



Land and Environment Court New South Wales

Case Name: Karimbla Constructions Services (NSW) Pty Ltd v Northern Beaches Council

Medium Neutral Citation: **[2019] NSWLEC 1236**

Hearing Date(s): Conciliation conference on 29 May 2019

Date of Orders: 31 May 2019

Date of Decision: 31 May 2019

Jurisdiction: Class 1

Before: O'Neill C

Decision: The Court orders:
(1) The applicant is granted leave to amend the application by relying on the amended plans listed in condition A1 of the conditions of consent at Annexure A.
(2) The appeal is upheld.
(3) Development Application No. N0398/17, as amended pursuant to Order (1), for the construction of a road and earthworks at 2 Macpherson Street, Warriewood (Lot 25, Section C, DP 5464) is approved, subject to the conditions of consent at Annexure A.

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

Legislation Cited: Environmental Planning and Assessment Act 1979
Land and Environment Court Act 1979
Pittwater Local Environmental Plan 2014

Cases Cited:

Texts Cited:

Category: Principal judgment

Parties: Karimbla Constructions Services (NSW) Pty Ltd (Applicant)

Northern Beaches Council (Respondent)

Representation:

Counsel:

C McEwen SC with S Nash (Applicant)

Solicitors:

Meriton Group (Applicant)

D Yates, King & Wood Mallesons (Respondent)

File Number(s):

2018/244034

Publication Restriction:

No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to the provisions of s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the deemed refusal of Development Application No. N0398/17 for the construction of a road and earthworks (the proposal) at 2 Macpherson Street, Warriewood (the site) by Northern Beaches Council (the Council).

- 2 The Court arranged a conciliation conference under s 34 of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 29 May 2019. I presided over the conciliation conference.

- 3 At the conciliation conference, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties.

- 4 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. The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act to grant consent to the development application.

- 5 There are jurisdictional prerequisites that must be satisfied before this function can be exercised, pursuant to cl 6.1(3), 7.1(3), 7.2 (3), 7.3(3) and 7.6(3) and (4) of the Pittwater Local Environmental Plan 2014 (LEP 2014).

- 6 The site is zoned R3 Medium Density Residential pursuant to cl 1.7 of LEP 2014 (Land Zoning Map - Sheet LZN_012). The site is identified as Buffer Area 1m of the Warriewood Valley Release Area pursuant to LEP 2014. Buffer Area 1m has an allowable dwelling density of not more than 22 dwellings per hectare, at cl 6.1(3) of LEP 2014. This application does not include subdivision or the erection of dwellings.

- 7 I accept the Council's submission that the requirements of cl 7.1 'Acid sulphate soils' and cl 7.3 'Flood planning' have been considered and are reflected in the reports that form part of the application.

- 8 I accept the agreed submission of the parties that the requirements of cl 7.2 'Earthworks' at subcl (3) of LEP 2014 have been considered and are reflected in the reports that form part of the application.
- 9 The portion of the site that adjoins Narrabeen Creek is shown on the Biodiversity Map of LEP 2014 (Biodiversity Map -Sheet BIO_012) and is subject to the provisions of cl 7.6 'Biodiversity' of LEP 2014. I accept the agreed submission of the parties that the requirements of subcl (3) and (4) have been considered and that the proposal is designed, sited and will be managed to avoid any significant adverse environmental impacts.

Orders

- 10 The orders of the Court are:
- (1) The applicant is granted leave to amend the application by relying on the amended plans listed in condition A1 of the conditions of consent at Annexure A.
 - (2) The appeal is upheld.
 - (3) Development Application No. N0398/17, as amended pursuant to Order (1), for the construction of a road and earthworks at 2 Macpherson Street, Warriewood (Lot 25, Section C, DP 5464) is approved, subject to the conditions of consent at Annexure A.



Susan O'Neill
Commissioner of the Court

Annexure A

Karimbla Constructions Services (NSW) Pty Ltd

v

Northern Beaches Council

Conditions of Approval

This consent is not an approval to commence building work. The works associated with this consent can only commence following the issue of the Construction Certificate.

Note: Persons having the benefit of development consent may appoint either a council or an accredited certifier as the principal certifying authority for the development or for the purpose of issuing certificates under Part 4A of the Environmental Planning and Assessment Act. When considering engaging an accredited certifier a person should contact the relevant accreditation body to ensure that the person is appropriately certified and authorised to act in respect of the development.

