



Land and Environment Court New South Wales

Case Name: ACN 603 347 834 Pty Ltd v Northern Beaches Council

Medium Neutral Citation: **[2019] NSWLEC 1261**

Hearing Date(s): 5 June 2019

Date of Orders: 13 June 2019

Date of Decision: 13 June 2019

Jurisdiction: Class 1

Before: Dickson C

Decision: The Court orders:
By consent
(1) The appeal is upheld
(2) Development Application No. DA2018/0149 for the demolition of the existing buildings, excavation for a basement car park and the construction of a two storey boarding house containing 32 boarding rooms (including a manager's room) at 60 Binalong Avenue, Allambie Heights, is approved subject to conditions set out in Annexure 'A'.
And further that:
(3) The exhibits are returned with the exception of Exhibits A, C, 1 and 4.

Catchwords: DEVELOPMENT APPLICATION – demolition and construction of a new boarding house – consent orders – public objections

Legislation Cited: Environmental Planning and Assessment Act 1979
Land and Environment Court Act 1979
State Environmental Planning Policy (Infrastructure) 2007
State Environmental Planning Policy 55 – Remediation of Land
State Environmental Planning Policy (Affordable Rental Housing) 2009
Disability Discrimination Act 1992
State Environmental Planning Policy (Housing for

Seniors or People with a Disability) 2004
Warringah Local Environmental Plan 2011

Cases Cited: Bella Ikea Ryde Pty Ltd v City of Ryde Council (No 2)
(2018) NSWLEC 204
Cooper v Human Rights and Equal Opportunity
Commission [1999] FCA 180
Thurkal v Parramatta City Council [2011] NSWLEC
1019
Maharaj v Parramatta City Council [2011] NSWLEC
1074
GPC No 5 (Wombarra) Pty Ltd v Wollongong City
Council (2003) NSWLEC 268
Project Venture Developments v Pittwater Council
(2005) NSWLEC 191
Veloshin v Randwick Council [2007] NSWLEC 428
Terrace Tower Holdings Pty Ltd v Sutherland Shire
Council (2003) 129 LGERA 195

Texts Cited: Practice Note Class 1 Development Appeals
Northern Beaches Affordable Housing Needs Analysis
2016
Warringah Development Control Plan 2011

Category: Principal judgment

Parties: ACN 603 347 834 Pty Ltd (Applicant)
Northern Beaches Council (Respondent)

Representation: Counsel:
R O’Gorman- Hughes (Applicant)

Solicitors:
Addison Lawyers (Applicant)
S Patterson, Wilshire Webb Staunton Beattie
(Respondent)

File Number(s): 2018/00109854

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal under s 8.7 of the *Environmental Planning and Assessment Act 1979* (the Act) against the deemed refusal of the Applicant's Development Application No. DA/2018/0149 by Northern Beaches Council (the Respondent). Following the lodgement of the appeal the development application was refused by Northern Beaches Council on August 15 2018.
- 2 The development application seeks approval for the demolition of existing structures and the construction of a two storey boarding house and associated parking at 60 Binalong Avenue, Allambie Heights.
- 3 Following the termination of the conciliation, held pursuant to s 34 of the *Land and Environment Court Act 1979* (the LEC Act), the parties continued discussion on the form of development proposed for the site. On 30 May 2019, the Applicant, by way of notice of motion, was granted leave to rely on an amended set of architectural plans (the amended plans).
- 4 The amendments made to the proposal are described by the Applicant's planning expert as follows:
 - Reduction in rooms.
Reduction in the total number of boarding rooms from 36 (including managers room) to 32 (including managers room); a reduction of 11.1%.
 - Increased street frontage setbacks to 6.5m.
 - Decreased gross floor area and building bulk. The gross floor area has reduced from 1,245 m² to 997m² which equates to a 20% reduction in gross floor area.
 - Increased parking. The original DA that was lodged with nine car parking spaces the modified scheme contains 19 car parking spaces which is two spaces surplus to requirements.
 - Increased landscaping. The landscaped Open space is 25% more than what is required in the R2 zone under the Warringah DCP. The DCP requirement is 40% or 683 m² yet the proposal provides 855 m² or 50%, which is 25% above the control.

- Increased building separation. The building separation has been increased from 2 m originally to 4 to 5 m.
- Three building forms. The boarding house design has been separated to avoid long lengths of building to the street frontages. The architecture reflects this by providing two, 4- to-5 meter gaps at each of the Binalong Avenue and Nargong Road frontages.
- Breezeway created. There is now a four-meter-wide breezeway that has planting through its extent. This is now the entry to the building from Binalong Avenue.
- Relocated common area. In response to issues raised by Council and the community, the single storey common room has been removed. The original common room has been modified and an outdoor area adjacent to the common room has been provided.
- Relocated common outdoor area. The outdoor common area has been located to be adjacent to the Nargong Road / Jennifer Avenue street frontages. There is also a secondary outdoor area within the rear of the property (effectively the rear yard) which is visible from the on-site manager's room which will facilitate casual observation of the space.
- Additional building entry. The main entrance to the proposed development is off Nargong Road with a secondary entrance off Binalong Avenue created, enhancing access to and from the site and activation of these frontages providing improved casual observation of these spaces.
- Reduced wall heights. The amended design is compliant with Warringah DCP control B1 wall heights as shown on drawing DA904 only roof elements extend be on the wall height plane.
- Waste management. The operational plan of management will be updated to include waste transfer from basement to the temporary holding area.
(Exhibit E)

- 5 The Respondent is satisfied that the amended plans address the issues raised by them in the Statement of Facts and Contentions dated 30 May 2018 (Exhibit 1).
- 6 The parties seek for the appeal to be resolved through agreed consent orders. The orders sought are that the appeal is upheld and consent is granted to the development, subject to a set of agreed conditions.
- 7 During the proceedings the Court granted leave to a set of amended drainage engineering plans to reflect the amendments to the proposal made in the architectural plans. Leave was not objected to by the Respondent.

- 8 In circumstances where the Council agrees to the grant of development consent, I am nonetheless required to carry out an assessment under s 4.15 of the Act to determine if it is lawful and appropriate to grant consent. I am also required to consider the evidence and submissions of the objectors. The Practice Note - Class 1 Development Appeals (Practice Note) sets out the procedural requirements at par 99:

“Any application for consent final orders in development appeals will be listed before the Court for determination. The parties will be required to present such evidence as is necessary to allow the Court to determine whether it is lawful and appropriate to grant the consent or approval having regard to the whole of the relevant circumstances, including the proposed conditions. The consent authority will be required to demonstrate that relevant statutory provisions have been complied with and that any objection by any person has been properly taken into account. Additionally, the consent authority will be required to demonstrate that it has given reasonable notice to all persons who objected to the proposal of the following:

- (i) the content of the proposed orders (including the proposed conditions of consent);
 - (ii) the date of the hearing by the Court to consider making the proposed consent orders; and
 - (iii) the opportunity for any such person to be heard,
- or that, in the circumstances of the case, notification is not necessary.”

Site and Locality

- 9 The site consists of a double allotment and is legally described as Lots 2211 and 2223 in DP 725038.
- 10 The site is a corner lot located on the eastern side of Binalong Avenue, the south eastern side of Jennifer Avenue and the southern side of Nargong Road in Allambie Heights.
- 11 The site has an approximate total area of 1,708m². The eastern boundary adjoins a public reserve and the southern boundary adjoins a detached dwelling. The remaining property boundaries are public roads.
- 12 There are a mix of housing forms and allotment configurations within the local context.

Planning Controls

13 The site is mapped as 'bushfire prone land' under the Warringah Local Environmental Plan 2011 (LEP 2011). Pursuant to s 4.46 of the EPA Act the development application is integrated development. The NSW Rural Fire Service provided concurrence and recommended conditions by correspondence on 18 April 2018. The recommended conditions have been incorporated in the agreed conditions annexed to this judgment.

14 Pursuant to cl 45(2) of State Environmental Planning Policy (Infrastructure) 2007 Ausgrid provided their conditional consent to the development on 22 February 2018. The recommended conditions have been incorporated in the agreed conditions annexed to this judgment.

15 The Council assessment report makes the following assessment of the land under State Environmental Planning Policy 55 – Remediation of Land:

Clause 7(1)(a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7(1)(b) and (c) of SEPP 55 and the land is considered suitable for the residential land use.

(Exhibit 2)

16 I accept the evidence of the Council that the likelihood of contamination is low and that the land is suitable for the residential land use proposed.

