



Land and Environment Court New South Wales

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

Medium Neutral Citation: [2024] NSWLEC 1081

Hearing Date(s): Conciliation conference on 1 February 2024

Date of Orders: 28 February 2024

Date of Decision: 28 February 2024

Jurisdiction: Class 1

Before: Washington AC

Decision: The Court orders:
(1) The Applicant is to pay the Respondent's costs thrown away pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979* in the agreed sum of \$1,000 within 28 days of these orders.
(2) The appeal is upheld.
(3) Development Application DA-2023/0607 for Torrens Title subdivision of two lots into three, demolition of existing structures and construction of a new dwelling on each resultant lot at 173-175 Whale Beach Road, Whale Beach, is determined by the grant of consent subject to conditions contained in Annexure 'A'.

Catchwords: DEVELOPMENT APPLICATION – conciliation conference – Torrens title subdivision and construction of 3 dwellings – agreement between the parties – orders

Legislation Cited: *Environmental Planning and Assessment Act 1979*, ss 4.16, 8.7, 8.15
Land and Environment Court Act 1979, s 34

Environmental Planning and Assessment Regulation 2021, s 38
Pittwater Local Environmental Plan 2014, cl 4.1, 4.3, 4.6, 7.1, 7.2, 7.5, 7.6, 7.7, 7.8

State Environmental Planning Policy (Biodiversity and Conservation) 2021, Ch 2
State Environmental Planning Policy (Building Sustainability Index) (BASIX) 2004
State Environmental Planning Policy (Resilience and Hazards) 2021, ss 2.10, 2.11, 2.12, 2.13, 4.6

Category: Principal judgment

Parties: Peter Heyworth (Applicant)
Northern Beaches Council (Respondent)

Representation: Counsel:
M Sonter (Solicitor) (Applicant)
M Domingo (Solicitor) (Respondent)

Solicitors:
Mills Oakley (Applicant)
Northern Beaches Council (Respondent)

File Number(s): 2023/219825

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** These Class 1 proceedings arise as the result of the deemed refusal, by Northern Beaches Council, of development application DA2023/0607 which seeks approval for: the subdivision of land involving two lots into three Torrens Title lots; the construction of three new residential dwellings with garages and a swimming pool, landscaping works and ancillary site works at 173-175 Whale Beach Road, Whale Beach, Lots 21 and 22 DP 10782.

- 2 These proceedings have been brought to the Court pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act).

- 3 The Court arranged a conciliation conference under s 34(1) of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 1 February 2024. I presided over the conciliation conference, after which the parties reached agreement as to the acceptable terms of a decision in the proceedings. This decision involved the Court upholding the appeal and granting development consent to the development application, subject to conditions.

- 4 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if that decision is one that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the development application, however, there are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties identified the jurisdictional prerequisites of relevance in these proceedings and explained how they have been satisfied. From this I note the following points.

- 5 In the course of the conciliation, the development application has been amended in response to the contentions raised by the Respondent. Principally, these amendments result in:

- (1) Removal of the northern access stairs from the street frontage of dwellings A-C;
 - (2) A reduction in the overall height of dwellings B and C through alterations to the internal stairways of levels 2 and 3;
 - (3) A deduction of the bulk of the second and third floor; and
 - (4) Refinement of the form of the garage as viewed from the street.
- 6 The development application has been made with the written consent of the owner of the subject site.
- 7 The development application was appropriately notified from 29 May to 16 June 2023, during which time 8 submissions were received. The parties submit, and I accept, that the relevant matters raised in these submissions have been adequately taken into consideration.
- 8 Pursuant to the Pittwater Local Environmental Plan 2014 (PLEP), the subject site is zoned C4 Environmental Living, within which development for the purpose of dwelling houses is permitted with consent. The proposed development is consistent with the objectives of this zone.
- 9 Pursuant to PLEP cl 4.1, the site is identified as having a minimum lot size of 700m². All three proposed lots are greater than 700m².
- 10 PLEP cl 4.3 establishes a maximum building height control of 8.5m, however, subcl 4.3(2D) provides:

