoining properties.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

3) Licence over the Sydney Water Land

The applicant must obtain a licence from Sydney Water which permits the portion of Sydney Water controlled land to be managed as an Inner Protection area (in relation to Bushfire Requirements prescribed in the NSW Rural Fire Service Letter dated 15 October 2021) for the life of this development.

Reason: To ensure an Inner Protection area for Bushfire requirements can be legally maintained.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the *Environmental Planning and Assessment Regulation 2000*. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

4) Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

(a) Approved Plans

Architectural Plans		
Drawing No.	Dated	Prepared By
DA-011 – Site Plan (issue 2)	29/03/2021	Jackson Teece
DA-013 – Demolition Plans (issue 2)	29/03/2021	Jackson Teece
DA-100 – Floor Plan – Lower Ground Floor (issue 2)	29/03/2021	Jackson Teece
DA-101 – Floor Plan – Ground Floor (issue 2)	29/03/2021	Jackson Teece
DA-102 – Floor Plan – Level 1 (issue 2)	29/03/2021	Jackson Teece
DA-103 – Roof Plan (issue 2)	29/03/2021	Jackson Teece
DA-200 – Elevations – Building A&B (issue 2)	29/03/2021	Jackson Teece
DA-201 – Elevations – Communal Building (issue 2)	29/03/2021	Jackson Teece
DA-300 – Sections – Building A&B (issue 2)	29/03/2021	Jackson Teece
DA-400 – Visualisations 01 (issue 2)	29/03/2021	Jackson Teece
DA-401 – Visualisations 02 (issue 2)	29/03/2021	Jackson Teece
DA-500 – Typical Unit Layouts – Building A (issue 2)	29/03/2021	Jackson Teece
DA-501 – Typical Unit Layout – Building B (issue 2)	29/03/2021	Jackson Teece

Engineering Plans		
Drawing No.	Dated	Prepared By
CI-520-01 – Stormwater Management Plan (Rev J)	31.03.2021	Stantec
CI-526-01 – Stormwater Management Details – Sheet 1 of 2 (Rev I)	31.03.2021	Stantec
CI-526-02 – Stormwater Management Details – Sheet 2 of 2 (Rev D)	31.03.2021	Stantec

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
SEPP 65 - Design Verification Statement	30.03.2021	Jackson Teece
Bush Fire Management Plan	31 March 2021	Total Earth Care

Bushfire Hazard Assessment	31 March 2021	Australia Bushfire Consulting Services
NSW Rural Fire Service Letter	15 October 2021	NSW Rural Fire Service
Biodiversity Development Assessment Report	May 2020	Total Earth Care
Addendum - Biodiversity Development Assessment Report	27 July 2021	Total Earth Care
Arboricultural Impact Assessment Report (Rev B)	29 March 2021	Arterra
Tree Protection Specification & Schedule (Rev B)	29 March 2021	Arterra
Tree Protection & Removal Plan (Rev B)	29 March 2021	Arterra
Biodiversity Management Plan	March 2021	Total Earth Care
NatHERS and BASIX Assessment	31.03.2021	Efficient Living

- (b) Any plans and/or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.
- (c) Any plans and/or documentation submitted to satisfy the Conditions of this consent.
- (d) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
L2-SD-01 – Landscape Concept Plan (Rev B)	6 October 2021	Arterra
L2-SD-02 – Planting Plan – Entry (Rev E)	19 October 2021	Arterra
L2-SD-03 – Planting Plan – Communal Building (Rev E)	19 October 2021	Arterra
L2-SD-04 – Planting Plan – Pond (Rev C)	8 October 2021	Arterra
L2-SD-05 – Planting Plan – Outdoor Recreation Area (Rev D)	19 October 2021	Arterra
L2-SD-06 – Planting Plan – Emergency Access Driveway (Rev D)	19 October 2021	Arterra
L2-SD-07 – Planting Plan – Upper Courtyard Terrace (Rev C)	19 October 2021	Arterra
L2-SD-08 – Planting Plan – Blue Gum Area (Rev C)	19 October 2021	Arterra
L2-SD-09 – Indicative Plant Imagery and Plant Schedule (Rev E)	19 October 2021	Arterra
L2-SD-10 – Landscape Section and Character Images (Rev A)	29 March 2021	Arterra

L2-SD-11 – Landscape Section and Character Images (Rev B)	6 October 2021	Arterra
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Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Operational Waste Management Plan	12 December 2020	Elephants Foot

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

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

5) 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 Certifying Authority 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 Certifying Authority 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 Certifying Authority 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;
 - (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; and
 - (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.

6) 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 or any other contamination 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 a final 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; and
- 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 2008
 - (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

7) Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$179,208.58 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 2021. The monetary contribution is based on a development cost of \$17,920,858.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

8) Security Bond

A bond (determined from cost of works) of \$10,000 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 Certifying Authority 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.

9) **Construction, Excavation and Associated Works (Security Bond)**

A bond of \$20,000 as security against damage to Council's roads fronting the site caused by the transport and disposal of materials and equipment to and from the site.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

10) **On slab landscape planting and associated works**

- (a) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage of the concrete slab over which soil and planting is being provided.
- (b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.
- (c) The following soil depths are required in order to be counted as landscaping:
 - 300mm for lawn
 - 600mm for shrubs

-1metre for trees

Reason: To ensure appropriate soil depth and secure waterproofing and drainage is installed to direct water flow into the drainage system, and away from habitable areas.

11) Compliance with Ecologist's Recommendations – Pre-construction

All pre-construction biodiversity-related measures specified in the Biodiversity Development Assessment Report (BDAR) (Total Earth Care Final May 2020) and Biodiversity Management Plan (Total Earth Care Rev B March 2021) and these conditions of consent are to be implemented at the appropriate stage of the development. Compliance with pre-construction measures are to be certified by the Project Ecologist prior to the issue of the Construction Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

12) Preparation of Environmental Management Checklist

A Construction Environmental Management Checklist (CEMC) is to be prepared and is to incorporate all measures for the protection of native vegetation, wildlife and habitats during the construction phase. Measures specified in the checklist are to include all conditions of consent addressing construction-related impacts to biodiversity. The CEMC is to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To protect native vegetation, wildlife and habitats.

13) No Clearing of Vegetation

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

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

Reason: To protect native vegetation.

