



## Land and Environment Court New South Wales

Case Name: Unsworth v Northern Beaches Council

Medium Neutral Citation: **[2019] NSWLEC 1591**

Hearing Date(s): Conciliation conference on 21-22 November 2019

Date of Orders: 3 December 2019

Date of Decision: 3 December 2019

Jurisdiction: Class 1

Before: Gray C

Decision: The Court orders that:

- (1) The Applicant is granted leave to amend the development application to rely upon the amended architectural plans referred to in condition 1 of Annexure A.
- (2) The clause 4.6 written request to vary the Special height provisions development standard set out in clause 4.3A of Manly Local Environmental Plan 2013 prepared by Vaughan Milligan dated 22 November 2019 is upheld.
- (3) The clause 4.6 written request to vary the Height of buildings development standard set out in clause 4.3 of Manly Local Environmental Plan 2013 prepared by Vaughan Milligan dated 22 November 2019 is upheld.
- (4) The Appeal is upheld.
- (5) Development Application No. DA2018/0628 for alterations and additions to an existing dwelling house including a swimming pool at 8 Bower Street, Manly is approved subject to the conditions in Annexure A.

Catchwords: DEVELOPMENT APPLICATION – alterations and additions to dwelling house - conciliation conference – agreement between the parties – orders

Legislation Cited: Environmental Planning and Assessment Act 1979  
Land and Environment Court Act 1979  
Manly Local Environmental Plan 2013

Cases Cited:	GGD Danks Street P/L and CR Danks Street P/L v Council of the City of Sydney [2015] NSWLEC 1521 MGT 6 Pty Ltd v The Council of the City of Sydney [2017] NSWLEC 1211
Texts Cited:	Manly Development Control Plan 2013
Category:	Principal judgment
Parties:	Gregory Unsworth (Applicant) Northern Beaches Council (Respondent)
Representation:	Counsel: M Staunton (Applicant) S Patterson (Solicitor) (Respondent)  Solicitors: Sattler & Associates (Applicant) Wilshire Webb Staunton Beattie Lawyers (Respondent)
File Number(s):	2019/56233
Publication Restriction:	No

## JUDGMENT

- 1     **COMMISSIONER:** This appeal concerns a development application for alterations and additions to an existing dwelling house at 8 Bower Street, Manly. The appeal is lodged pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* ("EPA Act"). 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 in [11] below, are made as a result of an agreement between the parties that was reached at a conciliation conference.
- 2     The Court was required to arranged a conciliation conference between the parties, pursuant to s 34AA(2)(a) of the *Land and Environment Court Act 1979* ("LEC Act"). The conciliation conference commenced on 21 November 2019, and continued on 22 November 2019. I presided over the conciliation conference.
- 3     At the conciliation conference, an agreement under s 34(3) of the LEC Act was reached between the parties as to the terms of a decision in the proceedings that was acceptable to the parties. The decision agreed upon is for leave to be granted to amend the development application, and for the grant of development consent subject to conditions of consent pursuant to s 4.16(1) of the EPA Act. The amended development application removes a secondary dwelling that was sought in the original development application, removes the pitched roof of the existing dwelling and replaces it with a flat roof, increases the setback to the carport and increases setbacks on the north eastern side of the proposal to enable a line of sight from the public footpath to the view towards Manly Beach.
- 4     As the presiding Commissioner, I am satisfied that the decision to grant development consent to the amended application subject to conditions of consent is a decision 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 formed this

state of satisfaction as each of the jurisdictional preconditions identified by the parties is met, for the following reasons.

