



## Land and Environment Court New South Wales

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

Medium Neutral Citation: [2023] NSWLEC 1705

Hearing Date(s): Conciliation conference on 29 August, 9 and 24 October 2023

Date of Orders: 23 November 2023

Date of Decision: 23 November 2023

Jurisdiction: Class 1

Before: Targett AC

Decision: The Court orders that:

- (1) Pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979*, the applicant is to pay the costs of the respondent that are thrown away as a result of the Court allowing the applicant to file the Amended Development Application as agreed or assessed.
- (2) The updated written request made pursuant to cl 4.6 of the Manly Local Environmental Plan 2013, seeking to vary the floor space ratio development standard in cl 4.4 of the Manly Local Environmental Plan 2013 prepared by Anna Williams dated 5 October 2023, is upheld.
- (3) The appeal is upheld.
- (4) Development application No DA2022/0727, as amended, for alterations and additions to an existing semi-detached dwelling at 12 Clarence Street, Balgowlah, NSW, being Lot 1 in DP 445281, is determined by the grant of consent subject to conditions of consent in Annexure "A".
- (5) The applicant is required to file the plans and documents referred to in order (4) within 7 days of the date of this judgment.

Catchwords:	APPEAL – development application – conciliation conference – agreement between the parties – orders
Legislation Cited:	Environmental Planning and Assessment Act 1979, ss 8.7, 8.10, 8.14, 8.15 Environmental Planning and Assessment Regulation 2021, s 38 Land and Environment Court Act 1979, ss 17, 34 Manly Local Environmental Plan 2013 cll 4.4, 4.6, 6.2, 6.4, 6.12 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Resilience and Hazards) 2021, s 4.6 State Environmental Planning Policy (Transport and Infrastructure) 2021, s 2.48
Texts cited:	Manly Development Control Plan 2013
Category:	Principal judgment
Parties:	Matthew Adams (Applicant) Northern Beaches Council (Respondent)
Representation:	Counsel: M Adams (Self-represented) (Applicant) J Simpson (Solicitor) (Respondent)  Solicitors: Northern Beaches Council (Respondent)
File Number:	2023/94144
Publication Restriction:	Nil

## JUDGMENT

### Background

- 1 **COMMISSIONER:** This is a Class 1 Development Appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) by the applicant against the respondent's refusal of the applicant's development application (DA2022/0727) (Development Application) for alterations and additions to a semi-detached dwelling house on land identified as Lot 1 in Deposited Plan 445281, known as 12 Clarence Street, Balgowlah (Site).
- 2 The Court has power to dispose of these proceedings under its Class 1 jurisdiction pursuant to s 17(d) of the *Land and Environment Court Act 1979* (LEC Act). The proceedings are determined pursuant to the provisions of s 8.14 of the EPA Act.

### The Development Application

- 3 The Development Application as lodged with the respondent on 3 June 2022 sought consent for alterations and additions to an existing semi-detached dwelling including:
  - (1) construction of a first-floor addition, including two bedrooms, one bathroom, rumpus area and rear balcony;
  - (2) ground floor rear extension of kitchen/living areas and new outdoor patio;
  - (3) internal alterations to existing ground floor; and
  - (4) associated landscaping work.
- 4 On 12 July 2022, the respondent advised the applicant that the Development Application could not be supported in its current form and provided an opportunity for the applicant to either amend the design or withdraw the Development Application.

