



Land and Environment Court New South Wales

Case Name: Vimresh Pty Ltd v Northern Beaches Council

Medium Neutral Citation: **[2019] NSWLEC 1613**

Hearing Date(s): Conciliation conference on 18 November 2019

Date of Orders: 11 December 2019

Date of Decision: 11 December 2019

Jurisdiction: Class 1

Before: Bish C

Decision: The Court orders that:

- (1) The applicant is granted leave to amend the development application and rely upon the following plans and drawings as referred to in the conditions of consent at Annexure "B" and listed and attached at Annexure "A".
- (2) The applicant is to pay the respondent's costs thrown away pursuant to section 8.15(3) of the *Environmental Planning and Assessment Act 1979*, as agreed or assessed.
- (3) The appeal is upheld.
- (4) Development Application DA2017/1364 dated 19 December 2018 for the demolition of an existing building and construction of a seniors housing development and strata subdivision at 14 Ponsonby Parade, Seaforth as amended with the plans and drawings attached at Annexure "A", is approved subject to the conditions annexed to this judgment in Annexure "B".

Catchwords: DEVELOPMENT APPLICATION – seniors housing – view loss – 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

Texts Cited: Manly Development Control Plan 2013

Category: Principal judgment

Parties: Vimresh Pty Ltd (Applicant)
Northern Beaches Council (Respondent)

Representation: Counsel:
M Staunton (Applicant)
F Berglund (Respondent)

Solicitors:
HWL Ebsworth (Applicant)
Northern Beaches Council (Respondent)

File Number(s): 2019/97413

Publication Restriction: No

JUDGMENT

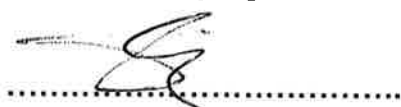
- 1 **COMMISSIONER:** This is an appeal against refusal of Development Application (DA) 2017/1364 by Northern Beaches Council (hereafter the Council) for the demolition of existing structures, and construction of a seniors housing development on Lot 22 DP 7577, also known as 14 Ponsonby Parade, Seaforth (hereafter the site).
- 2 This Class 1 appeal is made under s 8.7(1) of the *Environmental Planning and Assessment Act 1979* (EPA Act).
- 3 The Court agreed to a conciliation conference under s 34(1) of the *Land and Environment Court Act 1979* (LEC Act) between the parties, which was held on 18 November 2019. I presided over the conciliation conference, which started onsite. There were seven objectors heard at the conciliation on issues that related to: privacy; drainage; character; setbacks; parking and traffic; view loss; bulk and scale; and overshadowing.
- 4 Following the conciliation conference, during an adjournment, the applicant sought to amend the associated plans to the DA. Based on these amended plans, together with the DA's supporting documents and agreed conditions of consent, the parties reached agreement as to the terms of a decision in the proceedings that would be acceptable to the parties. The decision of the parties is to uphold the appeal and grant consent to DA 2017/1364 with conditions.
- 5 Pursuant to s 34(3) of the LEC Act 1979, I must dispose of the proceedings in accordance with the parties' decision, if it is a decision that the Court could have made in the proper exercise of its functions. The parties' decision involves the Court exercising its function of assessment under s 4.15 of the EPA Act and being satisfied, pursuant to s 4.16(1)(a) to grant consent to DA 2017/1364, with amended plans in Annexure A and conditions, as described in Annexure B.