- 5 Firstly, the development works are for the purposes of a dwelling house, which is a permissible use in the E3 Environmental Management zone in which the site is located, pursuant to the Manly Local Environmental Plan 2013 ("MLEP 2013").
- 6 Secondly, I am satisfied that consent should be granted notwithstanding the contravention of the height development standard. The development standard establishes a maximum height of 8.5m, pursuant to cl 4.3 of the MLEP 2013. The proposed maximum height of 10.92 represents a contravention of 2.42m above the numerical standard. The contravention is confined to a small portion of the development, and result from the topography of the land and the extension of the existing floor plate of the dwelling. In accordance with cl 4.6(4)(a) of the MLEP 2013, I am satisfied that:
  - The written request, lodged pursuant to cl 4.6 of the MLEP 2013, adequately establishes sufficient environmental planning grounds that justify the breach in the height development standard by demonstrating that the breach results from the steeply sloping topography of the land and from extending the floor plate of the existing dwelling, which is located at the top of the site. This causes the higher portion of the building to be located at the top of the site as an extension of the existing dwelling, with the building then stepping down the site to achieve a height and setback that retains the views from all side room windows of the dwelling on the adjacent property (10 Bower Street). A compliant building would require the development to have bulk further down the site, and obstruct views from the windows of the adjacent dwelling.
  - The written request demonstrates that compliance with the height development standard is unreasonable and unnecessary as the

objectives of the height development standard are met notwithstanding the non-compliance, for the reasons set out in the request.

- For the reasons outlined in the written request, the proposal is in the public interest as it is consistent with the objectives of the zone and of the height development standard.

7 Thirdly, I am satisfied that consent should be granted notwithstanding the contravention of the special height provisions in cl 4.3A of the MLEP 2013. The special height provisions require that the height of the building “must not exceed the height of the highest point of the road adjoining the centre point of the lot boundary that adjoins the road that is the frontage to that lot”. The relevant level is RL 26.28. The ground floor and roof of the existing dwelling, which is retained, are already above this point. Compliance with the special height provision would require demolition of the existing dwelling, which is not proposed, and is contrary to Clause 4.4.2 of the Manly Development Control Plan 2013 (Amendment 13) (“MDCP 2013”), which encourages the retention of existing buildings in order to meet ecologically sustainable development principles. In accordance with cl 4.6(4)(a) of the MLEP 2013, I am satisfied that:

- The written request, lodged pursuant to cl 4.6 of the MLEP 2013, adequately establishes sufficient environmental planning grounds that justify the breach in the special height provisions by demonstrating that the contravention is caused by retaining the existing dwelling, which is consistent with the MDCP 2013 and principles of ecologically sustainable development.
- The written request establishes that demonstrates that compliance with the height development standard is unreasonable and unnecessary in two ways. Firstly, it does so by demonstrating that the underlying objective of the standard is not relevant to the development. The lone objective of the special height provisions is to “maintain public views to Sydney Harbour”, whereas there are no public views to Sydney

Harbour from the street level over the property (the views are to Manly Beach and the ocean). Secondly, it does so by demonstrating that, if the objective is understood to refer to public views from the street to Manly Beach and the ocean, the proposal meets that objective as it removes the pitched roof of the dwelling which currently prevents views from Bower Street to the ocean, therefore opening up public views from the street to Manly Beach and the ocean over the top of the altered dwelling.

- For the reasons outlined in the written request, the proposal is in the public interest as it is consistent with the objectives of the zone and of the height development standard.

- 8 Finally, the proposed development complies with the floor space ratio ("FSR") development standard in cl 4.4 of the MLEP 2013, with a gross floor area of 436.85m<sup>2</sup> and a FSR of 0.448:1. I accept that the floors of the pool cabana and the courtyard adjacent to the north-eastern elevation at the pool house level are not gross floor area, for the reason that they are either "terraces... with outer walls less than 1.4 metres high" which are specifically excluded from the definition of gross floor area, or they are not floor area enclosed within external walls (consistent with the decisions in *MGT 6 Pty Ltd v The Council of the City of Sydney* [2017] NSWLEC 1211 and *GGD Danks Street P/L and CR Danks Street P/L v Council of the City of Sydney* [2015] NSWLEC 1521).
- 9 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)).
- 10 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.