14) Permanent Delineation of Asset Protection Zones

Prior to the commencement of any vegetation clearance/modification, the boundaries of the bushfire Asset Protection Zone (APZ) are to be surveyed by a registered surveyor and permanently delineated by way of permanent bollards which complies with the following construction specifications:

- Bollards: Minimum 100mm high galvanised posts of at least 40mm diameter with galvanized cap. Bollards are to be spaced at a maximum of 5m intervals.

Any proposed alternative designs must be approved by Council in writing.

Clearing of vegetation for APZ establishment must only occur within the marked APZ boundaries. Written certification of compliance is to be prepared by the Project Ecologist and submitted to the Principal Certifying Authority prior

to the issue of the Construction Certificate.

Reason: To protect native vegetation and wildlife in accordance with relevant Natural Environment LEP/DCP controls.

15) Notification of determination to which the Biodiversity Offset Scheme applies

The applicant or Project Ecologist, on behalf of the applicant, must download and complete the "Biodiversity Offsets Scheme – Notification of Determination" form.

The completed form and attachments, including a copy of the determination and any conditions of approval, must be emailed to the LMBC Service Centre bam.support@environment.nsw.gov.au. The LMBC Service Centre arranges for determination outcomes to be recorded in the Biodiversity Offset and Agreement Management System (BOAMS).

Council's Manager Bushland and Biodiversity and the Certifying Authority must be copied into the notification email to confirm compliance.

Reason: To ensure the NSW Department of Planning, Industry and Environment are notified of determinations where the Biodiversity Offsets Scheme applies and Council are notified for compliance.

16) Like for like credit retirement conditions - Ecosystem credit retirement conditions

Prior to issue of the relevant Construction Certificate, the class and number of ecosystem credit in Table A must be retired to offset the impacts of the development.

The requirement to retire credits outlined in Table A may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the BAM Credit Calculator (BAM-C).

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table A requirements must be provided to the Manager Bushland and Biodiversity of Northern Beaches Council prior to the release of construction certification.

Table A Ecosystem credits required to be retired – like for like.

Impacted Plant Community Type	TEC	Number of ecosystem credits	Containing HBT	IBRA sub-region	Plant community type(s) that can be used to offset the impacts from development

661- Coastal sand littoral forest	Nil	2	YES	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo. or Any IBRA subregion that is within 100 km of the outer edge of the impacted site.	North Coast Wet Sclerophyll Forests This includes PCT's: 661, 686, 694, 1217, 1237, 1244, 1285, 1504, 1841, 1843, 1915
1231- Coastal sand Swamp Mahogany forest	Nil	2	YES	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo. or Any IBRA subregion that is within 100 km of the outer edge of the impacted site.	Coastal Swamp Forests This includes PCT's: 839, 1064, 1227, 1230, 1231, 1232, 1716, 1717, 1718, 1719, 1723, 1730, 1731, 1795, 1798

1250-Coastal sandstone gully forest	Nil	2	YES	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo. or Any IBRA subregion that is within 100 km of the outer edge of the impacted site.	Sydney Coastal Dry Sclerophyll Forests This includes PCT's: 1083, 1138, 1156, 1181, 1183, 1250, 1253, 1619, 1620, 1621, 1623, 1624, 1625, 1627, 1632, 1636, 1638, 1642, 1643, 1681, 1776, 1777, 1778, 1780, 1782, 1783, 1785, 1786, 1787
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1783-Sydney North exposed sandstone woodland	Nil	1	NO	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo. or Any IBRA subregion that is within 100 km of the outer edge of the impacted site.	Sydney Coastal Dry Sclerophyll Forests This includes PCT's: 1083, 1138, 1156, 1181, 1183, 1250, 1253, 1619, 1620, 1621, 1623, 1624, 1625, 1627, 1632, 1636, 1638, 1642, 1643, 1681, 1776, 1777, 1778, 1780, 1782, 1783, 1785, 1786, 1787
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1824- Coastal sandstone Heath- Mallee	Nil	6	YES	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo. or Any IBRA subregion that is within 100 km of the outer edge of the impacted site.	Sydney Coastal Heaths This includes PCT's: 772, 881, 882, 1134, 1143, 1641, 1822, 1823, 1824, 1826
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Reason: To offset the residual biodiversity impacts of the development in accordance with the NSW Biodiversity Offset Scheme.

17) **Like for like credit retirement conditions - Ecosystem credit retirement conditions**

Prior to issue of the relevant Construction Certificate, the class and number of ecosystem credits in Table B must be retired to offset the impacts of the development.

The requirement to retire credits outlined in Table B may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the BAM Credit Calculator (BAM-C)2.

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table B requirements must be provided to the Manager Bushland and Biodiversity of Northern Beaches Council prior to release of construction certification.

Table B Ecosystem credits required to be retired – like for like

Impacted Plant Community Type	TEC	Number of ecosystem credits	Containing HBT	IBRA sub-region	Plant community type(s) that can be used to offset the impacts from development
1824- Coastal sandstone	Nil	2	YES	Pittwater, Cumberland, Sydney Cataract, Wyong and Yengo.	Sydney Coastal Heaths This includes PCT's:

Heath-Mallee				or Any IBRA subregion that is within 100 km of the outer edge of the impacted site.	772, 881, 882, 1134, 1143, 1641, 1822, 1823, 1824, 1826
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Reason: To offset the residual biodiversity impacts of the Asset Protection Zone established within the adjoining Sydney Water land marked as Sydney Water Land APZ (3) on Map 2 Bush Fire Management Overview of the Bush Fire Management Plan William Charlton Village, Allambie Heights (Total Earth Care Rev B 31 March 2021). The retirement of additional credits is in accordance with the NSW Biodiversity Conservation Act s7.13(4).

18) **Like for like credit retirement conditions - Species credit retirement conditions**

Prior to issue of the relevant Construction Certificate, the class and number of species credits in Table C must be retired to offset the impacts of development.

The requirement to retire credits outlined in Table C may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the BAM Credit Calculator (BAM-C).

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table C requirements must be provided to the Manager Bushland and Biodiversity of Northern Beaches Council prior to the release of construction certification.