- 6 The parties identified the jurisdictional prerequisites of particular relevance in these proceedings, in consideration of s 4.15(1) of the EPA Act, as consistency with the Manly Local Environmental Plan 2013 (MLEP). In addition, the Manly Development Control Plan 2013 (MDCP) is of consideration to grant consent to the DA.
- 7 The requirements of the MLEP, specifically cl 4.4, as raised by the objectors, have been considered by the parties and the parties are satisfied, based on the amended plans and documents supporting the DA. The numeric requirements for floor space ratio (FSR) have been addressed and are satisfied in the amended plans that support the DA. The proposed development is considered to be in character with the local area, which the parties agree is consistent with the objectives of the R2 Low Density Residential zone.
- 8 The parties agree that the requirements of the MDCP are complied with, based on the amended plans and conditions of consent. Based on the amended plans, the contention of view loss for adjoining residents is addressed to the satisfaction of the parties, as required in the MDCP. The parties also agree that the other issues raised by objectors, specifically overshadowing, privacy and setbacks are addressed to their satisfaction based on the amended plans.
- 9 The proposed development was required to be publicly notified, pursuant to the MDCP, and the parties agree that the issues raised by the residents have been resolved to their satisfaction.
- 10 Based on the amended plans and supporting documents to the DA, the contention (of view loss) as expressed in the Statement of Facts and Contentions is resolved to the satisfaction of the parties.
- 11 I am satisfied that there are no jurisdictional impediments to this agreement and that DA 2017/1364 should be granted, as it satisfies the requirements of s 4.15(1) of the EPA Act.

12 As the parties' decision is a decision that the Court could have made in the proper exercise of its functions, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.

13 The Court orders that:

- (1) The applicant is granted leave to amend the development application and rely upon the following plans and drawings as referred to in the conditions of consent at Annexure "B" and listed and attached at Annexure "A".
- (2) The applicant is to pay the respondent's costs thrown away pursuant to section 8.15(3) of the *Environmental Planning and Assessment Act 1979*, as agreed or assessed.
- (3) The appeal is upheld.
- (4) Development Application DA2017/1364 dated 19 December 2018 for the demolition of an existing building and construction of a seniors housing development and strata subdivision at 14 Ponsonby Parade, Seaforth as amended with the plans and drawings attached at Annexure "A", is approved subject to the conditions annexed to this judgment in Annexure "B".



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Commissioner of the Court

Annexure A

Vimresh Pty Ltd v Northern Beaches Council

List of Plans and Drawings

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA.3 Basement Floor Plan, Rev J	18/11/19	Vimresh Pty Ltd
DA.4 Ground Floor Plan, Rev J	18/11/19	Vimresh Pty Ltd
DA.5 First Floor Plan, Rev J	18/11/19	Vimresh Pty Ltd
DA.6 Roof Plan, Rev J	18/11/19	Vimresh Pty Ltd
DA.7 West & East Elevations & Materials, Rev J	18/11/19	Vimresh Pty Ltd
DA.8 North & South Elevations & Materials, Rev J	18/11/19	Vimresh Pty Ltd
DA.9 Sections, Rev J	18/11/19	Vimresh Pty Ltd
DA.10 Detailed Sections, Rev J	18/11/19	Vimresh Pty Ltd
DA.13 Demolition Plan, Rev J	18/11/19	Vimresh Pty Ltd

Engineering Plans		
Drawing No.	Dated	Prepared By
DA.12 Erosion & Sediment Control Plan, Rev J	18/11/19	Vimresh Pty Ltd

Annexure B

Vimresh Pty Ltd v Northern Beaches Council

Conditions of Consent

Application Number:	DA2017/1364
Land to be developed (Address):	Lot 22 DP 7577, 14 Ponsonby Parade SEAFORTH NSW 2092
Proposed Development:	Demolition of existing building and construction of a seniors housing development associated landscaping and strata title subdivision

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
DA.3 Basement Floor Plan, Rev J	18/11/19	Vimresh Pty Ltd
DA.4 Ground Floor Plan, Rev J	18/11/19	Vimresh Pty Ltd
DA.5 First Floor Plan, Rev J	18/11/19	Vimresh Pty Ltd
DA.6 Roof Plan, Rev J	18/11/19	Vimresh Pty Ltd
DA.7 West & East Elevations & Materials, Rev J	18/11/19	Vimresh Pty Ltd
DA.8 North & South Elevations & Materials, Rev J	18/11/19	Vimresh Pty Ltd
DA.9 Sections, Rev J	18/11/19	Vimresh Pty Ltd
DA.10 Detailed Sections, Rev J	18/11/19	Vimresh Pty Ltd
DA.13 Demolition Plan, Rev J	18/11/19	Vimresh Pty Ltd

