



Land and Environment Court
New South Wales

Case Name: The Crest at Oxford Falls Pty Ltd v Northern Beaches Council

Medium Neutral Citation: [2021] NSWLEC 1152

Hearing Date(s): 25-26 February 2021

Date of Orders: 26 March 2021

Decision Date: 26 March 2021

Jurisdiction: Class 1

Before: Gray C

Decision: The Court orders that:
(1) The appeal is upheld.
(2) Development consent is granted for the expansion of an approved industrial complex at Lot 100 Meatworks Avenue, Oxford Falls, by the construction of a building containing 10 industrial units with ancillary floor space, a roof top terrace, and associated car parking, subject to the conditions in Annexure A.
(3) Exhibits 1-7 and D are returned.

Catchwords: APPEAL – development application – extension of an existing industrial complex by the construction of an industrial building – Oxford Falls Valley locality – consistency with character statement – contentions resolved

Legislation Cited: Environmental Planning and Assessment Act 1979 ss 8.7, 4.15
State Environmental Planning Policy No 55—
Remediation of Land cl 7
Warringah Local Environmental Plan 2000 cl 12, 18, 43, 56, 57, 58, 60, 66, 72
Warringah Local Environmental Plan 2011 cl 1.3

Texts Cited: Northern Beaches Council, Water Management for Development Policy (February 2021)
Department of Environment, Climate Change and Water NSW, NSW Road Noise Policy (March 2011)

Category: Principal judgment

Parties: The Crest at Oxford Falls Pty Ltd (Applicant)
Northern Beaches Council (Respondent)

Representation: Counsel:
M Staunton (Applicant)
S Patterson (Solicitor) (Respondent)

Solicitors:
Sattler and Associates (Applicant)
Wilshire Webb Staunton Beattie (Respondent)

File Number(s): 2020/71257

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** At the end of Meatworks Avenue in Oxford Falls is an approved light industrial/warehouse complex. The applicant, the Crest at Oxford Falls Pty Ltd (“the Crest”), seeks development consent for an expansion of the development by the construction of an additional building comprising 10 additional industrial/warehouse units with ancillary office space and parking. The Crest lodged a development application with Northern Beaches Council (“the Council”) on 26 November 2019. Following the expiry of the period after which a decision is deemed to be refused, the Crest lodged an appeal pursuant to s 8.7 of the *Environmental Planning and Assessment Act 1979* (“EPA Act”).
- 2 At the hearing of the appeal, leave was granted to the Crest to amend the development application the subject of the appeal. As a result of those amendments, the proposed development involves the construction of around 2991m² of gross floor area across three storeys, in a building that is to be located in an already cleared area of the site. The units within the building are referred to as Units 30-39, and have a total floor area of 2284.42m², and there is ancillary floor space of 664m² spread over three levels, located at the

western end of the building. The development application indicates this floor space is to be used as a café, subject to future planning approval, and communal lounge/meeting room areas. A large roof top communal open space of 44m² is also proposed.

- 3 The design of the building is in keeping with the buildings already approved on the site, with driveway access on the north and excavation of up to 6m for the building such that the driveway has level access with the ground floor. On the southern side of the proposed building, no excavation is proposed, and the area is proposed to be levelled for the provision of open car-parking. The level of the open car-parking, which roughly reflects the natural ground level, will be the same as the finished floor level of the third storey of the building, so that there is level access from the open car parking to the third storey. The proposed site layout is shown at Figure 1, with the proposed development highlighted in yellow.

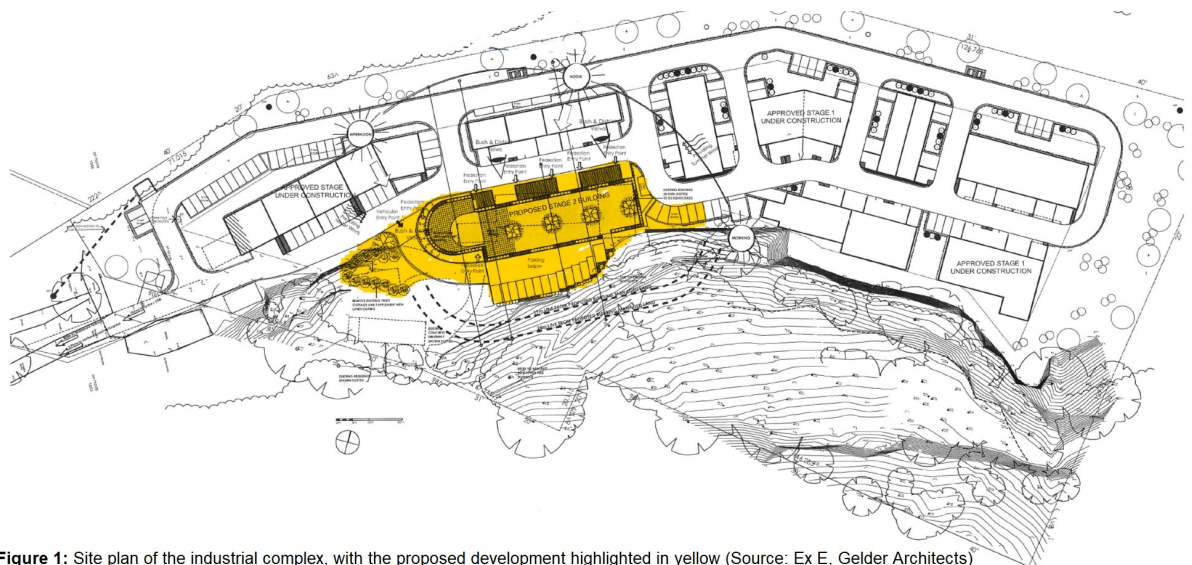


Figure 1: Site plan of the industrial complex, with the proposed development highlighted in yellow (Source: Ex E, Gelder Architects)

- 4 The proposed development also includes the removal of two trees, and the removal of an existing fibro cottage and landscaping of the area where the cottage is removed. The proposed development therefore increases the landscaping in the industrial complex.
- 5 The proposed hours of operation of the new building are 7am to 6pm Monday to Friday, and 8am to 2pm on Saturday.