- 5 On 23 August 2022, the applicant submitted additional information to the respondent.
- 6 On 7 September 2022, the Development Application was referred to the Northern Beaches Council Development Determination Panel (DDP) for determination with an officer recommendation of approval.
- 7 On 14 September 2022, the Development Application was determined by the DDP by way of refusal. The Notice of Determination was provided to the applicant under cover of letter from the respondent on 26 September 2022 (being the date on which the decision was notified for the purpose of s 8.10(1) of the EPA Act).
- 8 On 22 March 2023, the proceedings were commenced, being within the appeal period prescribed by s 8.10 of the EPA Act.
- 9 The Court arranged a conciliation conference under s 34 of the LEC Act between the parties, which was held on 29 August, 9 and 24 October 2023. I presided over the conciliation conference.
- 10 Amended plans and an updated cl 4.6 request prepared by Anna Williams of Blackwattle Planning were provided to the Court as part of the conciliation process (Amended Development Application) cited at [39]. The amendments can be summarised as follows:
  - (1) increased setbacks to the rumpus room, bedroom three and the master suite walk-in robe;
  - (2) decrease in gross floor area;
  - (3) reduction in the number of side windows, and reduction in size and introduction of privacy measures to the stairwell window, on the first floor;
  - (4) reduction in height of boundary wall; and
  - (5) a revised stormwater management system.

- 11 During the conciliation process, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. The decision agreed upon is for the grant of consent to the Amended Development Application, subject to conditions of consent. The signed agreement is supported by an agreed jurisdictional statement.
- 12 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if the parties' decision is a decision that the Court could have made in the proper exercise of its functions.

### **Jurisdictional considerations**

- 13 As the presiding Commissioner, I am satisfied that the decision is one that the Court can make in the proper exercise of its functions (this being the test applied by s 34(3) of the LEC Act). I form this state of satisfaction for the reasons that follow.

#### *Owner's consent*

- 14 The Amended Development Application was submitted by the applicant, being the registered proprietor of the Site.

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

- 15 The Amended Development Application is accompanied by a BASIX certificate (Cert No. A1373444-04, LEC-04, dated 23 October 2023) prepared by Evolving Design and Drafting in accordance with State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 and the Environmental Planning and Assessment Regulation 2021.

#### *State Environmental Planning Policy (Resilience and Hazards) 2021*

- 16 I accept the parties' submission that the requirements of s 4.6 of the State Environmental Planning Policy (Resilience and Hazards) 2021 have been considered and the Site is suitable to accommodate the development the subject of the Amended Development Application. This is primarily because of the Site's

longstanding history of residential use with no known history of potentially contaminating uses or events.

*State Environmental Planning Policy (Transport and Infrastructure) 2021*

17 For the purposes of s 2.48(1)(b)(iii) of the State Environmental Planning Policy (Transport and Infrastructure) 2021 (TISEPP), the Site is located within 5 metres of an exposed overhead electricity power line. Pursuant to s 2.48(2) of the TISEPP, the consent authority must:

- (1) give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and
- (2) take into consideration any response to the notice that is received within 21 days after the notice is given.

18 The respondent provided notice of the Development Application, as lodged, to the electricity supply authority for the Site (Ausgrid). Ausgrid did not object to the development proposed, subject to conditions, which have been incorporate into the agreed conditions of consent.

19 In determining the Amended Development Application, I am satisfied that the relevant electricity supply authority's response to the notification under s 2.48(2)(a) of the TISEPP has been considered.

*Manly Local Environmental Plan 2013 – general*

20 The Site is zoned R2 Low Density Residential under the Manly Local Environmental Plan 2013 (MLEP). Accordingly, semi-detached dwelling houses and additions and alterations to semi-detached dwellings are permitted with consent in the R2 zone. I have had regard to the zone objectives which are extracted below:

- 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.

- 21 The Development Application was notified between 14 June and 28 June 2022. Four written submissions objecting to the proposed development were received in response to the notification of the proposal. Two of the objectors addressed the Court at the on-site view associated with the conciliation conference. The Amended Development Application was informally notified to those persons who had initially made submissions from 10 to 17 October 2023. No further submissions were received.
- 22 I am satisfied that the written and oral submissions received have been taken into consideration in the assessment and determination of the Amended Development Application.
- 23 The Amended Development Application seeks consent for excavation and earthworks. Clause 6.2(3) of the MLEP prescribes a number of mandatory matters that must be considered prior to the granting of development consent. In determining the Amended Development Application, I have considered the matters set out in cl 6.2(3) of the MLEP, including the fact that the parties have agreed conditions of consent with respect to the proposed earthworks.
- 24 Pursuant to cl 6.4 of the MLEP, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied of various matters. Having reviewed the Amended Stormwater Management Plan dated 29 September 2023 prepared by Taylor Consulting, the Development Application Assessment Report contained in the Class 1 Application, and having regard to the agreed conditions of consent relating to stormwater disposal, I am satisfied of the matters listed in cl 6.4(3) of the MLEP.
- 25 Pursuant to cl 6.12 of the MLEP, development consent must not be granted to development unless the consent authority is satisfied that any of the services listed in cl 6.12(1) that are essential for the development are available or that adequate measures have been made to make them available when required.

