



Land and Environment Court  
New South Wales

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Case Name: Thomson v Northern Beaches Council

Medium Neutral Citation: [2021] NSWLEC 1763

Hearing Date(s): Conciliation conference 7 December 2021

Date of Orders: 15 December 2021

Decision Date: 15 December 2021

Jurisdiction: Class 1

Before: Walsh C

Decision: The Court orders:  
(1) The request pursuant to clause 4.6 of the Pittwater Local Environmental Plan 2014 to vary the development standard in clause 40(4)(c) in State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 is upheld.  
(2) The Appeal is upheld.  
(3) Development Application DA2020/1162 for the construction of a seniors housing development to accommodate three (3) self-contained dwellings, including associated basement level car parking, landscaping and associated works on land legally described as Lot 33 in in DP11462 known as 27 Bellevue Road, Avalon is approved subject to the conditions set out in Annexure "A".

Catchwords: DEVELOPMENT APPLICATION – conciliation conference – agreement between the parties

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.15, 4.16  
Environmental Planning and Assessment Regulation 2000, cl 55  
Land and Environment Court Act 1979, s 34  
Pittwater Local Environmental Plan 2014, cll 2.3, 4.6,

## **Annexure A**

### **DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT**

**Development Application No:** DA2020//1162

**Development:** The construction of a seniors housing development to accommodate three (3) self-contained dwellings, including associated basement level car parking, landscaping and associated works

**Site:** **27 Bellevue Road, Avalon NSW 2107**

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

**Date of determination:** 15 December 2021

**Date from which consent takes effect:** Date the consent is registered on the NSW Planning Portal.

#### **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 **27 Bellevue Road, Avalon**.

The conditions of consent are as follows:

## DRAFT CONDITIONS

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

#### 1. **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

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
1901- DA040 - Demolition and Construction Management Plan - Issue D	20/09/21	Shed
1901- DA070 - Site Plan - Issue D	20/09/21	Shed
1901- DA100 - Lower Parking Level Plan - Issue D	20/09/21	Shed
1901- DA101 -Lower Parking Level Plan - Impacts on trees - Issue D	20/09/21	Shed
1901- DA110 -Lower Ground Floor Plan- Issue D	20/09/21	Shed
1901- DA111 -Lower Ground Floor Plan - Impacts on trees - Issue D	20/09/21	Shed
1901- DA120 -Ground Floor Plan - Issue D	20/09/21	Shed
1901- DA121 -Ground Floor Plan - Impacts on Trees - Issue D	20/09/21	Shed
1901- DA130 - First Floor Plan - Issue D	20/09/21	Shed
1901- DA200 - Longitudnal Section - Issue D	20/09/21	Shed
1901- DA210 - Cross Section 1- Issue D	20/09/21	Shed
1901- DA211 - Cross Section - Issue D	20/09/21	Shed
1901- DA250 - Tree 21 - Detail Drawings-	20/09/21	Shed

Issue D		
1901- DA260 - Tree 33 - Detail Drawings- Issue D	20/09/21	Shed
1901- DA270 - Tree 39 - Detail Drawings- Issue D	20/09/21	Shed
1901- DA300 - West Elevation - Detail Drawings- Issue D	20/09/21	Shed
1901- DA301 - South Elevation - Detail Drawings- Issue D	20/09/21	Shed
1901- DA302 - North Elevation- Issue D	20/09/21	Shed
1901- DA303 - East Elevation- Issue D	20/09/21	Shed
1901 - DA904 - Materials and Finishes - Issue D	20/09/21	Shed

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Civil and Drainage Notes and Plans - C01-C37	Various	M+G Consulting

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Arboricultural Impact Assessment	30 September 2021	Bradshaw Consulting
Traffic and Parking Impact Assessment	16/09/2021	pdc Consulting
Accessibility Design Review	5 October 2021	ABE Consulting
BASIX Certificate No. 0005185510	7 December 2021	Tracey Cools

- c) Any plans and / or documentation submitted to satisfy the Conditions of this consent.
- b) The development is to be undertaken generally in accordance with the following:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Landscape Plan - Ground and Lower Ground Floor	Issue D dated 10/09/21	Narelle Sonter Botanica
Landscape Plan - First Floor and Roof Terrace	Issue D dated 10/09/21	Narelle Sonter Botanica

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
1901- DA903 - Waste Management	20.09.2021	Shed

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. **Traffic Management**

Traffic management procedures and systems must be in place and practised during the course of the project to ensure safety and minimise the effect on adjoining pedestrian and vehicular traffic systems. These procedures and systems must be in accordance with AS 1742.3 2009 Manual of Uniform Traffic Control Devices and Council's Development Control Plans.

Note: A plan of traffic management is to be submitted to and approved by the Consent Authority.

Reason: To ensure pedestrian safety and continued efficient network operation.

3. **Staff and Contractor Parking**

The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use the basement parking once available. All necessary facilities are to be provided to accommodate this requirement including lighting in the basement, security cameras, etc.

Reason: To ensure minimum impact of construction activity on local parking amenity.

4. **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, 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.

**5. General Requirements**

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of 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
  - 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 sewered 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.

## FEES / CHARGES / CONTRIBUTIONS

### 6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$49,982.72 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 \$4,998,272.00.

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](http://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.

### 7. 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](http://www.northernbeaches.nsw.gov.au)).

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

8. **Construction, Excavation and Associated Works Security Bond (Road works)**

The applicant is to lodge a bond with Council of \$25,000 as security against any damage or failure to complete the construction of road pavement/shoulder reconstruction works as part of this consent.

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.

9. **Construction, Excavation and Associated Works Security Bond (Crossing / Kerb)**

The applicant is to lodge a Bond of \$75,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required as part of this consent.

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.

10. **Construction, Excavation and Associated Works Bond (Maintenance for civil works)**

The developer/applicant must lodge with Council a maintenance bond of \$10,000 for the construction of the road pavement, kerb and gutter and footpath works associated with the development. The maintenance bond will only be refunded upon completion of the six month maintenance period, if work has been completed in accordance with the approved plans and to the satisfaction of Council. The maintenance bond is to be paid prior to Council issuing practical completion.

Reason: To ensure adequate protection of Council infrastructure.

11. **On Slab Landscape Works**

Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall also be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed:

- i) 300mm for lawn
- ii) 600mm for shrubs
- iii) 1m for small trees

Design certification shall be submitted to the Certifying Authority by a qualified Structural

Engineer that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by Crozier Geotechnical Consultants dated October 2019 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

**13. Preparation of a Tree Removal Protocol**

The Project Ecologist is to prepare a Tree Removal Protocol which includes the provision of (at a minimum):

- i a pre-clearance survey
- i direct supervision of tree removal
- i protocol for rescue of fauna and relocation of log hollow sections onsite to provide fauna habitat

The Tree Removal Protocol must also include procedures for stop work and formal impact assessment in the event that threatened fauna species are found during the pre-clearance survey.

The Tree Removal Protocol is to be submitted to the Certifying Authority prior to issue of Construction Certificate.

