



Land and Environment Court New South Wales

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

Medium Neutral Citation: [2023] NSWLEC 1211

Hearing Date(s): 28 November 2022

Date of Orders: 9 May 2023

Date of Decision: 9 May 2023

Jurisdiction: Class 1

Before: Sheridan AC

DECISION: The Court orders:
(1) The Applicant is granted leave to rely on amended plans as set out in Condition 1 of Annexure A.
(2) The appeal is upheld.
(3) Development Application DA 2021/2590 for the construction of a single storey dwelling at 40 Pine Street Manly is approved, subject to the conditions in Annexure A.
(4) All Exhibits are returned, with the exception of Exhibits A, D and 2.

Catchwords: DEVELOPMENT CONSENT – proposed new single storey dwelling house – carparking – landscaping – undersized allotment – public interest

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.15, 8.7
Land and Environment Court Act 1979, s 34
Manly Local Environmental Plan 2013
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 9, s 9.13
State Environmental Planning Policy (Resilience and Hazards) 2021

Cases Cited:	Goarin v Manly Council [2014] NSWLEC 1108
Texts Cited:	Manly Development Control Plan 2013 Northern Beaches Community Participation Plan 2019
Category:	Principal judgment
Parties:	James Frederick Bell (Applicant) Northern Beaches Council (Respondent)
Representation:	Counsel: A Pickles SC (Applicant) F Berglund (Respondent) Solicitors: Sattler and Associates Pty Ltd (Applicant) Northern Beaches Council (Respondent)
File Number(s):	2022/226498
Publication Restriction:	Nil

JUDGMENT

- 1 **COMMISSIONER:** This is a Class 1 appeal under s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the refusal by Northern Beaches Council (Council) of development application DA 2021/2590 (the DA) seeking consent for the construction of a single storey dwelling house including external access stairs through the adjacent public reserve, on a vacant allotment. The subject site is legally described as Lot 5 in Deposited Plan 939161 known as 40 Pine Street, Manly (the Site).

Site and Setting

- 2 I rely on the Statement of Facts and Contentions dated 16 September 2022 (SOFAC) (Exhibit 1) for much of the factual material below.
- 3 The Site is rectangular in shape with a frontage of 12.19 metres (m) and respective depths of 8.165m and 8.145m along the eastern and western boundaries. The site has a surveyed area of 99.4m². The site is atypical to the size and configuration of surrounding private properties and was subdivided from 9 and 11 Pacific Parade in 1908 and has remained vacant since this date.
- 4 The site consists of a grassed area, rocky outcrops, shrubbery, and a Sydney Blue Gum tree, and experiences a fall of approximately 4.5m that slopes towards the north (i.e. rear), representing an approximate slope of 55%. The site does not have vehicular access or a street frontage, but rather is located adjacent to a public walkway that forms part of the road reserve of Pine Street. The nearest public roads are Kangaroo Street and Pine Street, which are located approximately 45m to the north and approximately 60m to the east of the site respectively.

Background and Proposed Development

- 5 The site has been the subject of a previous development application (DA. 60/13) for the construction of a two-storey dwelling house. DA. 60/13 was refused by former Manly Council's Independent Hearing and Assessment Panel on 19 September 2013.
- 6 The refusal of DA No. 60/13 was the subject of a Class 1 appeal in *Goarin v Manly Council* [2014] NSWLEC 1108 (*Goarin*). The appeal was dismissed.
- 7 On 22 December 2021, the current Development Application 2021/2590 (the DA) was lodged for the construction of a one storey dwelling house (the Proposed Development) with the Respondent.
- 8 The DA was publicly exhibited in accordance with the Northern Beaches Community Participation Plan 2019, from 20 January until 3 February 2022. As a result of the public exhibition, submissions from 16 households objecting to the DA were received. The submissions raised a number of concerns that are broadly categorised as follows:
 - (1) Unsuitable access for the occupants of the dwelling and external parties (i.e. emergency services);
 - (2) Unsuitable provisions for waste collection;
 - (3) Inappropriate site for residential development;
 - (4) Landslip hazards;
 - (5) Amenity impacts to surrounding residential properties due to the minimal rear setback proposed;
 - (6) Unsuitable provisions for stormwater management;