Table C Species credits required to be retired – like for like

Impacted species credit species	Number of species credits	IBRA sub-region
<i>Cercartetus nanus</i> / Eastern Pygmy-possum	9	Any in NSW
<i>Chalinolobus dwyeri</i> / Large-eared Pied Bat	19	Any in NSW
<i>Cryptostylis hunteriana</i> / Leafless Tongue Orchid	7	Any in NSW
<i>Hibbertia puberula</i> / <i>Hibbertia puberula</i>	9	Any in NSW

Tetratheca glandulosa / Tetratheca glandulosa	9	Any in NSW
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Reason: To offset the residual biodiversity impacts of the development in accordance with the NSW Biodiversity Offset Scheme.

19) **Like for like credit retirement conditions - Species credit retirement conditions**

Prior to issue of the relevant Construction Certificate, the class and number of species credits in Table D must be retired to offset the impacts of development.

The requirement to retire credits outlined in Table D may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the BAM Credit Calculator (BAM-C)2.

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table D requirements must be provided to the Manager Bushland and Biodiversity of Northern Beaches Council prior to release of Construction Certification.

Table D Species credits required to be retired – like for like

Impacted species credit species	Number of species credits	IBRA sub-region
Cercartetus nanus / Eastern Pygmy-possum	3	Any NSW
Chalinolobus dwyeri / Large-eared Pied Bat	5	Any in NSW
Cryptostylis hunteriana / Leafless Tongue Orchid	2	Any in NSW
Hibbertia puberula / Hibbertia puberula	3	Any in NSW
Tetratheca glandulosa / Tetratheca glandulosa	3	Any in NSW

Reason: To offset the residual biodiversity impacts of the Asset Protection Zone established within the adjoining Sydney Water land marked as Sydney Water Land APZ (3) on Map 2 Bush Fire Management Overview of the Bush Fire Management Plan William Charlton Village, Allambie Heights (Total Earth Care Rev B 31 March 2021). The retirement of additional credits is in accordance with the *NSW Biodiversity Conservation Act* s7.13(4).

20) **Design of Stormwater Outlet Structure to Creek**

The stormwater outlet structure to the creek must be designed in accordance with DPI Water's Guidelines for Outlet Structures on Waterfront land. Guidelines can be found on Water NSW website.

No mortar is to be used on the outlet. Sandstone rocks must be placed using an interlocking system with varying rock sizes. The grade control/stabilisation shall be designed following industry best practice and the sandstone rocks shall be well graded.

This design is to be submitted to the Certifying Authority prior to the release of the Construction Certificate.

No construction works are to be undertaken within the creek channel or beyond the 'extent of works' shown in Landscape Concept Plan L-SD-01. Erosion and sediment control, bush regeneration and weed removal is excepted.

Reason: To protect the surrounding creek bank from the effects of localised erosion.

21) Detailed Design of Stormwater Quality System

A certificate from a Civil Engineer, stating that the stormwater quality management system has been designed in accordance with the approved plans and the Council's Water Management Policy.

The certificate shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment

22) Soil and Water Management Plan

A Soil and Water Management Plan (SWMP) shall be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER-3) and implemented onsite prior to commencement. The SWMP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004) and Council's Water Management for Development Policy. The SWMP must include the following as a minimum:-

- Site boundaries and contours;
- Vehicle access points, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- Location of all drains, pits, downpipes and waterways on and nearby the site;
- Planned stages of excavation, site disturbance and building;
- Stormwater management and discharge points;
- Integration with onsite detention/infiltration;
- Sediment control basin locations and volume (if proposed);
- Proposed erosion and sediment controls and their locations;
- Location of washdown and stockpile areas including covering materials and methods;

- i Vegetation management including removal and revegetation
- i A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained;
- i Inspection and maintenance program; and
- i North point and scale.

All Site drainage and sediment and erosion control works and measures as described in the SWMP, and any other pollution controls, as required by these conditions, shall be implemented prior to commencement of any other works at the Site.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To promote the long-term sustainability of ecosystem functions.

23) **Car Parking Standards**

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004. These must include, but not be limited to the following:

- The proposed disabled accessible spaces and the adjacent shared spaces are to be sufficiently line marked in accordance with AS2890.6:2009.
- Bollards within the shared spaces located adjacent to disabled accessible spaces are to be set back a complaint distance of 800±50mm from the back of the shared space. Alternatively, the variation in bollard distance from the standards could be approved by an Accessibility Consultant.
- Each disabled accessible parking space and associated shared spaces are required to be changed to have a maximum grade of 1:40 (or 1:33 if the surface is bituminous seal and the space is out of doors), or alternatively be approved for disabled access by an Accessibility Consultant.
- Visitor spaces on the ground floor are to be widened to a minimum width of 2.5m. A plan shall be prepared detailing this requirement.
- Confirmation of a minimum headroom of 2.2m within typical parking spaces and light vehicle circulation areas and 2.5m above disabled accessible spaces and adjacent shared spaces. A plan shall be prepared detailing this requirement.

Details demonstrating compliance with this condition are to be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

The line marking and infrastructure are to be implemented by the applicant prior

to the issue of any Occupation Certificate.

Reason: To ensure compliance with Australian Standards relating to maneuvering, access and parking of vehicles.

24) **Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

The CTMP must address following:

- i The proposed phases of construction works on the site, and the expected duration of each construction phase.
- i The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
- i Make provision for all construction materials to be stored on site, at all times.
- i The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- i The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- i The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.
- i Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available.
- i Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior. However, no approval is to be provided which permits queuing outside of the approved hours of construction.
- i Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- i The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property

owners prior to the implementation of any temporary traffic control measure.

- i Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- i Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- i The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
- i Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- i The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.
- i Proposed protection for Council and adjoining properties.
- i The location and operation of any on site crane.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

25) **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 Certifying Authority 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.

26) Building Code of Australia Upgrade requirements and Fire Safety Upgrade

The Building Code of Australia works and fire upgrading measures to upgrade/construct the buildings as detailed and recommended in the Building Code of Australia Audit Report prepared by AED Group, dated 20/2/2020, Report Ref No. 10141 Rev. 2 are to be carried out in full to the building.

Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, Access and Fire safety for building occupant health and safety.

