



Land and Environment Court  
New South Wales

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Case Name:	Grounds v Northern Beaches Council
Medium Neutral Citation:	[2021] NSWLEC 1803
Hearing Date(s):	Conciliation conference on 14 December 2021
Date of Orders:	30 December 2021
Decision Date:	30 December 2021
Jurisdiction:	Class 1
Before:	Washington AC
Decision:	<p>The Court orders:</p> <ol style="list-style-type: none"><li>1. The Appeal is upheld.</li><li>2. Development Application 2020/1136 for demolition of existing buildings and construction of a new three(3) storey dwelling, ancillary site works including excavation, landscaping and stormwater disposal at 13 Pacific Road, Palm Beach is approved subject to the conditions in Annexure B.</li></ol>
Catchwords:	DEVELOPMENT APPLICATION – conciliation conference – agreement between the parties – orders
Legislation Cited:	<p>Environmental Planning and Assessment Act 1979 Land and Environment Court Act 1979 Pittwater Local Environmental Plan 2014 cll 4.3, 5.10, 7.1, 7.2, 7.10. State Environmental Planning Policy 55- Remediation of Land cl 7. State Environmental Planning Policy (Coastal Management) 2018 cll 14, 15. State Environmental Planning Policy (Infrastructure) 2007</p>
Category:	Principal judgment

Parties: William Grounds (Applicant)  
Northern Beaches Council (Respondent)

Representation: Dr JY Eun (Applicant)  
S Patterson (Respondent)

Solicitors:  
Morson Law (Applicant)  
Wilshire Webb Staunton Beattie (Respondent)

File Number(s): 2021/240236

Publication Restriction: No

## JUDGMENT

- 1 **COMMISSIONER:** This is a Class 1 appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the actual refusal of development application 2020/1136 for demolition works and construction of a three storey dwelling house at Lot 404 DP 19651, 13 Pacific Road, Palm Beach.
- 2 The Court arranged a conciliation conference under s 34AA of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 14-15 December 2021. I presided over the conciliation conference.
- 3 At the conciliation conference, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. This decision involved the Court upholding the appeal and granting development consent to the development application subject to conditions.
- 4 As a result of the conciliation conference, the Applicant amended the development application to reduce the height of the dwelling to be within the 10m maximum height limit. This amendment occurred with the agreement of the Respondent as the relevant consent authority under cl 55(1) of the Environmental Planning and Assessment Regulation 2000 (Regulation). The Court has been notified that the amended modification application has been lodged on the NSW planning portal and filed with the Court, and that subsequently, the requirements of cl 55 of the Regulation are met.

5 Under s 34(3) of the LEC Act, I must dispose of the proceedings in accordance with the parties' decision if the parties' decision is a decision that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court exercising the function under s 4.16 of the EPA Act grant consent to the development application. There are jurisdictional prerequisites that must be satisfied before this function can be exercised and, in this regard, I note the following:

- (1) The DA was lodged with the written consent of the landowner, William Grounds.
- (2) Clause 7(1) of State Environmental Planning Policy 55- Remediation of Land (SEPP 55) requires the Consent Authority to consider whether the land is contaminated. As per Council records, the site is currently in use for residential purposes with no prior land use. The site poses little to no risk of contamination and is considered suitable for continued residential use.
- (3) A BASIX certificate has been submitted that applies to this development and confirms that it will meet the required sustainability commitments. Additionally, a condition of consent has been applied requiring compliance with the commitments of this certificate.
- (4) As required by State Environmental Planning Policy (Infrastructure) 2007, the proposal has been referred to Ausgrid who have confirmed it is acceptable subject to conditions of consent.
- (5) The State Environmental Planning Policy Coastal Management 2018 (SEPP Coastal Management) applies to this site, as it falls within the mapped 'Coastal Use Area' of this SEPP. Based on the evidence given by the planning experts and the Development Application Assessment Report within the respondent's bundle, I am satisfied that the requirements of SEPP Coastal Management cl 14 and 15 are satisfied by this development.
- (6) Development for the purposes of dwelling houses is permitted with consent in the Zone E4 Environmental Living under the Pittwater Local Environmental Plan 2014 (PLEP), and as per the objectives of this zone, the amended proposal provides low impact residential development, with no adverse effect on the areas special ecological, scientific or aesthetic values.
- (7) The Height of Buildings map in the PLEP allocates a maximum building height of 8.5m, as per PLEP cl 4.3(2). However, cl 4.3(2D) provides the following:  
  
'(2D) Despite subclause (2), development on land that has a maximum building height of 8.5 metres shown for that land on the Height of Buildings Map may exceed a height of 8.5 metres, but not be more than 10.0 metres if—

- (a) the consent authority is satisfied that the portion of the building above the maximum height shown for that land on the Height of Buildings Map is minor, and
- (b) the objectives of this clause are achieved, and
- (c) the building footprint is situated on a slope that is in excess of 16.7 degrees (that is, 30%), and
- (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.'