- (7) Concerns about the dwelling being used for short term rental accommodation;
 - (8) Impact on existing native vegetation and wildlife;
 - (9) Unreasonable visual impact when observed from the public footpath;
 - (10) Construction management impacts;
 - (11) Adverse planning precedent for the Local Government Area;
 - (12) Undersized allotment;
 - (13) No off-street parking, impacting local traffic and the available parking on surrounding residential streets; and
 - (14) The application should be refused on the basis of the previously dismissed Class 1 appeal to the NSW Land and Environment Court for a two storey dwelling house.
- 9 On 17 February 2022, Council's Development Assessment Planner undertook a site inspection at the subject site. On 13 May 2022, Council's Development Engineering referral response was received, which stipulated that further geotechnical assessment was required to address the proposed level spreader and to confirm the stability of the land. On 18 May 2022, the respondent provided written correspondence to the applicant indicating that the proposed development could not be supported.
- 10 On 6 July 2022, the Development Application was referred to the Northern Beaches Local Planning Panel (the Panel) for determination with a recommendation of refusal in Council's assessment report. The Development Application was subsequently refused by the Panel for the following reasons.

“1. Pursuant to Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979* the site is not considered to be suitable for the proposed development.

2. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Manly Local Environmental Plan 2013.

3. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities) of the Manly Development Control Plan as the proposed development fails to provide adequate access and off-street parking to meet the needs of the future occupants of the dwelling house and external parties. Additionally, the proposal would increase the demand for on-street parking.

4. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 6.12 Essential Services of the Manly Local Environmental Plan 2013 as the site is unable to provide adequate off-street parking and access to meet the needs of the future occupants of the dwelling and external parties. Furthermore, the applicant has not been able to demonstrate that the proposed development can adequately manage and dispose stormwater generated from the development.

5. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 3.4.2 Privacy and Security of the Manly Development Control Plan as the proposed dwelling would allow the future occupants to directly overlook into private open space at 9 and 11 Pacific Parade.

6. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 4.1.1.1 Residential Density and Dwelling Size of the Manly Development Control Plan as the undersized nature of the allotment makes it difficult for the development to comply with a number of Council's primary planning controls or provide an acceptable level of internal amenity for the future occupants of the dwelling.

7. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 4.1.4 Setbacks (front, side and rear) and Building Separation of the Manly Development Control Plan 2013 as the front and rear setback non-compliances will create adverse amenity impacts for adjacent properties and the future occupants of the dwelling house.

8. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 4.1.5 Open Space and Landscaping of the Manly Development Control Plan as the proposal provides insufficient total open

space and landscaping to enable the establishment of adequate landscape treatment to screen the built form from downslope properties. Furthermore, the proposal provides inadequate areas of private open space to meet the recreational needs of the future occupants of the dwelling house.

9. Pursuant to Section 4.15(1)(a)(i) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 6.4 Stormwater Management of the Manly Local Environmental Plan 2013 as there is insufficient information to determine whether stormwater generated from the development can be appropriately managed and disposed of.

10. Pursuant to Section 4.15(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979* the proposed development is inconsistent with the provisions of Clause 3.7 Stormwater Management of the Manly Development Control Plan 2013 as there is insufficient information to determine whether stormwater generated from the proposal can be appropriately managed and disposed of.

11. Pursuant to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979* the proposed development is not in the public interest."

Proceedings

11 The hearing commenced with an on-site view. Present were legal representatives, town planning experts, stormwater experts and landscape experts for the parties. Oral submissions from six objectors were heard on-site from the residents of 11 Pacific Parade Manly, 3A James Street Manly, 9 Pacific Parade Manly, 12 Kangaroo Street Manly, 13 Pacific Parade Manly and 4 Kangaroo Street Manly. The Court was also invited to view the Site from the rear yards of 9 and 11 Pacific Parade. A list of objectors (Exhibit 3) and a copy of the submissions received by the Respondent during public exhibition of the DA were also provided to the Court (Exhibit 4).