27) Detailed Design of Stormwater Treatment Measures

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been detailed designed in accordance with:

- (a) STANTEC drawings:
 - i) CI-500-01 Stormwater Drainage Catchment Plan (Rev E- 3 July 2020);
 - ii) CI-520-01 Stormwater Management Plan (Rev J - 31 March 2021);
 - iii) CI-522-01 Stormwater Long Sections (Rev A - 8 July 2020);
 - iv) CI-526-01 Stormwater Management Details - Sheet 1 of 2 (Rev H - 31 March 2021); and
 - v) CI-526-02 Stormwater Management Details - Sheet 2 of 2 (Rev D - 31 March 2021);
- (b) ARTERA drawings
 - i) Finishes Plan- Pond L2-CD-22 rev A 18/0/20; and
 - ii) Grading & Setout Plan - Pond drawing L2-CD-32 rev A 18/09/20; and
- (c) Council's Water Management for Development Policy.

The certificate shall be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

28) Project Ecologist - Aquatic Freshwater Specialist

Prior to any works being undertaken on site, a Project Ecologist (aquatic freshwater specialist) is to be engaged for additional ecological investigation and for the duration of the onsite works.

The Project Ecologist (aquatic freshwater specialist) is to be engaged as required by this consent and associated documentation to ensure all conditions relating to the creek and riparian design are fully implemented and complied with at all times. The Project Ecologist (aquatic freshwater specialist) is to ensure that the sediment and erosion controls measure are suitable to guarantee the protection of the downstream environment with specific attention to the *Galaxias Brevipinnis* population.

The Project Ecologist (aquatic freshwater specialist) shall have experience in the Sydney region and knowledge of *Galaxias Brevipinnis*.

A legally signed contract demonstrating compliance is to be submitted to the Certifying Authority prior to commencement.

The ecologist shall issue compliance certification of the Sediment and Erosion Control monitoring program as per the requirements of this consent.

Reason: To ensure ecological management and protection of sensitive fauna communities.

29) Prior to Construction Certificate - Plant and Equipment

Mechanical plant and equipment must be located within the basement level of the development and/or within the maintenance shed adjacent to the entrance to the site. Any mechanical plant and equipment that cannot be located in the basement or maintenance shed is to be suitably located so as not to create offensive noise to receiving boundaries of residential or other sensitive land uses.

Reason: Protect the amenity of the area and public health.

30) Stormwater Management

Stormwater shall be disposed of in accordance with Council's "Stormwater Drainage: From Low Level Properties Policy PDS-POL 136". The stormwater management system is to ensure that there is no increase in stormwater pollutant loads arising from the approved development.

Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from development, ensuring that the proposed works do not negatively impact upon the existing natural watercourse present on the subject site in accordance with the requirements of the Warringah Local Environment Plan 2000 and the Warringah Creek Management Study 2004.

31) Pre-commencement Dilapidation Report

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public property and public infrastructure (including roads, gutter, footpaths, etc.). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

The pre-construction / demolition dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifying Authority prior to the issue of the any Construction Certificate and the commencement of any works including demolition.

Reason: Protection of Council's infrastructure during construction.

32) Engagement of Project Ecologist

A Project Ecologist is to be employed for the duration of the approved works to ensure all biodiversity protection measures are carried out in accordance with these conditions of consent and the approved Biodiversity Development Assessment Report (BDAR) (Total Earth Care Final May 2020).

The Project Ecologist must have one of the following memberships / accreditation:

- Practising member of the NSW Ecological Consultants Association (<https://www.ecansw.org.au/find-a-consultant/>); OR
- Biodiversity Assessment Method Accredited Assessor under the NSW Biodiversity Conservation Act 2016 (<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>)

Evidence of engagement of the Project Ecologist is to be provided to the Principal Certifying Authority Prior to issue of Construction Certificate.

Reason: To protect native vegetation and wildlife in accordance with relevant Natural Environment LEP/DCP controls.

33) Compliance with Standards

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

(Note: At the time of determination the following (but not limited to) Australian Standards applied:

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites'***

- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking**
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
- (l) AS 1428.1 – 2009* Design for access and mobility - General requirements for access – New building work**

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.)

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

Reason: To ensure the development is constructed in accordance with appropriate standards (DACPLC02).

34) **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 Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

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

- i "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- i 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.

35) **Emergency Egress (Fire Brigade Vehicles)**

Confirmation from a Fire Consultant is required regarding the emergency egress of fire brigade vehicles as required by the General Terms of Approval provided by the NSW Rural Fire Service date 15 October 2021. This is to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Reason: To ensure fire brigade vehicle access is achievable prior to construction of the associated paths (DACTRCPC1).

36) Pedestrian Infrastructure - Design

The applicant shall prepare plans demonstrating a pedestrian link from the development to the assigned bus stops. The plan shall also demonstrate any necessary upgrades to the assigned bus stops to ensure they are DDA compliant.

The footpath design shall be in accordance with Council's Public Domain Standards. (Council's Development Engineers can provide the details on request).

The plans are to be submitted to and approved by Council prior to the issue of any Construction Certificate.

Reason: To ensure safe pedestrian access to public transport as per the SEPP requirements (DACTRCPC2).

37) Waste and Recycling Requirements

Details demonstrating compliance with Warringah Development Control Plan – Part C9 Waste Management, including the required Warringah Waste Management Plan, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with Warringah Development Control Plan – Part C9 Waste Management, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided (DACWTC1).

38) Bright Lighting – Fauna Habitat

External and internal lighting is to be designed so that there is no light spillage into adjoining natural areas west of the development. Lighting installed to access roads, driveways, pathways, car park areas and in external landscaped areas to the west of the residential dwellings should have regard to and adopt the Principles of Best Practice Lighting Design within Appendix A of the National Light Pollution Guidelines for Wildlife – Version 1.0 January 2020.

<https://www.environment.gov.au/system/files/resources/2eb379de-931b-4547-8bcc-f96c73065f54/files/national-light-pollution-guidelines-wildlife.pdf>

Compliance with this condition is to be certified by the Project Ecologist and an Electrical Engineer prior to the issue of a Construction Certificate.

Reason: Bright lighting disturbs and disrupts normal native fauna foraging, sheltering and nesting activity.

39) **Chemical use on site**

No chemical fertilisers, residual or organophosphate containing pesticides and non-biodegradable detergents are to be used on site for the purpose of landscape management.

Reason: To protect the downstream environment.

40) **Landscaping works**

Only crushed sandstone mulch and locally native species are to be used west and south of the proposed main internal driveway and visitor parking, as indicated in the approved Landscape Plans.