The maximum height of the development is 9.95m. This exceedance of the 8.5m maximum height limit occurs to a portion of the roof to the south-east corner of the proposed dwelling. Based on the revised drawings that are the subject of this conciliation and the submissions of the Planning experts, I am satisfied that the portion of the building above the 8.5m height limit is minor, the building footprint is situated on a slope that exceeds 16.7 degrees, and that the building is sited and designed to take into account the slope of the land, and minimise the need for cut and fill. In addition, based on the observations I was directed to make on site, the submissions of the planning experts and the revised drawings, I am satisfied that the objectives of cl 4.3(1) are achieved because the building:

- (a) by virtue of its height and scale, is consistent with the desired character of the locality,
  - (b) is compatible with the height and scale of surrounding and nearby development,
  - (c) minimises overshadowing of neighbouring properties,
  - (d) allows for reasonable sharing of views
  - (e) is designed to respond sensitively to the natural topography and,
  - (f) minimises adverse visual impact of the development of the natural environment and has no adverse impact on heritage conservation areas or heritage items.
- (8) Subsequently, the requirements of cl 4.3 (2D) are satisfied, and cl 4.3(2D) therefore applies. As the building height remains below 10m and the requirements of cl 4.3(2D) are met, the exceedance of the 8.5m height limit for this proposal is acceptable. Furthermore, the proposed development does not breach the height of buildings development standard set out in cl 4.3 of the PLEP and a cl 4.6 written request is therefore not required.

- (9) Pursuant to cl 5.10 of the PLEP, the site is not identified as a heritage item, nor is it within a heritage conservation area or within the vicinity of any heritage items.
  - (10) The site is identified as Class 5 on the Acid Sulfate Soils Map, however the works are not within 500m of an adjacent Class 1, 2, 4 or 4 land that is below 5m AHD and by which the water table is likely to be lowered below 1m. The requirements of PLEP cl 7.1 are therefore met with this proposal.
  - (11) The DA includes a geotechnical report (J2578 prepared by White Geotechnical dated 10 September 2020) which indicates there will be no likely impacts or disruption of any of the matters for consideration under PLEP cl 7.2, subject to recommendations which have been included in the conditions of consent.
  - (12) As an existing residential property, the site has access to essential services and, subject to conditions of consent, adequate stormwater and vehicular access arrangements. The requirements of PLEP cl 7.10 are therefore met.
  - (13) Based on the submissions of both parties and the evidence of the SEE, I am satisfied that the matters listed in EPA Act s 4.15(1) have been considered.
- 6 For these reasons, I am satisfied that the parties' decision is one that the Court could have made in the proper exercise of its functions, as required by s 34(3) of the LEC Act.
- 7 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.
- 8 The Court notes:
  - (1) that the Applicant has amended Development Application 2020/1136 with the agreement of Northern Beaches Council (*pursuant to clause 55(1) of the Environmental Planning and Assessment Regulation 2000*) as the relevant consent authority to incorporate the amended plans and documents referred to in the list of amended plans and documents in **Annexure A** ("Amended Development Application").
  - (2) that the Amended Development Application has been lodged on the NSW planning portal on 15 December 2021
  - (3) that the Applicant has subsequently filed the Amended Development Application with the Court on 17 December 2021
- 9 The Court orders:
  - (1) The Appeal is upheld.

- (2) Development Application 2020/1136 for demolition of existing buildings and construction of a new three (3) storey dwelling, ancillary site works including excavation, landscaping and stormwater disposal at 13 Pacific Road, Palm Beach is approved subject to the conditions in **Annexure B**.

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**E Washington**

**Acting Commissioner of the Court**

[Annexure A \(183823, pdf\)](#)

[Annexure B \(215566, pdf\)](#)

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**ANNEXURE A****List of Amended Plans and Documents referred to in Note 2(a) of the s34 Agreement**

<b>Amended Architectural Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA00 SITE ANALYSIS DETAIL SURVEY	12/2021	Jamisa Architects Pty Ltd
DA01 SITE ROOF PLAN	12/2021	Jamisa Architects Pty Ltd
DA02 LOWER GROUND FLOOR PLAN	12/2021	Jamisa Architects Pty Ltd
DA03 GROUND FLOOR PLAN	12/2021	Jamisa Architects Pty Ltd
DA04 FIRST FLOOR PLAN	12/2021	Jamisa Architects Pty Ltd
DA05 ELEVATIONS	12/2021	Jamisa Architects Pty Ltd
DA06 SECTIONS	12/2021	Jamisa Architects Pty Ltd
DA07 DEMO/EXCAVATION/WASTE MANAGEMENT/ EROSION SEDIMENT CONTROL PLAN	12/2021	Jamisa Architects Pty Ltd
DA08 LANDSCAPE AREA CALCULATIONS	12/2021	Jamisa Architects Pty Ltd
DA09 SHADOW DIAGRAMS JUNE 2021	12/2021	Jamisa Architects Pty Ltd
DA10 SHADOW DIAGRAMS MARCH/ SEPTEMBER 2021	12/2021	Jamisa Architects Pty Ltd
DA11 SHADOW DIAGRAMS DECEMBER 2021	12/2021	Jamisa Architects Pty Ltd
FS01 FINISHES SCHEDULE	12/2021	Jamisa Architects Pty Ltd
FS02 FINISHES SCHEDULE	12/2021	Jamisa Architects Pty Ltd
FS03 FINISHES SCHEDULE	12/2021	Jamisa Architects Pty Ltd
3D01 8.5M HEIGHT BLANKET PLAN	12/2021	Jamisa Architects Pty Ltd
3D02 10M HEIGHT BLANKET PLAN	12/2021	Jamisa Architects Pty Ltd

