



**Land and Environment  
Court**  
of New South Wales

Level 4 225 Macquarie Street SYDNEY NSW 2000  
Level 4 GPO Box 3565 SYDNEY NSW 2001  
DX 264, Sydney

Telephone: 02 9113 8200  
Facsimile: 02 9113 8222  
02 91138208

Email: [lecourt@justice.nsw.gov.au](mailto:lecourt@justice.nsw.gov.au)  
Website: <http://www.lec.justice.nsw.gov.au>

ABN: 52 659 114 436

Kendall Webber  
[kwebber@wilshirewebb.com.au](mailto:kwebber@wilshirewebb.com.au)

Your Ref:



31 December 2019

### **NOTICE OF ORDERS MADE**

Case number      2019/00150634  
Case title        Jennifer Davies v Northern Beaches Council

---

On 24 December 2019 the following orders (and/or directions) were made:

The Court orders that:

(1) The Applicant is granted leave to rely on the following amended plans and supplementary material:

- (a) Drawing A1101 B Site Plan, dated 20 September 2019 and prepared by Walter Barda Design;
- (b) Drawing A1190 B Landscape Plan, dated 20 September 2019 and prepared by Walter Barda Design;
- (c) Drawing A2001 B Floor Plans Lower, dated 20 September 2019 and prepared by Walter Barda Design;
- (d) Drawing A2002 B Floor Plans Upper & LOS Area Plan, dated 20 September 2019 and prepared by Walter Barda Design;
- (e) Drawing A3001 B Elevations West, South & East, dated 20 September 2019 and prepared by Walter Barda Design;
- (f) Drawing A3002 B Nth Elevations & Sections 01, 02, 03 & 04, dated 20 September 2019 and prepared by Walter Barda Design;
- (g) Drawing A3101 B Long Sections 01, dated 20 September 2019 and prepared by Walter Barda Design;
- (h) Drawing A2501 B Shadow Diagrams 9am 21 June, dated 20 September 2019 and prepared by Walter Barda Design;
- (i) Drawing A 2502 B Shadow Diagrams 12pm 21 June, dated 20 September 2019 and prepared by Walter Barda Design;
- (j) Drawing A2503 B Shadow Diagrams 3pm 21 June, dated 20 September 2019 and prepared by Walter Barda Design;
- (k) Drawing A2505 A Shadow Diagrams 10am 21 June, dated 20 September 2019 and prepared by Walter Barda Design;
- (l) Drawing A2506 A Shadow Diagrams 11am 21 June, dated 20 September 2019 and prepared by Walter Barda Design;

(m) Drawing A2511 A Sunview Diagrams 9am and 10am June 21, dated 20 September 2019 and prepared by Walter Barda Design;  
(n) Drawing A2512 A Sunview Diagrams 11am & 12pm June 21, dated 20 September 2019 and prepared by Walter Barda Design;  
(o) Drawing A2513 A Sunview Diagrams 1pm and 2pm June 21, dated 20 September 2019 and prepared by Walter Barda Design;  
(p) Statement of Support – Amended DA-2019/0309 prepared by SJB Planning and dated 1 October 2019;  
(q) View Sharing Assessment prepared by Dr Richard Lamb and dated 1 October 2019;  
(r) Submission to Development Determination Panel prepared by Alison McCabe and dated 25 November 2019;  
(s) BASIX Certificate dated 10 December 2019;  
(t) Nationwide House Energy Rating Scheme Certificate dated 10 December 2019; and  
(u) Assessor Certificate – Single Dwelling dated 10 December 2019.

(2) The appeal is upheld.

(3) Development Application DA 2019/0309 for demolition of existing dwelling and carpark structures and construction of a new dwelling house, two car garage, swimming pool, associated landscaping works and front fencing is approved subject to the conditions at Annexure A.