A. Prescribed Conditions:

A1. The development must be carried out in compliance with the following:

1. Approved Plans

a. Civil drawings prepared by AT&L:

- i. Cover Sheet and Locality Plan DAC1001, issue H, dated 15 April 2019
- ii. General Notes DAC1002, issue F, dated 28 March 2019
- iii. General Arrangement Plan DAC1005, issue F, dated 28 March 2019
- iv. Typical Sections Sheet 1 of 2 DAC1006, issue G, dated 28 March 2019
- v. Typical Sections Sheet 2 of 2 DAC1007, issue G, dated 28 March 2019
- vi. Siteworks and Stormwater Plan Sheet 1 DAC1010, issue F, dated 28 March 2019
- vii. Siteworks and Stormwater Plan Sheet 2 DAC1011, issue F, dated 28 March 2019
- viii. Bulk Earthworks Plan DAC1015, issue F, dated 28 March 2019
- ix. Siteworks Details DA1020, issue F, dated 29 March 2019
- x. Stormwater Details Sheet 1 DAC1021, issue F, dated 28 March 2019
- xi. Stormwater Details Sheet 2 DAC1022, issue F, dated 28 March 2019
- xii. Stormwater Details Sheet 3 DAC1023, issue F, dated 28 March 2019
- xiii. Pavement Signage and Linemarking Plan DAC1030, issue F, dated 28 March 2019
- xiv. MC01 Longitudinal Section DAC1040, issue F, dated 28 March 2019
- xv. MC01 Cross Sections Sheet 1 DAC1050, issue F, dated 28 March 2019
- xvi. MC01 Cross Sections Sheet 2 DAC1051, issue F, dated 28 March 2019
- xvii. MC01 Cross Sections Sheet 3 DAC1052, issue F, dated 28 March 2019
- xviii. MC01 Cross Sections Sheet 4 DAC1053, issue F, dated 28 March 2019
- xix. MC01 Cross Sections Sheet 5 DAC1054, issue F, dated 28 March 2019
- xx. MC01 Cross Sections Sheet 6 DAC1055, issue F, dated 28 March 2019
- xxi. MC01 Cross Sections Sheet 7 DAC1056, issue F, dated 28 March 2019
- xxii. MC01 Cross Sections Sheet 8 DAC1057, issue F, dated 28 March 2019
- xxiii. Sedimentation and Erosion Control Plan DAC1080, issue F, dated 28 March 2019

- xxiv. Sedimentation and Erosion Control Details DAC1081, issue F, dated 28 March 2019
 - xxv. Internal Stormwater Catchment Plan DAC1090, issue F, dated 28 March 2019
 - xxvi. Narrabeen Creek Plan DAC1110, issue F, dated 28 March 2019
 - xxvii. Narrabeen Creek Longitudinal Section DAC1115, issue F, dated 28 March 2019
 - xxviii. Narrabeen Creek Typical Sections DAC1116, issue F, dated 28 March 2019
 - xxix. Narrabeen Creek Cross Section Sheet 1 DAC1120, issue A, dated 15 April 2019
 - xxx. Narrabeen Creek Cross Section Sheet 2 DAC1121, issue A, dated 15 April 2019
 - xxxi. Narrabeen Creek Cross Section Sheet 3 DAC1122, issue A, dated 15 April 2019
 - xxxii. Narrabeen Creek Cross Section Sheet 4 DAC1123, issue A, dated 15 April 2019
- b. Landscape Plans, prepared by Meriton:
- i. Landscape Cover Page L000, issue F, dated 4 April 2019
 - ii. Landscape Plant Schedule L001, issue F, dated 4 April 2019
 - iii. Landscape Plan L201, issue F, dated 4 April 2019
 - iv. Landscape Plan L202, issue F, dated 4 April 2019
 - v. Landscape Typical Sections L800, issue F, dated 4 April 2019
 - vi. Landscape Details L900, issue F, dated 4 April 2019

2. Reports and Documentation (all recommendations and requirements contained within):

- a. Arborist Report, prepared by Jackson Nature Works, dated 11 December 2018
- b. Bushfire Assessment Report, prepared by Conacher Consulting, dated April 2019
- c. Flora and Fauna Report, prepared by Conacher Consulting, dated July 2018
- d. Vegetation Management Plan, prepared by Conacher Consulting, dated April 2019
- e. Acid Sulphate Soils Management Plan, prepared by Coffey, dated 29 October 2018
- f. Geotechnical Investigation Report, prepared by Coffey, dated 6 November 2014
- g. Detailed Site Investigation Contamination Report, prepared by Coffey, dated 16 August 2017
- h. Water Quality Monitoring Plan, prepared by Ecological, dated 7 February 2019
- i. Early Works DA Report, prepared by AT&L, dated March 2019

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.

A2. All works are to be carried out in accordance with the requirements of the Building Code of Australia and the National Construction Code.

A3. In the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, there is to be such a contract in force.

A4. 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:

- a. showing the name, address and telephone number of the Principal Certifying Authority for the work, and
- b. 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
- c. 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.

A5. The hours of construction are restricted to between the hours of 7.00am and 5.00pm Monday - Friday and 7.00am to 1.00pm on Saturdays. No works are to be carried out on Sundays or Public Holidays. Internal building work may be carried out at any time outside these hours, subject to noise emissions from the building or works not being audible at any adjoining boundary.