11 The Court orders that:

- (1) The Applicant is granted leave to amend the development application to rely upon the amended architectural plans referred to in condition 1 of Annexure A.
- (2) The clause 4.6 written request to vary the Special height provisions development standard set out in clause 4.3A of Manly Local Environmental Plan 2013 prepared by Vaughan Milligan dated 22 November 2019 is upheld.
- (3) The clause 4.6 written request to vary the Height of buildings development standard set out in clause 4.3 of Manly Local Environmental Plan 2013 prepared by Vaughan Milligan dated 22 November 2019 is upheld.
- (4) The Appeal is upheld.
- (5) Development Application No. DA2018/0628 for alterations and additions to an existing dwelling house including a swimming pool at 8 Bower Street, Manly is approved subject to the conditions in Annexure A.

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**J Gray**

**Commissioner of the Court**

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**Annexure A**  
**Unsworth v Northern Beaches Council**  
**Conditions of Approval**

<b>Application Number:</b>	DA2018/0628
<b>Land to be developed (Address):</b>	Lot 34 DP 8075, 8 Bower Street MANLY NSW 2095
<b>Proposed Development:</b>	Alterations and additions to an existing dwelling house and a swimming pool.

**DEVELOPMENT CONSENT OPERATIONAL CONDITIONS**

**1. Approved Plans and Supporting Documentation**

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

**a) Approved Plans**

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA3- Site Analysis Plan	21/11/19	SketchArc
DA4- Pool House Floor Plan	21/11/19	SketchArc
DA5- Lower Floor Plan	21/11/19	SketchArc
DA6- Ground Floor Plan	21/11/19	SketchArc
DA7- Entry Plan	21/11/19	SketchArc
DA8- Roof Plan	21/11/19	SketchArc
DA9- North Elevation	21/11/19	SketchArc
DA10- South Elevation	21/11/19	SketchArc
DA11- Street East Elevation & East Elevation	21/11/19	SketchArc
DA12- West Elevation	21/11/19	SketchArc
DA13- Section A-A	21/11/19	SketchArc
DA14- Section B-B	21/11/19	SketchArc
DA15- Section C-C	21/11/19	SketchArc
DA16- Section D-D	21/11/19	SketchArc
DA17- Section E-E	21/11/19	SketchArc
DA18- Section F-F	21/11/19	SketchArc
DA19- Section G-G	22/11/19	SketchArc
DA20- Controls plan	22/11/19	SketchArc

Architectural Perspectives	22/11/19	SketchArc
<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Geotechnical Investigation	10 April 2018	White Geotechnical group

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Bushfire Hazard Assessment Report	23 February 2018	Building Code & Bushfire Hazard Solutions
Peake Arboriculture	19/02/2018	Peake Arboriculture
Terrestrial Biodiversity Report	March 2018	GIS Environmental Consultants
BASIX Certificate No. A312650_02	21 November 2019	Phil Brown Drafting

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Site Plans and Open Space Calculations	15/11/19 Rev C	Serene Landscapes
<b>Waste Management Plan</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	25 October 2018	Vaughan Milligan

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. (DACPLB01)

2. **Prescribed conditions (Demolition):**

- (a) 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 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
  - (ii) 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.

- (b) 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.

- (c) 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.

Reason: Legislative Requirement (DACPLB09)

3. **Prescribed Conditions**

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

- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative Requirement (DACPLB09)

**4. General requirements (Demolition):**

(a) Unless authorised by Council:

Demolition and excavation works are restricted to:

8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

(b) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

(c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(e) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy. )

(i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

**5. General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

7.00 am to 5.00 pm inclusive Monday to Friday,

8.00 am to 1.00 pm inclusive on Saturday,

No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent

unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

(2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.

(3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

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

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

## FEES / CHARGES / CONTRIBUTIONS

### 6. Policy Controls

Northern Beaches Council Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Section 94 Development Contributions Plan	
Contribution based on a total development cost of \$ 2,900,000.00	

Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$27,550.00
Section 94A Planning and Administration	0.05%	\$1,450.00
Total	1%	<b>\$29,000.00</b>

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

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 Northern Beaches Council's Development Contributions Plan.

#### 7. **Security Bond**

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

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

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

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

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

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

#### 8. **On-site Stormwater Disposal Compliance**

Certification of Drainage plans detailing the provision of On-site Stormwater Disposal in accordance with Northern Beaches Council's *MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003* and the concept drawing by NB Consulting Engineers, Job number 171256 dated 29/03/2018. Details demonstrating compliance are to be submitted to the Principal 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.