“(2D) ... development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if—

- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and
- (b) the objectives of this clause are achieved, and

- (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and
 - (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.”
- 11 The parties submit and I accept that the proposed development meets each of the matters in subcl 4.3(2D) and accordingly, the 10m height control applies to the site.
- 12 The proposed dwellings reach the following heights:
 - (1) Dwelling A: 10.39m
 - (2) Dwelling B: 10.15m
 - (3) Dwelling C: 11.16m
- 13 As all dwellings breach the 10m height control, cl 4.6(3) of the PLEP requires a written request to justify the contravention of the height of building development standard. This written request must demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard. To that end, the Applicant has submitted a written request prepared by Northern Beaches Planning dated January 2024 (the written request). Pursuant to PLEP cl 4.6, I am satisfied that:
 - (1) The written request demonstrates that compliance with the height of buildings development standard is unreasonable and unnecessary because the proposal complies with the relevant objectives of both the C4 Environmental Living Zone and the Height of Buildings development standard, notwithstanding the non-compliance with the standard. Further, the non-compliance does not result in any adverse impacts on the amenity of adjoining properties.

- (2) The written request establishes sufficient environmental planning grounds to justify contravening the development standard by demonstrating that the breach of the Height of Buildings standard:
- (a) is the result of distortions to the natural ground plane due to historical excavation;
 - (b) occurs at the garage and entrance ways, and results from compliance with the Council's prescribed driveway profiles; and
 - (c) occurs as a redistribution of building bulk to the roof area, which results in a separation between dwellings and maximises view corridors from the road to the coastline.

The contravention is therefore justified by the improved impact on the amenity the proposed dwellings, the meeting of Council's driveway access requirements, the lack of adverse impact on neighbouring residents, and by being minor in nature.

- (3) The written request further demonstrates that the proposal is in the public interest as it is consistent with the relevant objectives of both the zone and the development standard.
- 14 The site is not mapped as having a maximum FSR control. Further, it does not contain any heritage items and is not within a heritage conservation area.
- 15 Pursuant to PLEP cl 7.1, the site is mapped as containing Class 5 Acid Sulfate Soils. However, the parties submit, and I accept that the nearest land that is identified as Class 1-4 is over 300m away from the subject site, and no excavation is proposed below 5m Australian Height Datum. Accordingly, an Acid Sulfate Soils Management Plan is not required.
- 16 Earthworks are proposed in this application, and in support of this, a Geotechnical Investigation Report prepared by White Geotechnical Group, and a Waste Management Plan prepared by the applicant as part of the Class 1

application, have been filed. The parties submit and I accept that the matters identified in PLEP cl 7.2(3) have been duly considered and adequately addressed in the application that is now before the Court and that therefore the requirements of PLEP cl 7.2 are met.

- 17 The subject site fronts the ocean coastline and is identified as being within the “Bluff/Cliff instability” area on the Coastal Risk Planning Map. Based on the parties’ submissions and the information contained in the Coastal Engineering Advice prepared by Horton Coastal Engineering (the Coastal Engineering Report), I am satisfied that the requirements listed in PLEP cl 7.5 are met with the proposed development.
- 18 Pursuant to PLEP cl 7.6, the site is mapped as being within a “Biodiversity” area. The typology and species of existing vegetation is assessed in the Arboricultural Impact Assessment Report by Urban Arbor dated 1 May 2023, and the parties submit that the proposed vegetation removal and replacement planting as shown on the landscape plans by Fiona Cole Design dated 1 May 2023 is consistent with the biodiversity planning objectives and that the matters identified in subcl 7.6(3) have been adequately considered. From this, I am satisfied that the development is designed, sited and will be managed to avoid any significant adverse environmental impact as per subcl 7.6(4)(a).
- 19 PLEP cl 7.7 aims to ensure that development on land susceptible to geotechnical hazards matches the underlying geotechnical conditions of the land, is restricted on unsuitable land, and does not endanger life or property. The parties submit that the matters listed in subcl 7.7(3) have been considered in the assessment of this development application. Based on their submission and the information contained in the stormwater plans by Torinex Consulting Engineers dated 24 June 2024, the Coastal Engineering Report and Geotechnical Report by White Geotechnical Group, dated 2 February 2024, I am satisfied that the requirements of PLEP subcl 7.7(4) are met.
- 20 The site is traversed by the foreshore building line which, pursuant to PLEP cl 7.8, limits development within the foreshore area. Based on the parties’

submissions and the amended architectural plans I am satisfied that all works are outside of the restricted foreshore area, with the exception of the swimming pool, waterway access stairs and walking trails which, pursuant to subcl 7.8(2)(b), are permitted within this area.