B. Matters to be incorporated into the development and maintained over the life of the development:

- B1. This approval/consent relates only to the new work nominated on the approved consent plans and does not approve or regularise any existing buildings, structures or earthworks within the property boundaries or within Council's road reserve.
- B2. If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Metropolitan Local Aboriginal Land Council (MLALC) and the Office of Environment and Heritage are to be notified.
- B3. In accordance with Council's Tree Preservation Order, all existing trees as indicated in the Survey Plan and/or approved Landscape Plan shall be retained. For all other tree issues not related to a development application, applications must be made to Council's Tree Management Officers.
- B4. No environmental weeds are to be planted on the site. Refer to Council's website for environmental weed lists.
- B5. Prior to the completion of works, all declared noxious weeds are to be removed/controlled in accordance with the *Biosecurity Act 2015*. Environmental weeds are to be removed and controlled. Refer to Council's website for noxious/environmental weed lists.
- B6. Any vegetation planted onsite outside the approved landscaping is to be consistent with:
 - a. Locally native species growing onsite and/or selected from the list pertaining to the vegetation community growing in the locality as per the vegetation mapping and Native Plants for Your Garden guide available on Council's website.
 - b. Species listed in the flora and fauna assessment report referenced in this consent.

Any other plant species can only be used with written approval of Council.

- B7. The recommendations of the approved Vegetation Management Plan, as referenced in condition A1 of this consent, are to be implemented prior, during and post construction, and adhered to until the land is dedicated to Council. Details demonstrating pre-construction compliance are to be certified by the project ecologist and submitted to the Certifying Authority prior to the issue of the Construction Certificate.
- B8. Water and sediment quality monitoring of Narrabeen Creek is to be undertaken in accordance with the approved Water Quality Monitoring Plan referenced in Condition A1 of

this consent to ensure adequate monitoring of the site in accordance with the Water Management Specification (2001 or as amended).

- B9. All water management facilities proposed for the development, including stormwater quality improvement devices, on-site detention facilities, and private stormwater drainage are to remain in private ownership, be located within private property (except where the private stormwater crosses public land or the outlet enters the public creek corridor) and maintained in accordance with the manufacturer's specifications and an Operation and Maintenance Manual to be prepared for those facilities based on the information in the approved Early Works DA Report referenced in Condition A1 of this consent.
- B10. The recommendations of the approved Geotechnical Investigation Report referenced in Condition A1 of this consent are to be incorporated into the construction plans and implemented during construction.
- B11. No building materials or other materials are to be placed on riparian vegetation, bushland, wetland, saltmarsh, seagrass or foreshore vegetation. Appropriate sediment fencing is to be installed.
- B12. The adjustment and construction of all utilities, services and drainage systems, and the creation of appropriate easements are to be at the full cost of the developer, including:
- a. Electrical and telecommunications for the lot is to be provided underground.
 - b. Street lighting facilities are to be provided to streets proposed within the site and existing street frontages in accordance with the requirements of Ausgrid.
- B13. The proposal is to be consistent with the General Terms of Approval, issued by the Department of Primary Industries - Water (DPI Water), as referenced in this consent. The General Terms of Approval (GTA) only apply to the controlled activities described in the plans and association documentation relating to N0398/17 and provided by Council (Site plan, map and/or survey). Any amendments or modifications to the proposed controlled activities may render these GTA invalid. If the proposed controlled activities are amended or modified DPI Water must be notified to determine if any variations to these GTA will be required.
- B14. Landscaping is to be implemented in accordance with the approved Landscape Plans and Vegetation Management Plan referenced in Condition A1 of this consent, as modified by any conditions of consent. This landscaping is to then be maintained for the life of the development.
- B15. The development is to be undertaken in accordance with the recommendations of the Arboricultural Impact Assessment Report referenced in condition A1 of this consent.
- B16. This consent does not authorise a specific land use for the subject site. Separate development consent is required for the use of the land.
- B17. With the exception of temporary construction fencing, fencing or balustrading is to be predominately open to retain visibility and is to be finished in dark and earthy tones, such as dark grey or black. Fencing shall not exceed 1.2m above the FFL. All retaining walls are to be finished in sandstone.
- B18. A final occupation certificate must be obtained for the works approved by this consent to ensure appropriate completion and certification of the approved works.
- B19. The recommendations of the Detailed Site Investigation Contamination Report referenced in Condition A1 of this consent must be implemented.

- B20. The recommendations of the Bushfire Risk Management Report referenced in Condition A1 of this consent must be adhered to for the life of the development.

C. Matters to be satisfied prior to the issue of the Construction Certificate:

Note: All outstanding matters referred to in this section are to be submitted to the accredited certifier together. Incomplete Construction Certificate applications / details cannot be accepted.