Engineering Plans

Drawing No.	Dated	Prepared By
DA.12 Erosion & Sediment Control Plan, Rev DJ	18/11/19	Vimresh Pty Ltd
DA.12 Stormwater Management Plan, Rev B	27/11/17	Michael Gergich Consulting Engineer

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Access Report	11/12/17	Accessibility Solutions (NSW) Pty Ltd
Construction Impact & Management Statement	November 2017	Growing My Way Tree Consultancy
Tree identification Report	25/05/19	Growing My Way Tree Consultancy
Geotechnical Investigation, Ref: J1504	28/11/17	White Geotechnical Group
Letter	18/12/18	White Geotechnical Group
Statutory Compliance Review, Ref: 17061B BCA R1.1	04/12/17	Code Performance BCA Pty Ltd

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:

Landscape Plans		
Drawing No.	Dated	Prepared By
VIM - L1.01 Landscape Plan, Rev E	18/07/19	3DL Landscape Consultants
VIM - L1.02 Landscape Plan, Rev E	18/07/19	3DL Landscape Consultants

Waste Management Plan		
Drawing No.	Dated	Prepared By
Waste Minimisation and Management Plan	04/12/17	Stephen Petesic

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:

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

Demolition and excavation works are restricted to:

- o 8.00 am to 5.00 pm Monday to Friday only.

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

(b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

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

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

(e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

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

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

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

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

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

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches Council Section 7.12 Development Contribution Plan

The proposal is subject to the application of Council's Section 7.12 Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Section 7.12 Development Contributions Plan		
Contribution based on a total development cost of: \$ 2,798,400.00		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 26,584.80
Section 7.12 Planning and Administration	0.05%	\$ 1,399.20
Total	1%	\$ 27,984.00

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.

5. Security Bond

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

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

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

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

6. On-site Stormwater Detention Compliance

Certification of Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Northern Beaches Council's "MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003" and the concept drawing by Michael Gergich Consulting Engineer, dated 27/11/2017. 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.

7. 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

8. 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.

9. **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. Light colours such as off white, cream, silver or light grey colours are 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.

10. **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.

11. **Window amendments**

The windows serving the kitchen areas of Unit 3 and Unit 4 (W3-4 and W4-4) are to have a solid sill height or obscured glazing to a height of 1.65 metres above the finished floor level.

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

Reason: In order to maintain privacy to the adjoining / nearby property.

12. **Construction Management Plan**

A Construction Management Plan shall be submitted to the Certifying Authority prior to the issue of a Construction Certificate. The plan shall detail:

(a) The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion, noise and dust in the area, with no access across public parks or reserves being allowed;

(b) The proposed phases of construction works on the site, and the expected duration of each construction phase;

(c) 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;

(d) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process.

(e) 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;

- (f) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- (g) 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;
- (h) 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;
- (i) Proposed protection for Council and adjoining properties;
- (j) The location and operation of any on site crane; and
- (k) The proposed methods of reducing dust and noise during construction.

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

13. Privacy - courtyards

The ground floor, eastern courtyard of Unit 2 is to be deleted, made non trafficable and landscaped.

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

Reason: In order to maintain privacy to the adjoining / nearby property.

14. Driveway and parking area design

The driveway/access ramp grades and parking facilities must comply with AS/NZS 2890.1:2004 - Parking facilities - off-street car parking.

Reason: To ensure compliance with standards.

15. Design of accessible parking spaces

The accessible parking spaces shall be redesigned to meet the requirements of AS2890.6 in terms of their minimum widths, markings and provision of bollards in the unload area.

Reason: Compliance with standards.