- 21 The site is mapped as “Coastal environment Area” and “Coastal Use Area” under the State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP Resilience and Hazards). Based on the parties’ submission and the Coastal Engineering Report, I accept that the proposed development is not likely to cause an adverse impact on the matters identified in ss 2.10 and 2.11 of the SEPP Resilience and Hazards. Further, pursuant to ss 2.12 and 2.13, based on the parties’ submissions, the Coastal Engineering Report and the Geotechnical Report, I am satisfied that no geotechnical hazards will be created by the proposed development, and also that no certified coastal management program applies to the subject site.

- 22 Section 4.6 of SEPP Resilience and Hazards requires the consent authority to consider whether the land is contaminated. Based on the information contained within the Statement of Environmental Effects (SEE) and the parties’ submission, I accept that the site has been historically used for residential purposes and there are no known actions that may have led to contamination of the subject site. Subsequently, I am satisfied that there is no evidence of contamination or potentially contaminated activities and that, pursuant to the requirements of s 4.6, the site is suitable for its intended purpose.

- 23 Chapter 2 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 applies to the proposed development as it seeks the removal of 10 trees on the site. From the parties’ submission and the Arboricultural Impact Assessment Report, I accept that the proposed development will, with the application of the relevant conditions of consent, be consistent with the requirements of Ch 2 of this SEPP.

- 24 A BASIX certificate has been filed with the amended application in accordance with State Environmental Planning Policy (Building Sustainability Index) (BASIX) 2004.
- 25 For these reasons, 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.
- 26 As the parties' decision is one that the Court could have made in the proper exercise of its functions, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.
- 27 The Court notes:

- (1) Northern Beaches Council, as the relevant consent authority, has agreed, under s 38(1) of the Environmental Planning and Assessment Regulation 2021, to the Applicant amending Development Application DA2023/0607 in accordance with the documents listed below (Amended Application):

No.	Document	Date
1.	Schedule of Amendments prepared by Bureau SRH Architecture	31 January 2024
2.	Amended Architectural Plans prepared by Bureau SRH Architecture	7 February 2024
3.	Amended Landscape Plan prepared by Fiona Cole Design	February 2024
4.	Amended Stormwater Plans prepared by Torinex Consulting	7 February 2024
5.	Updated Clause 4.6 (Building Height) Request prepared by Northern Beaches	January 2024
6.	Updated Geotechnical Report prepared by White Geotechnical Group	2 February 2024
7.	Updated Coastal Engineering Report prepared by Horton Coastal Engineering	2 February 2024
8.	Stormwater Conduit Survey and Supplementary Letter (171A Whale Beach Rd) prepared by Stuchbury James	6 February 2024

9.	Updated BASIX Certificates prepared by Outsource Ideas <ul style="list-style-type: none"> • Dwelling A (Certificate No. 1385800S_02) • Dwelling B (Certificate No. 1385802S_02) • Dwelling C (Certificate No. 1385804S_02) 	5 February 2023
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- (2) The Amended Application was filed with the Court on 21 February 2024.
- (3) The Court notes the Respondent's reasons for agreement to the terms of the decision are set out in Annexure 'B'.

28 The Court orders:

- (1) The Applicant is to pay the Respondent's costs thrown away pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979* in the agreed sum of \$1,000 within 28 days of these orders.
- (2) The appeal is upheld.
- (3) Development Application DA-2023/0607 for Torrens Title subdivision of two lots into three, demolition of existing structures and construction of a new dwelling on each resultant lot at 173-175 Whale Beach Road, Whale Beach, is determined by the grant of consent subject to conditions contained in Annexure 'A'.