17 The site is zoned R2 Low Density Residential under LEP 2011 and development for the purpose of 'boarding house' is permissible with consent. The objectives of the R2 zone are as follows:

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

- 18 Relevantly the following uses are also permitted with consent in the zone (emphasis added):

Bed and Breakfast Accommodation; Boat sheds; Building Identification signs; Business Identification signs; **Centre-based child care services; Community facilities;** Dwelling houses; **Educational Establishments;** Emergency services facilities; Environmental protection works; Exhibition homes; **Group homes; Health consulting rooms;** Home businesses; Hospitals; Oyster aquaculture; **Places of public worship;** Pond-based aquaculture; Recreation areas; **Respite day care centres;** Roads; Secondary dwellings; Tank-based aquaculture; **Veterinary hospitals.**

- 19 The principal development standards relevant to the subject site are as follows:

- Clause 4.1: Minimum subdivision lot size: 600 sqm
- Clause 4.3: Height of Buildings: 8.5m
- Clause 4.4: FSR, not adopted

- 20 The parties are agreed that the development is compliant with the 8.5m building height limit.

- 21 Pursuant to cl 6.3(3): Flood Planning of LEP 2011, the Consent Authority is required to be satisfied of the following prior to the grant of consent:

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) is compatible with the flood hazard of the land, and
- (b) is not likely to significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and
- (c) incorporates appropriate measures to manage risk to life from flood, and
- (d) is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and
- (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

- 22 During the onsite component of the hearing, evidence was provided by Council's Development Engineer that the amended drainage engineering

plans are acceptable to the Council. He is satisfied that the previous contentions of the Council and the concerns raised by the adjoining resident are resolved. Further he advises that the proposed development satisfies the requirements of cl 6.3 of LEP 2011.

- 23 I accept the evidence of the Council and I am satisfied the provisions of cl 6.3(3): Flood Planning of LEP 2011 is met by the amended proposal and the additional information filed, including the Taylor Consulting Report: Trunk Drainage and Watercourse Study (Exhibit H).
- 24 In addition to the LEP provisions, the application is required to be assessed under the provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 (the SEPP ARH).
- 25 Division 3: Boarding Houses in SEPP ARH at cl 27 states that boarding house development cannot be carried out in the R2 Low Density zone unless it is within an 'accessible area' as defined. The parties accept that this condition is met.
- 26 Relevantly SEPP ARH defines 'accessible area' as follows:

accessible area means land that is within:

...
(c) 400 metres walking distance of a bus stop used by a regular bus service (within the meaning of the *Passenger Transport Act 1990*) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday.

- 27 The Applicant's planning expert argues the development meets the definition of 'accessible area' as follows:

The subject site is located within 250 metres to 2 regularly serviced bus stops on Allambie Road and is therefore deemed to be within an 'accessible area', entirely satisfying cl27(3) of SEPP ARH 2009.

These bus stops are serviced by:

- Route 280, Forest Coach Lines, Chatswood to Warringah Mall via East Roseville, Forestville, Frenchs Forest & Allambie. These services run on all

days of the week, including Sundays and Public Holidays.
<https://forestcoachlines.com.au/timetables/sydney/download-time-tables/>

- Route 142, Transport NSW, Allambie (Skyline Shops) to Manly via Allambie Heights, Manly Vale and Balgowlah. This service operates daily.
https://wherewelive.com.au/wpcontent/uploads/2017/04/Allambie-Heights_-Manly_City_142_E66_Feb2017.pdf

- Route E66, Transport NSW, Allambie (Skyline Shops) to City - Wynyard EXPRESS via Allambie Heights, Manly Vale, Mosman, Cremorne and Neutral Bay. Service operates Monday to Friday peak hours.
https://wherewelive.com.au/wpcontent/uploads/2017/04/Allambie-Heights_-Manly_City_142_E66_Feb2017.pdf

For these reasons the proposed development is located within an accessible area as defined by the SEPP.

(Exhibit E)

28 I note that in *Bella Ikea Ryde Pty Ltd v City of Ryde Council (No 2)* (2018) NSWLEC 204 at [54] it was accepted that the definition of accessible area can be met by a combination of bus services or bus stops to achieve the required bus frequency.

29 Following a review of the timetables filed (Exhibit G) for the relevant routes I am satisfied the definition of accessible area is met by the 142 Bus Route, complemented the 280 Bus Route. Accordingly cl 27(3) of SEPP ARH is met.

30 During the exhibition period of the application, and at the onsite component of the hearing, a community member raised concern that the proposed and existing foot paths that allow access to the relevant bus stop, did not meet the appropriate gradients for access for wheel chair users. Further she raised concern that, given the development gained 'permissibility' by being accessible; the failure to achieve disabled access to the relevant bus stop was contrary to the provisions of the Disability Discrimination Act 1992 (DDA).

31 Relevantly 'walking distance' is defined in SEPP ARH as follows:

walking distance means the shortest distance between 2 points measured along a route that may be safely walked by a pedestrian using, as far as reasonably practicable, public footpaths and pedestrian crossings.

- 32 In his submissions to the Court Mr Patterson accepts that the provisions of DDA apply to the *site* and that compliance with the access requirements of the DDA must be demonstrated by the proposed development: see *Cooper v Human Rights and Equal Opportunity Commission* [1999] FCA 180. However he submits that there is no case law that demonstrates that those requirements extend beyond the site, or specifically are required in meeting the accessible area provisions of SEPP ARH.
- 33 Further Mr Patterson references two decisions of the Court: *Thurkal v Parramatta City Council* [2011] NSWLEC 1019 (*Thurkal v Parramatta*) and *Maharaj v Parramatta City Council* [2011] NSWLEC 1074 (*Maharaj v Parramatta*).
- 34 In particular he relies on paragraph [46-47] of *Thurkal v Parramatta* which addresses whether it is reasonable to require a boarding house development to accord with the disability access provisions of the Building Code of Australia and AS1428.1- Design for Access and Mobility. The judgment states:
46. A consideration of this issue must be balanced against the fact that this SEPP [SEPP ARH] does not require compliance with the disability access provisions of the Building Code of Australia and AS 1428.1- Design for Access and Mobility.
- 47.
- In my assessment under the SEPP of the conversion of a 4-bedroom house into a 6-bedroom boarding house with a maximum 10 residents it is unnecessary to impose the deferred commencement condition. In the particular circumstances of the case, it is a small scale boarding house and it is unnecessary to impose requirements beyond those specified in the SEPP.
- 35 Mr Paterson notes this approach was adopted in the decision of *Maharaj v Parramatta City* at [25] and should be noted by the Court in considering the residents submission.
- 36 Mr O’Gorman Hughes concurs with the submissions of Mr Patterson and further argues that the DDA contains no requirement for an accessible path to be provided to a facility. Further he submits that the drafting of the definition of

'walkable distance' in SEPP ARH is distinct from how a similar concept is drafted in State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP SL). For comparison he draws the Courts attention to cl 26(2) of SEPP SL which states:

2) Access complies with this clause if:

(a) the facilities and services referred to in subclause (1) are located at a distance of not more than 400 metres from the site of the proposed development that is a distance accessible by means of a suitable access pathway and the overall average gradient for the pathway is no more than 1:14, although the following gradients along the pathway are also acceptable:

(i) a gradient of no more than 1:12 for slopes for a maximum of 15 metres at a time,

(ii) a gradient of no more than 1:10 for a maximum length of 5 metres at a time,

(iii) a gradient of no more than 1:8 for distances of no more than 1.5 metres at a time, or

(b) in the case of a proposed development on land in a local government area within the Greater Sydney (Greater Capital City Statistical Area)—there is a public transport service available to the residents who will occupy the proposed development:

(i) that is located at a distance of not more than 400 metres from the site of the proposed development and the distance is accessible by means of a suitable access pathway, and

(ii) that will take those residents to a place that is located at a distance of not more than 400 metres from the facilities and services referred to in subclause (1), and

(iii) that is available both to and from the proposed development at least once between 8am and 12pm per day and at least once between 12pm and 6pm each day from Monday to Friday (both days inclusive), and the gradient along the pathway from the site to the public transport services (and from the public transport services to the facilities and services referred to in subclause (1)) complies with subclause (3), or

37 Mr O'Gorman Hughes notes that the specificity of these requirements in SEPP SL is not mirrored in SEPP ARH.

38 I accept the submissions of the parties that the development meets the accessibility requirements of SEPP ARH. Despite giving consideration to the residents submission, I find there is no evidence or special circumstances that warrant the imposition of requirements beyond those in SEPP ARH.