Reason: To protect native wildlife.

**14. Pump-Out System Design for Stormwater Disposal**

The design of the pump-out system for stormwater disposal will be permitted for drainage of

hard surfaces areas such as driveways and basement pavement areas only, and must be designed in accordance with AS/NZS 3500. The Applicant is to provide engineering details demonstrating compliance with this requirement and certified by an appropriately qualified and practising Hydraulic Engineer.

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

Reason: To ensure adequate provision is made for the discharge of stormwater from the excavated parts of the site.

**15. 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.

Due to the proximity of the site adjacent to Avalon Public School, truck movements or construction activities affecting vehicle and pedestrian traffic will be restricted between 9:00am-10:00am and 2:45pm-4:00pm School Days. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

Due to the proximity of the site adjacent to Avalon Public School, truck movements or construction activities affecting vehicle and pedestrian traffic on Old Barrenjoey Road, Sanders Lane and Bellevue Avenue (south of Sanders Lane) will be restricted between 9:00am-10:00am and 2:45pm-4:00pm on School Days. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

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
- 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.

#### 16. **Vehicle Access & Parking**

All internal driveways, vehicle turning areas, garages and vehicle parking space/ loading bay dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Off-street Parking standards).

With respect to this, the following revision(s) must be undertaken;

All internal driveways and vehicle access ramps must have ramp grades and transitions complying with AS 2890.1. To ensure the gradient requirements and height clearances are satisfied, a driveway profile must be prepared for all internal ramps showing ramp lengths, grades, surface RL’s and overhead clearances, taken from the crest of the ramp to the base. The driveway profile must be taken along the steepest grade of travel or sections having

significant changes in grades, where scraping or height restrictions could potentially occur and is to demonstrate compliance with AS 2890 for the respective type of vehicle.

Plans prepared by a suitably qualified Engineer shall be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

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

17. **Pedestrian sight distance at property boundary**

A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To maintain pedestrian safety.

18. **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.

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

The Applicant is to provide 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 M+G Consulting Engineers Pty Ltd, drawing numbers 5281 C01 issue 1, C04 Issue 1, C05 Issue 7, C06 Issue 2, C07 Issue 2 and C08 Issue 1, dated 08-09-20, 08-09-20, 23-09-21, 23-09-21, 16-03-21 and 16-03-21 respectively. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

1. The OSD Tank/High Early Discharge Chamber must include access pits for future maintenance.
2. Step irons are to be provided below the access pits noted in (1).

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 disposal and stormwater management arising from development.

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

The Applicant is to submit an Infrastructure Works on Council Roadway with Council for approval under Section 138 of the Roads Act 1993. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of the kerb and gutter, footpath, pram ramps, driveway crossings and road pavement which are to be generally in accordance with the approved Civil Engineering plans and the Council's specification for engineering works - AUS-SPEC #1. The plans shall be prepared by a qualified Civil Engineer. The design must include the following information:

1. 150mm high kerb and gutter for the entire frontage of the site in accordance with Council standard drawing A4/2276/A.
2. Two driveway crossings, one 5.5 metres wide off Sanders Lane and one 4.5 metres wide off Wickham Lane in accordance with Council standard drawing A4/3330/1 N.
3. Two pram ramps at the intersection of Wickham Lane in accordance with Council standard drawing A4/7284.
4. Reconstruction of the northern side of Sanders Lane from the intersection with Wickham Lane to adjust the existing footpath levels to suit Clause 26 of SEPP (HSPD 2004).
5. Reconstruction of the kerb and gutter on the eastern side of Wickham lane to accommodate the required garbage truck turning.

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

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

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

21. **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, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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.

22. **Shoring of Council's Road Reserve (Temporary road anchors)**

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

A Temporary Ground Anchors (Road Reserve) Application is to be submitted with Council for approval under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The form can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/temporary-ground-anchors-road-reserve/4018-temp-ground-anchors-application-jun21.pdf>

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

Owner's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

23. **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 according to these conditions of consent. The Project Ecologist must have one of the following memberships/accreditation

- Practising member of the NSW Ecological Consultants Association OR
- Biodiversity Assessment Method assessor accreditation under the NSW Biodiversity Conservation Act 2016

Evidence of engagement is to be provided to the Certifying Authority prior to issue of the Construction Certificate.

**Reason:** To ensure bushland management.

24. **Deleted**

25. **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](http://www.sydneywater.com.au) for:

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

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

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

## CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

### 26. **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 in accordance with the Arboricultural Impact Assessment. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

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.

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

The Project Arborist shall supervise and approve the works by certification as listed in the Arboricultural Impact Assessment, including:

- i) section 5 - Project Arborist Monitoring Stages,
- ii) section 7.5 - Tree Management Plan, Tree Protection Fencing, Trunk Protection, and Ground Protection,
- iii) section 8 - Appendix G Tree Protection Specifications,
- iv) section 9 - Installation of Drip line irrigation,
- v) all other works as determined 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.

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.

### 27. **Tree Removal Within the Property**

This consent approves the removal of the following tree(s) within the property (as recommended in the Arboricultural Impact Assessment):

- i) tree 30 and tree 34 - Red Bloodwood
- ii) tree 35 - Broad-leafed White Mahogany

Reason: To enable authorised building works.

28. **Tree Hollow Inspection by Ecologist**

All tree hollows proposed for clearing are to be inspected by the Project Ecologist prior to removal. Inspection of tree hollows is to be facilitated by a qualified tree climber or arborist with the use of an elevated work platform where necessary.

The Project Ecologist is to provide written certification of compliance to the Principal Certifying Authority prior to commencement of tree removals.

Reason: To protect native wildlife.

29. **Fauna and Tree Hollow Relocation**

The Project Ecologist is to be present to:

- a) relocate any displaced fauna that may be disturbed during any tree clearance and/or construction works; and
- b) direct the project arborist to salvage any tree hollows within the development area and place them within areas of retained native vegetation on the site.

Reason: To protect native wildlife.

30. **Work Zones 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 and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

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

31. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

32. **Ecologist to Induct Site Manager**

Prior to commencement of construction works, the project ecologist is to meet with the site manager to:

- a) advise of conditions to be implemented for protection of relevant threatened species and endangered ecological communities;
- b) ensure that all workers are appropriately briefed on required protective measures; and
- c) inspect protective measures to confirm their adequacy and advise the proponent and site manager of the inspection results and their implications.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

**33. Public Road Reserve Infrastructure**

- The eastern kerbline in Wickham Lane is to be realigned to facilitate access for Waste Vehicles turning right into Sanders Lane and vehicle access to the Lower Ground Floor Car Park. The minimum road width for Wickham Lane is 4m wide between kerbs. The full width of Wickham Lane is to be 4.5m, from opposite the access driveway to the Lower Ground Floor Car Park to the intersection with Sanders Lane. The change in width is to occur from a location 5m north of the driveway. The section between the new kerb alignment and the property boundary of 15 Old Barrenjoey Road is to be infilled with concrete.