- C1. Submission of construction plans and specifications and documentation which are consistent with the approved Development Consent plans, the requirements of Building Code of Australia and satisfy all conditions shown in Part B above, are to be submitted to the Principal Certifying Authority.
- C2. A construction methodology plan is to be produced which outlines:
- o The total volume of fill to be introduced on site,
 - o A staging plan to ensure that when 90% of the volume of fill anticipated has been received and placed in the site, that the finished levels will not exceed the levels nominated in the Approved Plans.
- C3. Construction works approved by this consent must not commence until:
- a. Construction Certificate has been issued by a Principal Certifying Authority;
 - b. A Principal Certifying Authority has been appointed and Council has been notified in writing of the appointment, and
 - c. At least 2 days' notice, in writing has been given to Council of the intention to commence work.
- C4. In accordance with section 34 of the Building and Construction Industry Long Service Payments Act 1986, the applicant must pay a long service levy at the prescribed rate of 0.0035 of the total cost of the work to either the Long Service Payment Corporation or Council for any work costing \$25,000 or more.
- C5. A bond of \$50,000 as security against damage to Council's road(s) and associated infrastructure fronting the site caused by the transport and disposal of materials and equipment to and from the site.
- C6. Drainage plans including specifications and details showing the site Stormwater management are to be submitted to the Accredited Certifier for approval with the Construction Certificate application. The Drainage plans are to be generally in accordance with the Soil and Water Management Details C006, Stormwater Management Plan Interim, Road Works C025 and Stormwater Drainage Details C052 referenced in this consent. Such details are to be accompanied by a certificate from a qualified practicing Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience and competence in the related field, that the storm water management system complies with Pittwater 21 DCP and Councils Auspec One design specification.
- C7. A pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. The pre-construction/ demolition dilapidation report must be submitted to Council for approval and the Principal Certifying Authority prior to the issue of the Construction Certificate.

- C8. A retaining wall design and certificate shall be prepared by an qualified Structural Engineer, including but not limited to all reinforced concrete, structural steel support construction, sub-soil drainage line and any proposed retaining walls; must be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate
- C9. An Erosion and Sediment Management Plan is to be submitted prior to the issue of a Construction Certificate. Control over discharge of stormwater and containment of run-off and pollutants leaving the site/premises shall be undertaken through the installation of erosion control devices such as catch drains, diversion drains, energy dissipaters, level spreaders and sediment control devices such as hay bale barriers, filter fences, filter dams and sedimentation basins. Such plan is to be accompanied by a certification from an appropriately qualified person, that the plans/ details have been designed in accordance with the requirements of *Managing Urban Stormwater: Soils and Construction* (Landcom 2004). The plan is also to include specific details required to remove fine sediment and clay from vehicles leaving the site so as to maintain public roads in a clean condition.
- C10. A satisfactory Construction Traffic Management Plan (CTMP) prepared by a suitably qualified traffic consultant is to be submitted prior to the issue of a Construction Certificate. The CTMP is to detail:
- a. Quantity of material to be transported;
 - b. Proposed truck movements per day;
 - c. Proposed hours of operation; and
 - d. Proposed traffic routes, noting that 3 tonne load limits apply to some roads within the local government area.
 - e. Location of on/off site parking for workers associated with construction for the whole period of construction.
- C11. A suitably qualified professional is to provide certification that the Construction Certificate detail is consistent with the relevant provisions of the General Terms of Approval, issued by the DPI Water, as referenced in this consent.
- C12. Details demonstrating pre-construction compliance with the Vegetation Management Plan referenced in Condition A1 of this consent are to be certified by the project ecologist and submitted to the Certifying Authority prior to the issue of the Construction Certificate.
- C13. Prior to the commencement of any onsite building works or commencement of vegetation/tree clearance or modification, the extent of the bush fire Asset Protection Zone must be surveyed and marked on ground. The clearing of vegetation for Asset Protection Zone establishment is to be confined within Asset Protection Zone boundaries. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to issue of the Construction Certificate.
- C14. Civil engineering detailed design for the proposed works are to be submitted to the Accredited Certifier or Council with the Construction Certificate application. Each plan/sheet is to be signed by a qualified practising Civil Engineer who is registered on the National Engineers Register (NER) maintained by Engineers Australia and has appropriate experience and competence in the related field. The design shall take regard of all of the requirements of the Water Management Specification (2001) and the approved Water Management Report, as referenced in this consent.
- C15. 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 Principal Certifying Authority.