39 Relevantly at cl 29 of SEPP ARH it details a number of standards that cannot be used to refuse consent to development if the relevant conditions are met.

The evidence is that these standards are met by the amended application.

The standards of cl 29 of EPP ARH are as follows:

(1) A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:

(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or

(b) if the development is on land within a zone in which no residential accommodation is permitted—the existing maximum floor space ratio for any form of development permitted on the land, or

(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register—the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus:

(i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or

(ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.

(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:

(a) **building height** if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,

(b) **landscaped area** if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,

(c) **solar access** where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,

(d) **private open space** if at least the following private open space areas are provided (other than the front setback area):

(i) one area of at least 20 square metres with a minimum dimension of 3 metres is provided for the use of the lodgers,

(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8 square metres with a minimum dimension of 2.5 metres is provided adjacent to that accommodation,

(e) **parking** if:

(i) in the case of development carried out by or on behalf of a social housing provider in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and

(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and

(iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and

(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,

(f) **accommodation size** if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:

(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or

(ii) 16 square metres in any other case.

40 At cl 30 of SEPP ARH are a number of standards for Boarding Houses. The consent authority must not consent to development to which Division 3 applies, unless these standards are met. I am satisfied that the current application meets these standards.

41 Under cl 30A of the SEPP ARH, the consent authority cannot consent to the development of a boarding house under the ARH SEPP “unless it has taken into consideration whether the design of the development is compatible with the character of the local area”. The issue of compatibility of the development is discussed in more detail later in the judgement at [58]-[63].

42 Relevantly, in February 2019 the SEPP ARH was amended so boarding houses are limited to 12 boarding rooms per site within the R2 Low Density Residential zone. In addition the amendment removed the applicability of cl 30A (the character consideration). The Explanation of Intended Effect which accompanied the exhibition of the amendments notes that the intent of the changes as follows:

The proposed amendment to the Affordable Rental Housing SEPP will provide for a new provision that limits the number of boarding rooms in a boarding house development in the R2 zone to a maximum of 12 boarding rooms.

The intention of the proposed amendment is to ensure that the built form of boarding house development in the R2 zone is compatible with the built form of other development in the local area.

The proposed introduction of a maximum room number for boarding houses is considered to assist in ensuring that amenity impacts of boarding house development on adjoining and nearby properties such as overlooking, overshadowing and car parking impacts, are able to be better managed.

(<https://www.planning.nsw.gov.au/Policy-and-Legislation/Housing/Diverse-and-affordable-housing/Boarding-Houses>)

- 43 The parties agree that the amended SEPP ARH, incorporating the maximum limitation of 12 rooms, does not apply to the current application: cl 54C: Savings and Transitional Provisions - 2019 amendment. This clause states:

54C Savings and transitional provisions—2019 amendment

(1) This clause applies to a development application that was made before the commencement of the amending SEPP and was not determined by a consent authority or, if appealed, not finally determined by a court before that commencement.

(2) The application must be determined by applying all provisions of this Policy as if the amending SEPP had not commenced.

(3) In this clause, the amending SEPP means State Environmental Planning Policy (Affordable Rental Housing) Amendment (Boarding House Development) 2019.

- 44 The development is also required to have regard to the applicable provisions of Warringah Development Control Plan 2011 (DCP 2011).

Merit Contentions raised

- 45 The Council filed a Statement of Facts and Contentions (Exhibit 1) that identified the following reasons why the unamended version of the application should be refused:

- (1) that the proposed development is not compatible with the character of the local area, and therefore does not comply with cl 30A of SEPP ARH.
- (2) as the development has excessive wall height and fails to comply with Part B1 Wall Height of DCP 2011.
- (3) as the proposed setbacks from Binalong Avenue, Jennifer Avenue, and Nargong Road are inadequate and do not comply with Part B7 Front Boundary Setbacks in DCP 2011.
- (4) as it results in unacceptable internal privacy impacts.

(5) as the landscaping treatment of the site is unsatisfactory.

46 Consistent with the Practice Note, the Council has provided a planning assessment report. The report was prepared by Councils Planning expert Mr Daniel Milliken and details how the Council has formed a view that it is now satisfied the above contentions are resolved and the application warrants approval.

47 The reasoning of the Mr Milliken against each of the contentions is reproduced below, extracted from his report:

1. Character

Clause 30A - Character of local area, states:

A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.

The amended development has been reduced in size and scale by breaking the built form up into three modules. This broke down the building elements to lengths similar to those of detached dwelling houses.

The front setbacks were increased, allowing more landscaping within the front setback area so that the treatment of the front landscaped areas are now compatible with the existing streetscape. The total landscaped area across the site was also increased, giving the development a suitable landscaped setting, consistent with the majority of surrounding development.

The 'compatible' test is not the same as requiring the design to be 'consistent' with the character of the local area.

The matter of assessing the character compatibility of development has been examined by the Land and Environment Court in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council* (2003) NSWLEC 268 and *Project Venture Developments v Pittwater Council* (2005) NSWLEC 191 where Senior Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character of its environment.

The character of the amended development was assessed against these Planning Principles.

The amended development is now fully compliant with all relevant controls including those which apply to a standard house, provides a suitable landscaped setting, is set well back from all boundaries and is considered to be 'compatible' with the character.

Nevertheless, it is appreciated that the Community will still have concerns with the proposal for a boarding house.

2. Carparking

The number of rooms decreased to 32 and the carparking increased to 19 spaces. The development only needs to provide 17 spaces to prevent any consent authority from refusing the application on the grounds of carparking.

3. Wall height

The proposal is now fully compliant with the 7.2m wall height control.

4. Front Setbacks and Landscaping

The proposal is now fully compliant with the 6.5m front setback control to all three street frontages, despite the DCP allowing a 3.5m setback to secondary streets. The treatment of the front setback area was also greatly improved by the removal of hard surfaces and a more appropriate landscape design. Council's Landscape Officer is satisfied with this outcome.

5. Privacy

The original proposal had a common outdoor area that directly adjoined a number of rooms, leading to visual and acoustic privacy issues. This outdoor area has been moved adjacent to the entrance and the common indoor area. This change did not result in any unreasonable external privacy issues.

6. Stormwater, Drainage and Engineering

The applicant submitted a revised stormwater design as well as a Flood Study. These satisfied Council's Development Engineers.

7. Insufficient Information

Revised landscape plans were submitted. These satisfied Council's Landscape Officer.

The applicant agreed to construct a footpath to the nearest bus stop. This footpath has been detailed on the latest set of plans and satisfies Council's Road Assets Team, Development Engineers, Traffic Officer (re: pedestrian safety) and Landscape Officer (re: the treatment of the road reserve).

The waste room was amended to comply with Council's guidelines and the plan of management for the boarding house has been altered to outline how waste will be dealt with on an ongoing basis.

Conclusion

The amended plans, additional information and recommended conditions of consent have, in my professional opinion, satisfactorily resolved the contentions.

- 48 Mr Milliken also notes he agrees with the Statement of Evidence of the Applicant's planning expert Mr Haynes (Exhibit E).

49 Mr Haynes provides the following evidence in support of the resolution of the previous contentions. The following sections are extracted from his Statement of Evidence:

(1) Contention 1: Compatibility with character: Clause 30A of SEPP ARH 2009

- ...
- The scale of the proposed development has been amended by increasing the front setback and increasing the landscaped area within the front setback.
 - The length of building elements, along each of its three street frontages have been amended. The boarding house design has effectively been separated into three separated building forms when viewed from the adjacent streets. This responds to the concern that the original design presented long lengths of building to the street frontages. The architecture now reflect this providing 4 to 5 meter gaps at the belong Avenue and Nargong Road frontages.
 - The treatment of the front landscaped areas has been amended in liaison with Council's landscaping expert. The design reflects input from the proponents and Council's expert.
 - The setbacks to each street boundary have been amended noting:
 - The boundary setback to 58 Binalong Avenue has been increased from 2.1m (at ground level) to 3m;
 - The boundary setback to Nargong Road and Jennifer Avenue has been increased from 3.5m to 6.5m.

The proposal complies with all of the development standards and built form controls applicable to the site/type of development. It presents a compatible 2 storey height noting that nearby development ranges from 1 to 2-3 storeys.

...

