



Land and Environment Court New South Wales

Medium Neutral Citation:	Hall v Northern Beaches Council [2024] NSWLEC 1199
Hearing dates:	Conciliation conferences 27-28 March 2024
Date of orders:	19 April 2024
Decision date:	19 April 2024
Jurisdiction:	Class 1
Before:	Porter C
Decision:	The Court orders: (1) The appeal is upheld. (2) Development consent is granted to DA2023/0894 for demolition of existing buildings, construction of a dwelling, driveway, swimming pool and landscaping at 18 Rock Bath Road, Palm Beach, NSW, 2108 and the adjoining road reserve, subject to the conditions contained in Annexure A.
Catchwords:	DEVELOPMENT APPLICATION – new dwelling - conciliation conference - agreement between the parties - orders
Legislation Cited:	<i>Environmental Planning and Assessment Act 1979</i> , ss 4.16, 8.7, <i>Land and Environment Court Act 1979</i> , ss 34, 34AA <i>Roads Act 1993</i> <i>Environmental Planning and Assessment Regulation 2021</i> , s 38 <i>Pittwater Local Environmental Plan 2014</i> , cll 4.3, 7.1, 7.5, 7.7, 7.8, 7.10 <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i> <i>Environmental Planning Policy (Sustainable Buildings) 2022</i> , s 4.2 <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> , Ch 2 ss 2.10, 2.11, 2.12, 4.6

State Environmental Planning Policy (Transport and Infrastructure) 2021, s 2.48

Category:	Principal judgment
Parties:	Bridget Elizabeth Hall (Applicant) Northern Beaches Council (Respondent)
Representation:	Counsel: M Astill (Applicant) A Gough (Solicitor) (Respondent) Solicitors: Hones Lawyers (Applicant) Storey and Gough Law (Respondent)
File Number(s):	2023/271148
Publication restriction:	Nil

JUDGMENT

- COMMISSIONER:** This is an appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (EPA Act) against the deemed refusal of development application 2023/0894 (DA). The DA sought consent for the demolition of existing structures, tree removal, construction of a new dwelling with a swimming pool, landscaping works, an elevated driveway within the Council road reserve and ancillary site works at 18 Rock Bath Road, Palm Beach, legally described as Lot 292 DP 16362 (site).
- The Respondent, as the relevant consent authority, has approved under s 38 of the Environmental Planning and Assessment Regulation 2021 (EPA Reg 2021) to the Applicant amending DA2023/0894 in accordance with the documents listed at [22] (amended DA). The key amendments can be summarised as follows:
 - Increased setback from the peninsular;
 - Revised Vegetation Management Plan;
 - Revisions to the driveway and works within the road reserve; and
 - Changes to colours and finishes.
- 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 27 and 28 March 2024. I have presided over the conciliation conference.
- 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 for the amended DA and granting development

consent to the amended application subject to conditions.

5 I note that as part of the submitted s 34 agreement, the parties have submitted a jurisdictional statement setting out how the proposal has satisfied the jurisdictional requirements and other matters.

6 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.

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

Jurisdictional Prerequisites

8 There are jurisdictional prerequisites that must be satisfied before this function can be exercised. The parties identified the jurisdictional prerequisites of relevance in these proceedings and explained how the jurisdictional prerequisites have been satisfied. 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, as set out below.

9 I am satisfied that owners consent accompanied the development application. I note that Council has agreed to works within the road reserve, which is also subject to further *Roads Act 1993* applications to Council (condition 21).

10 The DA was lodged to the Respondent on 10 July 2023. The Respondent notified the development application between 11 July to 28 July 2023. 25 submissions were received, with 10 in support and 15 objections. At the beginning of the site viewing on 27 March 2024, the Court heard oral concerns from two objectors.

11 As the parties have entered into an agreement, Council, as the consent authority, has considered the concerns raised.

Pittwater Local Environmental Plan 2014 (PLEP)

12 The site is zoned C4 Environmental Living under the Pittwater Local Environmental Plan 2014 (PLEP). The proposed development for a dwelling is permitted with consent and I have had regard to the objectives of the zone.