9. **Vehicle Crossings Application**

An application for Driveway levels shall be made with Council subject to the payment of fee applicable at the time of payment. The fee includes all Council inspections relating to the driveway construction and must be paid. Approval is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To facilitate suitable vehicular access to private property

10. **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.

11. **Water Proofing and Drainage Details.**

Details must be submitted to the Certifying Authority prior to issue of the Construction Certificate indicating the proposed method of water proofing and drainage of the concrete slabs over which landscaping is being provided.

Reason: To ensure the appropriate type of water proofing is carried out and descriptive information about drainage is provided and drainage is adequately control.

12. **Pool Exclusion Fencing – Bandicoot Habitat**

Long-nosed Bandicoots are to be excluded from swimming pools and spas while maintaining access to any surrounding soft landscaping. Pool fencing must have no gaps large enough to allow bandicoots access.

Plans are to be amended and provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To prevent Long-nosed Bandicoots from drowning in swimming pools and spas.

13. **Height of Walls/Steps – Bandicoot Habitat**

The height of any new retaining walls or steps of new external stairways must not exceed 200mm (or lower in accordance with BCA standards). Where this cannot be achieved, a slope is to be provided in association with the retaining walls and/or stairs to permit Long-nosed Bandicoot access.

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

Reason: To maintain bandicoot access to existing and proposed habitat within and surrounding the site.

**14. 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.

**15. No Bright Lighting – Bandicoot Habitat**

No bright lighting or motion detectors are to be installed to illuminate the lawn or garden areas. A modest amount of low lighting may be used for safety purposes only.

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

Reason: Bright lighting disturbs Long-nosed Bandicoots and disrupts normal Bandicoot foraging, sheltering and nesting activity.

**16. Access to Undercroft Areas – Bandicoot Habitat**

Where concealing material is required for any undercroft areas (e.g. under the house, stairs or balcony), gaps are to be established to allow Long-nosed Bandicoot access. Gaps are to be at least 150mm high and 300mm wide.

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

Reason: To maintain bandicoot access to existing and proposed habitat within and surrounding the site.

**17. Preparation of CEMP – Manly LEP Clause 6.5**

A Construction Environmental Management Plan (CEMP) is to be prepared outlining all measures for the protection of native fauna and vegetation during the construction phase. Measures to be addressed in the CEMP include, but are not limited to, all conditions of this consent addressing construction-related biodiversity impacts.

The CEMP is to be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure conditions for the prevention of construction-related biodiversity impacts are complied with during the construction phase.

**18. Stormwater Management**

Water quality is not to be reduced from pre-development conditions. The stormwater management plan is to be updated to demonstrate that there is no increase in stormwater pollutant loads arising from the approved development. Details demonstrating compliance are to be submitted to the Certifying Authority for approval prior to issue of the Construction Certificate.

Reason: To ensure that the generation of additional stormwater discharge from the site due to the increase in impervious area does not adversely impact the marine ecosystem within the Cabbage Tree Bay Aquatic Reserve

**19. Provision of Landscape Working Drawings**

The submitted plans are to be amended in accordance with the following:

- a) The approved architectural plans dated 21/11/19 set out in conditions 1
- b) Deletion of the proposed outbuilding and associated services and structures;
- c) The footprint of the deleted outbuilding replaced with soft open space incorporating turf and/or garden beds with low clumping species consistent with Section 3.3.1.a)iv) of the Manly DCP 2013;
- d) Planting schedule amended accordingly and identifying the stratum, species/common names, species quantities, pot sizes and staking details of proposed plantings;
- e) The proposed finished treatment of garden areas, including soil depth and retaining walls and the location of underground services.

Reason: To achieve greater consistency with the objectives of Manly LEP Clause 6.5 (Terrestrial Biodiversity)

**20. Access Spaces – Bandicoot Habitat**

Any new gates or fences are to be designed to include gaps appropriate to maintain bandicoot access through and within the site. Gaps are to be at least 150mm high and 300mm wide. This condition does not apply to pool fencing.