- Rolled kerbs or mountable kerbs are not permitted and only standard barrier kerbs are to be used along the frontage of the development.

- Kerb ramps are required on both sides of Wickham Lane at the intersection with Sanders Lane for pedestrian access across the laneway.

- Upgrades to the northern footpath along Sanders Lane is required to comply with the SEPP accessibility and gradient requirements.

Reason: To ensure vehicle access and pedestrian safety.

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

**34. Protection of Existing Street Trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

As a minimum, the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture.

All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Tree protection.

**35. Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected, including:
- i) all trees and vegetation within the site (identified as trees 23, 25, 26, 33, and 39) not approved for removal,
  - ii) all trees and vegetation located on adjoining properties (identified as trees 37, 42, and 43),
  - iii) all road reserve trees and vegetation (identified as 1, 2, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 21, 24, 27, 28 and 29).
- 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) or vi) 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.
- c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact.

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.

**36. 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 carried out for the purpose of this clause.

Reason: Protection of trees.

**37. 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.

**38. 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.

39. **Ongoing Management**

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

40. **Survey Certificate**

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

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

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

41. **Progress Certification (Infrastructure Works)**

The applicant shall provide written certification by a suitably qualified Civil Engineer upon completion and/or as and when requested by the Roads Authority for the following stages of works:

- (a) Silt and sediment control facilities
- (b) Laying of stormwater pipes and construction of pits
- (c) Proof Roll
- (d) Sub-grade trimmed and compacted \*\*
- (e) Base-course laid and compacted \*\*
- (f) Kerb and gutter construction
- (g) Pavement
- (h) Landscaping and vegetation
- (i) Clean-up of site, and of adjoining Council roadway and drainage system.

(\*\*To be tested by a recognised N.A.T.A. approved laboratory).

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

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

42. **Civil Works Supervision**

The Applicant shall ensure all civil works approved in the Section 138 Roads Act approval are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or

Roads Authority.

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

43. **Footpath and Associated Pavement Construction**

The applicant shall reconstruct the existing footpath and associated pavement on the northern side of Sanders Lane, from the intersection of Wickham Lane to ensure the footpath levels suit the requirements of Clause 26 of SEPP (HSPD 2004). The works shall be in accordance with the following:

(a) All footpath and associated pavement works are to be constructed in accordance with the Section 138 Roads Act approval.

(b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Section 138 Road Act approval.

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

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

44. **Notification of Inspections (infrastructure works to be handed over to Council)**

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

(a) Installation of Silt and Sediment control devices

(b) Prior to backfilling of pipelines

(c) Prior to pouring of stormwater gully pits

(d) Prior to pouring of kerb and gutter

(e) Subgrade level / basecourse level / subbase

(f) Sealing road pavement

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification.

Reason: To ensure new Council infrastructure is constructed in accordance with Auspec 1 Council's design and specification standards.

45. **Vehicle Crossings**

The Applicant is to construct two vehicle crossing 5.5 and 4.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the Section 138 Roads Act application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to kerb, footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

**46. Kerb and Gutter Construction**

The Applicant is to construct kerb and gutter and associated works along the entire frontage of the site in accordance with Northern Beaches Council Drawing No. A4 2276/A. Prior to the pouring of concrete, the works are to be inspected by Council and an approval issued.

The approval is to be submitted to the Principal Certifying Authority.

Reason: To facilitate the preservation of on street parking spaces.

**47. StoneSet Driveway and Path within property**

The StoneSet driveway and path shall be constructed with no fines permeable concrete as the subbase and topped with Terrabond (commercial product name "stone set") comprising of a rock and resin bound material with a high porosity of 60 litres/m<sup>2</sup>/second.

The depth of excavation shall be determined by the Project Arborist to advise of excavation depths near existing trees.

Reason: protection of nearby existing trees.

**48. Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plans, and inclusive of the following conditions:

- i) the proposed *Ceratopetulum gummifera* along the Wickham Lane boundary are to be replaced with a native tree such as *Syzygium leuhmanni* or similar, to ensure adequate screening along the boundary, and the replacement trees shall be capable of attaining at least 6 metres in height at maturity, and in total at least five shall be planted,
- ii) the proposed small tree planting along the northern side boundary of the property shall be planted more than two metres from buildings,
- iii) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- iv) mass planting shall be installed at minimum 1 metre intervals for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch.

Prior to the issue of an Occupation Certificate, details (from 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.

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Governments 5 Million trees initiative

<https://5milliontrees.nsw.gov.au/>

**49. Condition of Retained Vegetation**

Prior to the issue of any Occupation Certificate a report prepared by an Arborist with minimum

AQF Level 5 in arboriculture shall be submitted to the Certifying Authority assessing the health and impact on all existing trees required to be retained including the following information:

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

Reason: Tree protection.

50. **Positive Covenant for the Maintenance Stormwater Pump-out Facilities**

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 positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

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

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard.

51. **Tree Removal Protocol to be Certified as Completed**

The Project Ecologist is to provide written and photographic evidence of implementation and completion of the Tree Removal Protocol to the Principal Certifying Authority prior to issue of Occupation Certificate.

Reason: To protect native wildlife.

52. **Linemarking - Internal**

Linemarking of the pedestrian path is to be provided to improve awareness in the car park.

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

Reason: To minimise conflicts between pedestrians and vehicles in the car park.

53. **Allocation of parking spaces (strata title)**

All carparking spaces are to be assigned to individual units. All residential units must be assigned a minimum of one parking space. Details demonstrating compliance are to be

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

Reason: To ensure parking availability for residents.

54. **Positive Covenant and Restriction as to User for On-site Stormwater Detention System**

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application is to include the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater detention system works. A guide to the process can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/guide-submitting-ldaa-nov19.pdf>

The form for the application can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/4023-legal-documents-authorisation-oct19.pdf>

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the 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 for the on-site stormwater detention system 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 detention system is maintained to an appropriate operational standard and not altered.

55. **Geotechnical Certification Prior to Occupation Certificate**

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

Reason: To ensure geotechnical risk is mitigated appropriately.

56. **Certification of Civil Works and Works as Executed Data on Council Land**

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Section 138 Roads Act approval. Works as Executed data certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data (details overdrawn on a copy of the approved civil plans) for Council Assets' in an approved format shall be submitted to Council for approval prior to the release of any security deposits and

commencement of the maintenance period.

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

57. **Installation of Nest Boxes**

At least two nest boxes designed to suit microbat species are to be appropriately installed in trees not affected by development. Nest box installation is to be certified by an Ecological Consultant / Project Ecologist as being complete and adequate and written evidence provided to the Certifying Authority prior to any Occupation Certificate.

Reason: Wildlife habitat replacement.

58. **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](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.

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

59. **Landscaping adjoining vehicular access**

The applicant must ensure that the planting chosen for any land immediately adjacent to the driveway and adjacent to any driveway intersections must not exceed a height of 1,140mm

Reason: To maintain unobstructed sight distance for motorists.

60. **Sight lines within carparks**

The required sight lines to pedestrians and other vehicles in and around the carpark and entrance(s) are not to be obstructed by landscaping or signage.

