



Land and Environment Court
New South Wales

Case Name: East Coast Property Development Pty Ltd ATF East Coast Property Development Unit Trust v Northern Beaches Council

Medium Neutral Citation: [2022] NSWLEC 1305

Hearing Date(s): Conciliation Conference 21 March 2022

Date of Orders: 15 June 2022

Decision Date: 15 June 2022

Jurisdiction: Class 1

Before: Dickson C

Decision: The Court orders that:
(1) The appeal is upheld
(2) The applicant is to pay the respondent's costs thrown away pursuant to s 8.15 (3) of the Environmental Planning and Assessment Act 1979 (NSW) in the amount of \$8000 within 28 days of the orders being made by the Court.
(3) Development Application No. 2021/1805 for the demolition of the existing dwelling located on the subject allotment and the construction of a seniors housing development incorporating 5 x 3 bedroom in-fill self-care housing units and basement car parking for 9 vehicles, at 4 Alexander Street, Collaroy (Lot A DP 379308), pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 is determined by the granting of consent subject to the conditions set out in Annexure "A" to this agreement.

Catchwords: DEVELOPMENT APPLICATION – infill seniors housing development – amended plans – agreement between the parties - orders

Legislation Cited: Environmental Planning and Assessment Act 1979, ss 4.15, 4.16, 8.7, 8.15
Environmental Planning and Assessment Regulation 2000, cl 55
Environmental Planning and Assessment Regulation 2021, cl 29
Land and Environment Court Act 1979, s 34
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
State Environmental Planning Policy (Biodiversity and Conservation) 2021, cll 10.19, 10.20
State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development, cl 28, Sch 1
State Environmental Planning Policy (Housing) 2021, Sch 7A
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, cll 26, 28, 30, 40, Div 6, Pt 4
State Environmental Planning Policy No 55— Remediation of Land
State Environmental Planning Policy (Resilience and Hazards) 2021, cl 4.6
Warringah Local Environmental Plan 2011, cll 4.6, 6.1, 6.2

Texts Cited: Department of Infrastructure, Planning and Natural Resources, Seniors Living Policy: Urban Design Guidelines for Infill Development, March 2004
NSW Department of Planning and Environment, Apartment Design Guide

Category: Principal judgment

Parties: East Coast Property Development Pty Ltd ATF East Coast Property Development Unit Trust (Applicant)
Northern Beaches Council (Respondent)

Representation: Solicitors:
McKees Legal Solutions (Applicant)
Northern Beaches Council (Respondent)

File Number(s): 2021/362068

Publication Restriction: No

JUDGMENT

- 1 COMMISSIONER: The proceedings are an appeal pursuant to s 8.7 (1) of the *Environmental Planning and Assessment Act 1979* (EPA Act) by the Applicant against the actual refusal of Development Application No DA/2021/1805 by the Northern Beaches Planning Panel. The development application that was refused sought consent for demolition of all structures on site, tree removal and excavation followed by construction of a part-two/ part-three storey development comprising five three-bedroom apartments over partial basement carparking. Since the filing of the appeal with the Court, the development application has been amended. This judgement relates to the amended development application. The development is proposed at 4 Alexander Street, Collaroy (Lot A DP 379308).
- 2 The Court arranged a conciliation conference under s 34(1) of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 21 March 2022. I presided over the conciliation conference. Following the conciliation, amended plans and documentation was prepared and agreement was reached between the parties. That decision is that the appeal is upheld, and the development application is approved, subject to the conditions of consent annexed to this judgment, pursuant to s 4.16(1) of the EPA Act.
- 3 In exercising the functions of the consent authority on the appeal, the Court has the power to determine the development application pursuant to ss 4.15 and 4.16 of the EPA Act. The final orders in this appeal, outlined below, are made as a result of an agreement between the parties that was reached at a conciliation conference.
- 4 As the presiding Commissioner, I am satisfied that the decision is one that the Court can make in the proper exercise of its functions (this being the test applied by s 34(3) of the LEC Act). I have formed this state of satisfaction for the following reasons:
 - (1) The development application was made with the consent of the owner of the subject site.
 - (2) The development application was lodged reliant on the provisions of the then State Environmental Planning Policy (Housing for Seniors or

People with a Disability) 2004 (SEPP Seniors). State Environmental Planning Policy (Housing) 2021 (SEPP Housing) commenced on 26 November 2021. SEPP Housing was then amended on 8 March 2022. Relevantly, the amendment updated the savings and transitional provisions at sch 7A of SEPP Housing. Applying the provisions of sch 7A 2(a) of SEPP Housing, the instrument does not apply to a development application, made but not determined before the commencement date.