I certify that this and the preceding 7 pages are a true copy of my reasons for judgment.



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E Washington

Acting Commissioner of the Court

Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: DA2023/0607

Development: Demolition of existing structures, Torrens title subdivision of two lots into three, removal of trees and construction of three dwelling houses with swimming pools.

Site: No. 173 Whale Beach Road, Whale Beach & No. 175 Whale Beach Road, Whale Beach.

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

Date of determination: 28 February 2024

Date from which consent takes effect: Date of determination.

TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the “applicant” means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the “site”, means the land known as 173 Whale Beach Road, Whale Beach and No. 175 Whale Beach Road, Whale Beach.

The conditions of consent are as follows:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
Architectural Plans				
DA002	B	Demolition Plan	SRH Architecture Pty Ltd	31 January 2024
DA003	B	Subdivision Plan	SRH Architecture Pty Ltd	31 January 2024
DA100	F	Third Floor (Street Level) Plan	SRH Architecture Pty Ltd	7 February 2024
DA101	F	Second Floor Plan	SRH Architecture Pty Ltd	7 February 2024
DA102	F	First Floor Plan	SRH Architecture Pty Ltd	7 February 2024
DA103	F	Ground Floor Plan	SRH Architecture Pty Ltd	7 February 2024
DA104	F	Roof Plan	SRH Architecture Pty Ltd	7 February 2024
DA200	F	North & South Elevations	SRH Architecture Pty Ltd	7 February 2024
DA201	E	Dwelling - A East & West Elevations	SRH Architecture Pty Ltd	7 February 2024
DA202	E	Dwelling - B East & West Elevations	SRH Architecture Pty Ltd	7 February 2024
DA203	E	Dwelling - C East & West Elevations	SRH Architecture Pty Ltd	7 February 2024
DA300	B	Cross - Sections	SRH Architecture Pty Ltd	7 February 2024
DA301	A	Long Sections Through Dwellings A & B	SRH Architecture Pty Ltd	28 November 2023
DA302	A	Long Sections Through Dwelling - C	SRH Architecture Pty Ltd	28 November 2023
DA515	A	Schedule of Materials and Finishes	SRH Architecture Pty Ltd	17 May 2023
Landscape Plans				
LPO1	-	Landscape Plan	Fiona Cole Design	1 May 2023
Stormwater Plans				
000	2	Cover Sheet	Torrinex Consulting Engineers	18 April 2023

101	4	Ground Floor	Torrinex Consulting Engineers	7 February 2024
102	3	First Floor	Torrinex Consulting Engineers	7 February 2024
103	3	Second Floor	Torrinex Consulting Engineers	7 February 2024
104	3	Third Floor	Torrinex Consulting Engineers	7 February 2024
105	4	Roof Floor	Torrinex Consulting Engineers	7 February 2024
201	4	Erosion and Sedimentation Control Plan	Torrinex Consulting Engineers	7 February 2024
202	1	Erosion and Sedimentation Control Details	Torrinex Consulting Engineers	18 April 2023
301	1	Typical Details	Torrinex Consulting Engineers	18 April 2023
302	2	OSD Details	Torrinex Consulting Engineers	18 April 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate (Dwelling A) No. 1385800S_02	-	Outsource Ideas	5 February 2024
BASIX Certificate (Dwelling B) No. 1385802S_02	-	Outsource Ideas	5 February 2024
BASIX Certificate (Dwelling C) No. 1385804S_02	-	Outsource Ideas	5 February 2024
Arboricultural Impact Assessment Report	1	Urban Arbor Pty Ltd	1 May 2023
Coastal Engineering Advice on 173-175 Whale Beach Road Whale Beach	-	Horton Coastal Engineering	2 February 2024
Geotechnical Investigation (Ref. J4663A)	-	White Geotechnical Group	2 February 2024
Traffic and Parking Assessment Report (Ref. 22506)	-	Varga Traffic Planning Pty Ltd	17 April 2023
Waste Management Plan	-	N/A	N/A

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

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

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

2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	1 June 2023

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

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

3. Prescribed Conditions

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

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work

must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

commence.

- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the following is required:
 - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% 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.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
 - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or 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.

5. No Approval for Secondary Dwelling

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house on Lot A, Lot B or Lot C for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

Reason: To ensure compliance with the terms of this consent.

FEES / CHARGES / CONTRIBUTIONS**6. Policy Controls****Northern Beaches Section 7.12 Contributions Plan 2022**

A monetary contribution of \$69,349.65 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$6,934,965.00.

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

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

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

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

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 Certifier prior to the issue of the Construction Certificate.

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**8. Project Arborist**

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

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

i) all works in the tree protection zone of tree 10.

b) All tree protection measures specified must:

i) be in place before work commences on the site, and

ii) be maintained in good condition during the construction period, and

iii) remain in place for the duration of the construction works.

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

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

Reason: Tree Protection.

9. Tree Removal Within the Property

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

a) Tree 5 - *Ficus rubiginosa*, trees 6, 7, 8, 9, and G1 - *Casuarina glauca*,

b) A qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

10. Tree Removal Within the Road Reserve

This consent approves the removal of existing trees within the road reserve as identified in the Arboricultural Impact Assessment, or as listed below:

a) Tree 1 - *Eucalyptus botryoides*, tree 2 - *Pittosporum undulatum*, trees 3 and 4 - *Ficus rubiginosa*,

b) A qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services business unit prior to removal.

Reason: Public liability.

11. 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.

12. 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 receiving waters from the effects of sedimentation and erosion from the site.

13. Pre-Construction Dilapidation Report Pre-Construction Dilapidation Report

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

Property: 177 Whale Beach Road

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

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

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

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

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

DURING BUILDING WORK**14. Protection of Rock and Sites of Significance**

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

15. Tree and Vegetation Protection

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

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

b) Tree protection shall be undertaken as follows:

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

xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

16. **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/Project Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

- a) a general decline in health and vigour,
- b) damaged, crushed or dying roots due to poor pruning techniques,
- c) more than 10% loss or dieback of roots, branches and foliage,
- d) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- e) yellowing of foliage or a thinning of the canopy untypical of its species,
- f) an increase in the amount of deadwood not associated with normal growth,
- g) an increase in kino or gum exudation,
- h) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- i) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist/Project 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.

17. **Wildlife Protection**

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

Reason: To protect native wildlife.

18. **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.

19. No Access Through Land Owned or Managed by Council

Site access is not approved for delivery of materials nor construction of the development through adjacent land owned or managed by Council, without the written approval of Council.

Reason: Public safety, landscape amenity and tree protection.

20. Storage of Materials on Land Owned or Managed by Council Prohibited

The dumping or storage of building materials, spoil, vegetation, green waste or any other material in land owned or managed by Council is prohibited.

Reason: Public safety and environmental protection.

21. Protection of Council's Public Assets

Any damage to Council's public assets shall be made good by the applicant, and/or the contractor, to the satisfaction of Council.

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

Existing trees shall be protected in accordance with AS4970-2009 Protection of Trees on Development Sites, with particular reference to Section 4, with no ground intrusion into the tree protection zone and no trunk, branch nor canopy disturbance.

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

22. Removing, Handling and Disposing of Asbestos

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

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

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

23. Demolition Works - Asbestos

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

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

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

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

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

24. Survey Certificate

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

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

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

25. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

26. Property Boundary Levels

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

Details demonstrating compliance are to be submitted to the Principal Certifier.

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

27. Pollution Control

All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste/debris is to be removed off site and disposed of as frequently as required in accordance with applicable regulations.

Reason: To protect the surrounding environment and ensure that pollutants and building associated waste do not enter receiving waters.

28. Geotechnical Issues

All conditions outlined in the Geotechnical Investigation Report prepared by White Geotechnical Group dated 2 February 2024 are to be complied with and adhered to throughout development and as recommended for the life of the development.

Reason: To ensure excavation, foundations and retaining structures are undertaken in an appropriate manner and are structurally sound.