12 The key concerns of the resident objectors can be summarised as follows:

- Visual privacy and overlooking;
- Impact on adjoining public reserve and wildlife corridor;

- Insufficient private open space and landscaping to screen the development;
- Inadequate front and rear setbacks resulting in privacy impacts on neighbouring properties;
- Inadequate carparking;
- Unsuitability of the site (should be zoned public open space);
- Impact on views of the reserve;
- Impact on stormwater drainage; and
- Difficulty in servicing the site (emergency services and deliveries) due to lack of a street frontage and inadequate access

The Evidence

- 13 In preparing for the hearing, the experts, Mr Greg Boston, planner for the Applicant and Mr Thomas Burns, planner for the Council, conferred and prepared a “Joint Expert Town Planning Report” (Joint Expert Report) filed on 9 November 2022 (Exhibit 5). The planning experts agreed that all eight contentions could be resolved subject to the preparation and settlement of amended plans reflecting the agreed amendments identified in the Joint Expert Report.
- 14 The landscape experts, Ms Melissa Wilson for the Applicant and Mr Joseph Tramonte for the Respondent prepared a Landscaping Joint Expert Report dated 10 November 2022 (Exhibit 6). The landscape experts agreed in the Joint Expert Report that Amended Landscape plans to provide screen planting to the rear of the dwelling will mitigate the height of the proposed

dwelling, mitigate any privacy concerns and screen the development when observed from the adjoining downslope properties to the north (9 and 11 Pacific Parade).

- 15 The landscape experts also agreed that Amended Landscape Plans should be prepared to provide additional landscape buffer planting to a height of at least 2m along the southern front boundary to satisfy Contention 4 (Inadequate Total Open Space and Landscaping). Mr Tramonte, from the Council, agreed that the Joint Report conferencing discussions have led to an agreement between the experts on the additional landscape design that is required to satisfy Contention 3 (Rear Setback) and Contention 4 (Failure to Provide Adequate Open Space and Landscaping).
- 16 The stormwater engineering experts, Mr Leon Savage for the Applicant and Mr Alex Kwok from the Council prepared a Stormwater Engineering Joint Expert Report dated 11 November 2022 (Exhibit 7). Mr Kwok agreed that the Joint Expert Conferencing discussions have led to an agreement between the experts on the method of stormwater disposal design that is required to satisfy Contention 8 (Failure to provide adequate information to assess the Stormwater Management System).
- 17 A number of documents were tendered in evidence, of which the following were of particular relevance to my consideration of this matter:
 - (1) The Town Planners Joint Expert Report (Exhibit 5).
 - (2) The Landscaping Joint Expert Report (Exhibit 6).
 - (3) The Stormwater Engineering Joint Expert Report (Exhibit 7).
 - (4) The Amended Plans and Landscape Plans (Exhibit A), for which leave was sought and provided, prepared by Carlisle Architects, Revision D

and Amended Landscape Plans prepared by Melissa Wilson, Issue C (Exhibit A).

- (5) Amended Stormwater Drainage, Rainwater Re-use and Onsite Detention Plans prepared by Structerre Consulting (Exhibit B).
- (6) An Amended Basix Certificate (Exhibit F).
- (7) Council's Bundle of Documents (Exhibit 2) that included an extract from the Manly Local Environmental Plan 2013 (MLEP), Manly Development Control Plan 2013 (MRDCP) and the public submissions (Exhibit 4).
- (8) Various documents lodged as part of the Class 1 Application, including the Statement of Environmental Effects prepared by 33F Town Planners (Exhibit D).
- (9) The agreed draft conditions of consent, filed with the Court on 1 May 2023 (Exhibit 8).

The Planning Controls

- 18 The site and immediately surrounding properties are zoned R1 General Residential under the MLEP. The proposed dwelling house is permissible with consent.
- 19 I am satisfied that the proposed dwelling house is consistent with the objectives of the R1 Zone which are:
 - To provide for the housing needs of the community.
 - To provide for a variety of housing types and densities.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents.

- 20 The maximum permissible height of buildings for the Site is 8.5m under cl 4.3(2) of MLEP. The proposed single storey dwelling complies with the height standard.
- 21 The Manly Development Control Plan 2013 (MDCP) also applies to the proposed development. The relevant parts of the MDCP are:
- Clause 4.1.5 Open Space and Landscaping
 - Clause 3.4.2 Privacy and Security
 - Clause 4.1.1.1 Residential Density and Dwelling Size
 - Clause 4.1.4 Setbacks (front, side and rear) and Building Separation
 - Clause 4.1.5 Open Space and Landscaping
 - Clause 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

The Issues

- 22 The SOFAC listed the following eight contentions:
- (1) The unsuitability of the site for the development;
 - (2) Inability to provide off-street carparking;
 - (3) Rear setback;
 - (4) Inadequate Total Open Space and Landscaping;
 - (5) Undersized Allotment;

(6) Privacy;

(7) Public Interest; and

(8) Failure to Provide Adequate Stormwater Management Information.