- (3) The provisions of SEPP Seniors remain relevant to the assessment of the development application. Accordingly,
- I am satisfied that the site is in an accessible area with access to facilities and services not more than 400m from the proposed development: cl 26 of SEPP Seniors.
 - The site is connected to water and sewer infrastructure and an appropriate site analysis plan forms part of the development application: cll 28 and 30 of SEPP Seniors.
 - In determining the development application, I have given consideration to the provisions of the Seniors Living Policy: Urban Design Guideline for Infill Development, March 2004 and the principles set out in Div 6 of SEPP Seniors.
 - The development application seeks to vary four development standards contained in Pt 4 of SEPP Seniors. They are the site frontage control (cl 40(3)), the 8m height limit (cl 40(4)(a)), the 2-storey height limit (cl 40(4)(b)) and the requirement to have single storey development in the rear 25% of the site (cl 40(4)(c)). In each case the Applicant has prepared and filed a written request pursuant to cl 4.6 of the Warringah Local Environmental Plan 2011 (LEP 2011) seeking to vary these standards.
 - In relation to the standard at cl 40(3) of SEPP Seniors, I am satisfied that compliance with the site frontage development standards is unreasonable or unnecessary in the circumstances of this development application on the basis that the objectives of the standard are met notwithstanding the variation to the control. Further, I am satisfied that the environmental planning grounds advanced in the written request, in particular the achievement of the promotion of the orderly and economic use of the land, are sufficient to justify the variation sought.
 - The standards at subcll (a),(b) and (c) of cl 40(4) of SEPP Seniors all relate to the height of the proposed building in relation to the subject site. The Applicant has prepared separate written requests directed to each of the development standards sought to be varied. Having considered these written requests, I am satisfied that each demonstrate that compliance with the respective development standards is unreasonable or unnecessary in the circumstances of this development application on the basis that the objective of the standards is met by the proposed development, despite the variations. I adopt the reasoning of the written requests in this regard. Further, I am satisfied that the environmental planning grounds advanced in the written request, in particular the constraints of the particular landform of the subject site, are sufficient to justify the variation sought.

- I am satisfied that the proposed development will be in the public interest as it is consistent with the objectives for development in the R2 Low Density Residential zone.
 - I am satisfied that the requirements of cl 4.6 of LEP 2011 to allow the variation to the development standard are met.
 - Finally, cl 4.6(4)(b) of the LEP 2011 requires the concurrence of the Planning Secretary be obtained, while cl 4.6(5) requires the Planning Secretary to consider whether, in granting this concurrence, the proposed contravention of the development standard raises any matters of significance for State environmental planning, the public benefits of maintaining the standard, and any other matters required to be considered by the Planning Secretary. Given the earlier written advice of the Planning Secretary (in the form of Planning Circular PS 18-003 issued on 21 February 2018), the Court may assume the concurrence of the Planning Secretary in this matter.
- (4) The development application is accompanied by a BASIX certificate, satisfying the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
 - (5) State Environmental Planning Policy (Resilience and Hazards) 2021 (SEPP Resilience and Hazards) came into force on 1 March 2022. SEPP Resilience and Hazards transfers the provisions of State Environmental Planning Policy No 55—Remediation of Land (SEPP 55) to the new instrument. Consideration has been given as to whether the subject site is contaminated as required by cl 4.6 of SEPP Resilience and Hazards. The Statement of Environmental Effects includes a review of the site history indicates that it has been used for residential purposes. There is no indication of previous uses that would cause contamination. I accept that the site will be suitable for the proposed development.
 - (6) State Environmental Planning Policy (Biodiversity and Conservation) 2021 applies. In determining the development application, I have taken into consideration the matters listed at cl 10.19 and 10.20. I am satisfied that the proposed development will not be visible from Collaroy Beach, does not change any existing access arrangements to Collaroy Beach, and is not considered likely to have any impacts on coastal processes.
 - (7) State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65) applies to the proposed development. Clause 28 of SEPP 65 requires a consent authority, or the Court on appeal, to take into consideration advice from the design review panel, and the design quality of the development when evaluated in accordance with the design quality principles, and the Apartment Design Guide (ADG). I have reviewed the amended development application against these provisions, and I am satisfied that adequate regard has been given to the design quality principles at Sch 1 of SEPP 65, and the objectives specified in the ADG.