<b>Amended Reports / Documentation</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
NATHERS Certificate	16/12/2021	Insight Energy
Thermal Performance Requirements table	16/12/2021	Insight Energy
BASIX Certificate	17/12/2021	Jamisa Architects Pty Ltd
Geotechnical report on updated plans	13/12/2021	White Geotechnical Group



## **Annexure B**

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

**Development Application No:** DA2020/1136

**Development:** Demolition works and construction of a dwelling house

**Site:** Lot 404 in DP 19651 known as 13 Pacific Road, PALM BEACH NSW 2108

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

**Date of determination:** 30 December 2021

**Date from which consent takes effect:** 30 December 2021

#### **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 Lot 404 in DP 19651 known as 13 Pacific Road, PALM BEACH NSW 2108.

The conditions of consent are as follows:

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA01 Issue F	12/2021	Jamisa Architects
DA02 Issue F	12/2021	Jamisa Architects
DA03 Issue F	12/2021	Jamisa Architects
DA04 Issue F	12/2021	Jamisa Architects
DA05 Issue F	12/2021	Jamisa Architects
DA06 Issue F	12/2021	Jamisa Architects
Finishes Schedule 01 Issue F	Not dated	Not named
Finishes Schedule 02 Issue F	Not dated	Not named
Finishes Schedule 03 Issue F	Not dated	Not named

<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 1073809S_02	17 December 2021	Jamisa Architects
Geotechnical Investigation J2578A	13 December 2021	White Geotechnical Group

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>Landscape Plans</b>		

Drawing No.	Dated	Prepared By
AD_DA_00 Rev B	20.07.20	Azurea Design
AD_DA_01 Rev A	23.03.20	Azurea Design

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Northern Beaches Council Waste Management Plan	8.9.20	Jamie Grounds

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	Ausgrid Referral Response	Not dated

(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.

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.

#### 4. **General Requirements**

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are

breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or

adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) 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.
- (o) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2018
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 5. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$12,650.00 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 2021. The monetary contribution is based on a development cost of \$1,265,000.00.

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 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

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

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

## 6. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

### 7. **Stormwater Disposal from Low Level Property**

The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's Water Management for Development Policy in particular the Clause 5.5 Stormwater Drainage from Low Level Properties. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Northern Beaches Council's Water Management for Development Policy are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and stormwater management arising from

the development.

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 10/09/2020 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

**9. Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- Privacy screens are to be provided to the northern edges of the Ground Floor and Lower Ground Floor rear decks. The privacy screens must have a minimum height of 1.8m above the finished floor levels of the deck.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

**10. 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.

**11. Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

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

Reason: To facilitate suitable vehicular access to private property.



**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. External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is 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. (DACPLC03)

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT****14. Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority 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.

Properties: 11 and 15 Pacific Road, Palm Beach

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority 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 Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

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

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

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

**15. Tree removal within the road reserve**

This consent approves the removal of the following trees within the road reserve as shown on the Landscape Plan: 2 x Camellia sp. and 1 x Callistemon sp.

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

Reason: public liability.

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

### 16. Road Reserve

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

Reason: Public safety.

### 17. 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:

- i Work Health and Safety Act;
- i Work Health and Safety Regulation;
- i Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- i Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998)];
- i Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- i 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.

### 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. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ 3NL and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

21. **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 not approved for removal.

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), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,

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

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.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: tree and vegetation protection.

**22. Protection of rock and sites of significance**

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

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

Reason: preservation of significant environmental features.

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

**23. Landscape completion**

Landscaping is to be implemented in accordance with Landscape Plan AD.DA.00 and AD.DA.01.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: environmental amenity.

**24. Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Council's Water Management for Development Policy by a suitably qualified civil engineer. 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.

**25. 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:

- i Compare the post-construction report with the pre-construction report,
- i Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- i 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 Certifying Authority prior to the issuing of any Occupation Certificate.

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

**26. Certification Elevated Parking Facility Work**

The Applicant shall submit a Structural Engineers' certificate certifying that the elevated parking facility was constructed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation.

Reason: Compliance with this consent.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

**28. House / Building Number**

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

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

Reason: Proper identification of buildings.

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

**29. 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 fertilized 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.

Reason: to maintain local environmental amenity.