- 26 The parties agree that all services that are essential for the proposed development are available to the Site, with agreed conditions of consent which require the new works to be suitably connected to relevant essential services. In determining the Amended Development Application, I am satisfied that the relevant essential services for the development are available or that adequate arrangements have been made to make them available when required.

*MLEP – floor space ratio standard*

- 27 The floor space ratio (FSR) standard applicable to the Site is 0.45:1 pursuant to cl 4.4 of the MLEP (FSR Standard). The parties agree that the Amended Development Application seeks consent for a FSR of 0.55:1, thereby exceeding the FSR Standard for the Site.
- 28 The applicant has prepared a written request, prepared pursuant to cl 4.6 of the MLEP which seeks to justify the variation to the FSR Standard (FSR Request). The parties agree that the FSR Request demonstrates that:
- (1) compliance with the FSR Standard is unreasonable or unnecessary in the circumstances of the case (pursuant to cl 4.6(3)(a) of the MLEP);
  - (2) there are sufficient environmental planning grounds to justify contravening the FSR Standard (pursuant to cl 4.6(3)(b) of the MLEP);
  - (3) the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3) (pursuant to cl 4.6(4)(a)(i) of the MLEP); and
  - (4) the proposed development will be in the public interest because it is consistent with the objectives of the FSR Standard and the objectives of the R2 zone in which the development is proposed to be carried out (pursuant to cl 4.6(4)(a)(ii) of the MLEP).
- 29 The objectives of the R2 zone that are said to be achieved are extracted above at [20].



30 The objectives of cl 4.4(1)(a) of the MLEP that are said to be achieved are extracted below:

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,
- (e) to provide for the viability of Zone E1 and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

31 The FSR Request (relevantly extracted below) asserts that the strict application of the FSR Standard is unnecessary and unreasonable on the basis that:

(1) The Amended Development Application meets the stated objectives of cl 4.4, specifically:

- (a) The Amended development Application will be consistent with the existing streetscape character comprising of a mix of one and two storey dwellings and semi-detached dwellings. The proposal has minimised its bulk and scale from the street with the height of the proposed dwelling reaching a maximum of 7.5m (being 1m below the height limit prescribed by the MLEP) and achieves a 12.5m setback on the upper level from the front boundary, making the proposal substantially lower and less prominent in the streetscape than many other nearby dwellings.
- (b) The Amended Development Application retains and protects the existing street tree immediately adjacent to the Site.

- (c) The Amended Development Application will maintain an appropriate visual relationship in the immediate locality by:
  - (i) providing an additional setback to the side boundary at bedroom three, the stairwell window, the walk-in robe and rumpus room;
  - (ii) including a variety of materiality to provide articulation and soften the western façade, thereby improving its visual presence as viewed from the adjoining properties;
  - (iii) providing a lower floor level of the rear rumpus room on the first floor addition to provide a reduced scale and increased modulation to the western façade;
  - (iv) including a parapet roof line to the first floor addition to provide greater distinction between the existing and new structures, in accordance with the respondent's preference;
  - (v) cladding the eastern side of the party wall and reducing its height to achieve greater integration of the new work with the overall design and reduce visibility in the streetscape; and
  - (vi) the design is not prejudicing future development of the remaining dwelling in the semi-detached pair.
- (d) The Amended Development Application does not unreasonably affect the amenity of neighbours as it will not interrupt view lines or result in unreasonable additional shadow impacts and will have no adverse impact upon the public domain.
- (e) The Amended Development Application will extend the economic and functional life of the dwelling for a family and contribute to support the nearby neighbourhood and business zones.