The proposal is a boarding house that is permitted in the zone and will therefore have some differences in its appearance to single residential houses. But a proposed development does not need to be the same as existing development to satisfy the test of compatibility with local character. Overall, it is assessed that the proposed design:

- is of high quality and has appropriately responded to the established local character and likely future character
- is appropriate in addressing each of its street frontages
- will not be prominent with the site's position being below the street levels of the adjoining roadways.
- will be located within a landscaped setting
- presents no physical impacts in terms of shading, privacy, visual impact, or scale – as further addressed under the respective subject areas below
- is harmonious and sympathetic with existing development. The amended plans incorporate street elevations that demonstrate the proposal will fit in contextually within its streetscape setting.

(2) Contention 2: Wall Height

The Architectural Plans have been amended to address this contention. The amended design is compliant with Warringah DCP control 'B1 wall height' as shown on drawing DA904; only roof elements extend beyond the wall height plane, as is allowed by the control. The proposed building height is compliant with the DCP Wall height control.

(3) Contention 3: Front Setbacks

The architectural plans have been amended to address these contentions by the following design changes:

- The boundary setback to Nargong Road and Jennifer Avenue has been increased from 3.5m to 6.5m; effectively resulting in the proposed development having two primary street frontages to the benefit of the adjacent streetscapes.
- The majority of these increased setbacks are proposed as landscape area and generally free of structures in accordance with the Part B7 of the DCP.
- A landscaping concept plan has been added to the architectural plan set. It incorporates planting zones A, B and C adjacent to each of the three street frontages with a detailed planting regime associated with each planting zone. These changes have been undertaken in consultation with Council's landscaping expert to facilitate addressing the concerns raised.
- The primary outdoor area (adjacent to the common room) has been moved from within the front setback to be behind the front setback.

(4) Contention 4: Privacy

It is noted for clarity that this privacy concern is internal to the proposed development rather than relating to a neighbouring property.

The Architectural Plans have been amended to address this contention by deleting the common outdoor area at the rear and relocating it adjacent to the Nargong Road / Jennifer Avenue street frontages. This resolves the issue by removing the privacy conflict on rooms 11, 12, and 13. The remaining space to the east of these rooms is now proposed to be a 1m deep raised planter that will enhance the amenity of this space.

(5) Contention 5: Landscaping

The amended Architectural Plans address the manner in which the adjoining road verges (Binalong Avenue particularly). The following aspects are noted:

- The boundary setback to Nargong Road and Jennifer Avenue has been increased from 3.5m to 6.5m; effectively resulting in the proposed development having two primary street frontages to the benefit of the adjacent streetscapes.

- The majority of these increased setbacks are proposed as landscape area and generally free of structures in accordance with the Part B7 of the DCP.
- A landscaping concept plan has been added to the architectural plan set. It incorporates planting zones A, B and C adjacent to each of the three street frontages with a detailed planting regime associated with each planting zone. These changes have been undertaken in consultation with Council's landscaping expert to facilitate addressing the concerns raised.

50 I am satisfied on the basis of the arguments submitted by the Mr Haynes, and agreed by the Mr Milliken, that the amended development satisfactorily responds to and addresses the previous contentions raised by the Respondent, noting I have detailed my consideration of the compatibility of the proposed development with the character of the locality later in the judgment [58]-[63].

Consideration of objections

51 The original development application was notified from 16 February 2018 and 21 March 2018 in accordance with the provisions of DCP 2011. The Council received 99 objections to the development. The issues raised within the submissions can be summarised as follows:

Zoning

The development is not suitable for the low density residential zoning of the site or this area of Allambie Heights. Boarding houses should not be permitted within the R2 Low Density Residential zone and that the State Environmental Planning Policy (Affordable Rental Housing) 2009 should not override Council's controls.

Character

The proposal is not compatible with the character of the local area.
Boarding house residents

The boarding house will be occupied by residents who are transient, involved in crime or anti-social activities or by people dependent on social services. Concerns are also raised that this is a family orientated area and that a boarding house does not fit with this social character, particularly in relation to the relatively short term stays and the potential activities of the residents (eg: smoking).

Traffic and parking

The development does not provide sufficient on-site car parking and that the increased occupancy of the site will result in traffic congestion and a loss of on-street parking.

Accessible area, pedestrian safety and bus services

The proposal is not in an "Accessible Area", the pedestrian pathways are either nonexistent or inadequate, and that the bus services it relies upon to service the residents are infrequent.

Privacy

The proposal would result in unreasonable privacy impacts.

Building bulk

The proposal has excessive building bulk.

Landscaped open space

The submissions raise concerns that the proposal does not sit within a suitable landscaped setting and does not comply with Council's landscaped open space control.

Bushfire

The bushfire report submitted with the application contained errors, including incorrect classification of the building and site vegetation.

The NSW Rural Fire Service has made errors in their assessment of the application and incorrectly issued approval conditions.

Impact on natural environment

The proposal will have unacceptable impacts on the natural environment.

Stormwater

The stormwater disposal system is not adequate.

Infrastructure

The addition of up to 64 new residents to this one site would result in a negative impact on existing infrastructure, such as the provision of power, water and sewage services.

Driveway visibility

The additional cars parked on the street would reduce the visibility for surrounding residents leaving their driveways.

Waste management

The waste management plan submitted with the application is inadequate and that the number of new residents would generate a large amount of rubbish.

Property values

The proposal would impact on property values in the area.

(Exhibit 6)

- 52 At the commencement of the proceedings, on-site evidence was heard from a number of objectors to the application. The issues raised by these objections repeated many of the issues detailed above with the following additional concerns:

- Overshadowing of proximate residents.

- The impacts of construction traffic, deliveries and haulage of materials from the site.
- Feasibility of the bin collection and waste management approach proposed.
- Impact of the proposed footpath on the park and its existing canopy trees.
- Whether the development will deliver affordable housing.

Expert Evidence on the issues raised by objectors:

53 Mr Haynes provides the following evidence in support of the resolution of the concerns raised by the public, noting that the following sections are extracted from his Statement of Evidence:

- Traffic and parking

The proposal is accompanied and supported by a traffic assessment prepared by Traffic & Urban Planning Pty Ltd. It finds that: the volume of vehicles exiting the car park is expected to be low due to it being a low traffic generating development, and pedestrian volumes in the area are also low. Furthermore, Council's experts have assessed and endorsed the proposal in their referral response subject to conditions of development consent.

- Privacy

It is assessed that the proposal is satisfactory and appropriately designed to reasonably address privacy considerations. The following features of the design and its relationship with adjoining land are noted:

- The majority of accommodation rooms are orientated to either the north (Jennifer Ave / Nargong Road) or east / west, where adjacent to Binalong Avenue to minimise the potential for overlooking across side boundaries.
- Significant separation provided by the adjoining roadways and the open space corridor to the east of the site. Furthermore, the design provides significant setbacks to the eastern side boundary ranging from 4.86m to 22.3m.

- The proposed rooms and communal spaces are appropriately separated from each other and adjoining developments. - The principal, north facing communal room is significantly separated from nearby dwellings. An onsite manager will reside on the property and support the orderly function of the communal room. Furthermore, an operation management plan accompanies the application and establishes rules for use of the communal room. - These spaces will not significantly or unreasonably affect the visual privacy of the neighbouring properties.

- In relation to the southern boundary interface, the proposal adjoins number 58 Binalong Avenue. The design provides an increased setback of 3m metres to the ground floor level of the southern side boundary. Window openings within the southern elevation of the building are providing appropriate light, ventilation and articulation to the elevation without compromising privacy. Privacy screens are provided to the balcony of the managers room to maintain privacy in a southerly and easterly direction. Furthermore, a garage with metal roof and driveway are located adjacent to the common boundary between the properties. The proposal will achieve an appropriate privacy outcome to this property.

Noting these characteristics, it is concluded that the proposal will not significantly or unreasonably affect the visual privacy of the neighbouring properties and will achieve an appropriate privacy outcome.

- Building bulk

Notwithstanding the following points summarise the key changes to the design that will reduce its visual impact:

- Increased setbacks and landscaped area and a corresponding reduced development footprint. The landscaped Open space is 25% more than what is required in the R2 zone under the Warringah DCP. The DCP requirement is 40% or 683 m² yet the proposal provides 855 m² or 50%, which is 25% above the control.
- Decreased gross floor area and building bulk. The gross floor area has reduced from 1,245 m² to 997m² which equates to a 20% reduction in gross floor area.
- Reduced wall height. The amended design is compliant with Warringah DCP control B1 wall heights.
- Increased building separation. The building separation has been increased from 2 m originally to 4 to 5 m.
- Creation of three building forms to avoid long lengths of building to the street frontage. The architecture now reflects this providing 4-to 5-meter gaps at the Binalong Avenue and Nargong Road frontages.
- Breezeway created. There is now a four-meter-wide breezeway that has planting through its extent. This is now a secondary entry to the building from Binalong Avenue

- Landscaped open space

The amendments to the Architectural plans provide increased landscaping. The landscaped Open space is 25% more than what is required in the R2 zone under the Warringah DCP. The DCP requirement is 40% or 683 m² yet the proposal provides 855 m² or 50%, which is 25% above the control.