29. Aboriginal Heritage

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

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

Reason: Aboriginal Heritage Protection.

30. Implementation of Construction Traffic Management Plan (CTMP)

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 TfNSW 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

BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

31. Subdivision Certificate

The Subdivision Certificate shall not be issued by Council until all conditions that relate to the subdivision component of the development have been satisfied.

Reason: To ensure the orderly development of land.

32. Provision of Services for Subdivision

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision.

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

Reason: To ensure that utility services have been provided to the newly created lots.

33. Sydney Water Compliance Certification

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

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

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

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

34. Subdivision Certificate Application

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

35. Title Encumbrances

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

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

Reason: To ensure proper management of land.

36. Notification of Approved Plans in Contract of Sale

In the event that any of the resultant Lots A, B or C are sold, copies of the approved plans and conditions subject of this development consent are to be made available to prospective purchasers – at the time the contract of sale is exchanged.

Reason: To ensure an acceptable environmental and built form outcome

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**37. Construction Certificate**

No Construction Certificate(s) shall be issued for any of the building works on Lot A, Lot B or Lot C, until the subdivision plan has been registered with the NSW Land Registry Services and a copy of the registered plan shall be provided to the Certifier.

Reason: To ensure the orderly development of land.

38. Amended Landscape Plan

An amended Landscape Plan shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:

- a) The *Livistona australis* proposed in the side setbacks shall be reduced in number by half,
- b) The five street trees (1 x *Bismarckia nobilis*, 2 x *Banksia integrifolia*, 1 x *Livistona australis* and 1 x *Tristaniopsis laurina* 'Luscious') shall be substituted with 5 x *Melaleuca linariifolia*.

The Landscape Plan is to be amended by a qualified landscape architect.

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

Reason: Landscape amenity and to maintain/replace habitat on site.

39. No Clearing of Vegetation

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

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

Reason: To protect native vegetation.

40. Stormwater Disposal

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or

Professionals Australia (RPENG) , indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the nearest water body through a Silt Arrestor Pit and Energy Dissipater.

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

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

41. 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 White Geotechnical Group dated 2 February 2024 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

42. Off Street Parking Design

The Applicant shall submit a design for the parking facility in accordance with the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-streetcar parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

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

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

The application is to include four (4) copies of Civil Engineering plans for the design of vehicular crossing, access stairs and any retaining walls in the road reserve, which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

1. A vehicular crossing 5.9 metres wide should be constructed in accordance with Council's standard drawing NL for each dwelling.
2. Structural details for the suspended driveway, pathway and stairs for each dwelling. The first 1.8m of the driveway crossing to be similar to existing ground levels without a barrier kerb to maintain pedestrian access along the road reserve.

3. The suspended driveway be designed such that there is no load imposed on the existing batter supporting the road.
4. Structural details for any retaining walls supporting the driveway.
5. Safety barriers and sight distances are to be in accordance with AS/NZS 2890.1:2004.
6. The application is to include a geotechnical report that is prepared by an appropriately qualified Geotechnical Engineer to assess the impact of the proposed suspended driveway., pathway and stairs on the existing batter supporting the road reserve.
7. Structural details for the reconstruction of the pedestrian access stairs. A 1.5m wide landing shall be provided at road level between the stairs and the kerb.
8. Cross sections at the boundary and along the road reserve for the driveway and stairs shall be provided.
9. Structural Engineer's certification of the design of all retaining walls, access stair, suspended Driveway, suspended pathway and safety barriers.
10. Reinstatement of all redundant vehicular crossing to kerb and gutter and footpath.

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.

44. **Utilities Services**

Prior to the commencement of demolition works, written evidence of the following service provider requirements must be provided to the Principal Certifier:

- a) A letter from Ausgrid demonstrating that satisfactory arrangements can be made for the installation and supply of electricity,
- b) A response from Sydney Water as to whether the proposed works subject to this consent would affect any Sydney Water infrastructure, and whether further requirements need to be met, and
- c) Other relevant utilities or services - that the development as proposed to be carried out is satisfactory to those other service providers, or if it is not, the changes that are required to make the development satisfactory to them.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of demolition works.