- 6 As a result of the amendments to the development application that were made in the course of the hearing, the Council agrees that each of the contentions that were raised in the Amended Statement of Facts and Contentions have now been resolved. The Council agrees that there are no contentions that could form the basis for the refusal of the development application. I am nonetheless required to carry out an assessment under s 4.15 of the EPA Act to determine if it is lawful and appropriate to grant consent. I am also required to consider the evidence and submissions of the objectors.
- 7 For the reasons set out below, I accept the evidence of the experts and consider that each of the contentions raised on the appeal have been resolved. The concerns of the resident objectors have been adequately addressed through the amended plans and the proposed conditions of development consent, and the proposed development is an appropriate response to the relevant planning controls and the context of the site. I have therefore determined to grant development consent subject to agreed conditions of consent.

The site and the locality

- 8 The subject site is legally described as Lot 100, DP 1023183, and is an irregularly shaped allotment with a total site area of 3.412ha located at the northern end of Meatworks Avenue.
- 9 The site is a sloping allotment, having a fall from south to north and from west to east, with a large rock escarpment traversing the southern portion of the site. The area to the south of the escarpment comprises dense remnant bushland. To the north and north-west of the site is a scenic outlook that comprises the bushland buffer around the Wakehurst Parkway.
- 10 A number of recently constructed buildings are located on the site, and were approved as part of development consent DA2011/0985. Some of the buildings approved in the consent have not yet been constructed, or are under construction.
- 11 There is a brick dwelling house located on the site, adjacent to the southern boundary. A fibro cottage is situated to its north, and is sought to be demolished by the proposed development.

- 12 The area where the development is proposed has already been the subject of excavation on its southern side, where it is currently being used as a waste transfer area. It has been formed on a cut area that is boarded to the south by a 4m vertical cut into the natural slope.
- 13 Vehicular access to the site is currently via Meatworks Avenue, which commences at a turn in Oxford Falls Road, and terminates at the front boundary of the site. A central driveway traverses the centre of the site then provides access throughout the newly constructed development, with secondary access roads accessing the upper and lower portions of the site. The area where the development is proposed is accessed by an unsealed secondary access road.
- 14 The site is surrounded by large vacant allotments that are covered in dense bushland. Immediately to the northwest of the site is public open space, which is an identified conservation area.
- 15 The urban locality is generally rural/residential in character in the immediate vicinity of the site and contains a range of other land uses including undeveloped native bushland to the north and east, detached dwelling houses on large allotments to the south and west of the site, and Oxford Falls Grammar School, which is a primary and secondary school located on the western side of Oxford Falls Road before the road turns into Meatworks Avenue.

The planning framework

- 16 Section 4.15(1)(a) of the EPA Act requires that the Court, in exercising the functions of the consent authority, consider the provisions of any applicable environmental planning instrument, development control plan, planning agreement, and regulations. Amongst other things, s 4.15(1) also requires consideration of the likely impacts of the development, the suitability of the site for development, any submissions made, and the public interest.
- 17 Pursuant to cl 1.3(1A) of the Warringah Local Environmental Plan 2011 ("WLEP 2011"), the site is located in an area identified as "Deferred Lands". Consequently, the relevant local environmental plan that applies to the site is the Warringah Local Environmental Plan 2000 ("WLEP 2000").

- 18 The site is located in the B2 Oxford Falls Valley Locality under the WLEP 2000. Parts 2 and 3 of the WLEP 2000 sets out the controls on development and the matters that must be considered in determining a development application.
- 19 Clause 12(1) of the WLEP 2000 sets out the matters that the consent authority must be satisfied that the development is consistent with before the grant of consent. This includes any relevant general principles of development control in Part 4. Further, cl 12(3) requires that, for development classified as category two or three, the consent authority be satisfied that the proposed development is consistent with the desired future character in the relevant locality statement. Clause 12 provides:

12 What matters are considered before consent is granted?

(1) Before granting consent for development the consent authority must be satisfied that the development is consistent with—

(a) any relevant general principles of development control in Part 4,
and

(b) any relevant State environmental planning policy described in
Schedule 5 (State policies).

(2) Before granting consent for development, the consent authority must be satisfied that the development will comply with—

(a) the relevant requirements made by Parts 2 and 3, and

(b) development standards for the development set out in the Locality
Statement for the locality in which the development will be carried out.

(3) In addition, before granting consent for development classified as—

(a) Category One, the consent authority must consider the desired
future character described in the relevant Locality Statement, or

(b) Category Two or Three, the consent authority must be satisfied that
the development is consistent with the desired future character
described in the relevant Locality Statement,

but nothing in a description of desired future character creates a prohibition on
the carrying out of development.

- 20 Pursuant to the land use table for the Oxford Falls Valley locality in Appendix B to the WLEP 2000, the proposed development is permissible and is development classified as Category Three. The locality statement for the Oxford Falls Valley is set out in Appendix B as follows:

The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.

Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.

The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.

A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.

Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.

- 21 Clause 18 requires that the built form will be controlled in accordance with the general principles of development control, the desired future character, and the applicable development standards. It provides as follows:

18 How will the built form of development be controlled?

(1) Built form will be controlled in accordance with the general principles of development control, the desired future character of the locality and the development standards set out in the Locality Statement.