13 The parties agree and I accept that the following applicable PLEP provisions are met:

- (1) Clause 4.3(2) sets a maximum building height of 8.5m. The amended architectural plans (in particular DA10, DA11, DA12 and DA21) prepared by Richard Cole Architecture (architectural plans) demonstrate the amended application is below 8.5m.
- (2) Clause 7.1 acid sulfate soils applies to the site, which is located in Class 5 soils. As detailed in the Geotechnical Site Investigation prepared by Crozier Geotechnical Consultants dated June 2023 (Geotechnical Report), a watertable was not identified on site. Accordingly, the amended application does not lower

- the watertable and the provisions of 7.1(3) do not apply.
- (3) Clause 7.5 coastal risk management applies to the site, as it is located within a bluff/cliff instability area on the associated map. With consideration of the Geotechnical Report (particularly Appendix 6 which is a letter of Coastal Engineering Advice prepared by Horton Coastal Engineering dated 16 June 2023), the jurisdictional statement and conditions of consent contained within Annexure A, I accept the parties' submissions that the provisions have been satisfied.
 - (4) Clause 7.7 geotechnical hazards applies to the site, as it is located within the associated geotechnical hazard H1 map. With consideration of the Geotechnical Report, natural environment joint expert report, stormwater plans within Annexure A and conditions of consent within Annexure A, I accept that the provisions have been met.
 - (5) Clause 7.8 limited development on foreshore area applies to the site. The amended DA proposes a swimming pool within the foreshore area. I accept the parties' agreement that the provisions have been satisfied as shown on the architectural plans, Statement of Environmental Effects prepared by Northern Beaches Planning dated July 2023 (SEE) and Geotechnical Report.
 - (6) Clause 7.10 essential services applies to the amended DA. With consideration of existing services currently provided to the site, the stormwater plans within Annexure A and the traffic and parking joint expert report, I accept the parties' agreement that the provisions have been satisfied.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

- 14 The development application was lodged prior to the commencement of State Environmental Planning Policy (Sustainable Buildings) 2022. In accordance with the savings provisions under s 4.2, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP BASIX) applies instead.
- 15 The parties agree and I am satisfied that the amended application is accompanied by amended BASIX Certificate (1391177S_02) that meet the provisions of the State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

State Environmental Planning Policy (Resilience and Hazards) 2021

- 16 Chapter 2 coastal management of State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP RH) applies to the site. The parties agree, and I accept, that ss 2.10, 2.11 and 2.12 have been satisfied as demonstrated by the SEE and Geotechnical Report.
- 17 The provisions of s 4.6 of SEPP RH apply to the site. The amended DA does not involve a change of use and the s 10.7 planning certificate accompanying the Class 1 appeal does not show any reported contamination on site. Accordingly, the parties

agree and I accept that the provisions of s 4.6 of SEPP RH have been adequately satisfied.

State Environmental Planning Policy (Transport and Infrastructure) 2021

18 Subsection 2.48 development likely to affect an electricity transmission or distribution network applies to the site. The DA was referred to Ausgrid and the responses received have been incorporated into the conditions of consent at Annexure A.

Conclusion

- 19 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.
- 20 In making the orders to give effect to the agreement between the parties, I was not required to, and have not, made any merit assessment of the issues that were originally in dispute between the parties.
- 21 I have considered the jurisdictional prerequisites and I am satisfied on the basis of the evidence before me that the agreement of the parties is a decision that the Court could have made in the proper exercise of its functions.
- 22 The Court notes that the Respondent, as the relevant consent authority, has approved under s 38(1) of the Environmental Planning and Assessment Regulation 2021 to the Applicant amending DA2023/0894 in accordance with the documents listed below:

Document title	Version	Prepared by	Date
Vegetation management plan	1	EcoLogical Australia	19 February 2024
BASIX Certificate	3	Bonnefin Consulting Pty Ltd	3 April 2024

Drawing number	Revision number	Title	Drawn by	Date
Architectural drawings				
DA02	O	Site plan	Richard Cole Architecture	26 March 2024
DA03	O	Ground floor plan	Richard Cole Architecture	26 March 2024

DA04	O	First floor plan	Richard Cole Architecture	26 March 2024
DA05	O	Roof plan	Richard Cole Architecture	26 March 2024
DA06	O	Elevation - east	Richard Cole Architecture	26 March 2024
DA07	O	Elevation – west	Richard Cole Architecture	26 March 2024
DA08	O	Elevation - north	Richard Cole Architecture	26 March 2024
DA09	O	Elevation - south	Richard Cole Architecture	26 March 2024
DA10	O	Long section	Richard Cole Architecture	26 March 2024
DA11	O	Cross section A	Richard Cole Architecture	26 March 2024
DA12	O	Cross section B	Richard Cole Architecture	26 March 2024
DA17	M	Driveway plan and sections	Richard Cole Architecture	15 December 2023
DA25	N	Finishes	Richard Cole Architecture	13 March 2024
Landscape drawings				
DA 01 DA	D	Landscape plan	Volker Klemm Landscape Design	February 2024
DA 02 DA	D	Landscape plan	Volker Klemm Landscape Design	February 2024
Engineering drawings				