Only locally native species consistent with the naturally occurring Plant Community Types and/or the species listed for the Frenchs Forest Ward in the relevant section of the Native Plant Species Guide are to be used west of the recreation area to the west of the proposed main internal driveway and south of the visitor parking, as indicated in the approved Landscape Plans.

The Native Plant Species Guide is available on Council's website:

<https://www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide>.

Reason: To ensure landscaping is consistent with relevant Natural Environment LEP/DCP controls.

41) **Carwash Bay**

Wastewater and rainwater run-off from vehicle, machinery and equipment wash bays can pose a significant threat to the health of natural waterways if they are discharged into the stormwater system.

No wash water containing any cleaning agents or toxic pollutants should be discharged directly to the stormwater system, and rainwater should be restricted from flowing through the wash bay and into a stormwater drain.

Carwash bay shall not be connected to the stormwater system, detention system or drained directly to the environment.

Vehicle, machinery or equipment wash bays shall be designed to exclude rainwater, and to legally dispose of all wastewaters.

If the wastewater is disposed to sewer a trade water agreement shall be in place with Sydney Water.

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

Reason: To protect the downstream environment.

42) **Aboriginal Heritage Due Diligence**

A 'due diligence' assessment (under the National Parks and Wildlife Act 1974) is to be undertaken by a qualified Aboriginal Heritage professional.

The assessment is to provide information on what potential Aboriginal heritage issues exist on the land and recommendations for any further action, if required.

Details are to be provided prior to the issue of a Construction Certificate.

Reason: To ensure appropriate due diligence assessment is undertaken.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

43) Compliance with Ecologist's Recommendations – During Construction

All biodiversity-related measures are to be implemented during construction in accordance with Condition 1, and the Biodiversity Management Plan (Total Earth Care Rev B March 2021).

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifying Authority.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

44) Provision of Construction Environmental Management Checklist

All workers, including sub-contractors, are to be briefed on measures specified in the Construction Environmental Management Checklist (CEMC) through a site induction and given a copy of the CEMC prior to commencing their works.

A record of receipt of the CEMC is to be signed by all workers and this record is to be provided to the Principal Certifying Authority.

Reason: To protect native vegetation, wildlife and habitats.

45) Dead or Injured Wildlife

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

Reason: To protect native wildlife in accordance with Section 2.1 of the NSW Biodiversity Conservation Act 2016.

46) Property/Reserve Boundary Identification

Prior to commencement of work, the property/reserve boundary is to be surveyed by a registered surveyor and such boundary is to be clearly marked on site.

Reason: property/reserve management

47) Installation and Maintenance of Sediment and Erosion Control

- (a) Prior to commencement of works on site, sediment and erosion controls must be installed along the immediate downslope of the works area, in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). The erosion controls shall be maintained in an operational condition until the development activities have been completed

and the site fully stabilised. Sediment shall be removed from the sediment controls following each heavy or prolonged rainfall period.

- (b) 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.

48) **Works on Land owned or managed by Council.**

No works are to be carried out on Land owned or managed by Council without the written approval of the Council.

Note: Separate approval from Council is required for access driveways, paths, stairs, connections to underground utilities (stormwater, gas, sewer, electricity, telecommunications etc.), and landscaping works on land owned or managed by Council.

49) **Tree and vegetation protection**

- (a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees and vegetation within the site not indicated for removal in the Arboricultural Impact Assessment dated 29 March 2021 prepared by Arterra Consulting Arboriculture, excluding exempt trees and vegetation under the relevant planning instruments of legislation;
 - ii) all trees and vegetation located on adjoining properties; and
 - iii) all road reserve trees and vegetation not approved for removal.
- (b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with the Arboricultural Impact Assessment dated 29 March 2021 prepared by Arterra Consulting Arboriculture and Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development;
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist;
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with the Project Arborist;
 - iv) no excavated material, building material storage, site facilities, nor landscape materials;
 - v) are to be placed within the canopy dripline of trees and other vegetation required to be retained;
 - vi) structures are to bridge tree roots at or >25mm (Ø) diameter unless

directed by the Project Arborist on site;

- vii) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with the Project Arborist including advice on root protection measures;
 - viii) should either or all of v), vi) and vii) occur during site establishment and construction works, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority;
 - ix) 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 Australian Standard 4970-2009 Protection of Trees on Development Sites;
 - x) the activities listed in section 4.2 of Australian Standard 4970-2009 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.
 - xi) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees; and
 - xii) 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.
- (c) The Certifying Authority must ensure that: the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. Any request to remove a tree approved for retention under the development application is subject to a Section 4.55 modification application, or an assessment by an Arborist with minimum AQF Level 5 in arboriculture that determines that the tree presents an imminent risk to life or property.

Reason: tree and vegetation protection.

50) **Project Arborist**

- (a) A Project Arborist with minimum AQF Level 5 in arboriculture shall be

engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites.

- (b) The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.
- (c) The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained, including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works, unless approved by the Project Arborist.
- (d) All tree protection measures specified 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.
- (e) The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) 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: A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.

Reason: tree protection.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

51) 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.

52) Site inductions for Construction Environment Management Plan

The site Environmental Officer (or appropriate equivalent) must induct all staff prior to starting work, with an induction record maintained and available onsite at all times.

Personnel conducting the site induction must:

- (a) Be familiar with any environmental protection conditions under the

development approval and/or the Construction Environment Management Plan

- (b) Be familiar with the names and contact details of relevant people and authorities in the event of any environmental or site management emergency.
- (c) Be familiar with the presence of environmentally significant areas within and surrounding the site.
- (d) Be able to identify threatened species of fauna if they enter the site, especially Red-crowned Toadlet.
- (e) Be familiar with animal welfare issues and procedures should human-wildlife interactions take place during the construction phase.

Reason: To ensure all personnel understand what must be done to protect native vegetation, wildlife, habitats and receiving waterways on the site.

53) **Substitution of Stormwater Treatment Measure**

The substitution of an "equivalent" device for the stormwater treatment measure approved under the Development Consent must be submitted to the Principal Certifying Authority for approval prior to installation.

Reason: To ensure stormwater is appropriately managed and in accordance with the Water Management for Development Policy.