- (8) Clause 29(2) of the Environmental Planning and Assessment Regulation 2021 requires an application for residential apartment development to be accompanied by a statement by a qualified designer. A complying design verification statement prepared by the architect Paul Buljevic (7768) accompanies the application.
 - (9) In determining the development application, I have had regard to the objectives of the R2 Low Density Residential zone.
 - (10) The site is identified on the maps in LEP 2011 as located in Class 4 Acid Sulfate Soils. Clause 6.1 of the LEP 2011 applies. The development application is accompanied by a Geotechnical Investigation Report which assesses the likelihood of acid sulfate soils on the site and notes that it did not identify their presence on the site. The clause is satisfied.
 - (11) In accordance with cl 6.2 of LEP 2011, the Geotechnical Investigation Report accompanying the development application assesses the acceptability of the proposed earthworks and proposes a number of recommendations for the construction of the development. Compliance with the Geotechnical Investigation Report is a requirement of the annexed conditions. The clause is satisfied.
 - (12) The development application was notified to adjoining and proximate properties. I am satisfied that the submissions have been considered in the determination of the development application: s 4.15(1)(d) of the EPA Act. In particular, I am satisfied that the objections raised by adjoining neighbours have been appropriately considered by either amendment to the application or in the imposition of conditions of consent.
- 5 Having reached the state of satisfaction that the decision is one that the Court could make in the exercise of its functions, s 34(3)(a) of the LEC Act requires me to “dispose of the proceedings in accordance with the decision”. The LEC Act also requires me to “set out in writing the terms of the decision” (s 34(3)(b)).
- 6 In making the orders to give effect to the agreement between the parties, I was not required to make, and have not made, any assessment of the merits of the development application against the discretionary matters that arise pursuant to an assessment under s 4.15 of the EPA Act.
- 7 The Court notes that:
- (1) Northern Beaches Council as the relevant consent authority has agreed, under clause 55(1) of the Environmental Planning and Assessment Regulation 2000, to the applicant amending the development application Number DA2021/1805 with the following:

- (a) Amended plans listed in Condition 1 of the Conditions of Consent provided as Annexure 'A' to this agreement;
- (b) Amended overland flow assessment dated 18 March 2022, prepared by Woolacotts Consulting Engineers; and
- (2) Updated clause 4.6 variation requests dated 29 April 2022, prepared by Boston Blyth Flemming Town Planners.
- (3) The Respondent uploaded the amended development application on the NSW planning portal on 13 May 2022.
- (4) That the Applicant filed the amended application with the Court on 19 May 2022.
- (5) The updated written requests made pursuant to clause 4.6 of the LEP 2011 which seek to vary development standards in clauses 40 (4) (a), 40 (4) (c), 40 (3), and 40 (4) (b) of SEPP Seniors are upheld.

8 The Court orders that:

- (1) The appeal is upheld
- (2) The Applicant is to pay the Respondent's costs thrown away pursuant to s 8.15 (3) of the *Environmental Planning and Assessment Act 1979* (NSW) in the amount of \$8,000 within 28 days of the orders being made by the Court.
- (3) Development Application No. 2021/1805 for the demolition of the existing dwelling located on the subject allotment and the construction of a seniors housing development incorporating 5 x 3 bedroom in-fill self-care housing units and basement car parking for 9 vehicles, at 4 Alexander Street, Collaroy (Lot A DP 379308), pursuant to the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 is determined by the granting of consent subject to the conditions set out in Annexure "A" to this agreement.

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D M Dickson

Commissioner of the Court

(Annexure A) (431025, pdf)

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.

Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: DA2021/1805

Development: Demolition of all structures, excavation and construction of a part-two/part-three storey seniors housing development consisting of 5 self contained dwellings and basement carparking

Site: 4 Alexander Street, Collaroy NSW

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

Date of determination: 15 June 2022

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 4 Alexander Street, Collaroy NSW.