22031/01	H	Proposed garage layout	TEF Consulting	5 February 2024
22031/02	H	Proposed garage layout	TEF Consulting	5 February 2024
22031/03	H	Proposed profile	TEF Consulting	5 February 2024
22031/04	H	Proposed profile	TEF Consulting	5 February 2024
22031/05	H	Proposed profile	TEF Consulting	5 February 2024
22031/06	H	Proposed profile	TEF Consulting	5 February 2024
22031/07	H	Proposed garage layout	TEF Consulting	5 February 2024
22031/08	H	Proposed garage layout	TEF Consulting	5 February 2024
H-DA-01	C	Ground floor and first floor stormwater	ITM Design	18 January 2024

Orders:

23 The Court orders:

- (1) The appeal is upheld.
- (2) Development consent is granted to DA2023/0894 for demolition of existing buildings, construction of a dwelling, driveway, swimming pool and landscaping at 18 Rock Bath Road, Palm Beach, NSW, 2108 and the adjoining road reserve, subject to the conditions contained in Annexure A.

S Porter

Commissioner of the Court

Annexure A

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.

Decision last updated: 19 April 2024

Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: DA2023/0894

Development: Demolition of existing buildings, construction of a dwelling, driveway and swimming pool and landscaping.

Site: 18 Rock Bath Road, Palm Beach and adjoining road reserve.

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

Date of determination: 19 April 2024

Date from which consent takes effect: Date of determination.

TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the “applicant” means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the “site”, means the land known as 18 Rock Bath Road, Palm Beach and adjoining road reserve.

The conditions of consent are as follows:

CONDITIONS OF APPROVAL

Application Number:	DA2023/0894 NSW LEC Proceedings 2023/271148
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Land to be developed (Address):	Lot 292 DP 16362, 18 Rock Bath Road PALM BEACH NSW 2108 and adjoining road reserve.
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Proposed Development:	Demolition of existing buildings, construction of a dwelling, driveway and swimming pool and landscaping.
Determination	NSW LEC

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans / Drawings				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA02	O	Site Plan	Richard Cole Architecture	26.3.2024
DA03	O	Ground Floor Plan	Richard Cole Architecture	26.3.2024
DA04	O	First Floor Plan	Richard Cole Architecture	26.3.2024
DA05	O	Roof Plan	Richard Cole Architecture	26.3.2024
DA06	O	Elevation - East	Richard Cole Architecture	26.3.2024
DA07	O	Elevation - West	Richard Cole Architecture	26.3.2024

DA08	O	Elevation - North	Richard Cole Architecture	26.3.2024
DA09	O	Elevation - South	Richard Cole Architecture	26.3.2024
DA10	O	Long Section	Richard Cole Architecture	26.3.2024
DA11	O	Cross Section A	Richard Cole Architecture	26.3.2024
DA12	O	Cross Section B	Richard Cole Architecture	26.3.2024
DA17	M	Driveway Plan and Sections	Richard Cole Architecture	15.12.2023
DA20	L	Demolition Plan	Richard Cole Architecture	26.6.2023
DA27	L	Cut and Fill	Richard Cole Architecture	26.6.2023
DA25	N	Finishes Board. This plan is amended by the condition entitled "Materials and Finishes" below	Richard Cole Architecture	13.3.2024

Landscape Plans				
DA 01 DA	D	Landscape Plan	Volker Klemm Landscape Design	02.2024
DA 02 DA	D	Landscape Plan	Volker Klemm Landscape Design	02.2024

Engineering Plans				
22031/01	H	Proposed Garage Layout	TEF Consulting	5.2.24
22031/02	H	Proposed Garage Layout	TEF Consulting	5.2.24
22031/03	H	Proposed Profile	TEF Consulting	5.2.24
22031/04	H	Proposed Profile	TEF Consulting	5.2.24
22031/05	H	Proposed Profile	TEF Consulting	5.2.24
22031/06	H	Proposed Profile	TEF Consulting	5.2.24
22031/07	H	Proposed Garage Layout	TEF Consulting	5.2.24