54) **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

55) **Monitoring Erosion and Sediment Control Site Performance**

Monitor the site and adjust erosion and sediment control (ESC) practices to maintain the required performance standard defined by the project ecologist to guarantee the protection of the site downstream environment with specific attention to the *Galaxias Brevipinnis* population. Monitor the effectiveness of the

ESC through a combination of site inspection and water quality monitoring.

Water quality monitoring

The project ecologist shall develop a specific water quality sampling program designed to monitor the effectiveness of the ESC, implement it during the construction period and report to the Certifying Authority. Record shall be kept on site and made available at Council request.

Sites inspections

All erosion and sediment control measures shall be inspected:

- at least daily when rain is occurring;
- at least weekly at all times, even if works are not occurring on site;
- within 24 hours prior to expected rainfall; and
- within 8 hours of rainfall event of sufficient intensity and duration to cause on-site runoff.

Where a rainfall event of sufficient intensity and duration to cause on-site runoff is predicted, the project ecologist must inspect the ESC measures and ensure that such measures are sufficient to condition to address impact of the predicted rain event. If it is considered that the ESC measures are not sufficient to adequately deal with the predicted rainfall event then additional ESC measures must be implemented to ensure ESC measures are not over burdened by the predicted rain event.

A "site checklist" is to be signed by a suitably qualified Civil Engineer (who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER-3)), construction site superintendent and project ecologist.

The project ecologist shall issue compliance certification of the erosion and sediment control monitoring program as per the requirements of this consent.

The Soil and Water Management Plan is a living document that can and should be modified as site conditions change.

If the site inspections detect a risk or a failure in the adopted ESC measures, then the source of this risk/failure must be investigated and corrected.

The site checklist and proposed ESC correction must be submitted the same day of the visit to the Certifying Authority.

The water quality report is to be submitted to the Certifying Authority.

Reason: To protect the downstream environment

56) **Protection of Council's Public Assets**

- (a) Site access is not approved for delivery of materials nor construction of the development through adjacent Land owned or managed by Council.

- (b) The dumping or storage of building materials, spoil, vegetation, green waste, or any other material in Land owned or managed by Council is prohibited.
- (c) Any damage to Council's public assets shall be made good by the applicant and/or the contractor, to the satisfaction of Council.

Council's public assets include, but is not limited to the following: road, kerb and gutters, crossovers, crossings, paths, grass verge, open space and associated elements such as furniture, recreational facilities and the like, within the meaning of the *Local Government Act 1993*.

Reason: to protect and/or restore any damaged public asset.

57) Protection of rock and sites of significance

- (a) All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.
- (b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

58) Works Environmental Protection Plan

A Works Environment Protection Plan (WEPP) is to be prepared by the Project Ecologist for implementation by the Environmental Manager and must be kept in the site office. All staff must be inducted by the Environmental Manager with an induction record being maintained and available onsite at all times.

Personnel conducting the site induction will be able to:

- (a) Be familiar with the names and contact details of relevant people and authorities in the event of any environmental or site management emergency that may arise.
- (b) Be familiar with the presence of environmentally significant areas within and surrounding the site.
- (c) Be familiar with the location of trees with hollows and the importance of tree hollows to a variety of wildlife species and the protection and significance of tree hollows.
- (d) Be familiar and aware of the presence of weed locations, spoil mounds and the potential of weed infections and weed seed propagules accidentally being introduced to the site.
- (e) Identify threatened species of fauna that may venture into the subject site.
- (f) Identify threatened species of fauna that may be cryptic such as the Red-crowned Toadlet, Heath Monitor, etc.

- (g) Be familiar with animal welfare issues and procedures should human-wildlife interactions take place during the construction phase.
- (h) Have an understanding of flora and fauna management issues.

A certificate demonstrating compliance must be prepared by the Project Ecologist and submitted to the Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of bushland.

59) **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 Environment and Climate Change (DECC).

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 DECC.

Reason: Aboriginal Heritage Protection (DACAHE01).

60) **Dewatering Management (Large sites/basements)**

Council proactively regulates construction sites for sediment management.

Where a one-off instance of dewatering of groundwater or tail water is required during works, Council's Catchment Team must be notified of your intention to discharge. Discharges should meet the water quality requirements below. Notification must be via the Team's email address - catchment@northernbeaches.nsw.gov.au.

If continuous dewatering or dewatering on multiple events is expected, a dewatering permit is required from Council's Catchment Team at catchment@northernbeaches.nsw.gov.au.

To obtain a permit, the following information must be contained in a dewatering management plan and provided to Council's Catchment Team. The dewatering management plan must be certified by a suitably qualified civil engineer who has membership of Engineers Australia and appears on the National Engineering Register (NER).

- (a) Preliminary testing of groundwater/tailwater must be conducted by a NATA accredited laboratory to establish a correlation between NTU and TSS. This will allow the use of grab sampling at short notice prior to planned discharges.
- (b) Grab samples must be collected within 1 hour before planned discharge that comply with the parameters in the table below.
- (c) The groundwater/tailwater to be discharged must be compliant with the water quality requirements below, the General Terms of

Approval/Controlled Activity permit issued by WaterNSW (if applicable), Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) (Blue Book), Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

Water Quality (<one hour of planned discharge)

Oil and grease, not visible pH, 6.5-8.5

Total Suspended Solids (TSS), <50mg/L NTU from a meter/grab sample

- (d) All approvals, water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.
- (e) Tailwater must be discharged to the nearest stormwater pit in accordance with Council's Auspec1 Design Manual and must not spread over any road, footpath and the like. Discharge to the kerb and gutter will not be accepted. Where there is no stormwater pit within 100 metres of the site, Council's Catchment Team must be contacted to discuss alternative arrangements.

On receipt of a satisfactory dewatering management plan, Council's Catchment Team will issue a permit that will allow dewatering for up to one year. This permit should be provided to WaterNSW for their permit. Once a permit has been received from WaterNSW, dewatering may commence.

Reason: Protection of the receiving environment.

61) **Site inductions for Construction Environment Management Plan Site inductions for Construction Environment Management Plan**

The site Environmental Officer (or appropriate equivalent) must induct all staff prior to their starting work, with an induction record maintained and available onsite at all times.