- 23 A majority of the contentions listed in the SOFAC (Exhibit 1) were no longer pressed by the Respondent following the Amended Plans and Amended Landscape Plans (Exhibit A), the Stormwater Drainage Plans (Exhibit B) and the outcome of joint expert conferencing (Exhibits 5, 6 and 7). The experts agreed that subject to appropriate conditions and the amended plans, seven of the eight Contentions were resolved (Contentions 1 – 6 and Contention 8).

Is the proposed development in the Public Interest (Contention 7)

- 24 The remaining unresolved Contention (Public Interest) relates to the public submissions received by the Respondent in relation to the Proposed Development. The Court, as the consent authority, in determining a development application, is to take into consideration the public interest (s 4.15(1)(e) EPA Act).
- 25 At the on-site view, the Court heard from six objectors, and I summarise their concerns below in [26].
- 26 The major issues raised by the residents related to the impact on privacy, the stability of the site and stormwater drainage, inadequate carparking, inadequate landscaping/impact on native vegetation, the suitability of the site for residential development and its impact on the adjoining reserve and the wildlife corridor. Submissions also raised the inadequate size of the site and inadequate access for servicing and emergency vehicles. Several submissions suggested that the Council should purchase the Site.
- 27 In relation to the suggestion, by a number of objectors, that the Council should acquire the land, I note this is unlikely because the former Council zoned it residential and subsequently sold the land. This is not a matter for

consideration for the Court on appeal and is a matter for the Council who zoned the land Residential R1, consistent with surrounding residential properties.

- 28 Regarding potential impacts on vegetation on the Site, in the adjoining reserve and on wildlife, Council's landscape officer was of the view that the proposed development was not likely to have an adverse impact on local biodiversity. The large Sydney Blue Gum on the Site is being retained and appropriate conditions have been included in the consent stating that all existing trees are required to be retained and maintained in a healthy and vigorous condition. Further the Council's landscape architectural expert, Mr Tramonte concurs that the Joint Report conferencing discussions have led to an agreement on the additional landscape design, including further screen planting around the Site boundaries, that is required to satisfy Council's Contention on the provision of adequate open space and landscaping for the Site (Exhibit 6).
- 29 Regarding the issue raised in relation to the inadequate rear setback and the privacy concerns for the properties in Pacific Parade to the north, I note that the proposed rear setback has been amended from 900mm to 1.5m, which provides an adequate setback for additional landscape planting. The planning experts in relation to the rear seatbacks, agreed that the proposed rear setback will provide reasonable levels of overlooking (refer Exhibit 5). It was also agreed by the experts that by providing a higher sill height of 1.5m on the north-facing windows, the proposed dwelling will not overlook the open space of 9 and 11 Pacific Parade. I am satisfied that the amended landscape plans which provide for screen planting within the rear setback area and the Amended Plans with highlight windows on the northern elevation, will mitigate any concern of overlooking into the two neighbouring properties to the rear.
- 30 In relation to the issue of access for future occupants of the proposed dwelling, the Council experts noted that while the site was constrained and the site must be accessed via public footpath, the additional information

submitted by the Applicant during the course of the appeal has satisfied the Council that access for deliveries and emergency services is satisfactory. A condition has also been included that requires the owner of the Site to provide access details to the subject property to NSW Ambulance on a 12 month basis from the date of the consent.

- 31 Waste collection and the Council's waste officer was also satisfied and raised no objections to the provision of waste services from nearby Kangaroo Street. I am also satisfied that access to the property, including for deliveries and emergency vehicles is reasonable in the circumstances.
- 32 Regarding the concerns raised by objectors in relation to the lack of any on-site carparking, the planning experts agree that reducing available on-street parking within the catchment of the site would be to the detriment of the neighbourhood. The planning experts also agree that this issue could be alleviated through the implementation of a condition of consent that precludes future residents of 40 Pine Street from obtaining a resident's parking permit, thereby satisfying Objective 2 of Clause 4.1.6 of MDCP 2013, which is to reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances. Noting that the proposed dwelling house is well-serviced by local transport infrastructure (i.e. GoGet car sharing pod and public transport services), coupled with the fact that the development contains one bedroom and is unlikely therefore to attract occupants with one or more vehicles, I am satisfied that an absence of off-street parking on the site should not preclude development on the land.
- 33 In relation to the potential for land slip concerns, the Council was satisfied by the geotechnical report prepared on behalf of the Applicant by White Geotechnical Group dated 7 July 2021 and an addendum report dated 30 May 2022. I am satisfied from the evidence that the issue raised regarding geotechnical risk has been resolved and various conditions have been included in the consent, requiring all recommendations included in the

Geotechnical Report to be complied with during work to ensure geotechnical risk is mitigated appropriately. A further condition has been included requiring that excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. Further, all retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer.