Reason: To maintain unobstructed sight distance for motorists.

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

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

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

62. **Landscape maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

For all new residential works with two or more dwellings and mixed use developments, a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

63. **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 organisation must be contacted for advice.

**Reason:** To mitigate potential impacts to native wildlife resulting from construction activity.

64. **Landscape Plan to be Implemented**

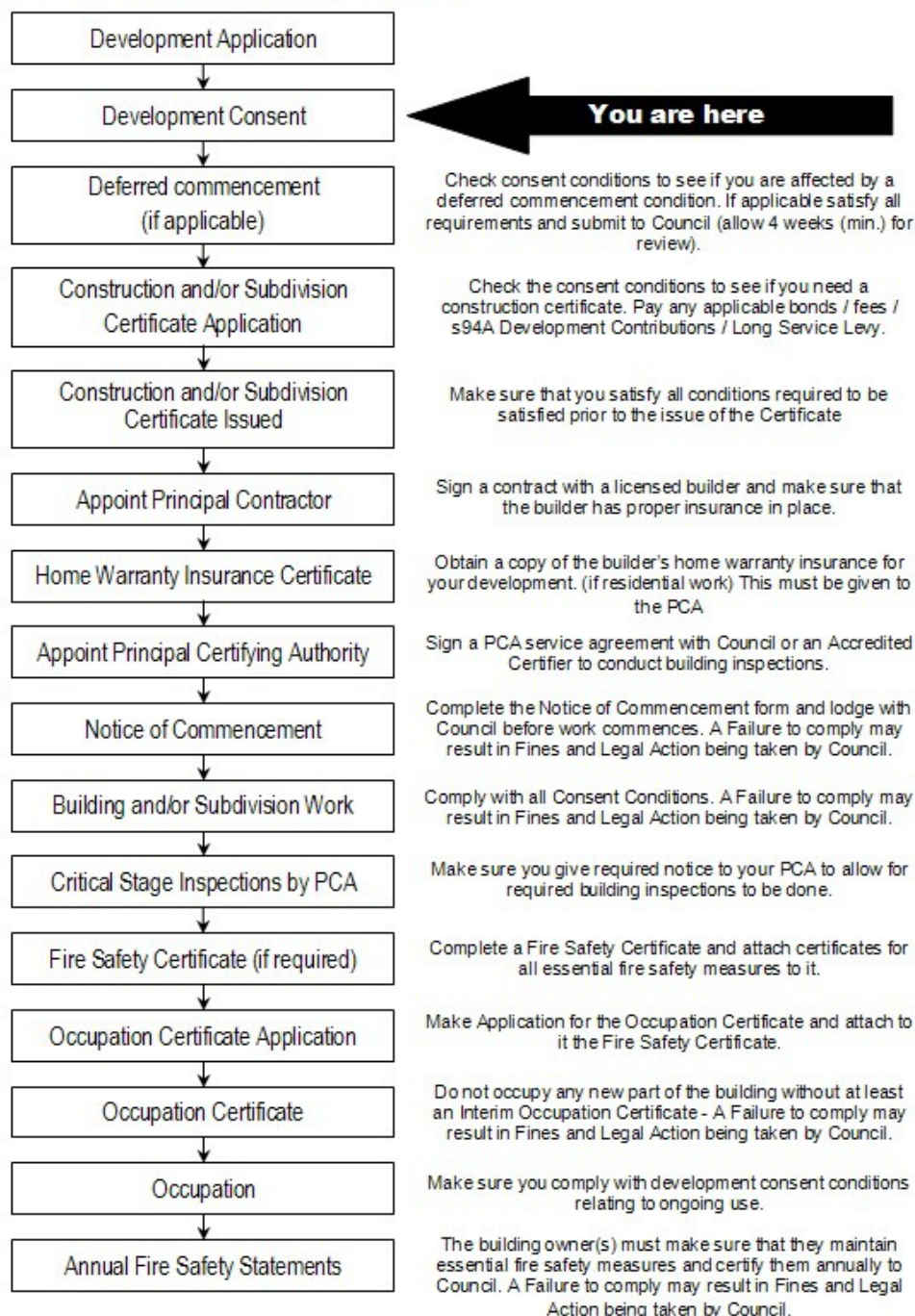
Landscaping is to be implemented in accordance with the certified Landscape Plans which have been amended in accordance with these conditions of consent. Compliance with this condition is to be certified by a qualified landscape architect and written evidence of certification provided to the Certifying Authority prior to issue of any Occupation Certificate. Landscaping is to then be maintained for the life of the development.

**Reason:** To improve compliance with PDCP B4.3 (Flora and Fauna Habitat Enhancement Category 2 Land).

## GENERAL ADVICE

## Advisory Notes (General)

## Where are you in the development process?



**Note:** The advice within this document is provided in good faith as a guide to assist applicants understand the broad process and will not detail every step or every requirement for demolition, building construction works or subdivision required or business operating requirements under New South Wales or Commonwealth Legislation. If you require clarification or have any questions, please contact your Certifier or Council's Planning and Development Enquiries Team.

The attached Notice of Determination includes conditions of consent which must be complied with.

(Note: A failure to gain approval prior to the works being carried out is a serious breach of the Environmental Planning & Assessment Act 1979 which attracts penalties and may also result in legal action.)

### **Building Certification**

The Environmental Planning and Assessment Act 1979 provides that:

- Building work cannot occur unless a construction certificate has been issued;
- Occupation of building works cannot occur unless an occupation certificate has been issued
- Subdivision cannot be registered until a subdivision certificate has been issued
- Mandatory Inspection for building work must be completed

Please refer to process chart for more detail.

(Note: A failure to gain approval prior to the works being carried out is a serious breach of the Environmental Planning & Assessment Act 1979 which attracts penalties and may also result in legal action.)

### **Certification Services**

Construction Certificates / Occupation Certificates / Subdivision Certificates / Strata Certificates, can be issued by Council or an accredited private certifier (Note Council must be the Principal Certifying Authority (PCA) for subdivisions).

Council is well placed to provide Certification Services. Council can issue Construction Certificates and act as your Principle Certifying Authority at competitive rates. Please visit our web site [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au) or speak to our Customer Service Officers if you have any further questions about our Certification Services or if you wish to use Council as your certifier.

### **Charges Associated with the Development Consent**

All bonds, fees, Development Contributions or the Long Service Levy detailed within the Notice of Determination are required to be paid prior to the issuing of any Construction Certificate.

### **Bonds are released after:**

1. 'Final Occupation Certificate' has been received by Council; and
2. Final inspection by a Council Officer where:
  - the development is complete
  - damage has not been caused to council assets during the works
  - conditions of development consent have been met.

The bond will be released to the person or business who paid the bond to Council (The name that appears on the original receipt)

### **Acceptable Form of Security Bonds**

Council will accept bank guarantee (in a form acceptable to Council) in lieu of cash and is required prior to the issue of a construction certificate.