Personnel conducting the site induction must:

- (a) Be familiar with any environmental protection conditions under the development approval and/or the Construction Environment Management Plan
- (b) Be familiar with the names and contact details of relevant people and authorities in the event of any environmental or site management emergency.
- (c) Be familiar with the presence of environmentally significant areas within and surrounding the site.
- (d) Be able to identify threatened species of fauna if they enter the site, especially Red-crowned Toadlet.
- (e) Be familiar with animal welfare issues and procedures should human-wildlife interactions take place during the construction phase.

Reason: To ensure all personnel understand what must be done to protect native vegetation, wildlife, habitats and receiving waterways on the site.

62) Waste/Recycling Requirements (Waste Plan Submitted)

During demolition and/or construction the proposal/works shall be generally consistent with a submitted Waste Management Plan.

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided (DACWTE01).

63) Waste/Recycling Requirements (Materials)

During demolition and/or construction the following materials are to be separated for recycling –timber – bricks – tiles – plasterboard – metal – concrete, and evidence of disposal for recycling is to be retained on site.

Reason: To ensure waste is minimised and recovered for recycling where possible (DACWTE02).

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

64) Landscape completion and certification

- (a) Landscaping is to be implemented in accordance with Landscape Plans drawing numbers L2 - SD-01, 02, 03, 04, 05, 06, 07 and 08, Issue A, prepared by Arterra Design.
- (b) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: environmental amenity.

65) Condition of retained vegetation

Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist shall be submitted to the Certifying Authority, assessing the health and impact of trees and vegetation required to be retained as a result of the proposed development, including the following information:

- (a) Compliance to Arborist recommendations for tree protection and 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: To ensure compliance with the requirement to retain and protect significant planting on development sites.

66) Compliance with Ecologist's Recommendations – Post Construction

All biodiversity-related measures are to be implemented at the appropriate stage of development in accordance with the approved Biodiversity Development Assessment Report (BDAR) (Total Earth Care Final May 2020) and Biodiversity Management Plan (Total Earth Care Rev B March 2021) and these conditions of consent.

Satisfactory establishment/initiation of post-construction measures is to be certified by the Project Ecologist prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls.

67) Implementation of Construction Environmental Management Checklist

Construction is to be undertaken in accordance with the Construction Environmental Management Checklist.

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

Reason: To protect native vegetation, wildlife and habitats.

68) Certification of Ongoing Work

A bushland management contract for implementation of all post-occupation biodiversity-related measures, as specified in these conditions of consent and the approved Biodiversity Management Plan (Total Earth Care Rev B March 2021), is to be entered into. Evidence of engagement in accordance with this condition is to be certified by the Project Ecologist and provided to Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To protect and maintain native vegetation and wildlife habitat in accordance with relevant Natural Environment LEP/DCP controls.

69) Clearing for Asset Protection Zones – Project Ecologist to Certify

Clearing of vegetation for APZ establishment must only occur within the surveyed and permanently marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries.

Written certification of compliance is to be prepared by the Project Ecologist and submitted to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To protect native vegetation and wildlife.

70) Relocation of Logs and Coarse Woody Debris

All logs and branches are to be salvaged from trees prior to any vegetation clearing and reused as fauna habitat within the riparian corridor.

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

Reason: To protect wildlife habitat.

71) Post-Construction Road Reserve Dilapidation Report (Major Development)

The applicant must bear the cost of all restoration works to Council's road, footpath and drainage assets damaged during the course of this development.

A Post Construction Dilapidation Report after the completion of all building works is to demonstrate that there is no damage to Council infrastructure prior to the refund of any security deposits.

Reason: To ensure security against possible damage to Council property.

72) Certification for the Installation of Stormwater Quality System

A certificate from a Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER-3) shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate, stating that the stormwater quality management system has been installed in accordance with the detail design for construction and Council's Water Management Policy.

The certificate shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

73) Stormwater Treatment Measures Operation and Maintenance Plan

An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must be attached to the Positive Covenant (and the community or strata management statement if applicable) and contain the following:

1. Detail on the stormwater treatment measures:

- (a) Work as executed drawings;
- (b) Intent of the stormwater treatment measures including modelled pollutant removal rates;
- (c) Site detail showing catchment for each device;
- (d) Vegetation species list associated with each type of vegetated stormwater treatment measure;
- (e) Impervious area restrictions to maintain the water balance for the site;
- (f) Funding arrangements for the maintenance of all stormwater treatment measures;

- (g) Identification of maintenance and management responsibilities; and
 - (h) Maintenance and emergency contact information.
2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:
- (a) Activity description, and duration and frequency of visits additionally for vegetated devices;
 - (b) Monitoring and assessment to achieve an 80 percent survival rate for plantings; and
 - (c) Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure.
3. Maintenance schedule and procedure - ongoing:
- (a) Activity description, and duration and frequency of visits;
 - (b) Routine maintenance requirements;
 - (c) Work Health and Safety requirements;
 - (d) Waste management and disposal;
 - (e) Traffic control (if required);
 - (f) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed); and
 - (g) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

74) Works as Executed Drawings - Stormwater Quality System

Works as Executed Drawings for the stormwater quality system must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

75) Certification for the Installation of Stormwater Treatment Measures

A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the approved plans. The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment. Vegetated measures must exhibit an 80 percent survival rate of plantings.

The certificate shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

76) **Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands.

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 to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

77) **Strata Management Statement**

The Strata Management Statement must specifically list the stormwater treatment measures that will be maintained under strata title. The statement must also include the Stormwater

Treatment Measure Operation and Maintenance Plan.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: To ensure maintenance of all stormwater management assets and protection of the receiving environment.

78) **Removal of Sediment and Erosion Controls (OC)**

Before demobilising from the site and once vegetation cover has been re-established across 70 percent of the site, the applicant is to remove all temporary sediment and erosion controls.

Any area of the site that requires ongoing stabilisation must have jute mesh or matting incorporated into the revegetated area. Mulch may be used on slopes subject to sheet flow with a gradient of no more than 1 metre in height for every 3 horizontal metres. Mulch must be laid to a depth of 50-100mm. If using mulch within two metres of the top of bank of a waterway, coir logs or similar must be placed at the downslope edge of the mulched area to prevent migration of the mulch to the waterway.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority for approval prior to the issue of the Occupation Certificate.

Reason: Protection of the receiving environment

79) **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. Certification is to be provided by an engineer with RPENG or NER(Civil) accreditation.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures including the raingarden 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 party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site stormwater detention as to user is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of final Occupation Certificate.