- **Bushfire**

The site is designated as bushfire prone. The proposed development has been designed to satisfy bushfire planning considerations and has been endorsed by the NSW Rural Fire Service.

The proposal is accompanied and supported by a bushfire protection assessment report by Bushfire Consultancy Australia. Furthermore, the application was referred to the NSW Rural Fire Service and in a letter response dated 18 April 2018 they state that no concern is raised to the proposal.

Subject to compliance with the bushfire protection recommendations, the proposal satisfies planning for bushfire protection requirements.

- **Impact on natural environment (native vegetation, tree removal, and waterway)**

The proposal is also accompanied and supported by an arboriculture Assessment report prepared by Urban Forestry Australia.

The extent, type, quality and health of vegetation on the site has been thoroughly assessed and documented. Based on the findings of this expert report it is assessed that tree removal considerations are satisfied by the proposal.

Furthermore, the amended Architectural plans incorporate a landscaping concept plan which proposes additional replanting in response to this contention. These changes have been undertaken in consultation with Council's landscaping expert to facilitate addressing the concerns raised.

The proposal is accompanied and supported by Waterway Impact and Flora and Fauna Assessment reports prepared by GIS Environment Consultants Pty Ltd.

The Flora and Fauna Assessment report concludes:

The proposal described in this report not likely to have a significant effect to any threatened species, population or ecological community and none of the BC Act thresholds are met, therefore a Biodiversity Development Assessment Report (BDAR) is not recommended in relation to this proposal.

The ecological impact of the proposal is not likely to be an unacceptable impact by itself under Section 79C of the EPA Act or to have a significant impact under part 5A. The proposal

is not considered to be a 'matter of National Environmental Significance (NES)' EPBC Act referral of the proposal to the Department of the Environment and Water Resources is not considered necessary.

The proposal meets the requirements and objectives of parts E2, E4, E6 and E7 of the Warringah DCP 2011.

We recommend that ameliorative conditions and management recommendations in this report be followed to reduce disturbance during construction and to improve ecological outcomes.

Furthermore, the Waterway Impact Assessment report states in conclusion that:

'The current condition of the vegetation in the Riparian Land is low with many weeds. The proposal will have an impact on the Riparian Land on the property. The Biodiversity Management Plan and the recommendations in this report and the Flora and Fauna Assessment will help the recovery of the Riparian Land. The proposal will not have a significant impact to the waterway or the riparian land adjacent to the property'

Based on the above conclusions it is assessed that natural environmental impacts are satisfied by the proposal. With the incorporation of the ameliorative conditions it is assessed that native fauna considerations are satisfied by the proposal.

- Infrastructure

The property comprises existing residentially zoned, urban land that is serviced by trunk infrastructure. It will not result in exceedance of the capacity of local and regional infrastructure and community services. It will not result in excessive population density or the exceedance of the capacity of local and regional transport facilities.

- Driveway visibility

The proposal is accompanied and supported by a traffic assessment prepared by Traffic & Urban Planning Pty Ltd. Furthermore, Council's experts have assessed and endorsed the proposal (as stated in their referral response), subject to conditions of development consent.

- Waste management

Sufficient waste management provisions are provided by the application. These have been endorsed by Council in the assessment of the DA.

Waste management is provided within the basement level of the proposal. Provision for a bin storage area is provided at the northern end of the basement, adjacent to the vehicle entry point. Provision is

made for the accommodation of 17 bins with a separately accessible bulky waste storage room adjacent.

Provision for a temporary bin holding area is provided adjacent to the driveway. The storage areas have been designed to meet the DCP requirements. The DCP provisions relating to waste management are satisfied by the proposal.

- Property values

No empirical evidence has been provided by those making submissions that the proposal would result in a reduction in the value of nearby properties.

(Exhibit E)

54 Mr Milliken accepts the evidence of Mr Haynes that the concerns of the residents have been appropriately addressed and the amended application warrants approval. Accordingly the Respondent seeks the Court to make the agreed consent orders.

55 During the proceedings oral evidence was provided to the Court by Mr Haynes, Mr Milliken and Mr Anthony Powe (Landscape Architect and Arborist for the Respondent). In particular they were questioned as to the following issues raised by the objectors. A summary of the agreed oral evidence of the experts is detailed below:

- Overshadowing of proximate residents.

As demonstrated in the Shadow Diagrams (reference architectural plans DA 500,501 and 503) the rear of 58 Binalong Avenue achieves three hours sunlight to more than 50% of their rear private open space in mid-winter. This meets the requirements of DCP 2011.

- The impacts of construction traffic, deliveries and haulage of materials from the site.

The agreed conditions of consent should include a condition requiring the preparation of a construction management plan prior to commencement of work on site.

- Feasibility of the bin collection and waste management approach proposed.

Agreement that the bin room provided is sufficient in size to accommodate the required number of bins. The holding area is acceptable and has proven to be a feasible approach on other sites. The bins will not be required to be moved to the kerb and will be collected from the holding area by the contractor.

- Impact of the proposed footpath on the park and its existing canopy trees.

The footpath location has been agreed by Council and makes allowance for the tree protection zone for the proximate tree.

- 56 A condition of consent has been included in Annexure A to address the management of construction as follows:

A Construction Management Program shall be prepared. The Plan should include the following:

(a) The proposed method of access to and egress from the site for demolition, excavation and construction vehicles, including access routes through the Council owned or managed land 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 without Council's Consent being granted;

(b) The proposed method of loading and unloading, demolition, 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;

(c) The location and operation of any on site crane.

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

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community.

- 57 I note the concerns of the residents in relation to whether the development will deliver affordable housing. However it is the role of the consent authority to apply the relevant planning policy's as they are drafted and I am satisfied that

the amended development, when assessed against those policies, meets their requirements.

58 I am satisfied on the basis of the arguments submitted by the Mr Haynes, and agreed by the Mr Milliken, that the amended development satisfactorily responds to and addresses the concerns raised by the residents, noting I have detailed my consideration of the compatibility of the proposed development with character below.

Zoning and Character

59 The concerns of the residents are well canvassed in the evidence of the experts, which I have accepted at paragraph [49] and [58].

60 However given the pervasive concern of the residents as to the compatibility of the development with their neighbourhood, its character and the low density zoning I have given separate consideration to these matters below.

61 As noted at paragraph [17] the R2 Low Density Residential zone provides for a diverse range of uses. I accept the submission of Mr O’Gorman Hughes that the diversity of these uses, the permissibility of boarding houses as a use and the compliance of the proposed development with the standards in LEP 2012 and the controls in DCP 2011 are relevant factors in determining the compatibility of the development with the character of the locality.

62 Further, relevant to the determination of compatibility with character is consideration of the likely future character of an area and whether the planning controls are aimed at preserving that character (*Veloshin v Randwick Council* [2007] NSWLEC 428 at [33]). The likely future character is the affected by the realisation of the planning controls. I have given weight to the fact that the proposed development is compliant with these controls in my assessment of the compatibility of the development.

63 However, I accept that the decision of *Terrace Tower Holdings Pty Ltd v Sutherland Shire Council* (2003) 129 LGERA 195; [2003] NSWCA

289 concludes that the weight to be given to a draft environmental planning instrument is proportionate to its certainty and imminence, although the level of consideration may differ depending on the purpose of the planning controls proposed. The recent amendments to SEPP ARH are such a draft instrument given the effect of the savings and transitional provisions, refer paragraph [43].

64 Given that the amendments to SEPP ARH restricting the size of boarding houses to 12 rooms have been effected, I am satisfied they should be given weight in considering the compatibility of the proposed development with the character of the local area. On balance I accept the evidence of the planning experts (at paragraph [47] and [49]) that the development achieves compatibility. My reasoning is as follows:

- (1) the subject site contains two separate allotments. Therefore, even if the provision restricting the size of boarding houses to 12 rooms applied to the site it would apply to each lot, resulting in a maximum of 24 rooms across the subject site.
- (2) I accept the subject site may be capable of further subdivision given the minimum lot size standard in LEP 2012. This is relevant in considering the proposed built form.
- (3) I am satisfied that the provision of landscaped area in the amended plans is greater than that required by DCP 2011. Further, the increased front setback to the secondary street frontage, and the presentation of the building as three building forms with separation make the scale of the development appropriate.