- C16. The approved Landscape Plans referenced in condition A1 of this consent are to be amended to include:
- a. The incorporation of *Tristanopsis laurina* (Water Gum), with a minimum 400L pot size, planted at 6m centres along the Macpherson Street public road reserve.
- C17. A Landscape Maintenance Plan is to be prepared and submitted to Council that outlines the technique and frequency of maintenance tasks during the establishment of the landscaping on the subject site. The Landscape Maintenance Plan is to be implemented for a period 24 months immediately following the completion of landscape and hardscape works on site. The Landscape Maintenance Plan is to incorporate maintenance and care of hardscape elements (e.g. paving, retaining walls), weeding, watering, mowing, consideration of other endemic species where plantings do not respond to the conditions as expected and a procedure for the replacement of failed plantings.
- C18. Prior to the issue of a Construction Certificate the following documentation is to be prepared and certified by a suitably qualified Hydraulic Engineer and provided to Council:
- a. A revised Water Management Report providing detailed designs, plans and the required information for all works needed to achieve full compliance with the Warriewood Valley Water Management Specification February 2001 (WMS (2001)) and Pittwater 21 Development Control Plan (P21 DCP) including:
 - i. The Warriewood Valley Water Management Specification (2001 or as amended) document Checklist – Construction Certificate is to be certified and submitted and approved.
 - ii. Water quality monitoring data that meets the requirements of the Water Management Specification (2001 or as amended), with collection and reporting as detailed in the approved Water Quality Monitoring Plan referenced in this consent. No construction works are to commence until a complete contemporary baseline data set for water and sediment quality in Narrabeen Creek is collected.
 - iii. Mosquito Risk Assessment for both watercourse and water quality assets.
 - b. An Operation and Maintenance Manual for all of the approved water management facilities that are to be owned and operated by the Property Owner. A Construction Certificate must not be issued until such time that the Applicant has obtained certification from Council that this condition has been met.
 - c. Detailed design of the creek corridor based on details provided in the Water Management Report, the Amended Water Management Report, and the Creekline Works Site Plan, Creekline Works Long Section Plans and Creekline Works Cross Section Plans referenced in this consent.
 - d. A staging plan for creek works that details the methodology for completing the creek works, including removal of the interim boundary retaining wall on the northern boundary with 29-31 Warriewood Road (if constructed) and any interim works on the eastern boundary with 23-27 Warriewood Road (if constructed).
- C19. A qualified practising Civil Engineer with corporate membership of the Institute of Engineers Australia (M.I.E), or who is eligible to become a Corporate member and has appropriate experience is to certify that the Water Management Report and all associated plans and detailed design are in accordance with the Warriewood Valley Water Management Specification (February 2001) and as meeting the requirements of these conditions.
- C20. The approved plans must be submitted to the Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

- C21. Prior to the issue of any Construction Certificate a Contamination Management Plan is to be prepared by an experienced environmental consultant for the site to the satisfaction of the Certifying Authority. The plan shall include procedures to manage the following:
- a. Fill materials impacted with asbestos
 - b. Unexpected finds of contamination
 - c. Management of aesthetics associated with fill material if the current fill on site will be visible.
 - d. Waste classification and material tracking
 - e. Classification for reuse of soils on-site (if applicable)
 - f. Classification of imported soils
- C22. Prior to the issuing of any construction certificate, the approved Acid Sulphate Soils Management Plan referenced in condition A1 of this consent is to be amended, assessed and approved to the satisfaction of Council's Environmental Health Team.

Testing must be carried out by an appropriately qualified person to a depth up to 0.5 m below the maximum proposed excavation depth and shall be consistent with the requirements of the Acid Sulfate Soil Manual (ASSMAC, 1998) or as updated. The amended Acid Sulphate Soils Management Plan is to incorporate the deployment of two real time water quality probes that measure pH continuously and a system shall be established during the excavation phase and for six months after issue of subdivision certificate that triggers a message to the site manager and Council when the pH falls more than 1 unit below the minimum recorded prior to construction from the baseline data measured by Eco Logical for the site.

D. Matters to be satisfied prior to the commencement of works and maintained during the works:

Note: It is an offence to commence works prior to issue of a Construction Certificate.

- D1. Critical stage inspections are to be carried out in accordance with clause 162A of the *Environmental Planning & Assessment Regulation 2000*. To allow a Principal Certifying Authority or another certifying authority time to carry out critical stage inspections required by the Principal Certifying Authority, the principal contractor for the building site or the owner-builder must notify the Principal Certifying Authority at least 48 hours before building work is commenced and prior to further work being undertaken.
- D2. A clearly legible *Site Management Sign* is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:
- a. The builder's name, builder's telephone contact number both during work hours and after hours.
 - b. That no works are to be carried out in Council's Road Reserve without the written approval of the Council.
 - c. That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections. During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
 - d. That no skip bins or materials are to be stored on Council's Road Reserve.
 - e. That the contact number for Northern Beaches Council for permits is 9970 1111.
- D3. All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with appropriate professional standards.

- D4. The site must be fenced throughout demolition and/or excavation and must comply with WorkCover New South Wales requirements and be a minimum of 1.8m in height.
- D5. Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works
- D6. Where excavations extend below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must preserve and protect the building from damage and, if necessary, underpin and support the adjoining building in an approved manner.
- D7. Where site fill material is necessary, fill materials must:
- a. be Excavated Natural Material (ENM) only, as approved under the NSW Environment Protection Authority Resource Recovery Exemption (2014);
 - b. be free of slag, hazardous, contaminated, putrescibles, toxic or radioactive excavated material and soil, rock or similar material. Putrescibles and non-putrescibles solid waste (including demolition material) is not permitted.
 - c. Be the subject of testing and monitoring throughout the course of the works, and is to consist of clean fill inert material only, that is, non-contaminated excavated material and soil, and suitable material. Putrescible and non-putrescible solid waste (including demolition material) is not permitted. All imported fill must be sourced locally where practicable to reduce traffic movements.
 - d. Be deposited and works carried out in strict compliance with *Managing Urban Stormwater: Soils and Construction* (Landcom 2004).
- D8. A Project Ecologist is to be employed for the duration of the approved works to ensure all bushland protection measures are carried out according to the conditions of consent. The Project Ecologist will provide certification that conditions relating to the approved Vegetation Management Plan referenced in Condition a1 of this consent are carried out. The Project Ecologist will ensure that all conditions relating to the biodiversity management of the property are fully implemented. The Project Ecologist must have one of the following memberships and/or accreditation:
- Practising member of the NSW Ecological Consultants Association OR
 - Biodiversity Assessment Method assessor accreditation under the NSW Biodiversity Conservation Act 2016
- D9. Prior to the commencement of construction works, all tree protection recommendations in particular the establishment of tree protection zone fencing is to be certified by a project arborist as being adequate and in accordance with the specifications of AS 4970 ~ 2009 Protection of Trees on Construction Sites. Certification is to be provided to the certifying body prior to the issue of the Occupation Certificate. Documented evidence of a qualified arborist having supervised the works in proximity to trees being retained and ensuring that all tree protection measures are adopted as specified in the approved arborist report is required. This documentation is to be provided prior to the issue of the Occupation Certificate.
- D10. Protection fencing measures (including sedimentation fences) are to be installed in accordance with all approved plans including those specified in Section 2.2.5 of the