### **Modifications to the consent**

If you seek to make any changes to the development (which may include internal / external configuration of the building, variation to facades, site layout or any changes to the proposed operation or use), the modifications may require the submission and approval of an application to modify the development consent prior to the issuing of a Construction Certificate and prior to the works being

carried out. The proposed changes should be discussed with the PCA.

(Note: A failure to gain approval prior to the works being carried out is a serious breach of the Environmental Planning & Assessment Act 1979 which attracts penalties and may also result in legal action.)

### **Other Matters not detailed within the Notice of Determination**

The Notice of Determination does not stipulate every requirement that must be completed to satisfy New South Wales and Commonwealth legislation.

You should check, as may be relevant, with other authorities including but not limited to:

- Workcover NSW for work safety and asbestos requirements
- Sydney Water – Quick Check Agent for the provision of water and sewer services
- Energy & Gas suppliers for utility services
- Department of Fair Trading for advice about builders and licensing
- Building Professionals Board for advice about private certifiers
- NSW Roads and Maritime Services for works on state roads only
- Human Rights and Equal Opportunity Commission for access issues
- NSW Land and Property Information for Land Title matters
- Australia Post for the positioning and dimensions of mail boxes in new commercial and residential developments;

### **Dial Before You Dig**

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial before you dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

### **Telecommunications Act 1997 (Commonwealth)**

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact :Telstra's Network Integrity Team on Phone Number 1800810443.

(1) if the development is likely to disturb or impact upon telecommunications infrastructure, written confirmation from the service provider that they have agreed to the proposed works must be

submitted

to the Principal Certifying Authority prior to the issue of a Construction Certificate or any works commencing, whichever occurs first; and

(2) The arrangements and costs associated with any adjustment to telecommunications infrastructure shall be borne in full by the applicant/developer.

### **Model**

If you submitted a model with the application it must be collected from the Council offices within fourteen (14) days of the date of this determination. Models not collected will be disposed of by Council.

### **Trade waste agreement**

A Trade Waste Agreement must be obtained from Sydney Water prior to the discharge of trade wastewater to the sewer system. Trade wastewater is defined as 'discharge water containing any substance produced through industrial or commercial activities or operation on the premises'.

### **Waste collection**

Liquid and solid wastes generated on the site must be collected, transported and disposed of in accordance with the requirements of the Protection of the Environment Operations Act 1997. Records must be kept of all waste disposal from the site.

Material to be removed from the site must be source separated on site to maximise recycling, and the material disposed of to an appropriate disposal and recycling facility in accordance with the approved Waste Management Plan.

### **Aboriginal Heritage**

If in undertaking excavation or works and 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 Warringah Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

### **On-Site Sewage Management System**

This approval does not authorise the installation or operation of a new or modification of an existing on-site wastewater management system. An On-Site Sewage Management System must not be installed or operated unless an 'Approval to Install an On Site Sewage Management System' is obtained from Warringah Council.

### **Cost of Works**

The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

### **Relocation of stormwater drainage**

Council is not responsible for the cost of relocating Council's stormwater drainage pipes through the subject property.

### **Tree preservation**

Where tree work has not been approved by this Development Consent the developer is notified that a general Tree Preservation Order applies to all trees in the Northern Beaches Local Government Area. This order prohibits the ringbarking, cutting down, topping, lopping, pruning, transplanting, injuring, or wilful destruction of such trees except without the prior written consent of Council.

### **Storage bins on footpath and roadway**

Approval is required from Council prior to the placement of any storage bin on Council's footpath and/or roadway.

**Protection of Public Places**

- (1) If the work involved in the erection or demolition of a building:
- (a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or
  - (b) building involves the enclosure of a public place,

a hoarding and site fencing must be erected between the work site and the public place.

- (2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- (3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- (4) Any such hoarding, fence or awning is to be removed when the work has been completed.
- (5) No access across public reserves or parks is permitted.

Note: Prior to the erection of any temporary fence or hoarding over property owned or managed by Council, written approval must be obtained.

**Road Opening Permit**

The developer/applicant is to obtain a "Road Opening Permit" from Council and pay all appropriate charges prior to commencement of any work on Council property. The developer/applicant shall be responsible for all public utilities and services in the area of the work, and as such shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

**Special Permits**

Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development are to occur entirely on the property. The applicant, owner or builder must apply for specific permits available from Council. A minimum of forty-eight (48) hours notice is required for all permits except work zones, which may require additional assessment time.

- Permit for on-street mobile plant

Restrictions apply to the hours of operation and the area of operation for on street mobile plant equipment (for example cranes, concrete pumps, cherry pickers). Separate permits are required for each occasion and each piece of equipment. It is the responsibility of the applicant, owner and builder to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

- Hoarding Permit

Permits are required to erect Class A, Class B and Class C hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

- Storage of building materials and building waste containers (skips) on Council's property

Permits to utilise Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice being given.

- Kerbside restrictions, work zones

Existing kerbside restrictions apply. An application must be made to Council for the alteration of existing kerbside restrictions or the provision of a construction zone.

Other permits may include out of construction hours permits.

### **Licensing requirements for removal of bonded asbestos**

Anyone who removes, repairs or disturbs bonded asbestos must hold a bonded or a friable asbestos licence, or a demolition licence in accordance with Workcover requirements and the Occupational Health and Safety Act 2000.

### **Pool Access**

Access to pools are required to be restricted by a child resistant barrier in accordance with the regulations prescribed in all relevant Acts, Regulations and Australian Standards including:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2012;
- (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

It is your responsibility as a land owner to ensure any fencing is maintained.

### **Dewatering**

Where dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Department of Water and Energy. The bore license must be obtained prior to commencement of dewatering works.

### **Requirement to Notify about New Contamination Evidence**

Any new information revealed during works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to Council and the Principal Certifying Authority.

### **Flood Evacuation Plan**

If your site is on flood prone land you may wish to consider the preparation of a flood evacuation plan.

Generally a Flood Evacuation Plan would be prepared by suitably qualified Engineer (e.g. Hydraulic) with a number of years experience in flood management and who is eligible for Membership to the Australian Institute of Engineers.

Some matters that you may wish to consider (but not limited to) include:

- (i) a route of evacuation to higher ground and / or point of shelter
- (ii) depth of water for a Possible Maximum Flood event surrounding the building
- (iii) details of 'last chance' evacuation water levels / times for evacuation prior to floodwaters surrounding the building
- (iv) provide details of flood warning systems and protocols
- (v) details of how this information will be distributed and people educated for users of the site.

You may seek to discuss this with the State Emergency Service of NSW.

### **Utility Service Requirements**

Where development requires the installation of, or the relocation of utility services being (but not limited to) gas, water, electricity and telecommunications, the installation of, or the relocation of utility services shall be conducted in accordance with the requirements of the relevant service provider / authority (unless stipulated by any other condition of the consent or will result in damage to threatened or endangered species defined under the Threatened Species Conservation Act 1995).