Reason: To ensure relevant utility and service providers' requirements are provided to the Principal Certifier.

45. **Stormwater Management**

Stormwater shall be disposed of in accordance with Council's Policy. A stormwater management plan is to be implemented to ensure that there is no increase in stormwater pollutant loads arising from the approved development. Water quality is not to be reduced from pre-development conditions and water quantity is not to be increased from pre-development levels.

Details demonstrating compliance are to be prepared by a registered professional stormwater engineer with chartered professional status (CP Eng) and who has an appropriate level of professional indemnity insurance and must be submitted to the Certifier for approval prior to issue of the Construction Certificate.

Reason: To ensure that the generation of additional stormwater discharge from the site, due to increases in impervious surfaces, does not adversely impact geotechnical stability or receiving waters.

46. Erosion and Sediment Control Plan

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

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls;
- North point and scale.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

47. Coastal Bluff Engineering Assessment Implementation

The advice and recommendations contained in the approved Coastal Engineering Assessment report prepared by Horton Coastal Engineering, dated 2 February 2024, must be addressed as necessary through the Geotechnical Investigation Report prepared in support of the development application and must be incorporated as required into construction plans and structural specifications for the development.

Reason: To ensure potential coastal hazards associated with development on a Coastal Bluff are minimised.

48. Coastal Bluff Design Requirements

All development or activities must be designed and constructed such that they will not increase the level of risk from coastal processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect coastal processes; they will not be adversely affected by coastal processes.

Reason: To ensure potential coastal hazards associated with development on a Coastal Bluff are minimised.

49. Compliance with standards (Demolition):

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

Details demonstrating compliance with the relevant Australian Standard are to be submitted to Council prior to the commencement of demolition works.

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

50. Compliance with Standards

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

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

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

51. External Finishes to Roof

The external finish to the roof of the dwelling house on Lot A, Lot B and Lot C shall have a Solar Absorptance (SA) greater than 0.46 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a metallic steel or reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

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

52. Sydney Water "Tap In"

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

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

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

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

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

53. Construction Traffic Management Plan (CTMP)

A Construction Traffic Management Plan (CTMP) and report shall be prepared by a Transport for NSW accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase.
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
- Make provision for all construction materials to be stored on site, at all times.
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- Where access is required across private property not in the direct ownership of the proponent, such as a private road/driveway, community title road or right of way, the CTMP is to include:
 - Evidence of the legal right and terms to use the access route or provide owners consent from the owners/strata/community association.
 - Demonstrate that direct access from a public space/road is not viable for each stage of works.
 - An assessment to be carried out of the physical constraints of the Right of Carriageway to determine the maximum size of vehicle that may access the site via the Right of Carriageway during construction.
 - Unless owner/strata/community associations consent is obtained, vehicles are not to exceed 24 tonnes or 7.5 metres in length (an assessment must be undertaken that the surface is capable of supporting up to 24 tonnes, otherwise the weight limit should be reduced in the CTMP). If consent is obtained, a copy must be included in the CTMP.
 - No construction vehicles, materials or plant are to be located or parked in the private road/driveway, community title road or right of way.
 - How any disruption to other users of the private road/driveway, community title road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.
 - If trees are located within or overhang the access route, a tree protection plan prepared by an Arborist with minimum AQF Level 5 in arboriculture demonstrating how any trees within the Right of Carriageway will be protected from damage by construction vehicles. Should any tree protection measures be required on private land in accordance with AS4970-2009 Protection of trees on development sites, owner's consent must be obtained.
 - A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private road/driveway/right of way, and any other adjacent private property assets (including trees) or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site

- works.
- A requirement for Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, to be submitted after the completion of works and prior to the Occupation certificate. The report must:
 - Compare the post-construction report with the pre-construction report,
 - Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,
 - Should any damage have occurred, identify remediation actions taken.
 - Be submitted to Council with the Occupation Certificate.
 - The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.
 - Make provision for parking onsite. All Staff and Contractors are to use any basement parking once available.
 - Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
 - Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety.
 - The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
 - Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
 - Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
 - The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
 - Specify that the public roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.
Proposed protection for Council and adjoining properties.
 - The location and operation of any on site crane.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742

– “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

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

A copy of the approved CTMP must be kept on-site at all times while work is being carried out.