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

80) **Removal of All Temporary Structures/Materials and Construction Rubbish**

- (a) Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences/bunds are to be removed from the site.
- (b) Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any Occupation Certificate.

Reason: to protect reserve amenity and public safety.

81) **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To prevent pollution of the environment and to protect the amenity of the area (DACPLF03).

82) **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 Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: Proper identification of buildings.

83) **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**

The units within the development are to be numbered in accordance with the Australia Post Address Guidelines (https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf).

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form.

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision.

Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

84) **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Interim / Final Occupation Certificate.

Each year the Owners must send to the Council and the NSW Fire Brigade an Annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the *Environmental Planning and Assessment Regulation 2000*.

85) Pedestrian Infrastructure - Implementation

The applicant shall implement all upgrades, at no cost to Council, as per approved Civil Drawings.

All required upgrades must be completed, to Council's satisfaction, prior to the release of any Occupation Certificate.

Reason: To ensure safe access to public transport for the less mobile residents of the proposed development (DACTRFPOC1).

86) Signage and Linemarking

A signage and line marking plan is required detailing the intersection control of Martin Luther Lane and Martin Luther Place. The plan shall demonstrate a 'stop' intersection with appropriate signage and line marking. The plan is to be submitted to and approved by the Local Traffic Committee. The applicant will be required to upgrade the intersection as per the approved plan, at no cost to Council. The works shall be completed prior to the issue of any Occupation Certificate.

Reason: To ensure appropriate management of local street prior to the resident moving in (DACTRFPOC2).

87) Waste and Recycling Facilities Certificate of Compliance

The proposal shall be constructed in accordance with Warringah Development Control Plan –Part C9 Waste Management.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste and recycling facilities are provided. (DACWTF01)

88) Waste/Recycling Compliance Documentation

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled. (DACWTF02)

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

89) **Licence over the Sydney Water Land**

At all times and for the life of the development, the applicant must maintain a licence with Sydney Water which permits the portion of the Sydney Water controlled land to be managed as an inner protection area (in relation to Bushfire Requirements prescribed in the NSW Rural Fire Service Letter dated 15 October 2021). The development shall not be occupied unless the Sydney Water Licence remains in force and the area maintained as an inner protection area.

90) **Compliance with Ecologist's Recommendations – Ongoing**

All ongoing biodiversity-related measures are to be implemented in accordance with the approved Biodiversity Development Assessment Report (BDAR) (Total Earth Care Final May 2020) and Biodiversity Management Plan (Total Earth Care Rev B March 2021) and these conditions of consent.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls.

91) **Maintenance of Asset Protection Zones**

Vegetation clearing for ongoing APZ maintenance must only occur within the surveyed and marked APZ boundaries. No clearing is to be undertaken outside of the APZ boundaries. Ongoing APZ maintenance must be in accordance with the approved Biodiversity Management Plan (TEC Mar 2021).

Reason: To protect native vegetation and wildlife.

92) **Maintenance of Stormwater Treatment Measures**

Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Vegetated stormwater treatment measures must maintain an 80 percent survival rate of plantings and limit weed cover to no more than 10 percent of the total area of the stormwater treatment measure.

Where replacement cartridges or other necessary components for the system become unavailable, an alternative system is required to be retrofitted into the development to achieve an equivalent pollutant reduction outcome. Evidence supporting the replacement must be retained on site and made available to Council as required.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment

93) **Utilise existing waste service arrangements.**

The applicant is to ensure the additional development utilises the existing waste service arrangements and the service is increased sufficiently to accommodate the increase demand.

Reason: Council will not be providing the waste collection services due to the current lease arrangements, the ownership of the property being Crown land and waste positive covenants cannot be placed onto the land which is required for Council to provide the service (DACHEGOG1).

94) **Noise from Mechanical Equipment**

Noise from combined operation of all mechanical plant and equipment must not generate noise levels that exceed the ambient background noise by more than 5dB(A) when measured in accordance with the NSW Industrial Noise Policy at the receiving boundary of residential and other noise sensitive land uses.

Reason: Protect the amenity of the area and public health.

95) **Landscape maintenance**

- (a) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.
- (b) 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.

Reason: To maintain local environmental amenity.

96) **General Watercourse and Riparian Areas Matters**

Unless in accordance with the approved works the Consent holder must ensure that:

- (a) No materials or cleared vegetation that may obstruct flow or cause damage to river banks are left within the riparian zone.
- (b) All drainage works must not obstruct flow of water within the watercourse. Drain discharge points are stabilised to prevent erosion. Any excavation must not result in diversion of any watercourse, bank instability or damage to native vegetation.
- (c) The surfaces of river banks are graded to enable the unimpeded flow of water and bank retaining structures result in a stable river bank.
- (d) Any vegetation or other material removed from the area of operations shall be disposed of lawfully. Burning of the material is not permitted.
- (e) The riparian zones are to function as ecological systems and as such, all works, access routes, roads, recreational areas, asset protection zones, service easements and any other non-ecologically functioning work or activity are to be located beyond the riparian zones other than provided by the consent.

Reason: Environmental Protection, Monitoring and Enhancement.

97) Control of Weeds

Prior to the completion of works, all priority weeds (as listed under the Biosecurity Act 2015) are to be removed/controlled within the subject site using an appropriately registered control method. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>). Weed species which are not state or regional priority weeds, as identified in the Northern Beaches Local Priority Weed Management Plan, must also be always controlled. See - <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/weed-management/northernbeachescouncillocalpriorityweedmanagementplan.PDF>

Reason: Weed management.

98) No Planting Environmental Weeds

No environmental weeds are to be planted on the site. Information on weeds of the NorthernBeaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>). and the Council website (<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/weed-management/northernbeachescouncillocalpriorityweedmanagementplan.PDF>).

Reason: Weed management.

99) Works to cease if item found

If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

Reason: To protect Aboriginal Heritage.

100) Control of Domestic Animals

Domestic pet animals are to be kept from entering wildlife habitat areas at all times. All domestic pets are to be kept in an enclosed area or on a leash such that they cannot enter areas of bushland or foreshore, unrestrained, on the site or on surrounding properties or reserves.

Reason: Wildlife protection

101) Carwash Bay

The carwash bay:

- (a) is only to be used by residents of the development; and
- (b) is not to be operated or used as commercial carwash.