**Plant & Equipment Kept Within Site**

All plant and equipment used in the erection of the building, including concrete pumps, wagons, lifts, mobile cranes, etc, shall be situated within the boundaries of the site and so placed that all concrete slurry, water, debris and the like shall be discharged onto the building site, and is to be contained within the site boundaries. This does not prevent any requirement to comply with the Protection of the Environment Operations Act.

**Lighting**

Illumination of the site is to be arranged in accordance with the requirements of Australian Standard 4282 - 1997 Control of the obtrusive effects of outdoor lighting so as not to impact upon the amenity of the occupants of adjoining and nearby residential premises.

**Silt and Sediment Control**

During any onsite demolition, excavation and construction works, the site should be maintained in accordance with "The Blue Book - Managing Urban Stormwater (MUS): Soils and Construction".

In managing the site provision shall be made throughout the period of works to prevent transmission of soil to the public road, drainage system, any riparian lands or off site in any manner. Upon completion of the development, any measures to prevent the transition of soil off site to remain in place until the site is stabilised.

A failure to prevent the transmission of silt and sediment and / or causing, water pollution, air pollution, noise pollution or land pollution may result in a breach of the Protection of the Environment Operations Act and orders, penalties and prosecutions may occur.

**Maintenance of Sediment and Erosion Control** Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain.

Reason: To avoid erosion and sedimentation impacts that will result in an adverse change in watercourse or riparian land condition

**Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: soils and construction (2004).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

**Dividing Fences Act 1991**

The construction and maintenance of side boundary fences is to be agreed upon by all adjoining property owners of the fence. Works are to be in accordance with the Dividing Fences Act 1991.

**OTHER MATTERS**

**Child Care Centres**

A license to operate a child care centre must be obtained from the NSW Department of Community Services prior to the commencement of the use of the child care centre.

**Disability Access**

This decision does not ensure compliance with the Commonwealth Disability Discrimination Act 1992. Applicants are strongly advised to investigate their requirements under that Act

**Food Premises**

Food premises are required to comply with the requirements of the Food Act 2003, the Food Standards Code and Australian Standards.

The proprietor of a food business must notify the NSW Food Authority of the details of the business. Notification may be done either online at [www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au) or by lodging a completed NSW Food Authority notification form to the NSW Food Authority or Council.

**Wheel washing facility**

All trucks leaving the site, having had access to unpaved or contaminated areas, shall depart via a wheel wash facility in order to prevent mud, dust or debris from being deposited on Council's roads. The wheel wash facility shall be constructed prior to any truck movements occurring. Water from the wheel wash facility must not cause pollution. Any direction of Council with regard to cleaning trucks or the clean up of road pavements adjoining the site shall be complied with immediately.

**Monitoring State of Roadways**

The applicant shall monitor the state of roadways leading to and from the site and shall take all necessary steps to clean up any adversely impacted road pavements as directed by Council.

**Storage of Dangerous Goods**

Prior to the storage of any "dangerous goods" on the premises, a copy of a license obtained from the Chemical Safety Branch of Work Cover Authority must be submitted to Council.

**Storage of Flammable and Combustible Liquids**

Flammable and combustible liquids must be stored in accordance with Australian Standard 1940 The Storage and Handling of Flammable and Combustible Liquids.

**Noise and Vibration**

The premises, including operation of vehicles, shall be conducted so as to avoid offensive noise or vibration and cause no interference to adjoining or nearby occupants. Special precautions must be taken to avoid nuisance in neighbouring residential areas, particularly from machinery, vehicles, warning sirens, public address systems and the like.

**Hairdressing/Beauty Treatment/ Skin penetration Requirements**

The premises must comply with the following requirements before the commencement of business:

- i) A hand wash basin with warm water delivered through a common spout must be provided in the treatment area. The hand wash basin must be provided with liquid soap and paper towel.
- ii) The wall behind the hand wash basin from the floor to a height of 450mm above the top of the washbasin and from the centre of the washbasin to a distance of 140mm beyond each side of the wash basin, must be finished with a material that is durable, smooth, impervious to moisture and capable of being easily cleaned (eg tiles).
- iii) The premises must be provided with washing, drainage, ventilation and lighting that are adequate for the carrying out of hairdressing/beauty treatment/skin penetration procedures.
- iv) The floor coverings must be smooth and impervious.

- v) All furniture, shelves and fittings must be constructed of, or covered with a material that is smooth, impervious to moisture and capable of being easily cleaned.
- vi) Adequate lockers must be provided for the storage of employees clothing and personal effects.
- vii) The premises must be provided with facilities that are adequate for the purpose of storing of hairdressing/beauty treatment/skin penetration appliance and utensils.
- viii) The premises must be provided with a sink sullied with hot and cold water for washing equipment.

### **Food Premises Construction Requirements**

The food premises must comply with the following specific construction requirements:

Solid walls must be provided in all food handling areas (solid includes brick, cement and foam filled preformed panels);

- ix) Walls in food preparation and wash up areas must be finished with a smooth and impervious surface to a height of at least 2 metres.
- x) Hand wash basins must be provided with warm water delivered through a common spout with taps that are hands free operation;
- xi) Coving with a radius of 25mm must be provided between all floor and wall joints in food handling areas;
- xii) The open space between the top of the coolroom and the ceiling must be fully enclosed and kept insect and pest proof;
- xiii) The coolroom must be able to be opened from the inside with out a key and fitted with an alarm that can only be operated from within the coolroom;
- xiv) The doors to the toilet air lock and toilet compartment must be tight fitting and self closing;
- xv) The rear external door must be self closing or be provided with a fly screen that is self closing;
- xvi) Where cooking or extensive heating processes or such other processes as may be specified are carried out in food preparation areas, an approved mechanical ventilation system shall be installed and operated in accordance with AS 1668 part 1 & 2.

### **Legionella Control**

Cooling towers, warm water systems, water cooling systems must be registered with the Council. Details of registration are to be provided to the Council prior to operation.

### **Pool/Spa Safety**

Owners of properties with swimming pools and spa's must meet safety compliance and registration requirements. Provisions also apply when renting/selling properties. Details are available from the Division of Local Government.

### **Grease Trap**

Contact Sydney Water to determine what trade waste provisions you are required to provide to your food premises. Should a grease trap be required by Sydney Water, it must be located in an area that is easily accessible for the removal of waste water and must not be installed in any kitchen, food preparation or food stage area. The design and location of the grease trap should also not impede on any commercial right of way or pedestrian access.

### **Bandicoot/Penguin**

Long-nosed Bandicoots & Little Penguins – Best Practices for Residents Residents are encouraged to follow a number of *Best Practices* to assist with the protection and management of the endangered populations of Long-nosed Bandicoots and Little Penguins:

- Long-nosed Bandicoots, Little Penguins and other native animals should never be fed as it may cause them nutritional problems, hardship if supplementary feeding is stopped, and it may increase predation.
- Feral cats or foxes should never be fed or food left out where they can access it, such as rubbish bins without lids or pet food bowls, as these animals present a significant threat to Long-nosed Bandicoots, Little Penguins and other wildlife.
- The use of insecticides, fertilisers, poisons and/or baits should be avoided on the property.