22031/08	H	Proposed Garage Layout	TEF Consulting	5.2.24
H-DA-00	B	Legend, Sediment Control & Site Detail	ITM Design	23.6.23
H-DA-01	C	Ground Floor and First Floor Stormwater	ITM Design	18.1.2024
H-DA-02	B	Roof Stormwater	ITM Design	23.6.23

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	3	Bonnefin Consulting	3 April 2024
Construction Management Plan	4	Lawson & Lovell Building Services	June 2023
Waste Management Plan	-	Applicant	Undated
Geotechnical Site Investigation	2022-085	Crozier Geotechnical	22.6.2022
Arboricultural Impact Assessment and Management Plan	-	Botanics Tree Wise People	June 2023
Vegetation Management Plan	1	Ecological	19.2.2024

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

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	20.7.2023
Aboriginal Heritage Office	AHO Referral Response	14.7.2023

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

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, 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 Certifier 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 Certifier 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 Certifier 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 an 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 following is required:
- i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% 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.
 - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
- (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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or 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) 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.

5. **Sewer / Water Quickcheck**

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if

further requirements need to be met. Plans will be appropriately stamped.

Please refer to the website www.sydneywater.com.au for:

- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating. Or telephone 13 20 92.

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

FEES / CHARGES / CONTRIBUTIONS

6. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$43,617.03 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 (as amended).

The monetary contribution is based on a development cost of \$4,361,703.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

7. 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 Certifier 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).

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

8. Construction, Excavation and Associated Works Security Bond(s)

The applicant is to lodge bonds with Council for the following:

i) Crossing/Driveway Works

As security against any damage or failure to complete the construction of the vehicular crossing and removal of any redundant driveways required as part of this consent a bond of **\$50,000**.

ii) Security Bond

As security against damage to Council's roads fronting the site caused by the transport and disposal of materials and equipment to and from the site a bond of **\$20,000**.

Details confirming payment of the bond(s) are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

9. Amended Landscape Plans

Amended landscape plans shall be issued to the Principal Certifier prior to the issue of a Construction Certificate to include the following details:

(a) amend Landscape Plan - Ground Floor, to co-ordinate the location of the stormwater levelspreader re-located in the approved Stormwater Plans,

(b) amend Landscape Plan - Road Reserve works, to co-ordinate the extent of works as part of the proposed driveway depicted as 'impact area' on page 8 of the approved *Vegetation Management Plan*.

Certification shall be submitted to the Principal Certifier that these amendments have been documented.

Reason: Landscape amenity.

9A. **Amendments to the Approved Plans including Finishes and Materials**

The approved development must be constructed using the following materials and finishes:

- (a) Window and door frames are to be constructed in timber and have a clear timber finish.
- (b) The first floor balustrading is to be of a dark copper colour.
- (c) The face bricks of the dwelling are to be of the 'Berg Vot Blend' produced by 'Architectural Handmade Bricks and Pavers' and contain bricks referred to as 'Berg 01', 'Berg 02', and 'Berg 04'. The blend must contain an equal part of the nominated brick varieties. Alternative bricks of equal or darker tone and blend may be used if this product is discontinued or not available.
- (d) The surface of the driveway within the road reserve is to contain a dark washed aggregate with the exception of the area adjoining Whale Beach Road/Florida Road which is to be constructed to comply with the standard cross-over conditions.
- (e) The swimming pool barrier fence to the east of the swimming pool is to be a plain darkly coloured palisade fence and must not involve the construction of retaining walls or excavation of the bluff.
- (f) The first floor windows are to be constructed of standard non reflective glass.

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

Reason: To reduce visual impact within the scenic protection area of PLEP and the Desired Future Character as per PDCP.

10. **Tree Protection Plan**

- (a) a Tree Protection Plan shall be submitted to the Certifier for approval prior to the issue of a Construction Certificate, demonstrating tree protection measures in accordance with AS49702009 Protection of trees on development sites, to protect the following trees: i) tree 1 - Paperbark, located within the property, ii) all existing trees within the road reserve outside of the 'impact area' depicted on page 8 of the approved Vegetation Management Plan.
- (b) the Tree Protection Plan shall be prepared by an Arborist with minimum AQF Level 5 in arboriculture, incorporating the following:
 - i) location of all trees identified for retention, ii) access routes throughout the site for construction activity shall be confined to within the 'impact area' depicted on page 8 of the approved Vegetation Management Plan,
 - iii) location of tree protection fencing / barriers, to be limited to not extend beyond the 'impact area' depicted on page 8 of the approved Vegetation Management Plan,
 - iv) root protection in the form of mulching or boards proposed within the tree protection zone,
 - v) trunk and branch protection within the tree protection zone, vi) location of stockpile areas and materials storage, within the property, vii) other general tree protection measures.