- 34 Stormwater management and the impact on the properties downslope of the Site was an issue raised in the SOFAC, however I am satisfied that this issue has been adequately resolved by the stormwater experts during the joint conferencing (Exhibit 7).
- 35 The planning experts considered the public interest in the Joint Experts Report (Exhibit 5) and agree that subject to the preparation and settlement of amended plans, reflecting the agreed amendments identified in the joint report, that the proposal is capable of being in the public interest.
- 36 In relation to the suitability of the site, I am satisfied from the evidence of the planning, landscape and stormwater experts that the site, which is zoned for residential purposes, is suitable for the proposed development and the Amended Plans and conditions of consent address the concerns raised by objectors. The modest single storey dwelling house proposed for the Site is, in my view, an appropriate response to the site constraints and will have minimal impacts on the surrounding residential properties and the adjacent public reserve. The proposed dwelling has also been significantly reduced in height, bulk and scale to the previous development application for a two storey dwelling, that was dismissed by Commissioner Brown in *Goarin*.
- 37 I accept that the concerns raised have been considered and addressed by the Applicant's amended plans and conditions of consent, and I conclude that there is no reason to refuse the Proposed Development, on the basis of public interest.

Other statutory instruments

- 38 In regard to State Environmental Planning Policy (Resilience and Hazards) 2021, I note and accept the agreed evidence that the land has been vacant for an extended timeframe and is not considered to be at risk of contamination.
- 39 State Environmental Planning Policy (Biodiversity and Conservation) 2021 (SEPP B&C) applies to the Site. Clause 9.3 of SEPP B&C requires a consent authority to consider the matters referred to in Ch 9. I am satisfied that the matters for consideration under Ch 9 have been adequately addressed in the Statement of Environmental Effects which accompanies the DA. The Landscape experts also agreed during the joint conferencing that the landscape and open space outcomes for the Site were acceptable, subject to amended plans and conditions requiring the existing trees to be retained and maintained in a healthy and vigorous condition. Council's landscape officer was of the view that the proposed development was not likely to have an adverse impact on local biodiversity.
- 40 In regard to State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX SEPP), I note that an updated BASIX certificate was filed with the Court (Exhibit F) and has been accepted by the Respondent, in accordance with the requirements of the BASIX SEPP.

Conclusion

- 41 For the reasons given in this judgment, I conclude that development consent for the Proposed Development can be granted, subject to appropriate conditions.

Orders

- 42 The Court orders that:

- (1) The Applicant is granted leave to rely on amended plans and landscape plans as set out in Condition 1 of Annexure A.
- (2) The appeal is upheld.
- (3) Development Application DA 2021/2590 for the construction of a single storey dwelling house at 40 Pine Street Manly is approved, subject to the conditions in Annexure A.
- (4) All Exhibits are returned, with the exception of Exhibits A, D and 2.

I certify that this and the preceding **14** pages are a true copy of my reasons for judgment.



.....

L Sheridan

Acting Commissioner of the Court

Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: DA2021/2590

Development: Construction of a dwelling house

Site: 40 Pine Street, Manly

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

Date of determination: 9 May 2023

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 [insert details].

The conditions of consent are as follows:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documents

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp

Drawing No.	Dated	Prepared By
DA-01 (Revision D) – Site Plan / Site Analysis	23 November 2022	Carlisle Architects

DA-02 (Revision D) – Floor Plan	23 November 2022	Carlisle Architects
DA-03 (Revision D) – Elevations	23 November 2022	Carlisle Architects
DA-04 (Revision D) – Section A-A	23 November 2022	Carlisle Architects

Engineering Plans

Drawing No.	Dated	Prepared By
Drawing number 3.21.3215 – c- 402, Rev E	November 2022	Structerre Consulting

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Investigation Ref. J3541	7 July 2021	White Geotechnical Group
Addendum to Geotechnical Investigation to address Stormwater Disposal Ref. J3541A	30 May 2022	White Geotechnical Group
Arboricultural Impact Assessment	November 2021	Bluegum Tree Care and Consultancy
BASIX Certificate No. 1227505S_02	9 December 2021	Evergreen Energy Consultants Pty Ltd
Waste Management Plan	8 December 2021	N/A

b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) Landscape Plans

Landscape Plans

Drawing No.	Dated	Prepared By
LS01 (Issue C)	16 November 2022	Melissa Wilson Landscape Architects
LS02 (Issue C)	16 November 2022	Melissa Wilson Landscape Architects
LS03 (Issue C)	16 November 2022	Melissa Wilson Landscape Architects

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.

2. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and

- (ii) where necessary, underpin the adjoining premises to prevent any such damage.
- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. General Requirements

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- a. 7.00 am to 5.00 pm inclusive Monday to Friday,
- b. 8.00 am to 1.00 pm inclusive on Saturday,
- c. No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- d. 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewer areas or managed on-site in unsewered 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.

4. No Approval for Fencing

No approval is granted under this Development Consent for any fencing surrounding the site.

Reason: To ensure compliance with the architectural plans.

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$6,860 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 2022. The monetary contribution is based on a development cost of \$686,000.

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 2022 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.

6. Security Bond

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

7. Waste and Recycling Requirements

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, 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 the Northern Beaches Waste Management Guidelines, 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.

8. Sydney Water “Tap In”

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

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

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

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

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

9. Compliance with Standards

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

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

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

10. On-site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council’s WATER MANAGEMENT FOR DEVELOPMENT POLICY, and generally in accordance with the concept drainage plans prepared by Structerre Consulting, drawing number 3.21.3215 – c-402, Rev E and dated Nov/2022. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer. The drainage plan must address the following:

1) The OSD storage shall be amended to control the total discharge of the site including bypass flows and controlled flows through the level spreader. The total discharge of the post development must not exceed the 20% AEP state of nature storm event in the pre-development state.

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

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

11. Structural Adequacy and Excavation Work

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

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

Reason: To provide public and private safety.

12. External Finishes to Roof

The external finish to the roof shall have a medium to dark range to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

13. 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:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- 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
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- 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
- 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

- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- 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
- 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
- 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
- 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
- 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
- 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
- Proposed protection for Council and adjoining properties
- 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.

CONDITIONS TO BE SATISFIED PRIOR TO ANY COMMENCEMENT

14. Submission of Minor Encroachment Application for Works in the Public Road

The applicant is to submit a Minor Encroachments/ Constructions With Road Reserve Application for approval (Form #4033).

The applicant is to enter into any appropriate agreements with Council. All costs related to the above application are to be borne by the applicant.

No work shall commence until written approval has been obtained from Council

Reason: To ensure private works within the public road reserve are constructed in accordance with relevant standards and Council's specification and assign the responsibility for the structures on Council road reserve to the property owner.

15. 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 Certifier.

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

16. Erosion and Sediment Control Plan

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours.
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application).
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities).
- Existing and proposed drainage patterns with stormwater discharge points.
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

17. Works Zone and Permits

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane

Reason: To ensure Work zones are monitored and installed correctly.

18. Stormwater Treatment Measures – Minor

The applicant must install a filtration device (such as a sediment control pit) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

19. Project Arborist

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, and the recommendations of the Arboricultural Impact Assessment.

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

i) works to the existing Sydney Blue Gum identified as tree 4, under section 6.1 Site Establishment - Prior to Construction; Appointment of a Project Arborist; Tree Protection Fencing; Trunk Protection; Root Protection; Figure E; Tree Protection Zones; Steel Post Footing Set-Out; and Landscaping Works,

ii) works under section 6.3 Post Construction Tree Care.

Existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist.

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been conducted

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:

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

Reason: Tree protection.

CONDITIONS TO BE COMPLIED WITH DURING WORKS

20. Waste / Recycling Requirements

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

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

21. Geotechnical Requirements

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

Reason: To ensure geotechnical risk is mitigated appropriately.

22. Protection of natural landscape features

All rock outcrops outside of the area of approved works, including within the road reserve fronting the development property, are to be preserved and protected at all times during demolition excavation and construction works.

Reason: Preservation of significant environmental features.

23. Condition of Trees

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,

- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work conducted for the purpose of this clause.

Reason: Protection of trees.

24. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected including:
 - i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with 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 an Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,

- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) 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,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

- d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.
- e) 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.