Vegetation Management Plan referenced in this consent. Protection measures are to be maintained for the duration of the works. Protection fencing that is no longer required is to be removed once all works are completed. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to commencement of works.

- D11. Prior to commencement of any works, temporary sedimentation and erosion controls in accordance with the Erosion and Sediment Management Plan required by this consent are to be installed to eliminate the discharge of sediment from the site and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction including:
- a. A site fence and silt and sediment control fence is to be erected and maintained during the course of works along any street boundary and park/reserve boundary to the site.
 - b. Sediment is not to leave the site or enter areas of riparian vegetation, and the appropriate sediment fencing is to be installed.
 - c. The capacity and effectiveness of runoff and erosion control measures shall be maintained at all times to conform to the specifications and standards quoted and to any conditions of approval of those measures.
 - d. Measures shall be applied, to the satisfaction of council, to prevent site vehicles tracking sediment and other pollutants onto any sealed roads serving the development.
 - e. Measures required in permits issued under the Water Management Act shall be implemented. This Act requires that people obtain approval for any proposed works within 40 metres of a watercourse. Permits should be sought from the NSW Office of Water.
 - f. Approved runoff and erosion controls shall be installed before site vegetation is cleared (other than that associated with the construction of the controls). These shall be as shown on an ESCP approved by council.
 - g. Topsoil shall be stripped only from approved areas and stockpiled for re-use during site rehabilitation and landscaping.
 - h. Stockpiles of topsoil, sand, aggregate, spoil or other material shall be stored clear of any drainage line or easement, waters, footpath, kerb or road surface and shall have measures in place to prevent the movement of such materials onto the areas mentioned. All stockpiled materials are to be retained within the property boundaries.
 - i. Uncontaminated runoff shall be intercepted up-site and diverted around all disturbed areas and other areas likely to be disturbed. Diversion works shall be adequately stabilised.
 - j. Runoff detention and sediment interception measures shall be applied to the land. These measures will reduce flow velocities and prevent topsoil, sand, aggregate, or other sediment escaping from the site or entering any downstream drainage easements or waters.
- D12. Personnel with appropriate training, or demonstrated knowledge and experience in erosion and sediment control shall be responsible for supervising the installation and maintenance of approved erosion and sediment control measures – during and after construction and until the site has been restored to the satisfaction of council.
- D13. The construction of the development and preparation of the site, including operation of vehicles, must be conducted so as to avoid unreasonable noise or vibration and not cause interference to adjoining or nearby occupations
- D14. Waste materials generated through demolition, excavation and construction works are to be minimised by re-use on site, recycling or where re-use or recycling is not practical, disposal at an appropriate authorised waste facility.

- D15. All waste dockets and receipts regarding demolition, excavation and construction waste are to be retained on site to confirm which facility received the material for recycling or disposal.
- D16. Any new information revealed during excavation works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.
- D17. No works are to be carried out in Council's Road Reserve without the written approval of the Council.
- D18. All construction in the public road reserve must be undertaken by a Council authorised contractor. Alternatively, prior to the commencement of works, Council must be notified of each contractor undertaking works within the public road reserve. Each contractor must be able to provide/demonstrate each of the following;
- Incorporated company/ business name and ABN;
 - Public Liability Insurance;
 - Professional Indemnity Insurance;
 - Workers Compensation Insurance;
 - Accident/ Injury Insurance Cover;
 - Other Insurances;
 - Company Licences, Registrations, Permits, Certificates etc.;
 - WorkCover Construction Industry General Induction Card;
 - WHS Documents;
 - Employee qualifications – Certificates, Licences etc.;
 - Contractor Services;
 - Client Services; and
 - WHSMS Self Evaluation.
- D19. No skip bins or materials are to be stored on Council's Road Reserve.
- D20. The Construction Traffic Management Plan (CTMP) is to be implemented and adhered to throughout the construction phase of the development on site.
- D21. The Construction Methodology Plan is to be implemented and adhered to throughout the construction phase of the development on site.
- D22. A stamped copy of the approved plans is to be kept on the site at all times, during construction.
- D23. The public footways and roadways adjacent to the site are to be maintained in a safe condition at all times during the construction phase. Pedestrian access is to be maintained at all times during the construction phase.
- D24. Toilet facilities are to be provided in a location which will not detrimentally affect the amenity of any adjoining residents at or in the vicinity of the work site during the duration of the development.
- D25. Written certification is to be provided by a suitably qualified engineer upon completion and/or as and when requested by the Principal Certifying Authority for the following stages of works.
- a. Silt and sediment control facilities.
 - b. Formworks inspection driveway entry and exit points.
 - c. Kerb and gutter construction.