(2) Strict compliance with development standards, however, does not guarantee that the development is consistent with either the general principles of development control or the desired future character of the locality.

(3) Nothing in this plan requires development to comply strictly with a quantitative requirement made in any general principle of development control.

- 22 The general principles of development that are relevant to the proposed development are set out in full below. The Council agrees that there are no longer any general principles of development that are offended by the proposal.
- 23 The proposed development complies with all of the relevant development standards that apply to the site pursuant to the WLEP 2000.
- 24 The State Environmental Planning Policy No 55—Remediation of Land also applies to the site, and cl 7 requires the Court, in exercising the functions of the consent authority, to consider whether the land is contaminated. An assessment of the site was carried out and is reported in The Site Contamination Assessment by Geo-Environmental Engineering dated 5

February 2020 (Ex H). It carried out investigations of the entire site, as well as the area of the proposed development, and found that any identified contaminants, if present, were at levels below the assessment criteria. It therefore concluded that there is no contamination issue at the site.

Issues raised on the appeal

- 25 In an Amended Statement of Facts and Contentions filed on 8 February 2021, the Council raised a number of contentions that it now agrees are resolved.
- 26 The contentions are set out more fully in my consideration below, and concern the consistency of the proposed development with the desired future character (contention 1), its visual bulk and massing (contention 2), whether it retains the environmental features of the site (contention 4), and whether it has been sited and designed to minimise the impact on flora (contention 5). The Council also raised contentions that there was insufficient information to assess the acoustic impact (contention 6), the impact on traffic and road safety (contention 7), the impact on water quality (contention 8), and the geotechnical stability of the land (contention 9).
- 27 For the reasons that are set out below and based on the evidence of the experts, I accept the parties' agreed position that these contentions have been resolved.

The objector evidence

- 28 The development application the subject of the appeal was notified to surrounding properties on two occasions in late 2019 and early 2020, and by public advertisement on 18 January 2020. In response to the notification process, 121 residents provided submissions concerning the development application. Four objectors also gave evidence at the commencement of the hearing, including on behalf of Oxford Falls Grammar. The issues raised in the submissions and at the hearing can be summarised as follows:
- Traffic congestion and compromised safety on the local road network, especially for parents and children associated with the school and using the local road for drop off and pick up,
 - Inconsistency with the desired future character for the Oxford Falls Valley Locality,

- Environmental impacts, including impacts on the quality of water in the local water catchment, and on native bushland,
- Visual impacts and non-compliance with built form controls,
- Bushfire hazard,
- Inadequate information concerning geotechnical impacts,
- Acoustic impacts,
- Impacts from lighting, and
- Overdevelopment of the site.

29 I note that the proposed development that is before the Court is the construction of another building within an existing industrial complex, within an area of the site that is already cleared, and will result in increased landscaping on the site. It does not breach any built form controls, and there are no discernible environmental impacts occasioned by it. The size of the vehicles that will access the proposed development will be limited to small rigid vehicles, which are smaller than the vehicles that are currently used for the waste transfer station which is currently located on the land where the building is to be constructed. The waste management vehicle, which is a medium rigid vehicle, will not be able to access the proposed development during peak school drop off and pick up times. On the basis of the evidence of the experts, which is summarised below, I consider that none of the matters raised by the objectors warrant refusal of the proposed development.

The expert evidence

- 30 A number of experts provided expert opinion evidence concerning the contentions raised by the Council on the appeal.
- 31 Evidence on the town planning issues was given by Mr Greg Boston, a town planner engaged by the Crest, and Ms Lashta Haidari, a town planner employed by the Council. Mr Boston and Ms Haidari gave evidence in two joint reports (Ex 3 and Ex 8), and also gave oral evidence. Their agreed opinion evidence is that, as a result of the amendment to the plans, the proposed development responds to the desired future character of the Oxford Falls Valley Locality and is of acceptable bulk and scale.

- 32 Evidence on the traffic and safety issues was given by Meg Kong Siew Hwee, a traffic engineer engaged by the Crest, and Ms Rezvan Saket, a traffic engineer employed by the Council. Their evidence is contained in two joint reports (Ex 4 and Ex 9). They agree that the traffic generation of the proposed development is acceptable and is considered a “low density low impact” development.
- 33 Evidence on the ecological impacts of the proposed development was given by Mr Lucas McKinnon, an ecologist engaged by the Crest, and Mr Robert Blackall, an ecologist employed by the Council. They gave evidence in two joint reports (Ex 5 and Ex 10), and also gave oral evidence. They agree that the proposed development is located in previously disturbed areas of the site, and will not impact the native bushland area.
- 34 Evidence on the issues concerning stormwater quality and the impact on watercourses and aquatic habit was given by Mr Bruce Kenny, an engineer engaged by the Crest, and Ms Ruby Ardren, the project leader for water management at the Council. They gave evidence in a joint report (Ex 7) and gave oral evidence. They agree that the application is supported by a MUSIC water quality model, and that the application will meet the intent of the Water Sensitive Urban Design requirements and water conservation requirements outlined under Part 4.1 of Northern Beaches Council Water Management for Development Policy.

Each of the contentions raised by the Council have been resolved

- 35 As a result of the amendments that have been made to the plans, the proposed conditions of consent, and the evidence of the experts, each of the contentions raised by the Council on the appeal have been resolved.