For the Registrar

Annexure 'A'

**Davies v Northern Beaches Council**

Conditions of Consent

<b>Application Number:</b>	DA2019/0309
<b>Land to be developed (Address):</b>	Lot 171 DP 15376, 257 Whale Beach Road WHALE BEACH NSW 2107
<b>Proposed Development:</b>	Demolition works and construction of a dwelling house including swimming pool

**DEVELOPMENT CONSENT OPERATIONAL CONDITIONS**

**1. Approved Plans and Supporting Documentation**

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

a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
A1101 Site Plan (Issue B)	20 September 2019	Walter Barda Design
A2001 Floor Plans Lower (issue B)	20 September 2019	Walter Barda Design
A2002 Floor Plans Upper & LOS Area Plan (Issue B)	20 September 2019	Walter Barda Design
A3001 Elevations West, South & East (Issue B)	20 September 2019	Walter Barda Design
A3002 Nth Elevation & Sections 01, 02, 03 & 04 (Issue B)	20 September 2019	Walter Barda Design
A3101 Long Sections 01 (Issue B)	20 September 2019	Walter Barda Design
Schedule of Finishes Page 1 of 2	22 March 2018	Walter Barda Design
Schedule of Finishes Page 2 of 2	22 March 2018	Walter Barda Design

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
SW200 Stormwater Concept Design - Lower Level Plan (Rev B)	21 March 2019	SGC Consulting Engineers
SW201 Stormwater Concept Design - Bedroom Level Plan (Rev B)	21 March 2019	SGC Consulting Engineers
SW202 Stormwater Concept Design - Roof Plan (Rev B)	21 March 2019	SGC Consulting Engineers

SW300 Stormwater Concept Design - Details Sheet (Rev B)	21 March 2019	SGC Consulting Engineers
SW400 Erosion and Sediment Control - Plan and Details (Rev B)	21 March 2019	SGC Consulting Engineers

**Reports / Documentation – All recommendations and requirements contained within:**

<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
ABSA Assessor Certificate No. 4442737	10 December 2019	Taylor Smith Consulting
Arboricultural Impact Assessment	21 March 2019	Plateau Trees
BASIX Certificate No. 1003412S_02	10 December 2019	Taylor Smith Consulting
Bushfire Hazard Assessment Report	22 March 2019	Building Code & Bushfire Hazard Solutions
Bushfire Risk Assessment Certificate	22 March 2019	Building Code & Bushfire Hazard Solutions
Coastal Engineering Advice on 257 Whale Beach Road Whale Beach	31 March 2019	Horton Coastal Engineering
Geotechnical Investigation	21 March 2019	White Geotechnical Group
NatHERS Certificate No. 4442737	10 December 2019	Taylor Smith Consulting
Root Mapping Assessment	11 April 2018	Plateau Trees

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>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
A1190 Landscape Plan (Issue B)	20 September 2019	Walter Barda Design

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. 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.

### 3. 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) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) 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.
- (j) 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.

- (k) 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 2008
- (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

### 4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$33,946.43 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 2019. The monetary contribution is based on a development cost of \$3,394,643.00.

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 2019 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 \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

Stormwater shall be disposed of generally in accordance with stormwater concept plans prepared by SGC Engineering Value dated 21.03.19 and the recommendations of the Geotechnical Engineers report.



A certificate is to be provided to the Accredited Certifier with the Construction Certificate application by a qualified experienced practicing Civil Engineer, with Corporate membership of the Institute of Engineers Australia (M.I.E.) or who is eligible to become a Corporate member and has appropriate experience and competence in the related field that the existing approved system can accommodate the additional flows or provide drainage plans demonstrating compliance with Council's requirements.

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

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

**7. 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 15th March, 2018 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.

**8. Amendments to the approved plans**

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

- The lower deck is to be setback 1m from the southern boundary.

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 and demonstrate compliance with Section D12.6 Side and rear building line of the Pittwater 21 Development Control Plan.

**9. Vehicle Driveway Gradients**

Driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure suitable vehicular access to private property

**10. Structural Adequacy and Excavation Work**

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

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and

(b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.  
Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior

to the issue of the Construction Certificate.

Reason: To provide public and private safety.

**11. Shoring of Adjoining Property**

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings.