The conditions of consent are as follows:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA100 - Issue D – Ground Floor Plan	23 March 2022	PBD Architects
DA101 - Issue D – Level 1 Plan	07 April 2022	PBD Architects
DA102 - Issue C – Level 2 Plan	23 March 2022	PBD Architects
DA103 - Issue C – Roof Plan	23 March 2022	PBD Architects
DA200 - Issue C – Elevations 01	23 March 2022	PBD Architects
DA201 - Issue C – Elevations 02	23 March 2022	PBD Architects
DA300 - Issue C – Section A	23 March 2022	PBD Architects
DA301 – Issue B – Southern Boundary Interface	11 April 2022	PBD Architects
DA301 – Issue A – Boundary Condition Study	23 March 2022	PBD Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Investigation Report	23 September 2021	Alliance Geotechnical Pty Ltd
Arboricultural Impact Assessment	31 August 2021	Advanced Treescape Consulting
Access Report	3 September 2021	Vista Access Architects
Overland Flow Assessment Report	18 March 2022	Woolacotts Consulting Engineers

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
LPDA 22 - 69 Sheets 1-4 Revision D	12 April 2022	Conzept Landscape Architects

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	September 2021	Auswide Consulting

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

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

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

during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

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

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

(n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$52,462.23 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$5,246,223.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

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

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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 are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

6. **Construction, Excavation and Associated Works Bond (Drainage Works)**

The applicant is to lodge a bond of \$20,000 as security against any damage or failure to complete the construction of the external stormwater drainage works in Alexander Street as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

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

7. **On Slab Landscape Works**

Details shall be submitted to the Certifying Authority 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 Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following soil depths are required to support landscaping as proposed:

- i) 300mm for lawn
- ii) 600mm for shrubs
- iii) 1m for small trees

Design certification shall be submitted to the Certifying Authority 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 secure waterproofing and drainage is installed.

8. **Green Roof**

A green/sedum rooftop shall be installed and planted for the entirety of the rooftop area located above Level 2.

A detailed planting schedule including species and numbers of plantings shall be provided along with a maintenance strategy.

Details demonstrating compliance are to be submitted for written approval to the Executive Manager Development Assessment prior to the issue of any Construction Certificate.

Reason: To provide an appropriate landscaped outcome.

9. **Detailed Design of Stormwater Treatment Measures - Major**

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the DA stormwater plans and Council's Water Management for Development Policy.

The certificate shall be submitted to the Certifying Authority prior to the release of the

Construction Certificate.

Reason: Protection of the receiving environment.

10. Car Parking Standards

The driveway/access ramp grades, access and car parking facilities 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.

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

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

11. Fencing / Vegetation Height

All fencing and/or vegetation along the frontage road(s) shall not impede pedestrian or driver visibility. This requires that vegetation does not exceed one (1) metre in height. Appropriate

plants shall be selected within the 2.0 x 2.5m splay to ensure this condition is met.

Details are to be provided to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To ensure maximum vehicular and pedestrian visibility.

12. **Vehicular Swept Paths**

Vehicular manoeuvring paths must be provided to demonstrate all vehicles can enter or depart the site in a forward direction without encroaching on required car parking spaces. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

Details demonstrating compliance with this condition must be submitted to the Certifying Authority prior to the issue of the construction Certificate.

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

13. **Construction Traffic Management Plan**

As a result of the 3T Load Limits on Alexander Street, site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Due to heavy traffic congestion throughout the town centre, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm. Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- 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
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- 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
- 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
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic
- 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 seven (7) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure

- 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
- 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
- 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
- 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
- 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
- Proposed protection for Council and adjoining properties
- 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.

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

14. Removal of Redundant Driveways

All redundant driveways shall be removed and reinstated to Council standard kerb and gutter. Suitably prepared plans shall be submitted to for an approval under and approved by Council prior to the issue of the Construction Certificate. All costs associated with the works shall be borne by the applicant.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approval.

Reason: To maximise on street car parking by removing driveways that are no longer needed in accordance with Council policy.

15. Vehicle Access & Parking

All internal driveways, vehicle turning areas, garages and vehicle parking space/ loading bay dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Off-street Parking standards).

With respect to this, the following revision(s) must be undertaken;

All internal driveways and vehicle access ramps must have ramp grades and transitions complying with AS 2890.1. To ensure the gradient requirements and height clearances are satisfied, a driveway profile must be prepared for all internal ramps showing ramp lengths, grades, surface RL's and overhead clearances, taken from the crest of the ramp to the base. The driveway profile must be taken along the steepest grade of travel or sections having significant changes in grades, where scraping or height restrictions could potentially occur and is to demonstrate compliance with AS 2890 for the respective type of vehicle.

Plans prepared by a suitably qualified Engineer shall be submitted to the Certifying Authority prior to the issue of a Construction Certificate.

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

16. **Building Code of Australia Requirements**

The Building Code of Australia works as detailed and recommended in the Building Code of Australia Assessment Report prepared by BCA Logic, dated 3/9/2021, Report Ref No. 114581-BCA-r1 are to be considered as part of the assessment of the Construction Certificate). Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant health and safety.