Desired future character

- 36 The first contention raised by the Council on the appeal is that the development is inconsistent with the desired future character expressed in the locality statement for the Oxford Falls Valley Locality.
- 37 Mr Boston and Ms Haidari agree that the desired future character statement for the Oxford Falls Valley Locality anticipates a change in the present character only where the development is found to be consistent with the balance of the

character statement. They agree that to be consistent with the locality statement, the proposed development must be a low intensity, low impact use. They agree that it meets that description for the following reasons:

- It is located within a previous disturbed and excavated portion of the site, and, consistent with the desired future character statement for the locality, will not be located “on ridgetops or in places that will disrupt the skyline when viewed from Narabeen Lagoon and the Wakehurst Parkway” (Ex 8 p 3).
- The traffic generation of the proposed development is of low intensity (Ex 8 p 3).
- The noise impacts can be appropriately dealt with by way of conditions, including a condition on delivery hours and a condition limiting the noise emission from the premises to a sound level of 5dB(A) above the background noise level along the site boundaries (Ex 8 p 3).
- The potential lighting impacts can be limited by the imposition of conditions requiring external lighting to be restricted to the approved hours of operation with the exception of security sensor lighting and low-level bollard style lighting (Ex 8 p 3).
- The additional on slab and perimeter landscaping results in a contextually appropriate building which is fully compliant with the applicable built form standards in terms of height, setbacks and landscaped area, which will not be perceived as inappropriate or jarring in its context (Ex 8 p 4).
- The building “displays a height, footprint and form consistent with the existing buildings on the site” (Ex 8 p 4).
- The proposed excavation will not impact the existing natural landscape, and the demolition of the fibro dwelling and the revegetation of this area results in an enhancement of vegetation on the site (Ex 8 p 4).
- The proposed colours and materials will “assist in the building blending into the vegetated escarpment which forms a backdrop to the site” (Ex 8 p 4).
- There will be no impact on the dense bushland buffer established along Wakehurst Parkway and no fencing is proposed (Ex 8 p 4).

38 I accept their agreed evidence, on the basis of which I am satisfied that the proposed development is consistent with the desired future character described in the locality statement for the B2 Oxford Falls Valley Locality.

Bulk and massing

39 The Council also contended, in its Amended Statement of Facts and Contentions, that the bulk and massing of the proposed development is highly visible and inconsistent with general principle 66, contained in cl 66 of WLEP 2000 as follows:

66 Building bulk

Buildings are to have a visual bulk and an architectural scale consistent with structures on adjoining or nearby land and are not to visually dominate the street or surrounding spaces, unless the applicable Locality Statement provides otherwise.

In particular—

- side and rear setbacks are to be progressively increased as wall height increases,
- large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief, and
- appropriate landscape plantings are to be provided to reduce the visual bulk of new buildings and works.

- 40 The agreed expert opinion evidence of Mr Boston and Ms Haidari is that the proposed development displays “a contextually appropriate height, bulk and scale which will not give rise to unacceptable streetscape, residential amenity or environmental impacts” (Ex 8 p 5). They agree that the height, bulk, scale and footprint of the proposed development is compatible with the existing buildings on the site, with the same architect, same architectural style and materiality used for all buildings. They also agree that the proposed building is oriented towards and utilises the established internal driveway system, consistent with the balance of development on the site. As such, they both agree that the development (as amended) is consistent with the general principle 66, contained in cl 66 above. I accept their agreed evidence.

Environmental features of the site

- 41 The Council also contended that the proposal is inconsistent with general principle 56, as it is not sympathetic to environmental features and has impacts on remnant native vegetation caused by the asset protection zone (contention 4). General principle 56 is contained in cl 56 of WLEP 2000:

56 Retaining distinctive environmental features on sites

Development is to be designed to retain and complement any distinctive environmental features of its site and on adjoining and nearby land.

In particular, development is to be designed to incorporate or be sympathetic to environmental features such as rock outcrops, remnant bushland and watercourses.

- 42 However, the agreed evidence of Mr Blackall and Mr McKinnon is that the proposal will be consistent with general principle 56 on the basis that the

proposed development is located within a previously disturbed area of the site and will not impact the native bushland area. As the building will be built to BAL 40, a 19m asset protection zone ("APZ") is required. They agree that it is possible to retain all existing canopy trees within the 19m APZ, with the exception of one tree (Tree 50, which is a red bloodwood). They therefore consider, and I accept their evidence, that the amended design results in an acceptable outcome for the identified environmental features. I accept therefore, that this contention has been resolved and does not warrant refusal of the development application.

Impact on flora

- 43 The Council also raised a contention that the proposed development has not been sited and designed to minimise the impact on flora, contrary to general principle 58, contained in cl 58 of WLEP 2000 as follows:

58 Protection of existing flora

Development is to be sited and designed to minimise the impact on remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native ground cover species.

- 44 However, as set out above, the agreed evidence of Mr Blackall and Mr McKinnon is that the development is sited and designed to minimise the impact on the existing trees and vegetation. There are only two trees that require removal. The first is the red bloodwood in the APZ referred to above (Tree 50). The second is a lilly pilly *acmena smithii* that is within the footprint of the proposed driveway (Tree 20) and is within a landscaped area. As such, Mr Blackall and Mr McKinnon agree that the potential impacts to existing flora are limited, and all native canopy trees can be retained with the exception of Tree 50, and the modification of shrub and ground layers will focus on removal of exotic flora species. They therefore agree that the amended design reflected in the proposed development is sited and designed to minimise the impact on remnant indigenous flora, including canopy trees and understorey vegetation, and on remnant native ground cover species. They therefore agree, and I accept, that the proposed development is consistent with general principle 58.
- 45 Further, they agree that the positive covenant (AN242389) which was established pursuant to the consent for the site (DA 2011/0985) for the purpose

of managing, conserving, rehabilitating and protecting the bushland on Lot 100 in DP 1023183, should be revised to refer to an updated and amended Biodiversity Management Plan, which includes the APZ management zone. A condition requiring the creation of a positive covenant for bushland protection is included in the agreed conditions of consent.