Reason: Tree protection.

11. **On Slab Landscape Works**

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided. Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, and services connections. The following soil depths are required to support landscaping: 300mm for groundcovers, perennials, grasses; and 600mm for shrubs.

Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and ensure waterproofing and drainage is installed.

12. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG), indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to a suitably designed level spreader. The design is to be certified by a Geotechnical Engineer to ensure the discharge does not cause any scouring or instability downstream of the spreader.

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

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

13. **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 Crozier Geotechnical Consultants dated 22 June 2023 are to be incorporated into the construction plans and documentation. 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 Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

14. **Car Parking Standards**

The car parking facilities within the site boundaries must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004. The

driveway/access ramp grades are to comply with TEF Consulting drawing 22031/01 Revision H dated 5 February 2024.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifier prior to the issue of a construction certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

15. **Construction Traffic Management Plan**

A Construction Traffic Management Plan (CTMP) and report shall be prepared by a Transport for NSW accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

The CTMP must address following:

- a) The proposed phases of construction works on the site, and the expected duration of each construction phase.
- b) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
- c) Make provision for all construction materials to be stored on site, at all times.
- d) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- e) The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- f) Where access is required across private property not in the direct ownership of the proponent, such as a private road/driveway, community title road or right of way, the CTMP is to include:
 - i) Evidence of the legal right to use the access route or provide owners consent from the owners/strata/community association.
 - ii) Demonstrate that direct access from a public space/road is not viable for each stage of works.
 - iii) Unless owner/strata/community associations consent is obtained, vehicles are not to exceed 24 tonnes or 7.5 metres in length (an assessment must be undertaken that the surface is capable of supporting up to 24 tonnes, otherwise the weight limit should be reduced in the CTMP). If consent is obtained, a copy must be included in the CTMP,
 - iv) No construction vehicles, materials or plant are to be located or parked in the private road/driveway, community title road or right of way.
 - v) How any disruption to other users of the private road/driveway, community title road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.
 - vi) A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private road/driveway/right of way, and any other adjacent private property assets or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.
 - vii) A requirement for Post-Construction Dilapidation Reports, including photos of any

damage evident at the time of inspection, to be submitted after the completion of works and prior to the Occupation certificate. The report must:

- Compare the post-construction report with the pre-construction report,
 - Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,
 - Should any damage have occurred, identify remediation actions taken. Be submitted to Council with the Occupation Certificate.
- o g) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site
 - o h) Outline arrangements for the parking of staff and contractors associated with the site to ensure that vehicles are legally and safely parked and where the level of amenity impact of surrounding areas is minimised.
 - o i) Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
 - o j) Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
 - o k) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure
 - o l) Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees
 - o m) Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site
 - o n) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site
 - o o) Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council
 - o p) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent
 - o q) Proposed protection for Council and adjoining properties
 - o r) The location and operation of any on site crane

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

A copy of the approved CTMP must be kept on-site at all times while work is being carried out.

The development is to be undertaken in accordance with the Construction Traffic Management Plan approved by Northern Beaches Council Traffic Team.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

16. **[NOT USED]**

17. **Vehicle Mechanical Turntable**

The applicant is to provide information on the proposed vehicular turntable, operation details, and instructions to visitors on using the device, maintenance plan, and contingency plan during a malfunction.

Details are to be provided to Council for approval and this requirement is to be reflected on the Construction Certificate plans. Details demonstrating compliance are to be reflected on the Construction Certificate plans and any supporting documentation for the endorsement of the Principal Certifier prior to the release of the Construction Certificate.

Reason: To ensure no vehicle conflicts within the basement carpark.

18. **Pedestrian sight distance at property boundary**

A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas.

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

Reason: To maintain pedestrian safety.