17. **Building Code of Australia Access**

Access and facilities to and within the building are to be provided for Persons with a Disability and are to comply with the Building Code of Australia and AS 1428.1. In this regard the works and recommendations contained in the Access Report prepared by Vista Access Architects dated 3/9/2021, Ref. 21290 are to be taken into consideration as part of the assessment of the Construction Certificate. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

Reason: To ensure adequate provision is made for access to and within the building for Persons with a disability.

18. **Remedial Action Plan**

Prior to the Construction Certificate being issued, a site-specific Remedial Action Plan (RAP) approved by an accredited Certified Environmental Practitioner must be provided to the Principal Certifying Authority. The RAP must be prepared in accordance with Managing Land Contamination Planning Guidelines SEPP 55–Remediation of Land, Contaminated Land Management Act 1997, and State Environmental Planning Policy No 55 – Remediation of Land.

Reason: Comply with SEPP 55.

19. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and

Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- ▮ Site Boundaries and contours
- ▮ Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- ▮ Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- ▮ Existing and proposed drainage patterns with stormwater discharge points
- ▮ Locations and methods of all erosion and sediment controls;
- ▮ North point and scale.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

20. **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.

21. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. 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.

22. **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 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.

23. **Requirements for Seniors Housing or Housing for Persons with a Disability**

The development is for the purposes of Seniors Housing or Housing for Persons with a Disability and is required to comply with all the standards specified in Schedule 3 - "Standards

concerning accessibility and useability for hostels and self-contained dwellings”.

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

Reason: To ensure public safety and equitable access for seniors or people with a disability.

24. Demolition Traffic Management Plan

As a result of the 3T Load Limits on Alexander Street, 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.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

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 RMS accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.

Specify that a minimum seven (7) 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. (DACTRCPC1)

25. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

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

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

26. **Waste and Recycling Requirements**

Details demonstrating compliance with Northern Beaches Waste Management Guidelines, are to be submitted to and approved by the Certifying Authority prior to the issue of any Construction Certificate.

Note: If the proposal, when compliant with the Northern Beaches Waste Management Guidelines, causes inconsistencies with other parts of the approval i.e. architectural or landscaped plans, a modification(s) to the development may be required.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

27. **On-Site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management Policy for Development, and generally in accordance with the concept drainage plans prepared by C & M Consulting Engineers. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

28. **Basement Flood Gate**

The basement entry flood gate is to be a hydraulically activated system. The top level of the activated flood gate is to be at the 1/100 AEP level plus 500mm. Details of the flood gate system are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the management of flooding and protection of the basement carpark.

29. **Flooding**

In order to protect property and occupants from flood risk the following is required:

Building Components and Structural Soundness

All new development must be designed to ensure structural integrity up to the Probable Maximum Flood, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion.

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 4.53m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed to cut electricity supply during flood events.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

30. 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 four (4) copies of Civil Engineering plans for the design of the proposed 375mm Concrete pipe connection to Council's existing stormwater inlet pit in Alexander Street which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information: The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

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

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

31. Pre-Commencement Dilapidation Report

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public property and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

The pre-construction / demolition dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifying Authority prior to the issue of the any Construction Certificate and the commencement of any works including demolition.

Reason: Protection of Council's infrastructure during construction.

32. Certification of the Structural Stability of the Building

A suitably qualified structural engineer is to certify the structural stability of the new development considering lateral flood flow, buoyancy, suction effects, wave action and debris load impact of the Probable Maximum Flood (PMF) design flood depths and velocities.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

33. Certification of Services

A suitably qualified electrical engineer or contractor is to certify that all new electrical equipment, powerpoints, wiring, fuel lines, sewerage systems or any other service pipes and connections are located above the Flood Planning Level and any existing electrical devices, wiring and the like located below the FPL are protected from water egress or have residual current devices installed to cut electricity supply during flood events of the FPL.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

34. Tree Removal Within the Property

This consent approves the removal of the following tree(s) within the property (as recommended in the Arboricultural Impact Assessment):

i) *Eucalyptus botryoides*, located along the eastern boundary of the site, towards the rear of the property, Tree No. 7.

Note:

i) Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal.

ii) Any request to remove a tree approved for retention under the development application is subject to a Section 4.55 modification application, or an assessment by an Arborist with minimum AQF Level 5 in arboriculture that determines that the tree presents an imminent risk to life or property.

Reason: To enable authorised building works.