Noise impacts

- 46 The Council also contended that there was insufficient information to ensure that the proposed development will be consistent with general principle 43 concerning noise (contention 6), which requires as follows (cl 43 of WLEP 2000):

43 Noise

Development is not to result in noise emission which would unreasonably diminish the amenity of the area and is not to result in noise intrusion which would be unreasonable to the occupants.

In particular—

- noise from the combined operation of all mechanical plant and equipment must not generate noise levels that exceed the ambient background noise level by more than 5 dB (A) when measured in accordance with the Environment Protection Authority's Industrial Noise Policy at the receiving boundary of residential and other noise-sensitive land uses, and
- development near existing noise generating activities, such as industry and roads, is to be designed to mitigate the effect of that noise, and
- waste collection and delivery vehicles are not to operate in the vicinity of residential uses between 10 pm and 6 am.

- 47 An acoustic impact assessment has since been prepared by Mr Ken Scannell of Noise and Sound Services, dated February 2021 (Ex C). The assessment concludes that the acoustic impact arising from additional vehicles accessing the proposed development is in line with criteria given in the NSW Government's Road Noise Policy (2011).
- 48 Further, as noted above, the expert town planners agree that the noise impacts would be appropriately managed through the imposition of a condition of consent limiting the delivery hours and a condition of consent limiting the noise emission from the premises to a sound level of 5dB(A) above the background noise level as measured along the site boundaries.

- 49 In addition, the parties have agreed to conditions of consent that restrict the hours for waste collection and delivery such that they are not to occur between the hours of 10pm and 6am.
- 50 For the above reasons, I consider that the proposed development is consistent with design principle 43 concerning noise.

Traffic access and road safety

- 51 The Council also contended that there was insufficient information to allow a proper assessment of the traffic access and road safety of the development in accordance with general principle 72 (contention 7), which is as follows (cl 72 of WLEP 2000):

72 Traffic access and safety

Vehicle access points for parking, servicing or deliveries, and pedestrian access, are to be located in such a way as to minimise—

- traffic hazards, and
- vehicles queuing on public roads, and
- the number of crossing places to a street, and
- traffic and pedestrian conflict, and
- interference with public transport facilities.

Where practical, vehicle access is to be obtained from minor streets and lanes.

- 52 The evidence of Ms Kong is that the traffic generation of the proposed development is 1.31 and 1.50 vehicle trips per hour per 100m² GFA for the AM and PM peak period. This results in traffic generation of 46 and 53 vehicle trips per hour in the peak AM and PM periods, which is reduced to 40 and 45 with the further amendments to the proposed development that were made at the hearing. Her evidence is also that:
- The peak hour truck movements of the proposed development will be less than that of the waste transfer station, with the total peak hour truck movements of both the stage 1 (existing approved industrial buildings) and stage 2 (proposed development) estimated to be similar to that of the waste transfer station (see Ex 9 p 5).
 - The site will be serviced by small rigid vehicles only, which are smaller than the vehicles currently used for the waste transfer station. There will be a condition of consent preventing the waste management vehicle, which is a medium rigid vehicle, from accessing the site between 8am-9:30am and 2:30-4pm, Monday to Friday (Ex 9 p 8).

- The traffic impact assessment, which assesses the cumulative traffic impact of both the existing industrial complex and the proposed development, shows that acceptable operations of the intersections of Wakehurst Parkway/Dreadnought Road and Dreadnought Road/Oxford Falls Road will continue, with a minor increase of up to 4.4 seconds of average delay per vehicle when compared with existing conditions.
- The crash data provided by Transport for NSW indicated no crashes occur along Oxford Falls Road in the vicinity of the school, which demonstrates there are no safety issues along Oxford Falls Road (Ex 9 p 7).
- The existing vehicular access to the site measures 6m wide at the property boundary, and has operated safely to accommodate two-way traffic flow by service and delivery vehicles (Ex 9 p 5).
- There is no requirement for formed carriageways, kerb, gutter and footpath along Meatworks Avenue and the northern part of Oxford Falls Road, given that there will be insignificant foot traffic to/from the site (Ex 9 p 5).
- The morning peak hour associated with the proposed development will coincide partially with the school peak period between 8:30 to 9am, while the peak afternoon period of the proposed development will occur between 4:30 and 5:30pm, outside of the school's pick up period. An area of street parking to the north of the school that is used by parents is separated from a walkable pathway by bollards, to allow for safe walking beside the road. Any illegal parking along the No Stopping zone along the school's frontage by parents/carers and safety issues associated with this (including children walking along Oxford Falls Road) can be addressed as part of the traffic management plan for the school.
- Satisfactory swept path assessments have been carried out, and each of the industrial units have a dedicated loading area that can accommodate a small rigid vehicle or a B99.
- Shared zone signs with 10 kph posted speed limit will be installed within the site to ensure priorities are given to pedestrians within the site.

53 This evidence is not disputed by Ms Saket. The focus of cl 72 is on the vehicular access to the site, and I am satisfied that the vehicle access points for the proposed development are located in such a way as to minimise traffic hazards, vehicle queuing, conflicts and interference, such that the proposed development is consistent with general principle 72.