(2) The Amended Development Application meets the zone objectives of the R2 Low Density zone, specifically;

(a) The Amended Development Application does not increase the density of the Site beyond a single dwelling and provides much needed additional floor space for the current and future occupants.

(b) The Amended Development Application proposes a permissible use in the R2 zone and the continued use of the Site for a dwelling does not conflict with other permitted or approved land uses.

32 The FSR Request asserts that there are sufficient environmental planning grounds to justify contravening the development standard. The Site has an area of 334.5m<sup>2</sup> and is mapped with a minimum lot size of 500m<sup>2</sup>, thereby comprising an “undersized lot” for the purposes of the Manly Development Control Plan 2013 (MDCP). Pursuant to Part 4, paragraph 4.1.3 of the MDCP, the respondent may consider exceptions to the FSR Standard when both the relevant MLEP objectives and provisions of the MDCP are satisfied. This means that the undersized nature of the lot may be considered in determining whether compliance with the relevant standard is unreasonable or unnecessary in the circumstances of the case and whether there are sufficient environmental planning grounds to justify contravening the development standard under cl 4.6(3) of the MLEP. To this end, the FSR Request notes that:

(1) The Amended Development Application meets the relevant objectives of the MLEP as set out above.

(2) The Amended Development Application meets the numerical provisions of the MDCP in all areas except for those relating to Total Open Space (shortfall of 29m<sup>2</sup>) and side setbacks (shortfall of between 420mm – 720mm, however 62% of the first floor façade complies with Part 4, paragraph 4.1.7 of the MDCP). The design does, however, satisfy the relevant provisions of the MDCP because it is able to meet the objectives of these provisions for the reasons set out in the FSR Request.

- 33 The FSR Request concludes that despite the minor non-compliance in Total Open Space and side setback calculations, the proposed development achieves the relevant objectives of each of these parts of the MDCP, thereby meeting the required tests of Part 4, paragraph 4.1.3 of the MDCP. The satisfaction of these tests supports the position that the undersized lot is a sufficient environmental planning ground under cl 4.6(3)(b) of the MLEP for varying the FSR Standard as provided for in the MDCP.
- 34 The respondent is satisfied that the FSR Request addresses the matters required to be demonstrated by cl 4.6(3) of the MLEP and that the proposed development, as amended, will be in the public interest because it is consistent with the objectives of the FSR Standard and the objectives for development in the R2 zone. The respondent does not contend that the contravention of the FSR Standard raises any matter of significance for State or regional environmental planning, or that there is any public benefit in maintaining the development standard pursuant to cl 4.6(5) of the MLEP.
- 35 I am satisfied under cl 4.6(4) that the FSR Request has adequately addressed the matters required to be demonstrated by 4.6(3) and that the development proposed in the Amended Development Application will be in the public interest because it is consistent with the objectives of the FSR Standard set out in cl 4.4(1)(a) and the objectives for development in the R2 zone set out in the Land Use Table in the MLEP, for the reasons given in the FSR Request.
- 36 I have also considered whether the contravention of the FSR standard raises any matter of significance for State or regional environmental planning, and the public benefit of maintaining the development standard, pursuant to cl 4.6(5) of the MLEP. I find no grounds on which the Court should not uphold the FSR Request.

## **Conclusion**

- 37 As the parties' decision is a decision that the Court could have made in the proper exercise of its functions, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.

38 In making the orders to give effect to the agreement between the parties, I was not required to, and have not, made any merit assessment of the issues that were originally in dispute between the parties.