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

Reason: To maintain bandicoot access to existing and proposed habitat within and surrounding the site.

**21. Deletion of outbuilding**

The proposed outbuilding is to be deleted from the consent and replaced with landscaped area and native species of vegetation. Details are to be provided prior to the issue of a Construction Certificate.

Reason: To ensure consistency with the objectives of the zone, objectives of open space under the Manly DCP, objectives for Landscape design under the Manly DCP and to provide an acceptable floor space ratio variation. (DACPLCPCC1)

## CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$10 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Warringah Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

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

23. **Tree Protection Measures**

The following precautions must be taken when working near trees to be retained, inclusive of tree within adjoining properties: harmful or bulk materials or spoil must not be stored under or near trees, prevent damage to bark and root system, mechanical methods must not be used to excavate within root zones, topsoil from under the drip line must not be added and or removed, ground under the drip line must not be compacted, and trees must be watered in dry conditions.

Reason: This is to ensure no damage is caused to trees from various methods of possible damage.

24. **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

25. **Site Induction Required**

All workers, including site inspectors and sub-contractors, are to be made aware of the potential presence of relevant threatened species and endangered ecological communities through a site induction prior to commencement of works. The site induction is to include information about their conservation significance, potential activities on-site, means of identification and the measures to be implemented for their protection. A confirmation of induction is to be signed by every worker and the site manager.

Evidence of the site induction is to be documented and provided to the Principal Certifying Authority.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

26. **Fauna Protection Fencing**

Temporary chain wire fencing is to be installed around all work areas (including demolition, storage and construction areas) prior to the commencement of works. The fencing is to be designed to minimise the possibility of ground-dwelling native fauna (including relevant

threatened species) accessing the work areas. Fencing is to be maintained for the duration of works.

Reason: To prevent impacts to ground-dwelling native fauna, including relevant threatened species.

27. **Ecologist to Induct Site Manager**

Prior to commencement of construction works, the project ecologist is to meet with the site manager to:

- a) advise of conditions to be implemented for protection of relevant threatened species and endangered ecological communities;
- b) ensure that all workers are appropriately briefed on required protective measures; and
- c) inspect protective measures to confirm their adequacy and advise the proponent and site manager of the inspection results and their implications.

Reason: To prevent impacts to threatened species, endangered ecological communities and their habitats in accordance with the Biodiversity Conservation Act 2016.

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

28. **Stormwater Connection**

Where connection to Council's nearest stormwater drainage system is required, the applicant shall connect the pipeline in accordance with Council's specification for engineering works and shall reconstruct all affected kerb and gutter, bitumen reinstatements, adjust all vehicular crossings for paths, grass verges and household stormwater connections to suit the kerb and gutter levels. All works shall be undertaken at the applicant's cost, and upon completion certified by an appropriately qualified and practicing Civil Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

29. **Traffic Control During 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. 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

30. **Vehicle Crossings**

The provision of a vehicle crossing 4 metres wide at kerb and 5 metres wide at boundary in accordance with *Northern Beaches Council Drawing No A4-3330/5 EL* and specifications.

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.

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

Reason: To facilitate suitable vehicular access to private property

31. **Maintenance of Road Reserve**

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

Reason: Public Safety.

32. **Maintenance of Sediment**

Sedimentation and erosion controls are to be effectively maintained at all times during the course of construction and shall not be removed until the site has been stabilised or landscaped to the Principal Certifying Authority's satisfaction.

Reason: To ensure sediment controls are effective

33. **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.

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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.

34. Deleted

35. **Pre-clearance Survey Required – Bandicoot Habitat**

A pre-clearance survey for Long-nosed Bandicoot activity and presence is required prior to the removal of any vegetation, material or debris stockpiles. Clearing may only proceed if the survey concludes that no Long-nosed Bandicoots are present within the area to be cleared. All clearing must initially be carried out with hand tools to identify whether any bandicoots are sheltering within the area to be cleared (e.g. at the base of vegetation or under deep litter). Machinery may only be used once it has been confirmed that no bandicoots are sheltering within the area to be cleared. Clearing must be carried out at dusk and completed within one day so that bandicoots do not reoccupy partially cleared areas overnight. A record of each inspection is to be made in the daily inspection register log-book. The log-book is to be made available to the Principal Certifying Authority.