- d. 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.

D26. 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 the pouring of concrete for the vehicle entry and exit driveways.
- c. Prior to pouring of kerb and gutter.

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. Council approval or acceptance of any stage of the work must be obtained in writing, and will only be issued after completion of the work to the satisfaction of Council and receipt of the required certification

D27. The developer or contractor will take all measures to prevent damage to trees and root systems during site works and construction activities including provision of water, sewerage and stormwater drainage services. In particular, works, erection of structures, excavation or changes to soil levels within 5 metres of the trunks or the calculated TPZ of trees to be retained are not permitted, and the storage of spoil, building materials, soils or the driving or parking of any vehicle or machinery within 5 metres of the trunk or the calculated TPZ of a tree to be retained, is not permitted.

D28. As there are existing trees to be retained within 5 metres of proposed development works, all recommendations as outlined in the Arboricultural Impact Assessment Report referenced in this consent are to be complied with, particularly with regard to the following:

- a. Works, erection/demolition of structures, excavation or changes to soil levels within 5 metres of existing trees are not permitted unless part of the development as approved, and the storage of spoil, building materials, soil or the driving and parking of any vehicle or machinery within 5 metres of the trunk of a tree to be retained is not permitted;
- b. Where specified, tree guards are to be provided to all trees as indicated in the report, and are to be installed prior to the commencement of any work on the site. Tree guard materials and dimensions are specified in the arborist report;
- c. All works within 5 metres of existing trees including demolition, excavation, civil works, fencing and the like must be carried out by hand and under the supervision of an experienced and suitably qualified arborist. Should roots larger than 50mm be encountered all excavation works are to cease immediately and a qualified Arborist is to advise on the impacts of the roots removal on the tree's survival and report to the Principal Certifying Authority prior to works recommencing. If tree roots are present a pier and beam method of footing construction is to be adopted so as to bridge/span any identified lateral roots.
- d. Signage is to be erected advising all contractors and visitors to the site that no works or storage are to take place within the dripline of existing trees.
- e. Use of herbicide is not excluded from site as specified in the arborist report and may be used by appropriately qualified personnel in accordance with the Vegetation Management Plan referenced in this consent.
- f. Any changes or alterations made to the tree management recommendations as outlined by the arborist report due to the discovery of new structural roots or underground services during development works must be reported to the Principal Certifying Authority prior to works recommencing.

D29. It is noted that potentially toxic blue green algae have been recorded in baseline monitoring conducted for the site and this is to be identified to construction workers and suitable safe

work measures put in place prior to commencing works in the creek. Public access is to be restricted to the creek.

- D30. All works must be managed in accordance with the amended Acid Sulphate Soils Management Plan required by Condition C23 of this consent.

Where groundwater is encountered during excavation, particular care should be taken to ensure no acid drainage occurs and impacts groundwater or downstream environments. Where groundwater is encountered during excavation of an area mapped as containing acid sulfate soils, dewatering management will apply according to the 'Dewatering Management' condition.

The amended Acid Sulfate Management Plan must be closely monitored, as required to accompany construction management plans and managed for the entire site throughout the construction period, particularly during any earthworks.

- D31. An Application for Works to be approved within Council Roadway for the entrance and exit driveway works, including engineering plans is 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 retaining walls through the nature strip and driveway crossing which are to be generally in accordance with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and/ or Council's Minor Works Policy. The plan shall be prepared by a qualified structural engineer. The design must include the following information: The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges. . Approval is required prior to the commencement of the driveway.

Note: The applicant/owner is responsible for the construction of the vehicle entry /exit driveways to the site.

E. Matters to be satisfied prior to the issue of Occupation Certificate:

Note: An Occupation Certificate must be obtained for this development to ensure appropriate completion and certification of the approved works.

- E1. An Occupation Certificate application stating that the development complies with the Development Consent, the requirements of the Building Code of Australia and that a Construction Certificate has been issued must be obtained on completion of the construction work approved by this Development Consent.
- E2. Prior to issue of the Occupation Certificate, Form 3 of the *Geotechnical Risk Management Policy* (Appendix 5 of P21 DCP) is to be completed and submitted to the Principal Certifying Authority.
- E3. A qualified landscape architect/designer is to certify that all landscaping works have been undertaken prior to the issuing of any Occupation Certificate. The landscape architect/designer is to confirm that all plants are arranged and spaced in a manner that is consistent with the approved Landscape Plans referenced in Condition A1 of this consent, as amended by any conditions of consent.
- E4. A plan showing pipe locations and diameters of the stormwater drainage system, together with certification by a Licensed Plumber or qualified practicing Civil Engineer that the drainage system has been constructed in accordance with the approved design and relevant Australian Standards must be provided.