Watercourses and Water Sensitive Urban Design

54 The Council had also contended that there is insufficient information to ensure that the proposed development comprises Water Sensitive Urban Design and will not compromise water quality, consistent with general principle 60 (contention 8), which is contained in cl 60 of WLEP 2000 as follows:

60 Watercourses and aquatic habitat

Development is to be sited and designed to maintain and enhance natural watercourses and aquatic habitat.

- 55 However, Mr Kenny and Ms Ardren agree that the application is supported by a MUSIC water quality model, and that the application will meet the Water Sensitive Urban Design requirements. Ms Ardren is satisfied that the evidence demonstrates that the proposed development will not compromise water quality, and that there are solutions in place for water storage and reuse, consistent with the principles of Water Sensitive Urban Design. As such, I am satisfied that the proposed development is consistent with cl 60.

Geotechnical stability

- 56 The Council also contended that the proposed development is not accompanied by a geotechnical report that sufficiently addresses the matters in general principle 57 (contention 9), which concerns development on sloping land as follows (cl 57 of WLEP 2000):

57 Development on sloping land

On sloping land, the height and bulk of development, particularly on the downhill side, is to be minimised and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope.

In particular—

- the amount of fill is not to exceed more than 1 metre in depth, and
- fill is not to spread beyond the footprint of the building, and
- excavation of the landform is to be minimised.

The geotechnical stability of sloping land to support development is to be demonstrated.

Consent must not be granted for development involving the erection of a structure, including additions to an existing structure, on land identified as being potentially subject to landslip on the Landslip Hazard Map unless the consent authority has considered a report from a suitably qualified engineer as to the geotechnical stability of the land to support such development and an assessment of stormwater prepared by a suitably qualified hydraulic engineer.

- 57 An updated geotechnical report dated 26 February 2021 is now provided in support of the proposed development (Ex G), which fits the description of what is required to be considered by cl 57. The report specifically addresses cl 57 and concludes that the development can be undertaken with appropriate engineering design and construction controls, such that the risks of slope

instability will be low, and that the existing rock formation can withstand the proposed loads and standard shoring works will ensure the stability of the excavation and protection of the proposed development.

58 Further, the design of the proposed development is such that it steps up with the slope of the land, with the ground floor at the same level as the driveway that forms part of the existing industrial complex, and the second floor (third storey) at the same level as the area already excavated for the waste transfer station.

59 Accordingly, I am satisfied that the proposed development is consistent with cl 57.

Development consent should be granted

60 As set out above, each of the contentions raised by the Council on the appeal has now been resolved through the amendments to the proposed development and by appropriate conditions of consent, and on the basis of the expert evidence. As such, the Council now agrees that there is no contention that warrants refusal of the proposed development.

61 The proposed development is a permissible use in the B2 Oxford Falls Valley Locality. It is of low impact and intensity, given that it is for the construction of an additional building within an existing industrial complex, within an already cleared area of the site, and designed in a manner that is consistent with the existing buildings within the complex. The design also allows the building to step up with the slope of the land and retain the features of the natural environment. The proposed development will not have an adverse acoustic impact, and the traffic impact is not unacceptable. As such, the proposed development is suitable for the site, is consistent with each of the general principles of development control in Part 4, and does not cause any discernible adverse impact. It is therefore appropriate for development consent to be granted subject to the conditions of consent that are agreed by the parties.

62 The Court orders that:

- (1) The appeal is upheld.
- (2) Development consent is granted for the expansion of an approved industrial complex at Lot 100 Meatworks Avenue, Oxford Falls, by the

construction of a building containing 10 industrial units with ancillary floor space, a roof top terrace, and associated car parking, subject to the conditions in Annexure A.

(3) Exhibits 1-7 and D are returned.

.....

J Gray

Commissioner of the Court

Annexure A (368497, pdf)

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

Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: DA2019/1340

Development: Alterations and additions to the existing premises by the construction of a building and associated car parking and landscaping

Site: Lot 100 Meatworks Avenue, Oxford Falls
Lot 100, DP 1023183

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

Date of determination: 26 March 2021.

Date from which consent takes effect: 26 March 2021.

TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the “applicant” means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the “site”, means the land known as Lot 100 Meatworks Avenue, Oxford Falls (Lot 100, DP 1023183).

The conditions of consent are as follows:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA00 Issue I - Site/Site Analysis Plan	26/02/2021	Gelder Architects
DA01 Issue K - Ground floor Stage 2	26/02/2021	Gelder Architects
DA02 Issue L - Ground floor mezzanine Stage 2	26/02/2021	Gelder Architects
DA03 Issue L - Level 1 Mezzanine Stage 2	26/02/2021	Gelder Architects
DA04 Issue K - Roof Terrace Level	26/02/2021	Gelder Architects
DA05 Issue K - Upper Roof Terrace	26/02/2021	Gelder Architects
DA06 Issue H - Elevations	26/02/2021	Gelder Architects
DA07 Issue H - Elevations	26/02/2021	Gelder Architects
DA08 Issue I - Sections	26/02/2021	Gelder Architects
DA09 Issue C – Demolition Plan	09/10/2020	Gelder Architects
DA10 Issue C – Excavation Plan	09/10/2020	Gelder Architects
Schedule of Finishes – Stage 2 Issue A	30/08/2019	Gelder Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
C1 - Issue D - COVER SHEET & NOTES	24/07/2020	ACOR Consultants
C2 - Issue D - STORMWATER MANAGEMENT PLAN GROUND FLOOR	24/07/2020	ACOR Consultants
C3 - Issue D - STORMWATER MANAGEMENT PLAN GROUND FLOOR MEZZANINE	12/02/2021	ACOR Consultants
DA03 Issue J - Level 1 Mezzanine Stage 2	12/02/2021	ACOR Consultants
C4 - Issue D - STORMWATER MANAGEMENT PLAN LEVEL 1 MEZZANINE	12/02/2021	ACOR Consultants
C5 - Issue D - EROSION & SEDIMENT CONTROL NOTES	12/02/2021	ACOR Consultants
C6 - Issue D - EROSION & SEDIMENT CONTROL PLAN	12/02/2021	ACOR Consultants
C7 - Issue D - EROSION & SEDIMENT CONTROL DETAILS	12/02/2021	ACOR Consultants
C8 - Issue D - RAINWATER TANK DETAIL	12/02/2021	ACOR Consultants