39 The Court notes that:

- (1) The respondent, as the relevant consent authority, has agreed under s 38 of the Environmental Planning and Assessment Regulation, to the applicant amending its development application so as to rely on the following amended materials:

Site Plan & Cover Page, Sheet No. 1/7	LEC/04	19.10.2023	Evolving Design & Drafting
Ground Floor Plan, Sheet No. 2/7	LEC/04	19.10.2023	Evolving Design & Drafting
First Floor Plan, Sheet No. 3/7	LEC/04	19.10.2023	Evolving Design & Drafting
Sections A-A, B-B & C-C, Sheet No. 4/7	LEC/04	19.10.2023	Evolving Design & Drafting
North & South Elevation, Sheet No. 5/7	LEC/04	19.10.2023	Evolving Design & Drafting
East & West Elevation, Sheet No. 6/7	LEC/04	19.10.2023	Evolving Design & Drafting
Window Schedule, Sheet No. 7/7	LEC/04	19.10.2023	Evolving Design & Drafting
External Schedule of Finishes	-	-	Evolving Design & Drafting
BASIX Certificate No. A1373444-04	LEC-04	23.10.2023	Evolving Design & Drafting
Stormwater Management Plan, STORM-1		29.09.2023	Taylor Consulting
Clause 4.6 Variation Request		05.10.2023	Anna Williams

## Orders

40 The Court orders that:

- (1) Pursuant to s 8.15(3) of the *Environmental Planning and Assessment Act 1979*, the applicant is to pay the costs of the respondent that are thrown away as a result of the Court allowing the applicant to file the Amended Development Application as agreed or assessed.
- (2) The updated written request made pursuant to cl 4.6 of the Manly Local Environmental Plan 2013, seeking to vary the floor space ratio development standard in cl 4.4 of the Manly Local Environmental Plan 2013 prepared by Anna Williams dated 5 October 2023, is upheld.
- (3) The appeal is upheld.
- (4) Development application No DA2022/0727, as amended, for alterations and additions to an existing semi-detached dwelling at 12 Clarence Street, Balgowlah, NSW, being Lot 1 in DP 445281, is determined by the grant of consent subject to conditions of consent in Annexure "A".
- (5) The applicant is required to file the plans and documents referred to in order (4) within 7 days of the date of this judgment.

I certify that this and the preceding **11** pages are a true copy of my reasons for judgment.



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**N Targett**

**Acting Commissioner of the Court**

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## Annexure A

### DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

**Development Application No:** DA2022/0727

**Development:** Alterations and additions to an existing semi-detached dwelling

**Site:** Lot 1 DP 445281  
12 Clarence Street, BALGOWLAH NSW 2093

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

**Date of determination:** 23 November 2023

**Date from which consent takes effect:** Date of determination.

#### TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the “applicant” means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the “site”, means the land known as 12 Clarence Street, BALGOWLAH NSW 2093 (Lot 1, DP 445281).

The conditions of consent are as follows:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

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

#### a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>			
<b>Drawing No.</b>	<b>Amendment</b>	<b>Dated</b>	<b>Prepared By</b>
Site Plan & Cover Page, Sheet No. 1/7	LEC/04	19.10.2023	Evolving Design & Drafting
Ground Floor Plan, Sheet No. 2/7	LEC/04	19.10.2023	Evolving Design & Drafting
First Floor Plan, Sheet No. 3/7	LEC/04	19.10.2023	Evolving Design & Drafting
Sections A-A, B-B & C-C, Sheet No. 4/7	LEC/04	19.10.2023	Evolving Design & Drafting
North & South Elevation, Sheet No. 5/7	LEC/04	19.10.2023	Evolving Design & Drafting
East & West Elevation, Sheet No. 6/7	LEC/04	19.10.2023	Evolving Design & Drafting
Window Schedule, Sheet No. 7/7	LEC/04	19.10.2023	Evolving Design & Drafting
External Schedule of Finishes	-	-	Evolving Design & Drafting

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate No. A137344 - 04	23 October 2023	Evolving Design & Drafting
Geotechnical Assessment	31 March 2022	AscentGeo Consulting Geotechnical Engineers

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

c) The development is to be undertaken generally in accordance with the following:

<b>Technical Reports</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>



Waste Management Plan	19.01.2022	Evolving Design & Drafting
Stormwater Management Plan, STORM-1	29.09.2023	Taylor Consulting

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

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

## 2. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	29 June 2022

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

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

## 3. Prescribed Conditions

- a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - i. showing the name, address and telephone number of the Principal 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.
  - iv. 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:

- the name and licence number of the principal contractor, and
  - 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:
- the name of the owner-builder, and
  - 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.