65 In concluding my assessment of the public submissions I have also given weight to the Northern Beaches Affordable Housing Needs Analysis 2016 (Exhibit F). Broadly this document concludes that the Northern Beaches have a supply of affordable housing well below the Sydney average. Further, it concludes that there are increasing demands for Key Worker Housing due, in

part, to major investment in health infrastructure in the Northern Beaches. The document concludes, in part that *"There is, therefore, an urgent need for action to increase the supply of affordable, especially rental, housing which is targeted at low to moderate income households, who are required to live and work in the Northern Beaches to support its community and economy"* (Exhibit F).

- 66 The evidence of local community demand for such affordable accommodation is relevant material for my consideration as it falls within matters arising from the broad public interest (see *Terrace Tower Holdings Pty Limited v Sutherland Shire Council* [2003] NSWCA 289; (2003) 129 LGERA 195.
- 67 Section 4.15(b) of the EPA Act requires a consideration and balancing of a number of factors in the assessment of a development application. These includes the likely impacts of the development, including the benefits that may arise from the development along with the public interest at s.4.15(e). Notwithstanding the parties' agreement to Consent Orders in determining this matter, I have carefully considered the evidence and objections, the submissions and my observations during the onsite view. I am satisfied in my evaluation under s 4.15 of the Act that the amended proposal warrants approval.
- 68 The Practice Note requires: evidence that the approval is lawful and appropriate; satisfaction that any objections have been properly taken into account; and confirmation that reasonable notice has been given to all persons who objected to the proposal detailing the content of the proposed orders, the date of the hearing and the opportunity for them to be heard. I am satisfied that these requirements are met and accordingly, consent is granted to the development in accordance with the consent orders signed by the parties (Exhibit 7) and subject to the conditions of consent as agreed between the parties and annexed to this judgment.

Orders

- 69 The Court orders:

By consent

- (1) The appeal is upheld
- (2) Development Application No. DA2018/0149 for the demolition of the existing buildings, excavation for a basement car park and the construction of a two storey boarding house containing 32 boarding rooms (including a manager's room) at 60 Binalong Avenue, Allambie Heights, is approved subject to conditions set out in Annexure 'A'.

And further that:

- (3) The exhibits are returned with the exception of Exhibits A C, 1 and 4.



D M Dickson
Commissioner of the Court

Annexure A: Agreed Conditions of Consent.

ANNEXURE A

ACN 603 347 824 Pty Ltd v Northern Beaches Council

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA020 Revision B – Demolition Plan	30 April 2019	Walsh ² Architects
DA100 Revision G – Site Plan	30 April 2019	Walsh ² Architects
DA101 Revision G – Basement Plan	30 April 2019	Walsh ² Architects
DA102 Revision I – Ground Plan	30 April 2019	Walsh ² Architects
DA103 Revision F – Level 1 Plan	30 April 2019	Walsh ² Architects
DA104 Revision E – Roof Plan	30 April 2019	Walsh ² Architects
DA200 Revision F – Sections	30 April 2019	Walsh ² Architects
DA201 Revision H - Sections	30 April 2019	Walsh ² Architects
DA300 Revision G - Elevations	30 April 2019	Walsh ² Architects
DA301 Revision H - Elevations	30 April 2019	Walsh ² Architects
DA901 Revision C – Material Schedule	30 April 2019	Walsh ² Architects
DA910 Revision E – Landscape Concept Plan	30 April 2019	Walsh ² Architects
DA911 Revision B – Landscape Concept Plan	30 April 2019	Walsh ² Architects
11518-8/A and 11518-9/A Footpath Plans	21 March 2019	Taylor Consulting
Drawing No 11518 – 1/C – Stormwater Management Plan	2 August 2018	Taylor Consulting
Drawing No Sheet - 2 - Basement Drainage Plan	31 July 2018	Taylor Consulting
Drawing No 11518 – 3 – Stormwater Management Plan	2 August 2018	Taylor Consulting
Drawing No 11518 – 4 – Soil & Water Management Plan	29 January 2018	Taylor Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Operational Plan of Management for 60 Binalong	Not dated	Unknown
Arboricultural Impact Assessment	January 2018	Urban Forestry Australia
Flora and Fauna Assessment	30 January 2018	GIS Environmental

		Consultants
Waterway Impact Statement	31 January 2018	GIS Environmental Consultants
Biodiversity Management Plan	31 January 2018	GIS Environmental Consultants
Access Assessment Report	23 January 2018	BCA Logic
BCA Assessment Report	29 January 2018	BCA Logic
NCC Section J Report	15 January 2018	BCA Logic
Bushfire Risk Assessment	25 January 2018	Bushfire Consultancy Australia
Geotechnical Assessment Report	2 February 2018	Ascent Geotechnical Consulting
Waste Management Plan	Not dated	Walsh Architects

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

c) No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

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 except that drawings DA.910 and DA911 prevail over the Arboricultural Impact Assessment.

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

2. Compliance with other departments

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

Department	Title	Dated
NSW Rural Fire Service	NSW Rural Fire Service – Referral response	18 April 2018
Ausgrid	Ausgrid Referral Response	22 February 2018

(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 or Authorities.

3. Occupancy

The use is to operate in accordance with the following:

A) Nothing in this consent shall authorise the use of the premises as detailed on the approved plans for any land use of the site beyond the definition of a Boarding House.

A Boarding House is defined as:

"a building that:

- (a) is wholly or partly let in lodgings, and*
- (b) provides lodgers with a principal place of residence for 3 months or more, and*
- (c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
- (d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers,*

but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment".

(Development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary).

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

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

4. Prescribed Conditions

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

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

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

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

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

Reason: Legislative Requirement.

5. General Requirements

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- o 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) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(c) 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.

(d) 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.

(e) Prior to the release of the Construction Certificate payment of the Long Service Levy is

required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(f) Where works are to be carried out to a Class 1a building, smoke alarms are to be installed throughout all new and existing portions of that Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.

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

(h) No building, demolition, excavation or material of any nature 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) All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

(k) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(l) 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.

(m) Any Regulated System (e.g. air-handling system, hot water system, a humidifying system, warm-water system, water-cooling system, cooling towers) as defined under the provisions of the Public Health Act 2010 installed onsite is required to be registered with Council prior to operating.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Council Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Section 94 Development Contributions Plan		
Contribution based on a total development cost of: \$ 4,467,031.00		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$42,436.79
Section 94A Planning and Administration	0.05%	\$2,233.52
Total	1%	\$44,670.31

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

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

Reason: To provide for contributions in accordance with Northern Beaches Council's Development Contributions Plan.

7. Security and Works Bonds

(a) 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 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.

(b) Construction, Excavation and Associated Works Bond (Civil Works within Road Reserve)
A Bond of \$40,000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, footpath and associated kerb ramp works required as part of this consent.

(c) Construction, Excavation and Associated Works Bond (Pollution)
A Bond of \$10,000 as security to ensure that there is no transmission of material, soil etc. off the site and onto the public road and/or drainage systems.

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, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

Reason: To ensure adequate protection of Councils infrastructure.

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

8. Construction Management Program

A Construction Management Program shall be prepared. The Plan should include the following:

- (a) The proposed method of access to and egress from the site for demolition, excavation and construction vehicles, including access routes through the Council owned or managed land 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 without Council's Consent being granted;
- (b) The proposed method of loading and unloading, demolition, 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;
- (c) The location and operation of any on site crane.

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

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community.

9. Utilities Services

Prior to the issue of the Construction Certificate, evidence is to be submitted to the Certifying Authority that:

- (a) A letter from the telecommunications service provider confirming that satisfactory arrangements have been made for the provision of underground telecommunications for the approved development have been made; and
- (b) Evidence that notification has been received from an Electricity Service Provider of electricity supply requirements for the development can be provided.

Reason: To ensure that services have been provided as required by this consent.

10. Boarding House Plan of Management

Prior to the issue of any Construction Certificate an updated Plan of Management is to be prepared for the premises. The plan shall include detail to manage the following requirements:

- 1) The maximum number of boarders and lodgers:
 - a) The building is to contain a maximum of 64 persons (not including children under the age of 5 years), being no more than 2 persons per room, including the managers room.