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Construction Methodology Plan Stage 2	12/09/2019	Gelder Architects
Construction Traffic Management Plan (19179 – Issue A)	October 2019	Transport and Traffic Planning Associates
Phase 1 Contamination Assessment (12545/1-AA)	16/08/2011	GEOTECHNIQUE PTY LTD
Flora and Fauna Assessment (2019-014)	15/10/2019	Ecoplanning
Flora and Fauna Assessment (addendum letter)	02/10/2020	Ecoplanning
Waste Management Plan	02/09/2019	Gelder Architects
Assessment of Traffic and Parking Implications (19179 – Issue B)	February 2021	Transport and Traffic Planning Associates
Car Parking Design Statement	26/02/2021	Transport and Traffic Planning Associates
Disability Access Report (LP_19216)	06/09/2019	Lindsay Perry Access
Arboricultural Impact Assessment Report (19/10/31/100MAOF)	31/10/2019	Jack Williams Urban Arbor Pty Ltd
Bushfire Risk Assessment Report	18/11/2019	Blackash Bushfire Consultants
Bushfire Risk Assessment Report (addendum letter)	08/09/2020	Blackash Bushfire Consultants
Bushfire Advice and Specification of APZ	18/02/2021	Blackash Bushfire Consultants
Bushfire Certification Letter by Black Ash dated 26 February 2021.	26/02/2021	Blackash Bushfire Consultants
Site Contamination Assessment	05/02/2020	Geo-environmental Engineering
Stormwater Quality Report Version B (CC180469_WQ)	12/02/2021	ACOR Consultants
Geotechnical Investigation Report Rev.2	26/02/2021	Geo-environmental Engineering
Acoustic Impact Assessment Arising from Vehicles Accessing the Proposed Development (nss23351 – Final)	February 2021	NOISE AND SOUND SERVICES

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	02/09/2019	Gelder Architects

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. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Aboriginal Heritage office	Response Aboriginal Heritage Referral	05/05/2020

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

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. Approved Land Use

Nothing in this consent shall authorise the use of Units/Tenancies as detailed on the approved plans for any land use of the site beyond the definition of a Warehouse/ industrial and ancillary office use

A **warehouse** means a building or place used for the storage of goods, merchandise or materials pending their sale and distribution to persons engaged in the retail trade.

A **Industry** means:

(a) the manufacturing, assembling, altering, formulating, repairing, renovating, ornamenting, finishing, dismantling, transforming, processing or adapting of any goods or articles for commercial gain, or

(b) The storing, handling or displaying of items (whether goods or materials) which have been produced or manufactured for sale, other than retail sale to the public from the building or place, But does not include an extractive industry, potentially hazardous industry or Potentially offensive industry.

(Development is defined by the Warringah Local Environment Plan 2000 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

4. 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.

5. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

- 1 7.00 am to 5.00 pm inclusive Monday to Friday,
- 1 8.00 am to 1.00 pm inclusive on Saturday,
- 1 No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 1 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

6. No Approval for any Signage

No approval is granted under this Development Consent for signs (as defined under Warringah Local Environment Plan 2000 and State Environmental Planning Policy No. 64). A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage

FEES / CHARGES / CONTRIBUTIONS

7. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$52,868.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$5,286,800.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

8. Security Bond

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

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

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

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

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

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

9. On Slab Landscape Works

a) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

b) Landscape treatment details shall also be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

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

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

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

e) An on-going maintenance plan that shall be submitted to the Certifying Authority outlining a program to monitor and replenish soil levels as a result of soil shrinkage over time.

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

10. Stormwater Disposal

The Applicant is to demonstrate stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's Warringah Water Management Policy. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows or compliance with the Council's Policy are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

11. Biodiversity Management Plan

The Biodiversity Management Plan (Total Earth Care dated 1st August 2011 and updated maps dated 14th February 2013) shall be amended by the Project Ecologist and include:-

- the creation of a separate vegetation management zone that corresponds to the 19 metre wide bush fire asset protection zone;
- a specification for works within the APZ management zone, updated Roles, Responsibilities and Timing, and the ongoing management actions required to maintain the APZ in perpetuity;

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

Reason: To promote the long-term sustainability of ecosystem functions

12. Preparation of Environmental Management Checklist

A Construction Environmental Management Checklist (CEMC) is to be prepared and is to incorporate all measures for the protection of native vegetation, wildlife and habitats during the construction phase. Measures specified in the checklist are to include all conditions of consent addressing construction-related impacts to biodiversity. The CEMC is to be provided to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To protect native vegetation, wildlife and habitats in accordance with relevant Natural Environment LEP/DCP controls

13. No Clearing of Vegetation

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to issue of Construction Certificate.

Reason: To protect native vegetation in accordance with relevant Natural Environment LEP/DCP controls

14. Bushland Protective Fencing

Prior to the commencement of any onsite building works a temporary 2.0 metre steel mesh fence is to be erected on the south-eastern side of the existing residence concrete driveway between the natural bushland zone and the construction area for the duration of construction work.