## FEES / CHARGES / CONTRIBUTIONS

### 4. Policy Controls

#### Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$4,000.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2022. The monetary contribution is based on a development cost of \$400,000.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash

contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2022 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

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

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

## 5. **Security Bond**

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

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed

with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)).

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

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

## 6. **Stormwater Drainage Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG), indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas

and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the street in accordance with the Stormwater Management Plan by Taylor Consulting Drawing No. STORM-1 dated 29.09.2023.

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

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

**7. Boundary Identification Survey**

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

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

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

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

**8. 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.

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

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

**10. Sydney Water "Tap In"**

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

requirements.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

#### 11. **External Schedule of Finishes**

Prior to the issue of a construction certificate, the External Schedule of Finishes referenced in Condition 1 is to be amended, as follows:

- a) The external finish to the roof and walls 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. For the avoidance of doubt, Colorbond “Dune” is too light and is not supported.

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

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

#### 12. **Pre-Construction Dilapidation Report**

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

Property: 10 Clarence Street, Balgowlah

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

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

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

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

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



**13. Landscape Plan**

A Landscape Plan is to be prepared by a suitably qualified landscape designer to demonstrate:

- a) The removal of the access path that runs along the western side boundary, between the front boundary and the front porch, to be replaced by turf or vegetation, and
- b) The incorporation of a small locally native tree within the front setback.

Landscape works are to be contained within the legal property boundaries.

All tree planting shall be generally selected from Northern Beaches Council's Native Plant Species Guide, or Council's Tree Guide; to achieve at least 6 metres height at maturity; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn.

The Landscape Plan is to be submitted to the certifying authority prior to the issue of the construction certificate.

Reason: To enhance landscaping and soften the visual impact of the proposed built form.

**CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK****14. Protection of Existing Street Trees**

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites. As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

All street trees within the road verge are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees. Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Street tree protection.

**15. Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected, including:
- i. all trees and vegetation within the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
  - ii. all trees and vegetation located on adjoining properties,
  - iii. all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
- i. tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
  - ii. existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
  - iii. removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
  - iv. no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
  - v. structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
  - vi. excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
  - vii. should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
  - viii. any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970- 2009 Protection of Trees on Development Sites,
  - ix. tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees, and should additional pruning be required an application to Council's Tree Services shall be submitted for approval or otherwise.

The Certifying Authority must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Reason: Tree and vegetation protection.

**16. Removing, Handling and Disposing of Asbestos**

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

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

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

**17. Demolition Works - Asbestos**

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

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

disposed to a lawful waste disposal facility.

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

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

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

**18. Survey Certificate**

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

- a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- c) At completion of the roof frame confirming the finished roof/ridge height is in



accordance with levels indicated on the Approved Plans.

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

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

**19. Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

**20. Waste Management During Development**

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

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

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

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

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

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

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

**22. Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

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

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

**23. Post-Construction Dilapidation Report**

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

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

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

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

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

**24. Waste Management Confirmation**

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

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

**25. Geotechnical Report**

Written confirmation from a Geotechnical Engineer is to be provided to the Principal Certifying Authority to confirm that the works were undertaken in accordance with the recommendations of the Geotechnical Assessment referenced in Condition 1.

Reason: To ensure geotechnical risk is mitigated appropriately.

**26. Landscape Completion**

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

Reason: Environmental amenity.

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

### 27. Landscape Maintenance

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

Reason: To maintain local environmental amenity.