- E5. A suitably qualified professional is to provide certification that the drainage/water management system has been constructed/installed in accordance with the relevant plans, documentation and the National Construction Code, and that:
- a. The construction of the water management system has been supervised and certified by person(s) with appropriate experience and expertise in Civil/Environmental Engineering/Environmental Science, Hydrology and Hydraulics, and must be NER registered members of the Institution of Engineers (Australia), and
 - b. Works associated with the water management system have been completed in accordance with the approved Water Management Report and all associated plans and detailed design and have been installed to the manufacturers' specification (where applicable). Certification is to be provided in accordance with the *Warriewood Valley Water Management Specification (February 2001)*.
 - c. The creek works have been constructed in accordance with the approved plans referenced in this consent.
- E6. Certification is to be provided to the certifying body prior to the issue of the Occupation Certificate to confirm that all tree protection recommendations, in particular the establishment of tree protection zone fencing, was adequate and in accordance with the specifications of AS 4970 ~ 2009 Protection of Trees on Construction Sites.
- E7. Evidence is to be provided to confirm the engagement of a suitably qualified landscape architect who will be responsible for the implementation of the Landscape Maintenance Plan for a minimum period of 2 years. The landscape architect is to confirm that they will undertake to:
- a. visit the site immediately following completion of the landscaping and hardscape works on site (those other than in the creekline corridor); and
 - b. visit the site on a three (3) monthly basis for a period of 2 years to ensure implementation of the Landscape Maintenance Plan.
- E8. A suitably qualified professional is to provide certification that the as-built development is consistent with the relevant provisions of the General Terms of Approval, issued by the DPI Water, as referenced in this consent.
- E9. Evidence is to be provided to confirm the engagement of a suitably qualified ecologist who will be responsible for the implementation of the approved Vegetation Management Plan referenced in Condition A1 of this consent, for a minimum period of 2 years. The ecologist is to confirm that they comply with the recommendations of the approved Vegetation Management Plan and will undertake to:
- a. visit the site immediately following completion of the works in the creekline corridor on site; and
 - b. visit the site on a three (3) monthly basis for a period of 2 years to ensure implementation of the Vegetation Management Plan.
- E10. A post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. The post construction dilapidation report must be submitted to the Council for review and the Principal Certifying Authority prior to the issue of the Occupation Certificate. Any damaged to Council's stormwater infrastructure is to be rectified in accordance with Council's technical specifications prior to the release of the security bond.
- E11. Certification is required from a suitably qualified geotechnical engineer to confirm that the bank of the creekline is appropriately stabilised.

- E12. In accordance with section 88B of the 'Conveyancing Act 1919' a suitable instrument shall be created that specifies the sizing and design of seven bio-retention basins, and 14 Enviropod inserts. This must include a positive covenant that requires the water management system to be maintained by the land owners for the life of the development, including maintenance of the bio-retention basins and swales at least once every six months and following significant storms.
- E13. Certification is to be provided from an experienced environmental consultant to confirm that the remediation of the site was undertaken in accordance with the approved Detailed Site Investigation Contamination Report referenced in Condition A1 of this consent and the Contamination Management Plan required by this consent.
- E14. A suitably qualified Bushfire Consultant is to provide certification that the development is consistent with the recommendations of the approved Bushfire Risk Management Report referenced in Condition A1 of this consent.
- E15. A registered surveyor is to provide confirmation that the as-built levels are strictly in adherence with the levels nominated on the Approved Plans.
- E16. Prior to the issuance of the occupation certificate, written certification and documented evidence is to be provided by a suitably qualified professional to confirm that the works were managed in accordance with the amended Acid Sulphate Soils Management Plan required by Condition C22 of this consent.

F. Advice:

- F1. Failure to comply with the relevant provisions of the *Environmental Planning and Assessment Act, 1979* (as amended) and/or the conditions of this Development Consent may result in the serving of penalty notices (on-the-spot fines) under the summary offences provisions of the above legislation or legal action through the Land and Environment Court, again pursuant to the above legislation.
- F2. The applicant is also advised to contact the various supply and utility authorities, i.e. Sydney Water, Sydney Electricity, Telstra etc. to enquire whether there are any underground utility services within the proposed excavation area.
- F3. It is the Project Managers responsibility to ensure that all of the Component Certificates/certification issued during the course of the project are lodged with the Principal Certifying Authority. Failure to comply with the conditions of approval or lodge the Component Certificates/certification will prevent the Principal Certifying Authority issuing an Occupation Certificate.
- F4. Portions of the site may be liable to flooding from the 1% AEP and the PMF (Probable Maximum Flood) and effective precautions should be taken by the owner(s) and/or occupier(s) of the building to reduce any potential risk to personal safety and to minimise any property damage to the structure, its fixtures and contents.