35. 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 and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

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

36. Pre-Construction Dilapidation Report

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

- ▮ 6 ALEXANDER STREET, COLLAROY
- ▮ 5 EASTBANK AVENUE, COLLAROY
- ▮ 7 EASTBANK AVENUE, COLLAROY
- ▮ 1097 PITTWATER ROAD, COLALROY
- ▮ 1 EASTBANK AVENUE, COLLAROY

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

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

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

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

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

37. 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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

38. Tree and Vegetation Protection

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

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works,

an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,

viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,

ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,

x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,

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

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

39. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

40. **Substitution of Stormwater Treatment Measures**

The substitution of an "equivalent" device for the stormwater treatment measure approved under the Development Consent must submitted to the Principal Certifying Authority for approval prior to installation.

Reason: To ensure stormwater is appropriately managed and in accordance with the Water Management for Development Policy.

41. **Dewatering Management**

Tailwater (surface water and rainwater): Please contact catchment@northernbeaches.nsw.gov.au for advice on Council's water quality requirements for a single instance of dewatering tailwater that collects in an excavation during works. A dewatering permit application must be made for expected multiple instances or continuous dewatering of tailwater.

Groundwater: A permit from Council is required for any dewatering of groundwater. An application for interference with an aquifer is required to the Natural Resources Access Regulator. Contact catchment@northernbeaches.nsw.gov.au for more information about permits.

The groundwater/tailwater to be discharged must be compliant with the General Terms of Approval/Controlled Activity permit issued by WaterNSW (if applicable), Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) (Blue Book), Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

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

Reason: Protection of the receiving environment and groundwater resources.

42. **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 RMS 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.

43. **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 RMS 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.

44. **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.

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

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

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

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

46. **Geotechnical Requirements**

All recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent, that are required to occur during works must be done.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

47. **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.

48. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development. During demolition and/or construction the following materials are to be separated for recycling: timber, bricks, tiles, plasterboard, metal, concrete, and evidence of disposal for recycling is to be retained on site.

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

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

49. **Requirement to notify about new Acid Sulfate Soils evidence**

Any new information revealed during excavation works that has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifying Authority prior to further commencement.

Reason: Protection of the environment.

50. **Asbestos control during works**

Demolition: 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;
- How to safely remove asbestos: Code of Practice by Safe Work Australia;
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Demolition Work: Code of Practice by Safe Work Australia and Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of human health.

51. **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.

52. **Progress Certification (Road and Subdivision)**

The applicant shall provide written certification is to be provided by a suitably qualified engineer upon completion and/or as and when requested by the [Roads Authority for the following stages of works:

- (a) Laying of stormwater pipes and construction of pits
- (b) Clean-up of site, and of adjoining Council roadway and drainage system.

(**To be tested by a recognised N.A.T.A. approved laboratory).

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

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

53. Civil Works Supervision

The Applicant shall ensure all civil works approved in the Section 138 Roads Act approval are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

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

54. Notification of Inspections (Infrastructure Works to be handed over to Council)

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Installation of Silt and Sediment control devices
- (b) Prior to backfilling of pipelines
- (c) Prior to pouring of stormwater gully pits

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

Reason: To ensure new Council infrastructure is constructed in accordance with Auspec 1 Council's design and specification standards.

55. Traffic Control During Road Works

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

56. Vehicle Crossings

The Applicant is to construct one vehicle crossing 4.0 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ Normal and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

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

57. Landscape Completion

Landscaping is to be implemented in accordance with the approved Landscape Plan, inclusive of the following conditions:

i) substitute the proposed *Rhaphiolepis indica* 'Snow Maiden' with a native alternative, minimum 200mm pot size. Suggested species include: *Banksia spinulosa*, *Grevillea sericea*, or *Westringia fruticosa*,

ii) substitute the proposed *Elaeocarpus reticulatus* with a native alternative, capable of reaching a maximum height of 6 metres at maturity, minimum pot size 45L, and planted with a maximum spacing of 1.5m. Suggested species include: *Acmena smithii* 'Firescreen', *Acmena smithii* 'Minor', '*Elaeocarpus eumundi*' or *Callistemon viminalis* 'Prolific'.

Tree planting shall be located within a 9m² deep soil area wholly within the site and be located a minimum of 3 metres from existing and proposed buildings, and other trees.

Tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views.

Native tree planting species shall be selected from Council's list:

www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide.

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

Reason: Environmental amenity.

58. Certification for the Installation of Stormwater Treatment Measures

A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the Construction Certificate approved plans. The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment. Vegetated measures must exhibit an 80 percent survival rate of plantings.