Reason: Tree and vegetation protection.

25. 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.

26. Property Boundary Levels

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

Reason: To maintain the existing profile of the nature strip/road reserve.

27. Traffic Control Works

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works.

Reason: Public safety.

28. Waste/Recycling Requirements

During demolition and/or construction the proposal/works shall be generally consistent with the approved Waste Management Plan referenced in Condition 1 of this consent.

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

29. 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.

30. Implementation of Construction Traffic Management Plan

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

31. Installation of Sediment and Erosion Control Measures

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004), and the Erosion and Sediment Control Plan prepared by Structerre Consulting, prior to commencement of any other works on site.

Erosion and sediment controls 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 vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

32. Acid Sulfate Soils

Any new information revealed during excavation works that has the potential to alter previous conclusions about acid sulfate soil shall be immediately notified to the Principal Certifying Authority. An acid sulfate management plan will then be required.

Reason: To ensure management of potential acid sulfate soils.

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO OCCUPATION CERTIFICATE

33. Garbage and Recycling Facilities

Waste bin storage area shall be clear of any other services or utilities infrastructure such as gas, electricity, air conditioning, plumbing, piping ducting or equipment. Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Details demonstrating compliance must be submitted to the Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure that bins can be appropriately stored within the property.

34. Waste and Recycling Facilities Certificate of Compliance

The proposal shall be constructed in accordance with the Northern Beaches Waste Management Guidelines.

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

Reason: To ensure waste and recycling facilities are provided.

35. 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 Occupation Certificate.

Reason: To ensure waste is minimised, recycled and legally disposed.

36. 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.

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 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 storm water detention as to user is to be submitted.

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

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

37. Landscape Works Completion

Landscape works within the property shall be implemented in accordance with the approved Amended Landscape Plans, inclusive of the following requirement:

- a) The nominated *Buckinghamia celsissima* shall be replaced with *Elaeocarpus reticulatus*, at a pre-ordered installation size of 75 litre container size.

Prior to the issue of an Occupation Certificate, details from a landscape architect 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.

38. Condition of retained trees - Project Arborist

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 on all existing trees and vegetation required to be retained as listed in the Arboricultural Impact Assessment and within adjoining properties, including the following information:

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

Reason: Tree protection.

39. 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 Certifying Authority prior to the issue of an Occupation Certificate.

Reason: Proper identification of buildings.

40. Geotechnical Certification Prior to Occupation Certificate

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

The Geotechnical Engineer or Engineering Geologist must also confirm the integrity of the existing retaining wall located to the north of the approved building.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

41. Sydney Water

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

ONGOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

42. Landscape Maintenance

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

Reason: To maintain local environmental amenity.

43. Commercial Waste and Recycling Storage

Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins as shown on the approved plans.

Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed.

44. Presentation of Bins and Bulky Goods on Kangaroo Street for Collection of Waste and Recycle Bins

The owner of the property will be responsible for arranging the ongoing presentation of waste and recycling bins at the kerbside on Kangaroo Street.

The bins must be placed for collection above the kerb between numbers 4 and 6 Kangaroo Street Manly.

The bins are to be placed on Kangaroo Street no earlier than 4.00pm on the day prior to the scheduled day of collection.

The bins must be returned to the property no later than the evening of the day of collection.

The bulky goods items must be placed for collection above the kerb between numbers 4 and 6 Kangaroo Street Manly.

The bulky goods items are to be placed on Kangaroo Street no earlier than 4.00pm on the day prior to the scheduled day of collection.

Reason: To clearly define responsibility for the ongoing presentation of waste/recycle bins and bulky goods for collection on Kangaroo Street.

45. Maintenance of Stormwater Treatment Measures - Minor

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

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.

46. Resident Parking Permit

Any residents and/or tenants of the subject site are not eligible for resident parking permits. This condition is to be provided on the Property Title.

Reason: To ensure the tenants are aware that they are not entitled to a permit even if they are within a Resident Parking Scheme (RPS) Area.

47. Geotechnical Recommendations

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

48. NSW Ambulance – Access Details

The owner is to provide access details to the subject property to NSW Ambulance on a 12 month basis from the date of this consent.

NSW Ambulance must be provided with the following details:

- Full name and address of any resident(s).
- Property address.

- The lock box code and any further instructions on how to enter the property.

Reason: To ensure that adequate access details are provided to emergency services.