Reason: To avoid injury or death of Long-nosed Bandicoots which may be utilising stockpiles of vegetation, materials or debris.

36. **Daily Inspections Required – Bandicoot Habitat**

An inspection register log-book must be kept on site recording daily inspections of all holes, machinery and construction material stockpiles, checking for Long-nosed Bandicoots. Inspections are to be undertaken each work day prior to commencement of works and works may only proceed once any bandicoot has safely vacated any holes, machinery or stockpiles. The log-book is to be made available to Principal Certifying Authority.

Reason: To avoid injury or death of Long-nosed Bandicoots which may be utilising stockpiles of vegetation, materials or debris.

37. **Pollution Control**

All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste/debris is to be removed off site and disposed of as frequently as required in accordance to local regulations.

Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not leave the construction site.

38. **CEMP to be implemented – Manly LEP Clause 6.5**

Construction is to be undertaken in accordance with the Construction Environmental Management Plan (CEMP). All workers are to be made aware of the content of the CEMP.

Reason: To ensure conditions for the prevention of construction-related biodiversity impacts are complied with during the construction phase.

39. **Report Dead or Injured Bandicoots – Bandicoot Habitat**

Any injured or dead Long-nosed Bandicoots found within the worksite must be reported to the NSW National Parks & Wildlife Service (9457 9577) or Northern Beaches Council (1300 434 434).

Reason: To prevent impacts to Long-nosed Bandicoots in accordance with the (NSW) *Biodiversity Conservation Act 2016*.

40. **Pollution Control**

Any liquid waste/materials such as paint, lacquers, and any excess water from cleaning tools, paintbrushes, and machinery must not enter the stormwater drainage network and/or receiving waterways.

Reason: To ensure that building associated chemicals and pollutants don't enter the surrounding environment.

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

41. **Landscape Completion**

A qualified Landscape Consultant is to submit a Certificate of Practical Completion to the Certifying Authority prior to the issue of the Occupation Certificate, stating the work has been carried out in accordance with the approved Landscape Drawing L-01 and set 1-10 submitted by *Serenescapes*: dated 18/1/18

Additionally the drainage for the fire pit located at rear western boundary shall wholly on site. No fire pit drainage shall be dispersed upon public reserve.

Reason: This is to ensure the landscaping is planted in accordance with the drawing and maintained appropriately

42. **Required Tree Planting**

Details are to be provided of the existing or proposed native trees for the site which are typically expected to reach a height at maturity of 10 metres, to bring the proposal into compliance with Figure 37 of the Manly Development Control Plan 2013.

A list of appropriate native trees for the Manly area may be obtained at Council's Customer Service desk and the Manly Council website. Details of new planting are to include appropriate siting and pot size (minimum of 25 litres) in accordance with section 2.1.3 of the Manly Development Control Plan 2013, and schedule 4, Part B, Native Tree Selection.

Details are to be submitted with the Construction Certificate to the satisfaction of the Council/Accredited Certifier. The site has an area of 973.77m<sup>2</sup> and such requires four trees.

Reason: This is to ensure the planting of endemic trees back onto the site.

43. **Practical Completion of Landscape Works**

A landscape practical completion report is to be prepared by the consultant landscape architect/designer and submitted to the Principal Certifying Authority with the Occupation Certificate application. This report is to certify that all landscape works have been completed in accordance with the landscape working drawings and specifications.

Reason: To ensure landscaping is adequate and consistent with approved plans.

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

44. **No Planting Environmental Weeds**

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

Reason: Weed management.

45. **Maintain Fauna Access and Landscaping Provisions – Manly LEP Clause 6.5**

All fauna access/movement and landscaping provisions specified in these conditions of consent are to be implemented and maintained for the life of the development.

Reason: To maintain fauna access to existing and proposed habitat within and surrounding the site.

46. **Dead or Injured Wildlife – Manly LEP Clause 6.5**

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

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

END OF CONDITIONS