19. **[NOT USED]**

20. **[NOT USED]**

21. **Submission Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include Civil Engineering plans for the design of the driveway crossing and access driveway which are to be generally in accordance with the concept design by TEF Consulting, drawing numbers 22031/01, 02, 03, 04, 05 and 06, Revision H dated 5 February 2024 and Council's specification for engineering works - AUS-SPEC #1. The plans shall be prepared by a qualified Civil Engineer. The design must include the following information:

1. Long sections and cross sections including existing and proposed levels.
2. Barriers in accordance with AS/NZS2890.1:2004.
3. A passing bay clear of the proposed parking area for 16 Rock Bath Road.

4. Turning paths for vehicles entering and exiting 18 Rock Bath Road.
5. Turning paths for vehicles entering and exiting the parking area for 16 Rock Bath Road.
6. Structural details including specifications for the driveway crossing, driveway slab, retaining walls and associated footings.
7. Services plan.
8. Concurrence from all relevant service authority(s) for any services affected by the proposal including relocation and adjustment to suit the proposal.
9. Adjustment and provision of the pedestrian access from the existing public pathway to 16 and 18 Rock Bath Road.
10. Geotechnical report including recommendations.
11. Stormwater design for the collection and disposal of stormwater.

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 Principal Certifier prior to the issue of the Construction Certificate.

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

22. **Utilities Services**

Prior to the issue of the Construction Certificate, written evidence of the following service provider requirements must be provided to the Principal Certifier:

- a) a letter from Ausgrid demonstrating that satisfactory arrangements can be made for the installation and supply of electricity,
- b) a response from Sydney Water as to whether the proposed works subject to this consent would affect any Sydney Water infrastructure, and whether further requirements need to be met, and
- c) other relevant utilities or services - that the development as proposed to be carried out is satisfactory to those other service providers, or if it is not, the changes that are required to make the development satisfactory to them.

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

Reason: To ensure relevant utility and service providers' requirements are provided to the Principal Certifier.

23. **Coastal Bluff Engineering Assessment Implementation**

The advice and recommendations contained in the approved *Coastal Engineering Advice* prepared by Horton Coastal Engineering Pty. Ltd. dated 16 June 2023, must be addressed as necessary through the Geotechnical Risk Management Report prepared in support of the development application and must be incorporated as required into construction plans and structural specifications for the development.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are minimised

24. **Coastal Bluff Engineering Assessment Implementation**

All development or activities must be designed and constructed such that they will not increase the level of risk from coastal processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect coastal processes.

Reason: To ensure potential hazards associated with development on a Coastal Bluff are minimised

25. **Engineers Certification of Plans**

The structural design and specification shall be prepared by and signed by, a registered professional civil or structural engineer with chartered professional status (CP Eng) who has an appropriate level of professional indemnity insurance and shall be submitted to the Certifier prior to the release of the Construction Certificate.

Reason: To ensure structural engineering design is prepared and certified by an appropriately qualified professional.

26. **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 Certifier prior to the issue of the Construction Certificate.

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

27. **Sediment and Erosion Control on the Dwelling Site and within the Road Reserve**

Sediment and erosion controls shall be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) within the road reserve portion at no more than 3 metres from the edge of the proposed driveway as depicted on page 8 of the approved Vegetation Management Plan. Techniques used for erosion and sediment control 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

28. **Tree Removal Within the Road Reserve**

This consent approves the removal of existing trees within the road reserve as identified in the Arboricultural Impact Assessment, or as listed below:

(a) T2 to T8 inclusive, T12, T19 and T21,

(b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

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

Reason: Public liability.

29. **Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane. A Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

Reason: To ensure Work zones are monitored and installed correctly.

30. **Demolition Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – "Manual of Uniform Traffic Control Devices", RMS' Manual – "Traffic Control at Work Sites".

All fees and charges associated with the review of this plan is to be in accordance with Council's Schedule of Fees and Charges and are to be paid at the time that the Demolition

Traffic Management Plan is submitted.

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

31. **Pre-Construction Dilapidation Report**

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

Property / Properties:

- No.16 Rock Bath Road, Palm Beach No.12-14
- Rock Bath Road, Palm Beach.
- Private or public assets, to be retained, within the road reserve that may impacted by works.

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

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

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

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

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

32. **Construction Fencing within the Road Reserve**

Standard construction fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, shall be installed within the road reserve portion at no more than 3 metres from the edge of the proposed driveway as depicted on page 8 of the approved Vegetation Management Plan as the 'impact area', to protect all existing natural landscape features and vegetation outside of this area, and shall include sediment and erosion control measures located along the fencing inside of the 'impact area'.