- Garden insects will be kept in low numbers if Long-nosed Bandicoots are present.
- When the North Head Long-nosed Bandicoot Recovery Plan is released it should be implemented where relevant.
  - Dead Long-nosed Bandicoots or Little Penguins should be reported by phoning Manly Council on 9976 1500 or Department of Environment and Conservation on 9960 6266.
  - Please drive carefully as vehicle related injuries and deaths of Long-nosed Bandicoots and Little Penguins have occurred in the area. Care should also be taken at night in the drive way when moving cars as bandicoots will seek shelter beneath vehicles.
  - Cat/s and or dog/s that currently live on the property should be kept indoors at night to avoid disturbance/death of native animals. Ideally, when the current cat/s and/or dog/s that live on the property no longer reside on the property it is recommended that they not be replaced by new dogs or cats.
  - Report all sightings of feral rabbits, feral or stray cats and/or foxes to N B Council.

7.1, 7.2, 7.7, 7.10

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, cl 13, 26-32, 40

State Environmental Planning Policy No 55 – Remediation of Land, cl 7

Cases Cited: (Ku-ring-gai Council v Pathways Property Groups Pty Ltd [2018] NSWLEC 73  
Wehbe v Pittwater Council [2007] NSWLEC 827  
Winter Group Architects P/L v Ku-ring-gai C [2005] NSWLEC 546

Texts Cited: NSW Department of Infrastructure, Planning and Natural Resources, Seniors Living Policy: Urban Design Guideline for Infill Development, (March 2004)  
Pittwater 21 Development Control Plan

Category: Principal judgment

Parties: Stephen Thompson (Applicant)  
Northern Beaches Council (Respondent)

Representation: Counsel:  
J Farrell (Applicant)  
A Gough (Solicitor) (Respondent)

Solicitors:  
Chedid Storey Legal (Applicant)  
Storey and Gough (Respondent)

File Number(s): 2021/108540

Publication Restriction: No

## JUDGMENT

- 1 **COMMISSIONER:** These proceedings are an appeal brought under s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) against Northern Beaches Council's refusal of Development Application No. DA2020/1162.
- 2 The development site is at 27 Bellevue Road Avalon, which is legally described as Lot 33 DP 11462. The proposal before the Court, subsequent to certain

amendments agreed by Northern Beaches Council (Council) under cl 55 (1) of the Environmental Planning and Assessment Regulation 2000, involves site preparation works including certain tree removal and construction of an in-fill seniors living development containing three self-contained housing units with basement parking, along with hard and soft landscape treatment.

- 3 The Court arranged a conciliation conference between the parties under s 34(1) of the *Land and Environment Court Act 1979* (LEC Act), which was held on 7 December 2021, and at which I presided. Following the conference, the parties came to an agreement on the terms of a decision in the proceedings that would be acceptable to the parties.
- 4 This decision involved the Court upholding the appeal and granting development consent to the development application subject to agreed conditions.
- 5 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if the parties' decision is a decision that the Court could have made in the proper exercise of its functions.

### **Jurisdiction**

- 6 The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the development application. The parties outlined jurisdictional matters of relevance in these proceedings, including through provision of an agreed statement of jurisdictional prerequisites (jurisdictional statement) emailed to the Court on 7 December 2021. Below I provide my own findings in regard to relevant points of jurisdiction using the jurisdictional statement as an aid in this regard, as appropriate.

### ***State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004***

- 7 The proposal comprises three "self-contained dwellings" as described at cl 13(1) of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)). The proposal is permissible, under Chapter 3 of SEPP (HSPD) given the site's residential zoning (see [24]).

8 Chapter 3 of SEPP (HSPD) also establishes a number of criteria for self-contained dwellings as proposed with the subject application. The proposal meets the site-related requirements of Part 2 of Chapter 3 in that:

- (1) In relation to access to facilities, I accept the advice of the jurisdictional statement, appropriately cross-referenced via expert reports, and I am satisfied that all of the relevant facilities and services referred to in cl 26 are within 400m of the site and are accessible (with some proposed modifications of the footpath referred to in the plans) by a suitable access pathway.
- (2) Clause 27 provisions are not called up as the site is not bush fire prone land.
- (3) I am satisfied in regard to cl 28 provisions in that the site is already connected to a reticulated water system and has adequate facilities for the removal or disposal of sewage.
- (4) Clause 29 requires a consent authority to “take into consideration” certain issues otherwise associated with site compatibility certificates (referenced at cl 25(5)(b)). The relevant provisions, which draw attention to impact on the existing natural environment and existing land uses, are at subcll 25(5)(b)(i), (iii) and (v). I have taken these factors into consideration, assisted by the written documentation accompanying the application as amended.

9 The design requirements of Part 3 of Chapter 3 of SEPP (HSPD) are met in that:

- (1) I am satisfied that the applicant has taken into account a site analysis prepared by the applicant in accordance with cl 30. This is clear from the statement of environmental effects prepared for the application, most recently filed with the Court on 6 December 2021 (reference folio 339 behind Tab 7 of the applicant’s bundle filed that date).
- (2) In regard to cl 31, I have reviewed and taken into consideration the provisions of the Seniors Living Policy: Urban Design Guideline for Infill Development published by the Department of Infrastructure, Planning and Natural Resources in March 2004. This was facilitated by material supplied in an addendum statement of environmental effects dated 30 September 2021 (part of the bundle filed with the court on 6 December 2021).
- (3) In regard to cl 32, I agree with the position of the parties that the proposal as amended demonstrates adequate regard has been given to the principles set out in Division 2 of SEPP (HSPD), which address: neighbourhood amenity and streetscape, visual and acoustic privacy, solar access and design for climate, stormwater, crime prevention, accessibility and waste management. Again, the addendum statement of environmental effects dated 30 September 2021 was of assistance in that regard.

- 10 I accept the numerical particulars provided in the jurisdictional statement which indicate that the development standards included at Part 4 of Chapter 3 of SEPP (HSPD) are met, with the exception of the provisions at cl 40(4)(c) concerned with the height in storeys of a building located in the rear of the site. There are permissive powers allowing the granting of consent for a development despite the contravention of that particular development standard, which involve certain preconditions, which I give consideration to immediately below.

**Consideration of contravention of development standard**

- 11 Clause 40(4)(c) of SEPP (HSPD) applies in this instance as residential flat buildings are not permitted within the zone upon which the development is proposed. Clause 40(4)(c) essentially provides that:

...a building located in the rear 25% area of the site must not exceed 1 storey in height.