The certificate shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

59. Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and

restriction as to user is to be submitted to the Principal Certifying Authority prior to the issue of Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

60. **Stormwater Treatment Measures Operation and Maintenance Plan**

An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must be attached to the Positive Covenant (and the community or strata management statement if applicable) and contain the following:

1. Detail on the stormwater treatment measures:

- a) Work as executed drawings
- b) Intent of the stormwater treatment measures including modelled pollutant removal rates
- c) Site detail showing catchment for each device
- d) Vegetation species list associated with each type of vegetated stormwater treatment measure
- e) Impervious area restrictions to maintain the water balance for the site
- f) Funding arrangements for the maintenance of all stormwater treatment measures
- g) Identification of maintenance and management responsibilities
- h) Maintenance and emergency contact information

2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:

- a) Activity description, and duration and frequency of visits

Additionally for vegetated devices:

- b) Monitoring and assessment to achieve an 80 percent survival rate for plantings
- c) Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure

3. Maintenance schedule and procedure - ongoing

- a) Activity description, and duration and frequency of visits
- b) Routine maintenance requirements
- c) Work Health and Safety requirements
- d) Waste management and disposal
- e) Traffic control (if required)
- f) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)
- g) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of an Occupation Certificate.

Reason: Protection of the receiving environment.

61. **Works as Executed Drawings - Stormwater Treatment Measures**

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

62. **Strata Management Statement**

The Strata Management Statement must specifically list the stormwater treatment measures

that will be maintained under strata title. The statement must also include the Stormwater Treatment Measure Operation and Maintenance Plan.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: To ensure maintenance of all stormwater management assets and protection of the receiving environment.

63. **Disabled Parking Spaces**

Where disabled parking spaces are provided they must be in accordance with AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

64. **Shared Zone Bollard**

A bollard is to be provided at the shared zone between disabled spaces in accordance to Australian Standards AS2890.6:2009.

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

Reason: To ensure compliance with Australian Standards.

65. **Post-Construction Dilapidation Report**

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

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

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

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

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

66. **Validation of Remediation**

During works, recommendations contained within the Contamination Report entitled "Detailed Site Investigation" numbered 13625.1-ER-1-1 prepared by Alliance Geotechnical Pty Ltd and dated 1 October 2021 have been implemented.

Any Remediation Action Plan and validation procedures must be submitted to Council prior to occupation certificate being issued.

A validation and site monitoring report confirming clean-up objectives within the Remediation Action Plan, including a survey of all sites used for landfill disposal, is to be prepared in accordance with relevant guidelines issued under the Contaminated Land Management Act 1997. The validation report must be reviewed and approved by an accredited Certified Environmental Practitioner and must be in accordance with the protocol outlined in the NSW EPA (1997) document entitled Guidelines for Consultants Reporting on Contaminated Sites, and state that the site is suitable for its proposed use.

Reason: To ensure compliance with SEPP 55, Contaminated Land Guidelines, and protection of environment and human health.

67. **Compliant disposal of contaminated waste - Proof of compliant management of contamination**

Documentation of disposal of any contaminated material according with SEPP55 and the Contaminated Land Management Act 1997 must be provided to the Principal Certifying Authority by a Suitably Qualified Environmental Consultant.

Reason: proof of effective management of any contaminated materials found during excavation, according with SEPP55 and the Contaminated Land Management Act 1997.

68. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

69. **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.

70. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**

The units within the development are to be numbered in accordance with the Australia Post Address Guidelines (https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf).

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on

stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

71. Waste Management Confirmation

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

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

72. Occupation of Seniors Housing or Housing for Persons with a Disability

A positive covenant pursuant to s88E of the Conveyancing Act 1919 is to be registered on the title of the land to which this development consent applies.

The covenant shall stipulate that Council is the sole authority to release or modify the covenant and that the development is only permitted to be occupied by persons detailed as follows:

- (a) seniors or people who have a disability;
- (b) people who live within the same household with seniors or people who have a disability;
- (c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.

(Note: Under State Environmental Planning Policy (Housing for Seniors or People with a Disability 2004):

Seniors are people aged 55 or more years, people who are resident at a facility at which residential care (within the meaning of the Aged Care Act 1997 <http://www.comlaw.gov.au/> of the Commonwealth) is provided and/or people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider.

AND

People with a disability are people of any age who have, either permanently or for an extended period, one or more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life.)

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

Reason: Statutory requirements.