Reason: Protection of existing natural landscape features and vegetation.

DURING BUILDING WORK

33. **Tree and Vegetation Protection**

(a) Existing trees and vegetation shall be retained and protected, including:

- i) all prescribed trees within the site,
- ii) all trees and vegetation located on adjoining properties
- iii) all trees and vegetation within the road reserve, unless otherwise approved.

(b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, ii) the following arboricultural requirements shall be adhered to unless authorised by an Arborist with minimum AQF level 5 qualifications: existing ground levels shall be maintained within the tree protection zone of trees to be retained; removal of existing tree roots at or >25mm (Ø) diameter is not permitted; 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; and structures are to bridge tree roots at or >25mm (Ø) diameter, iii) the activities listed in section 4.2 of AS4970-2009 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,
- iv) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- v) 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 Principal Certifier must ensure that:

(c) The arboricultural works listed in a) and b) are undertaken as complaint to AS4970-2009 Protection of trees on development sites.

Reason: Tree and vegetation protection.

34. **Wildlife Protection**

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

Reason: To protect native wildlife.

35. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

36. **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.

37. Implementation of Demolition Traffic Management Plan

All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

38. Implementation of Construction Traffic Management Plan

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

39. Ongoing Management

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

40. 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 Certifier.

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

41. [NOT USED].

42. **[NOT USED]****BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**43. **Vegetation Management Plan Works**

Vegetation Management Plan works are to be implemented in accordance with the approved Vegetation Management Plan, including:

- (a) section 3 Preliminary Works,
- (b) section 4 Vegetation Management Works,
- (c) section 5 Implementations,
- (d) section 6 Monitoring and Reporting.
- (e) appendix d Techniques and Specifications

Prior to the issue of an Occupation Certificate, details from a qualified Ecologist shall be submitted to the Principal Certifier, certifying that the 'establishment stage' Vegetation Management Plan works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

44. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Amended Landscape Plans, and inclusive of the following conditions:

- (a) tree, shrub and groundcover planting shall be installed as indicated on the approved Amended Landscape Plans, unless otherwise imposed by conditions.

Prior to the issue of an Occupation Certificate, details from a landscape architect or landscape designer shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

45. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the approved Arboricultural Impact Assessment, including the following information:

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

Reason: Tree and vegetation protection.

46. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

47. **Certification of Civil Works and Works as Executed Data on Council Land** The Applicant shall submit certification by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) that the completed works have been constructed in accordance with this consent and the approved Section 138 plans. Works as Executed data certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data (details overdrawn on a copy of the approved civil plans) for Civil Assets' in an approved format shall be submitted to Council for approval prior to the release of any security deposits.

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

48. **Stormwater Disposal**
The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified Civil Engineer.

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

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

49. **[NOT USED]**

50. **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 Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

51. **House / Building Number**
House/building number is to be affixed to the letterbox (positioned at / adjacent top of driveway access near Whale Beach Road) to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

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

52. **Landscape Maintenance**
If any landscape materials/components or planting under this consent fails within the property, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plans and any conditions of consent.

The approved landscape area shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

53. **Landscaping adjoining vehicular access**

The applicant must ensure that the planting chosen for any land immediately adjacent to the driveway and adjacent to any driveway intersections must not exceed a height of 1m

Reason: To maintain unobstructed sight distance for motorists.

54. **Swimming Pool/Spa/ Air Conditioning Motor Noise**

The swimming pool / spa motor or air conditioner motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

55. **On-Going Maintenance of Driveway and Associated Structures in the Public Road Reserve**

The driveway and associated structures in the public road reserve approved under Section 138 of the *Roads Act* are to be maintained in perpetuity by the property owners benefiting from the structures in accordance with the requirements of Section 142 of the *Roads Act 1993*.

Reason: To ensure on-going maintenance of the driveway access in the public road reserve.

56. **Vegetation Management Plan Establishment Period**

If any planting as part of the *Vegetation Management Plan* under this consent fails during the establishment period to 5 years, they are to be replaced with like for like planting. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting and as required.

Maintenance of the works under the *Vegetation Management Plan* is to be carried out by an accredited Bush Regenerator (AABR) or should possess the required qualifications and experience for membership. In addition to this, they should have as a minimum, a Certificate III in Conservation & Land Management or equivalent. The contractor will need to carry out best practice bush regeneration techniques as described by Buchanan (2009).

Reason: To maintain local environmental amenity.