- 12 The proposed development seeks consent for development that would breach the one storey limit within part of the rear 25% of the site.
- 13 The permissive powers at cl 4.6(2) of Pittwater Local Environmental Plan 2014 (PLEP) apply here, even though the contravention is related to SEPP (HSPD) (*Ku-ring-gai Council v Pathways Property Groups Pty Ltd* [2018] NSWLEC 73 [91]).
- 14 To open the gate to the application of these permissive powers, mindful of cl 4.6(3) of PLEP, the Applicant has filed a written request seeking to justify the contravention of the development standard at cl 40(4)(c) of SEPP (HSPD). The written request was prepared by Planning Ingenuity (written request).
- 15 I have considered the written request. I am satisfied that it demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (PLEP cl 4.6(3)(a)). In *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 (*Wehbe*) Preston CJ nominated a series of “ways” that it might be demonstrated that compliance with a development standard would be unreasonable or unnecessary. The written request follows the first *Wehbe* “way”, seeking to demonstrate that in the circumstances of this proposal the objectives of the standard are achieved

notwithstanding the contravention. While there are no specific objectives nominated for the development standard at cl 40(4)(c) of SEPP (HSPD), the written request reasonably turns to a finding of the Court on the interpretation of the objective of this provision (in essence). Commissioner Murrell in *Winter Group Architects P/L v Ku-ring-gai C* [2005] NSWLEC 546 (*Winter Group Architects*) at [10] found that:

“...In terms of the objectives of the standard for the 25% it is clear that the objectives are 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.”

- 16 The written request demonstrates to my satisfaction, through its identification of the relatively small scale of the contravention and the particulars of the rear boundary relationships with neighbours, that the objective nominated at *Winter Group Architects* [10] is achieved with the proposal. That is, that the proposal is not overbearing in terms of its bulk scale, height or in regard to its overshadowing or privacy impacts.
- 17 I am also satisfied that the written request demonstrates that there are sufficient environmental planning grounds to justify the breach of the standard. This is through its demonstration of how the proposed design presentation and landscape treatment would minimise visual bulk, and present more as a single storey building. This explanation is coupled with a drawing out of a picture of the local context which includes existing two storey nearby development (to suggest the proposal would not “jar” in a visual sense). Other planning grounds are also supportive including the fact of the approximately 9m fall across the site and that there are no unreasonable amenity impacts brought about by this contravention.
- 18 For the reasons outlined above, I am satisfied that the Applicant’s written request has adequately addressed the matters required to be demonstrated under cl 4.6(3) of PLEP. It follows that the test of cl 4.6(4)(a)(i) is satisfied.
- 19 I am also satisfied regarding cl 4.6(4)(a)(ii) of PLEP. That is, that the proposed development is in the public interest because it is consistent with: (1) the objectives for development within the applicable R2 zone, and (2) the

objectives of the standard. In regard to the objectives of the standard I adopt the finding above at [16], where I consider the same question in light of the content of the written request. In regard to the objectives of the zone, I note it is the first objective that is particularly relevant here. It is clear that this proposal would play a role in providing for the housing needs of this community within the low density residential environment within which it would be located. I note as well that it is clear that the proposal is not antipathetic to the other two zone objectives.

20 I do not need the concurrence of the Planning Secretary under cl 4.6(4)(b) of PLEP but note that I have considered the matters in cl 4.6(5) in coming to my conclusions in regard to the contravention. I find nothing of significance arises in regard to those matters.

21 The states of satisfaction required by cl 4.6 of the PLEP have been reached and there is therefore power to grant development consent to the proposed development notwithstanding the breach of 40(4)(c) of SEPP (HSPD), relating to the building height at the rear.

*State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55)*

22 I accept the position of the parties that cl 7(1) of SEPP 55 is the provision of pertinence. I have considered whether the land is contaminated and accept the advice on the history of residential use of the site, and see the requirements of cl 7(1) have been satisfied.

*State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*

23 The required Certificate has been provided demonstrating compliance with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 and proposed consent conditions require compliance with this Certificate.

*Pittwater Local Environmental Plan 2014*

24 In regard to PLEP, I note the following matters of jurisdictional relevance:

- (1) The site is located within the R2 Low Density Residential zone. I have had regard to the zone objectives mindful of cl 2.3(2).
- (2) In regard to cl 7.1, and acid sulfate soils, I note that the site is identified as being within an acid sulfate soils Class 4 and 5 area. I accept the

advice of the parties that development Consent is not required under cl 7.1 as the circumstances identified in subclause (2) are not triggered.

- (3) The provisions of cl 7.2 and earthworks, are triggered in this instance, especially given the basement parking. I have considered the matters listed at subclause (3), and the summary response and accept the agreed advice of the parties that appropriate responses are accommodated with the proposal and the various consent conditions.
- (4) The provisions of cl 7.7, are triggered in this instance, as the site is identified as "Geotechnical Hazard H2" on PLEP's Geotechnical Hazard Map. I have considered the matters listed in subclause (2) and accept the advice of the parties that I can be satisfied in regard to the matters at subclause (4). Here I note in particular that proposed Condition 12 requires certain recommendations of the Geotechnical Report prepared by Crozier Geotechnical Consultants dated October 2019 be incorporated into the construction plans, aimed at ensuring geotechnical risk is mitigated appropriately.
- (5) In regard to cl 7.10, I accept the advice of the parties that services essential for the development (including water, electricity, sewer, stormwater infrastructure and driveway access) are available to the property.

#### *Other matters*

25 While I have had regard to the evaluation provisions at cl 4.15 of the EPA Act, generally, I note the following further matters in particular:

- (1) Mindful of s 4.15(1)(a)(iii) of the EPA Act, the jurisdictional statement has drawn my attention to relevant provisions of Pittwater 21 Development Control Plan which applies in this instance.
- (2) Mindful of s 4.15(1)(d) of the EPA Act, the parties have taken me to the public submissions made in regard to the development proposal. That is, both those made after notification of the original proposal and those made following notification of the amended proposal which addressed a number of these submissions. I am satisfied that the requirement to give consideration to submissions has been met.

#### **Conclusion**

26 Based on the material outlined above, I am satisfied that the parties' decision is one that the Court could have made in the proper exercise of its functions, as required by s 34(3) of the LEC Act. In turn I am required to dispose of the proceedings in accordance with the parties' decision. I note that I have had no direct regard to the merits of the application in coming to this position.

27 In respect of the amendments to the application as originally filed, I would formally note:

- (1) Council, as the relevant consent authority for the purposes of cl 55(1) of the Environmental Planning and Assessment Regulation 2000 (NSW), has agreed to the Applicant amending the development application no. DA2020/1162 (amended DA);
- (2) The amended DA has been uploaded to the NSW Planning Portal on 7 December 2021 and 9 December 2021; and
- (3) The Applicant has subsequently filed the amended DA with the Court on 9 December 2021.

28 The Court orders:

- (1) The request pursuant to clause 4.6 of the Pittwater Local Environmental Plan 2014 to vary the development standard in clause 40(4)(c) in State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 is upheld.
- (2) The Appeal is upheld.
- (3) Development Application DA2020/1162 for the construction of a seniors housing development to accommodate three (3) self-contained dwellings, including associated basement level car parking, landscaping and associated works on land legally described as Lot 33 in DP11462 known as 27 Bellevue Road, Avalon is approved subject to the conditions set out in Annexure "A".

.....

**P Walsh**

**Commissioner of the Court**

**Annexure A (702451, pdf)**

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