73. Certification of completion of requirements for Seniors Housing or Housing for Persons with a Disability

Details demonstrating that all stipulated requirements of this development consent for Seniors Housing or Housing for Persons with a Disability have been completed.

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

Reason: To ensure statutory requirements have been completed, public safety, and equitable access for seniors of people with a disability.

74. **Reinstating the damaged road reserve during construction**

Any damages to road reserve shall be reinstated to Council standard. Suitably prepared plans shall be submitted to for approval under and approved by Council. All costs associated with the works shall be borne by the applicant.

A plan checking fee (amount to be advised) and lodgement of a performance bond may be required from the applicant prior to the release of the approval.

Reason: To maintain road reserve to the standards.

75. **Garbage and Recycling Facilities**

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

Waste room floors shall be graded and drained to an approved Sydney Water drainage system.

Waste rooms shall be clear of any other services or utilities infrastructure such as gas, electricity air-conditioning, plumbing, piping ducting or equipment.

Reason: To prevent pollution of the environment, provide a safe workplace for contractors and residents and to protect the amenity of the area.

76. **Positive Covenant for Council and Contractor Indemnity**

A positive covenant shall be created on the title of the land prior to the issue of an Interim/Final Occupation Certificate requiring the proprietor of the land to provide access to the waste storage facilities. The terms of the positive covenant are to be prepared to Council's requirements, (Appendix E of the Waste Management Guidelines), at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities.

77. **Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (NSW Land Registry Services form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land.

78. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with Councils water Management Policy for Development and the approved plans by the design engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any

interim / final Occupation Certificate.

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

79. Positive Covenant and Restriction as to User for On-Site Stormwater Disposal Structures

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

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

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

80. Positive Covenant and Restriction as to User for Self-Actuating Flood Gate

A restriction as to user shall be created on the title over the self-actuating flood gate in order to:

1. Prohibit the removal or modification of the self-actuating flood gate.
2. The flood protection offered by the self-actuating flood gate must be continuous and at a minimum level of RL4.53 in operation. Such levels are to be detailed to Australian Height Datum on the Section 88B instrument and submitted to Council for approval.

Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify such restriction.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood prone property and reduce public and private losses in accordance with Council and NSW Government policy.

Positive Covenant

The Applicant shall submit a positive covenant (under the provisions of Section 88B of the Conveyancing Act 1919) to be created on the final plans and accompanying 88B instrument, requiring the proprietor of the land to maintain the self-actuating flood gate structures in accordance with the industry and manufacturing standards to ensure ongoing flood protection.

The terms of the positive covenant are to be prepared to Council's standard requirements, which are available from Northern Beaches Council. Northern Beaches Council shall be nominated as the sole authority empowered to release, vary or modify such covenant.

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

Reason: To ensure the flood gate system is maintained to an appropriate operational standard.

81. **Post-Construction Dilapidation Report (Major Development)**

The applicant must bear the cost of all restoration works to Council's road, footpath and drainage assets damaged during the course of this development.

A Post Construction Dilapidation Report after the completion of all building works is to demonstrate that there is no damage to Council infrastructure prior to the refund of any security deposits.

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

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

82. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub, roof garden 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 and any conditions of consent.

For all new residential works with two or more dwellings and mixed use developments, a maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

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

Reason: To maintain local environmental amenity.

83. **Undesirable Trees**

Leighton Green Cypress *Cupressocyparis leylandii* or any of its cultivars, or any other Undesirable Trees identified by Council, must not be planted on the site for the life of the development.

In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views and loss of plant diversity.

84. **Maintenance of Stormwater Treatment Measures - Major**

Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Vegetated stormwater treatment measures must maintain an 80 percent survival rate of plantings and limit weed cover to no more than 10 percent of the total area of the stormwater treatment measure.

Where replacement cartridges or other necessary components for the system become unavailable, an alternative system is required to be retrofitted into the development to achieve an equivalent pollutant reduction outcome. Evidence supporting the replacement must be retained on site and made available to Council as required.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

85. **Resident Parking Permits**

Any residents and/or tenants of the subject site are not eligible for resident parking permits. This condition is to be provided on the property Title.

Reason: To ensure the tenants are aware that they are not entitled to a permit regardless if they are within a Resident Parking Scheme (RPS).

86. **Parking facilities and Access**

The parking facilities and vehicular access should be maintained to the Standards and accessible throughout the lifetime of the development.

Reason: To ensure parking facilities are maintained and minimise the on-street parking impact