Council approval is required if temporary ground anchors are to be used within Council land. A Temporary Ground Anchors (Road Reserve) Application is to be submitted with Council for assessment and approval subject to Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

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

**12. Vehicle Crossings Application**

An Application for shall be made with council subject to the payment of the fee in accordance with Council's Fees and Charges. The fee includes all Council inspections relating to the driveway construction and must be paid.

Approval of the application by Council is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

**13. Construction Management Program**

An application for Traffic Management Plan is to be submitted to Council for approval. The Traffic Management Plan shall be prepared to RMS standard by an appropriately certified person. An approval is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

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

**14. Amendment of Stormwater Concept Design**

The Stormwater Concept Design (SGC 21/03/2019) is to be amended to avoid impacts to rock outcrops proposed to be retained and minimise impacts to the proposed native vegetation planting.

The amended Stormwater plans are to be reviewed and certified in writing by a qualified landscape architect, arborist or ecologist, and evidence provided to the Principal Certifying Authority prior to issue of the Construction Certificate.

Reason: To maintain native vegetation and protect rock outcrops in accordance with relevant Natural Environment LEP/DCP controls.

**15. Stormwater drainage**

Stormwater drainage must be installed as shown on the Stormwater Concept Plan Revision B provided by SGC Engineering.

Reason: Protection of the receiving environment (DACNECPCC1)

**16. Preparation of Erosion and Sedimentation Control**

An Erosion and Sediment Control Plan is to be prepared in accordance with Landcom's Managing Urban Stormwater: Soil and Construction Manual (2004) by a suitably qualified engineer and submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Sediment fencing must be located west of the existing rock outcrops to ensure protection of sand dunes and native vegetation east of the proposed dwelling.

Reason: To protect natural features and habitats in accordance with relevant Natural Environment LEP/DCP controls

**17. Amendment of Landscape Plans**

The submitted Landscape Plan is to be amended in accordance with the following:

- Deletion of *Cupaniopsis anacardioides*
- Replacement with another local native tree species already proposed

The amended Landscape Plan is to be certified by a qualified landscape architect, arborist or ecologist prior to issue of the Construction Certificate.

Reason: To ensure landscaping is consistent with relevant Natural Environment LEP/DCP controls.

**18. 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.

**19. 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)

**20. Surrender of Consent**

The applicant shall surrender to Council Development Consent No: DA2018/0797 in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

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

Reason: To prevent inconsistencies between consent applying the site (ref s80A (5) EPAA & cl97 EPA Reg).

**21. 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.

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

**22. Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

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

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site (DACNED06)

**23. Pre-Commencement Dilapidation Report**

A Pre-Commencement Dilapidation Report of adjacent buildings (Nos. 255 and 259 Whale Beach Road, Whale Beach) must be conducted prior to any site work.

The Pre-Commencement Dilapidation Report must clearly detail the condition of all the adjoining properties, infrastructure, natural and manmade features within the likely "zone of influence" of any excavation or construction induced vibration.

A copy of the Pre-Commencement Dilapidation Report must be provided to Council, any other owners of public infrastructure, the owners of adjoining and affected private properties and the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure security against possible damage to Council and private property.

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

**24. Road Reserve**

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

Reason: Public Safety.

**25. 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)] and
- ☐ 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.
- ☐ 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.

**26. 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.

**27. Vehicle Crossings**

The provision of a vehicle crossing 4.5 metres wide at the kerb to 5.5 metres at the boundary in accordance with Northern Beaches Council Drawing No A4-3330/5 Extra Low and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. The redundant lay back is to remain and the existing crossing adjusted to suit the new driveway crossing levels in order to maintain the access to the adjoining property at 259. Whale Beach Road. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

**28. Tree and vegetation protection**

A) Existing trees and vegetation shall be retained and protected as follows:

- i) all trees and vegetation within the site as identified on the site plans and as listed in the Arboricultural Impact Assessment prepared by Plateau Trees dated 21 March 2019, excluding exempt trees under the relevant planning instruments or legislation,
- ii) all trees and vegetation located on adjoining properties,
- iv) all road reserve trees and vegetation,

B) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
- iii) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,
- iv) to minimise the impact on trees and vegetation to be retained and protected, 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) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a Project Arborist on site,
- vi) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
- vii) excavation for stormwater lines is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist, to provide for root protection measures,
- viii) should either or all of v), vi) and vii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- ix) 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 AS 4970-2009,
- x) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

Reason: to retain and protect significant planting on development and adjoining sites.