Note: The Boarding House Regulation 2013 provides that long-term sleeping accommodation means accommodation that is provided to the same person for a period of more than 28 consecutive days.

- 2) The Operational Plan of Management is to include a provision to advise Council of any change to the manager or its delegate and of the contact details of the manager or its delegate within one (1) week of any change. The sign on the site giving the name and contact details of the manager must also be updated within one (1) week of any change.
- 3) The Waste Management and Cleaning section of the Operational Plan of Management is to state that the bins are to be taken to the temporary storage area the afternoon or evening before collection day and taken back to the basement on collection day (after the waste is collected).

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

Reason: To ensure the premises are maintained in an appropriate manner.

11. Tree protection

In order to protect and enhance onsite vegetation and trees the following applies to the development site:

(a) Construction Certificate Plans

Where applicable, the Construction Certificate plans must include reference to:

- (i) Trees to be removed coloured or shaded in the colour red
- (ii) Trees to be retained coloured or shaded in the colour green
- (iii) Trees to be pruned coloured or shaded in the colour blue
- (iv) Trees to be transplanted coloured or shaded in the colour yellow

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

Reason: To ensure compliance with the requirement to retain and protect significant planting on and adjacent to the site.

12. 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 Certifying Authority prior to the issue of the Construction Certificate.

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

13. Building Code of Australia / National Construction Code

Details and amendments to ensure compliance with construction requirements, access for persons with a disability, and Energy Efficiency provisions contained within the National Construction Code and as detailed and recommended in the Building Code of Australia (BCA) Assessment Report prepared by 'BCA Logic P/L', referenced report No. 109039-BCA-r2.1, and dated 29/01/2018 are to be incorporated into and applied to, the development.

Fully detailed plans and specifications demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for Fire Safety, Energy Efficiency, Health, and Amenity in accordance with the minimum provisions of the National Construction Code / BCA for building occupant access, structural and fire safety, and comfort.

14. External Finishes to Roof

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

15. 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 asset's and/or easement. Plans will be appropriately stamped prior to the issue of the construction certificate.

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

16. Offstreet Parking Facility and Internal Driveway Design

Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent. The off-street parking facility gradients, levels, internal dimensions are to comply with AS/NZS 2890.1:2004 Parking facilities Part 1: Off-street car parking.

Vehicle manoeuvrability into and out of all car parking spaces must be designed using the 85th percentile vehicle turning swept path in accordance with appendix B of AS/NZS 2890.1. Vehicles are to enter and exit the basement carpark in the forward direction.

Engineering longitudinal sections of the finished ground surface levels of the driveway and garage along the vehicle turning swept paths are to be provided to the Certifying Authority. Pavement surface levels, gradients, change in gradients, etc of the proposed garage and driveway are to comply with section 2.6 of AS/NZS 2890.1 to ensure vehicles will not scrape their undersides when accessing the proposed garage. Driveway levels from the kerb in Nargong Road to the basement carpark are to comply with the Traffic Report by Transport & Urban Planning Pty Ltd dated 17 January 2018.

A suitably experienced and qualified civil engineer is to certify that the proposed car parking facility complies with all requirements of this condition.

Vehicle manoeuvrability into all car parking spaces must be designed using the 85th percentile vehicle turning swept path in accordance with appendix B of AS/NZS 2890.1. A suitably experienced and qualified civil engineer is to certify that the proposed car parking facility complies with all requirements of this condition.

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

Reason: To ensure suitable vehicular access to private property.

17. Waterproofing/Tanking of Basement Level

The basement area is to be permanently tanked or waterproofed. Details of the waterproofing/ tanking are to be prepared by a suitably qualified Engineer.

Where dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Department of Primary Industries - Water. The bore license must be obtained prior to commencement of dewatering works. All requirements of the NSW Department of Primary Industries - Water are to be complied with and a copy of the approval must be submitted to the Certifying Authority. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent ingress of sub-surface flows into the basement area and to comply with State Government Requirements.

18. Structural Adequacy and Excavation Work

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

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

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

Reason: Safety.

19. On-site Stormwater Detention System Compliance

Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's "On-site Stormwater Detention Technical Specification" and the concept drawings by Taylor Consulting, drawing number 11518-1/B, 2 and 3 dated 2 August 2018, and 31 July and 2 August 2018.

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

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

20. Design of Outlet Structure Prior to Construction Certificate

Stormwater and overland flow must be discharged to the creek through an outlet structure designed in accordance with s per DPI Water's guidelines for outlet structures on waterfront land. Guidelines can be found at:

http://www.water.nsw.gov.au/data/assets/pdf_file/0009/547254/licensing_approvals_controlled_activities_outlet-structures.pdf

This design is to be submitted to Council for approval under Section 68 of the Local Government Act prior to issue of the Construction Certificate.

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

21. Pump-Out System Design for Stormwater Disposal

The design of the pump-out system for stormwater disposal will be permitted for drainage of basement areas only, and must be designed in accordance with the relevant Australian Standards. Engineering details demonstrating compliance with this requirement and certified by an appropriately qualified and practising hydraulic engineer are to be provided.

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

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

22. Implementation of Biodiversity Management Plan

All management actions in the Biodiversity Management Plan GIS Environmental Consultants dated 31 January 2018 are to be implemented prior, during and post construction.

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.

Reason: Protection of Bushland.

23. Shoring of Adjoining Property

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings. Council approval is required if temporary rock anchors are to be used within Council land. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

24. 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 Warringah 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.

25. Tree Trunk, Branch and Root Protection

- (a) Existing trees which must be retained
 - i) All trees not indicated for removal on the approved plans, except Tree 1 in the Urban Forestry Australia report which is approved for removal, or unless exempt under relevant planning instruments or legislation
 - ii) Trees located on adjoining land
- (b) Tree protection
 - i) No tree roots greater than 30mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
 - ii) All structures are to bridge tree roots greater than 30mm diameter unless directed otherwise by a qualified Arborist on site.
 - iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
 - iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
 - v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

26. Asbestos

Before the commencement of any demolition work:

Where asbestos is found or likely to be disturbed the owner or occupier of the premises must consult an appropriately qualified professional registered with the Australian Institute of Occupational Hygienists to undertake an assessment of the site to determine the potential for contamination. The owner or occupier must then develop a management plan which will require the issue of a Clearance Certificate.

Anyone who removes, repairs or disturbs bonded or a friable asbestos material must hold a current removal licence from Work Cover NSW.

Before starting work, a work site-specific permit approving each asbestos project must then be obtained from Work Cover NSW. A permit will not be granted without a current Work Cover licence.

All removal, repair or disturbance of or to asbestos material must comply with the following:

- The Work Health and Safety Act 2011
- The Work Health and Safety Regulation 2011, and.
- How to Safely Remove Asbestos Code of Practice –published by WorkCover NSW.

Reason: To ensure the health of site workers and the public.

27. Physical Barrier to be placed at the eastern boundary of the site

Prior to commencement, a physical barrier is to be placed at their landward extent in all locations where mowing or slashing, or any other damaging activity, is likely. The physical barrier shall be constructed of non-combustible materials, shall be a minimum of 50% transparent and shall not exceed 1.2 metres in height forward of the building line or 1.8m in height behind the building line.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to commencement.

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

28. 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) and the Erosion and Sediment Control Plan prepared by Taylor Consulting dated 29 January 2018.

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

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

29. Dilapidation report

A dilapidation report is to be prepared for No. 58 Binalong Avenue.

A copy of the report is to be submitted to Council prior to commencement of works.

Note: This report will be made available to the affected adjoining property owners.

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

Reason: To ensure the structural stability of the adjoining dwellings.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

30. Notification of Inspections

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 pouring of kerb and gutter, driveway, retaining walls, footpath and kerb ramps
- (c) Subgrade level / basecourse level
- (d) Sealing road pavement

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

Reason: To ensure new Council infrastructure is constructed to Council's requirements.

31. Civil Works Supervision

All civil works approved in the Construction Certificate are to be supervised by an appropriately qualified and practising Civil Engineer.

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

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

32. Maintenance of Road Reserve

The public footways and roadways adjacent to the site shall be maintained in a safe condition at all times during the course of the work.

Reason: Public Safety.

33. Traffic Control During Road Works

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with Council's Minor Works Policy 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.

Reason: Public Safety.

34. Trees Condition

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site 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 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.

35. Aboriginal Heritage

Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council should be contacted.

Reason: To ensure the protection of Aboriginal Heritage.