The development is to be undertaken in accordance with the Construction Traffic Management Plan approved by Northern Beaches Council Traffic Team.

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

54. Boundary Identification Survey

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

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

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

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

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

55. Landscape Completion

Landscape works are to be implemented in accordance with the approved amended Landscape Plan(s), and inclusive of the following conditions:

a) All tree planting shall be a minimum pre-ordered planting size of 75 litres; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,

b) Tree, shrub and groundcover planting shall be installed as indicated on the approved amended Landscape Plan(s),

c) 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 75mm depth of mulch,

d) All proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,

e) Where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

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

Reason: Environmental amenity.

56. Certification of Civil Works and Works as Executed Data in accordance with Road Act Approval

The Applicant shall submit a certification by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) that the completed works have been constructed in accordance with this consent and the approved Section 138 and/or Construction Certificate plans. Works as Executed data certified by a registered surveyor in relation to boundaries and/or relevant easements, prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Assets' in an approved format shall be submitted to the Principal Certifier for approval prior to the issue of the Occupation Certificate.

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

57. Condition of Retained Vegetation

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

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

Reason: Tree and vegetation protection.

58. Protection of Habitat Features

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

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

Reason: To protect wildlife habitat.

59. No Weeds Imported On To The Site

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

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

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

60. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

61. Waste Management Confirmation

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

62. Reinstatement of Kerb

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

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

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

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

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and

endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water disposal system as to user is to be submitted.

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

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

64. Certification of Off Street Parking Works

The Applicant shall submit a certificate from a suitably qualified person certifying that the parking facility was constructed in accordance within this development consent and the relevant provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical Controls and Section 2.6 Design of Domestic Driveways.

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

Reason: Compliance with this consent.

65. Geotechnical Certification Prior to Occupation Certificate

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

Reason: To ensure geotechnical risk is mitigated appropriately.

66. Swimming Pool Requirements

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

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

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

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

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available

in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life.

67. Removal of All Temporary Structures/Material and Construction Rubbish

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

68. Post-Construction Dilapidation Report

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

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

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

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

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

69. House / Building Number

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

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

Reason: Proper identification of buildings.

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

70. Landscape Maintenance

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

The approved landscaped area shall in perpetuity remain as planting under the development consent.

Reason: To maintain local environmental amenity.

Annexure B

PETER HEYWORTH v NORTHERN BEACHES COUNCIL

Land and Environment Court Proceedings 2023/219825

Respondent's reasons for entering into the s.34 agreement

DA Number: DA2023/0607

Site: 173-175 Whale Beach Road Whale Beach

Planner: Adam Richardson

File Ref: L8972

1. The amended proposal has reduced the height of the clerestory roof elements over the living areas for dwellings B and C, increased setbacks for each of the lots, removed elements of the development that were within the foreshore area and reduced the visual bulk of the development from the streetscape.
2. The amended proposal generally complies with the objectives of the C4 Environmental Living Zone under the *Pittwater Local Environmental Plan 2014 (PLEP)*, and the objectives and requirements of the applicable planning controls, including the *Pittwater 21 Development Control Plan*.
3. The amended proposal complies with the minimum lot size requirement under the PLEP.
4. The portions of the proposed dwellings which exceed the height control under the PLEP are minor and isolated to sections of building where there is an abrupt change in ground level and there is a fixed building element such as the fixed datum of garage access, integrated roof lines or lift core. Except for lift, stair wells and garages, all dwellings are less than 10 metres in height and only lift, stair or sections of flat roof exceed a height of 8.5 metres, principally due to un-uniform topography across the lots and the sites themselves.
5. The amended proposal incorporates lots of a sufficient depth and width, and skilfully designed dwellings which respond appropriately to the site's steep topography and coastal location and is of acceptable amenity and impact.