**29. Project Arborist**

A Project Arborist with minimum qualification in arboriculture/horticulture, equivalent to AQF Level 5 is to be appointed prior to the commencement of works to supervise all works within 5 metres of the existing Norfolk Island Pine located along the northern boundary between 257 and 259 Whale Beach Road, Whale Beach, inclusive of the following requirements:

- i) all work carried out inside of the TPZ must be supervised by the Project Arborist, as outlined in the Root Mapping Assessment report prepared by Plateau Trees dated 11 April 2018, and in accordance with section 5.0 Conclusions and Recommendations,
- ii) all existing ground levels within a 5 metre zone around the existing Norfolk Island Pine shall be retained without alteration, unless advised by the Project Arborist,
- iii) no structures are permitted within a 5 metre zone around the existing Norfolk Island Pine, as documented on Plan A2001 (section 1: 00 Lower Level), issue A, dated 22/3/2019, excluding the structural piers,
- iv) the structural piers shall be located outside of the SRZ (at least 3500mm from the trunk), as

directed on-site by the Project Arborist,

- v) the Project Arborist shall provide on-site recommendations to protect the existing Norfolk Island Pine if required, inclusive of recommended design changes,
- vi) the Project Arborist shall provide documentary details including photographic evidence of works undertaken, and any on-site recommendations and advice, and this shall be submitted by the Arborist to the Certifying Authority prior to Occupation Certificate,
- vii) scheduled monthly inspections, for a period of 12 months, shall be carried out by the Project Arborist during and after completion of development works,
- viii) the existing Norfolk Island Pine shall be protected and maintained for the life of the development in a healthy and sustainable condition.

Reason: to ensure protection of vegetation proposed for retention on the site.

**30. 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.

**31. Implementation of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans (Walter Barda Design 19/03/2019) and as amended by these conditions of consent. The new landscaping is to be certified in accordance with approved Landscape Plans and these conditions of consent by a qualified landscape architect, arborist or ecologist prior to issue of the Occupation Certificate.

Reason: To ensure landscaping is consistent with relevant Natural Environment LEP/DCP controls.

**32. No Material or Waste Storage east of the proposed building works**

No storage of building materials or building waste, excavated fill or topsoil storage is to occur east of the proposed building works or within 5m trees shown on the approved proposal plans as being retained or within protective fenced areas. Drainage is to be arranged such that fill, building materials or contaminants are not washed into protective fenced areas.

**Reason:** To protect and retain trees proposed for retention.

**33. Implementation of Erosion and Sediment Control Plan**

The Erosion and Sediment Control Plan is to be fully implemented and measures are to remain in effective operation until all development activities have been completed and the site fully stabilised. Evidence of compliance is to be certified by a suitably qualified engineer and submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To protect natural features and habitats in accordance with relevant Natural Environment LEP/DCP controls



**34. 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.

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

**35. Landscape works**

Landscaping is to be implemented in accordance with the Landscape Plan A1190, prepared by Walter Barda Design, issue A dated 22/3/2019, inclusive of the following requirement:

- i) all nominated tree planting shall be planted at 75 litre pot size, and shall have a minimum area of 3 metres x 3 metres. Canopy trees are to be located a minimum of 5 metres from existing and proposed built structures, or minimum of 3 metres where pier and beam footings are used,
- ii) the nominated *Cupaniopsis anacardioides* shall be replaced with a non-invasive native tree species,
- iii) it is advised that the nominated *Acmena smithii* should be changed to *Acmena smithii* 'cultivars' as used for screen planting to achieve the design intent of the design,
- iv) the proposed tree planting shall be located within the site to achieve a reasonable sharing of views available to adjoining properties.