36. Maintenance of Sediment and Erosion Controls

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

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

37. Temporary Dewatering

Discharge must achieve the following water quality targets in addition to any conditions/documentation of this consent, any requirements of the General Terms of Approval/Controlled Activity permit issued by DPI Water, and legislation including Protection of The Environment Operations Act 1997 and Contaminated Lands Act 1997.

Parameter	Criterion	Method	Time Prior to Discharge
Oil and grease	None visible	Visual inspection	<1 hour
pH	6.5- 8.5	Probe/meter	<1 hour
Total Suspended Solids (TSS)	<50mg/L	Meter/grab sample measured as NTU	<1 hour

Note: The correlation between NTU and TSS must be established by a NATA accredited laboratory prior to the commencement of dewatering activities.

Dewatering must not occur until the above water quality parameters are met.

All records of water discharges and monitoring results are to be documented and kept on site. Copies of all records shall be provided to the appropriate regulatory authority, including Council, upon request.

Tailwater must be discharged to a stormwater pit and not spread over any road, footpath and the like.

Reason: Protection of the receiving environment

38. Vehicle Crossings

The provision of one vehicle crossing 4 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/5 EL and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued. Details demonstrating compliance are to be submitted to the Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

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

39. Boarding House Plan of Management

Prior to the issuing of any interim / final occupation certificate, certification is to be provided from the operator that the requirements of the Boarding House Plan of Management have been implemented to the extent applicable at the commencement of operations.

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

Reason: To ensure the premises are maintained in an appropriate manner in perpetuity.

40. Required Planting

The tree/s, shrubs and groundcovers in the approved Landscape Plan shall be planted.

The following trees are to be planted in the Maneroo Road road reserve forward of the property at No. 9 Maneroo Rd to replace trees removed during construction of the footpath:

3x *Callistemon* 'Kings Park Special', minimum pot size 75 litre, mulched, watered and maintained until established.

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

Reason: To maintain environmental amenity.

41. Authorisation of Legal Documentation Required for On-site Stormwater Detention

The original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works.

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

Reason: To create encumbrances on the land.

42. Positive Covenant for the Maintenance of Stormwater Pump-out Facilities

A Positive Covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the property title to ensure the on-going maintenance of the stormwater pump-out facilities on the property being developed.

Warringah Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Warringah Council's delegate shall sign these documents prior to the submission to the Land & Property Information Department.

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

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard. (DACENF11)

43. Certification of Civil Works and Works as Executed Data

A suitably qualified Civil Engineer shall certify that the completed civil works including footpath, driveway crossing, kerb and gutter and associated works have been constructed in accordance with this consent and the approved Roads Act plans.

Works as Executed data certified by a registered surveyor prepared in accordance with Council's guidelines shall be submitted to the Council for approval prior to the issue of the

Occupation Certificate.

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

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

44. 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 Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure bushland management.

45. Garbage and Recycling Facilities

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

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

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

46. Sydney Water

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

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

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

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

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

47. Fire Safety Matters

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

Details demonstrating compliance if required, are to be submitted to the Certifying Authority

prior to the issue of the Interim / Final Occupation Certificate.

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

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

48. Building Code of Australia / National Construction Code

Works to ensure compliance with construction requirements, access for persons with a disability, and Energy Efficiency provisions as contained within the National Construction Code and as also detailed and recommended in the Building Code of Australia (BCA) Assessment Report prepared by 'BCA Logic P/L', referenced report No.109039-BCA-r2.1, dated 29/01/2018 (including any subsequent amendment to this document), are to be incorporated into and applied to the development.

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

Reason: To ensure adequate provision is made for Fire Safety, Energy Efficiency, Health, and Amenity in accordance with the minimum provisions of the National Construction Code / BCA for building occupant access, structural & fire safety, and comfort.

49. Property Boundary Levels

The property boundary levels (to all boundaries) shall match the existing levels except where modified for the vehicular crossing and along Jennifer and Binalong Avenue.. No approval is otherwise granted for any change to existing property alignment levels to accommodate the development. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To maintain the existing profile of the nature strip/road reserve, and the neighbouring properties.

50. Surveyor's Report

A Registered Surveyor's identification report indicating the finished ground floor levels to a nominated fixed datum point are in accordance with the levels indicated on the approved plans. A Surveyor's Report is to be provided for confirmation prior to pouring of the slab or construction of the floor platform. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

51. Stormwater Management System Operation & Maintenance Management Plan

Prior to the issue of an Occupation Certificate an Operation & Maintenance Management Plan for the stormwater management system shall be prepared by a registered engineer to ensure the ongoing performance of the system in accordance with the approved design.

Reason: To provide for the appropriate maintenance and management of the stormwater management system

52. Reinstatement of Kerb

All redundant laybacks and vehicular crossings shall be reinstated 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 Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

53. 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 Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

54. Allocation of Spaces

Car parking spaces provided shall be provided, made accessible and maintained at all times. One space must be permanently allocated to the on-site manager.

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

Reason: To ensure that adequate parking facilities to service the development are provided on site.

55. Certification of Planting, Biodiversity Management and Ongoing Work

The Project Ecologist or Ecological Consultant is to certify that:

- Native plant selection and planting as per the Biodiversity Management Plan prepared by GIS Environmental Consultants dated 31 January 2018 has been completed;
- All actions prescribed in the approved Biodiversity Management Plan have been undertaken fully and where relevant completed and that an appropriate program of regeneration and maintenance has been entered into to comply with requirements of the Plan;
- That areas/features requiring protection have been adequately protected and are in an acceptable condition.

A certificate from the The Project Ecologist or Ecological Consultant shall be submitted to the Principle Certifying Authority prior to the release of the Occupation Certificate.

Reason: Bushland Management.

56. Registration of Encumbrances for On-site Stormwater Detention

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

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

Reason: To identify encumbrances on land.

57. Vehicle Egress Signs

Appropriate sign(s) shall be provided and maintained within the site at the point(s) of vehicular egress to compel all vehicles to come to a complete stop before proceeding onto the public way. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure pedestrian safety.

58. Foot path

The Applicant is to construct the footpath as per the plans referenced below prior to the issue of the Occupation Certificate.

11518-8/A and 11518-9/A Footpath Plans	21 March 2019	Taylor Consulting
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59. Submission of Section 138 Application

An Application for Works to be approved within Council Roadway, 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

1. Driveway crossing
2. Retaining walls through the nature strip for support of the driveway crossing
3. Footpath along the full frontage of the site
4. Footpath up to the existing footpath in Allambie Road and associated pram ramps
5. Kerb and gutter reconstruction along the full frontage of the site

All of the above 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 plans shall be prepared by a suitably qualified consulting engineer.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. An approval is to be submitted to the Certifying Authority prior to the issue of any Occupation Certificate.

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

60. Encroachment Agreement

A Minor Encroachments/Constructions Within Road Reserve Application is to be submitted to Council for approval in relation to the proposed stair access to the property on Council's Road Reserve. All costs associated with these works are to be borne by the applicant.

The applicant is to enter into any appropriate agreements with Council, such as Deeds and Leases and pay any associated fees, in accordance with the above application.

A letter from Council indicating this condition has been satisfied is to be submitted to Certifying Authority prior to the issue of any Occupation Certificate.

Reason: Ensure compliance with Council Encroachments/ Constructions & Road Reserve Lease Requirements

61. Bin stacking

Garbage and recycling bins are only to be placed in the temporary storage area on the day before and the day of collection, and are to be returned to the waste room on the collection day.

When placing the bins in the temporary storage area, only bins of the same lid colour are to be stacked in front of each other (eg: do not stack blue bins behind yellow bins).

Reason: To allow for efficient waste collection and to reduce clutter within the streetscape.

62. Offensive Noise

The ongoing use of the premises/property must not give rise to 'offensive noise' as defined under the provisions of the Protection of the Environment Operations Act 1997.

Reason: To ensure compliance with legislation and to protect public health and amenity.

63. On-going Operations

The on-going use and operation of the boarding house premises must comply with the site-specific Plan of Management.

Reason: To ensure compliance with legislation and to protect public health and safety.

64. Parking Space Allocation

One parking space must be permanently allocated to the on-site manager. A sign is to be displayed on the wall behind this car space with this information.

If the on-site manager does not have a car, this space may be used by the residents. The sign is to be removed or amended to reflect this and replaced if a new manager is present.

Reason: To provide adequate car parking for the on-site manager.

65. Landscape Maintenance

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

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

Reason: To maintain local environmental amenity.