16. Amended Landscape Plans

Landscape plans are to be amended to delete all *Syzygium australae* 'Resilience' (Lilly Pilly) screen planting and replace with alternate screen planting Genus (which must not be Lilly Pilly, Rhus trees or Camphor Laurel) capable of attaining a height of 1.8 metres at maturity.

Reason: Environmental amenity

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. 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 \$20 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.

18. Dilapidation report

A photographic survey of adjoining properties (being No. 12 Ponsonby Parade, No 16 Ponsonby Parade and No. 9 Ross Street) detailing the physical condition of those properties, both internally and externally, including such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to Council/Accredited Certifier prior to the issue of a Construction Certificate. This survey is to be prepared by an appropriately qualified person.

On completion of the excavation and building works and prior to occupation of the building, a certificate prepared by the appropriately qualified person to the effect that no damage has resulted to adjoining premises, is to be provided to the Principal Certifying Authority.

If damage is identified by the appropriately qualified person which is considered to require rectification, the damage shall be rectified or a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible and prior to a final Occupation Certificate being issued.

All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent. In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant must demonstrate, in writing, to the satisfaction of Council/Accredited Certifier that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed.

(Note: This documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible)

Reason: Proper management of records

19. Works Zone

Should a Works Zone be required an application must be lodged on Council's application form no less than 28 days in advance of the its proposed commencement.

Reason: To ensure sufficient time to assess and install Works Zone.

20. Tree protection

(a) Existing trees which must be retained

i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation

ii) Trees located on adjoining land

(b) Tree protection

i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.

ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.

iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.

iv) All tree pruning within the subject site is to be in accordance with relevant local planning controls and AS 4373 Pruning of amenity trees

v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

21. Vehicle Crossings

The provision of a vehicle crossing 4 m wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N 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

22. 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.

23. A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

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

24. Authorisation of Legal Documentation Required for On-site Stormwater Detention

An application for the authorisation of legal documents is to be lodged with Council and payment of the associated fee. The application is to include the original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and photographic evidence of the completed system.

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 the on-site stormwater disposal system is maintained to an appropriate operational standard

25. Registration of Encumbrances for On-site Stormwater Detention

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 any interim / final Occupation Certificate.

Reason: To identify encumbrances on land.

26. Reinstatement of Kerb

All redundant laybacks and vehicular crossings shall be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces.

27. On-Site Stormwater Detention Compliance Certification (Manly)

A copy of the approved Onsite Stormwater disposal system showing Works as Executed (WAE) details must be submitted to Council for approval. The WAE must be certified by a registered surveyor. The details information for WAE is shown in Council's "Manly Specification for On-site Stormwater Management 2003".

A completion certificate of the on-site stormwater disposal system, certification from a consulting engineer

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

Reason: Compliance with the consent and Council standards and specifications.

28. Creation of Positive Covenant and Restriction as a User (Manly)

A restriction on the use of land and a positive covenant shall be created on the title of

the land in respect of the installation and maintenance of on-site stormwater disposal structures.

The detailed information for a restriction on the use of land and a positive covenant is shown in Council's "Manly Specification for On-site Storm Water Management 2003".

The terms of the positive covenant and a Restriction on the use of land 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 Department of Lands. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

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

29. 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.

30. 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

(<https://www.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/unit-numbering-multi-unit-developments-residential-commercial-and-industrial-form/unit-numbering-multi-unit-developments-residential-commercial-and-industrial-form.pdf>).

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.

31. 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.

32. 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.

33. Fire Safety Matters

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

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

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures

continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

34. Landscape completion certification

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

b) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been established and maintained in accordance with the approved landscape plan.

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

ON-GOING CONDITIONS

35. Landscape maintenance

i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.

ii) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: To maintain local environmental amenity.

36. Undesirable Trees

Leighton Green Cypress *Cupressocyparis leylandii* or any of its cultivars, 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.

37. Height of vegetation

Screen planting installed along the eastern and western boundaries of the site are to be maintained at a height not exceeding 1.8 metres, measured from the ground level adjacent to the trunk.

Reason: Protection of local amenity.