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 the approved plan and inclusive of any conditions of consent.

Reason: to ensure that the landscape treatments are installed to provide landscape amenity and privacy.

**36. Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an AQF Level 5 Arborist (or equivalent), shall be submitted to the Certifying Authority, assessing the health and impact of trees and vegetation required to be retained, and in particular the existing Norfolk Island Pine, as a result of the proposed development, including the following information:

- i) compliance to Arborist recommendations for tree protection and excavation works.
- ii) extent of damage sustained by vegetation as a result of the construction works.
- ii) any subsequent remedial works required to ensure the long term retention of the vegetation.

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

development sites.

**37. Certification Elevated Parking Facility Work**

An appropriately qualified and practicing Structural Engineer shall certify to the Council / Principal Certifying Authority that the elevated parking facility was constructed in accordance with this 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 an Occupation (or Subdivision)

Reason: Compliance with this consent

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

Prior to issue of the Occupation Certificate, Form 3 of the Geotechnical Risk Management Policy is to be completed and submitted to the Principal Certifying Authority.

Reason: To ensure geotechnical risk is mitigated appropriately.

**39. Certification of Erosion and Sediment Control Plan**

The Erosion and Sediment Control Plan is to be fully implemented and measures are to remain in effective operation until all development activities have been completed and the site fully stabilised. Evidence of compliance is to be certified by a suitably qualified engineer and submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To protect natural features and habitats in accordance with relevant Natural Environment LEP/DCP controls

**40. Priority Weed Removal and Management**

All Priority weeds (as specified in Appendix 1 of the Greater Sydney Regional Strategic Weed Management Plan 2017 – 2022) on the site are to be removed and managed. Details demonstrating the removal and management of weeds are to be prepared by a qualified ecologist/bush regenerator in writing and submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To reduce the risk of site works contributing to spread of Priority weeds, in accordance with relevant Natural Environment LEP/DCP controls.

**41. 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.

**42. Swimming Pool Requirements**

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

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

(i) Swimming Pools Act 1992;

- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

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

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life (DACPLF09)

#### **43. Post-Construction Dilapidation Report**

A Post-Construction Dilapidation Report of adjacent buildings (Nos. 255 and 259 Whale Beach Road, Whale Beach) must be conducted prior to the issue of the Occupation Certificate.

The Post-Construction Dilapidation Report must clearly detail the final condition of all the adjoining properties, infrastructure, natural and manmade features that were originally recorded in the Pre-Commencement Dilapidation Report.

A copy of the Post-Construction Dilapidation Report must be provided to Council, any other owners of public infrastructure, the owners of adjoining and affected private properties and the Certifying Authority prior to the issue of the Occupation Certificate.

Reason: To ensure security against possible damage to Council and private property.

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

#### **44. Landscape maintenance**

All landscape components are to be maintained for the life of the development. A maintenance program is to be established. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components and species to maintain

the landscape theme of the site.

Landscape works shall be maintained for a minimum period of 12 months following practical completion. 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 the environmental amenity and ensure landscaping continues to soften the built form.

**45. Environmental and priority weed control**

Condition: All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: preservation of environmental amenity.

**46. Control of Weeds**

Prior to the completion of works, all priority weeds (as listed under the Biosecurity Act 2015) are to be removed/controlled within the subject site using an appropriately registered control method. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>). All environmental weeds are to be removed and controlled. Refer to Council website [http://www.pittwater.nsw.gov.au/environment/noxious\\_weeds](http://www.pittwater.nsw.gov.au/environment/noxious_weeds)

Reason: Weed management.

**47. No Planting Environmental Weeds**

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

**48. Works to cease if item found**

If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

Reason: To protect Aboriginal Heritage.

**49. Dead or Injured Wildlife**

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

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

**50. Swimming Pool Equipment**

The swimming pool equipment that is capable of generation noise such as the swimming pool pump, is to be located within an acoustic box and shall not produce noise levels that exceed 5dB(A) above the background noise when measured from the nearest property boundary.

Reason: To ensure the proposal complies with the Protection of the Environment Operations Act 1997.