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

Reason: To ensure that the vegetation in the restricted development area is protected during and after construction.

15. Detailed Design of Stormwater Treatment Measures

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the plans dated 12 February 2021 by ACOR Consultants and Council's Water Management for Development Policy.

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

Reason: Protection of the receiving environment

16. Safe pedestrian Access within site

A shared zone area with maximum speed limit of 10km/h signposted, together with speed humps at several key locations within the site to slow down vehicles are to be implemented within the access roadways.

Detailed Plans demonstrating the above shall be prepared by a qualified traffic/civil Engineer and submitted to and approved by the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure the provision of a safe pedestrian area

17. Construction Traffic Management Plan

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

The CTMP must address the following:-

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

- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- Make provision for all construction materials to be stored on-site, at all times;
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- Make provision for parking on-site. All Staff and Contractors are to use the at-grade and Level 1 Mezzanine parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Specify that, due to the proximity of the site adjacent to Oxford Falls Grammar School, no heavy vehicle movements or construction activities affecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Five (5) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure with the exception for any temporary road closure, for which a minimum seven (7) days notification must be provided.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before

entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;

- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practicing Structural Engineer, or equivalent;
- Proposed protection for Council and adjoining properties;
- The location and operation of any on-site crane; and

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

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

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

18. Construction in Bush Fire Prone Areas

The recommendations made in the Bush Fire Risk Assessment Report prepared by Blackash Bushfire Consultants, dated 18 November 2019, Report Ref No. Version 1.2 and the subsequent Bushfire advice letter dated 8 September 2020 are to be considered as part of the assessment of the Construction Certificate.

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

Reason: To ensure adequate provision is made for the design and construction of the building to reduce the risk of ignition from a bushfire and provide building occupant safety

19. Building Code of Australia Report

A ‘Building Code of Australia (BCA) Assessment Report’ / ‘Fire Audit Report’ from an appropriately qualified Accredited Certifier* will need to be submitted with the Construction Certificate application addressing the following:

The report is to detail the extent to which the proposed building does or does not comply with the deemed-to satisfy provisions of Sections C, D, E and F of the Building Code of Australia. The report is to also provide recommendations with respect to the building works required to ensure that the specified measures and facilities for the proposed development are appropriate for its intended use to:

- i) restrict the spread of fire from the building to other buildings nearby, and
- ii) protect persons using the building, and to facilitate their egress from the building in the event of fire, and

- iii) where appropriate, provide access for persons with a disability, and
- iv) provide facilities and services appropriate for the development

*To be regarded as an "appropriately qualified accredited certifier" the certifier must hold the relevant level of accreditation that would enable the certifier to issue a construction certificate for the subject building.

The 'Building Code of Australia (BCA) Assessment Report' / 'Fire Audit Report' is to be submitted to the Certifying Authority with the Construction Certificate application.

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

20. Structural Adequacy and Excavation Work

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

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

21. Contaminated Land Requirements

A Stage 2 Detailed Investigation in accordance with the *Managing Land Contamination Planning Guidelines* is to be undertaken and a report prepared by suitably qualified contaminated land professional. Construction and/or earthworks must not commence until a Stage 2 Detailed Investigation has been undertaken and a report submitted to Council. Should the Stage 2 Detailed Investigation not conclude that the site in its current condition is suitable for the proposed development, without further works being required, a Stage 3 Remedial Action Plan (RAP) prepared in accordance with the *Managing Land Contamination Planning Guidelines* will be required, outlining how the site will be remediated suitable for the proposed use.

Reason: To prevent harm to humans or environment.

22. Delineation Asset Protection Zone

Prior to the commencement of any vegetation clearance/modification, the boundaries of the bushfire Asset Protection Zone (APZ) are to be surveyed by a registered surveyor and clearly marked by way of temporary staking, flagging tape and temporary signage identifying retained native vegetation areas. Clearing of vegetation for APZ establishment must only occur within the marked APZ boundaries. Details demonstrating compliance are to be submitted by the project ecologist to the Principal Certifying Authority prior to issue of the Construction Certificate.

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

23. Compliance with Ecologist's Recommendations – Pre-construction

All pre-construction biodiversity-related measures specified in the amended and approved Biodiversity Management Plan and these conditions of consent are to be implemented at the appropriate stage of the development. Compliance with pre-construction measures are to be certified by the Project Ecologist prior to issue of the Construction Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls

24. Project Ecologist

Prior to any works being undertaken on site, a Project Ecologist is to be engaged for the duration of the onsite works and issue compliance certification as per the requirements of this consent.

The Project Ecologist is to be engaged as required by this consent and associated documentation to ensure all conditions relating to the Biodiversity Management Plan of the property are fully implemented and complied with at all times.

The Project Ecologist shall meet the following minimum requirements:-

- A vegetation management specialist with at least 4 years' experience in the management of native bushland in the Sydney region; and
- TAFE Certificate III in Bush Regeneration or Conservation and Land Management – Natural Area Restoration
- A member of the Ecological Consultants Association of NSW Inc.

or as otherwise agreed by the Council;

A legally signed contract demonstrating compliance is to be submitted to the Certifying Authority prior to commencement.

Reason: To ensure bushland management

25. Draft Bushland Covenant

All areas of retained bushland on Lot 100 is to be protected, conserved, rehabilitated and managed through the use of a Section 88E (Conveyancing Act 1919) Instrument in which Northern Beaches Council shall be named as the sole authority to release or modify the restriction.

The draft instrument is to be written and registered on the title so that the owners are bound to manage and protect the area in perpetuity according to the updated Biodiversity Management Plan prepared for the approved development. The referenced plan must clearly denote areas outside the APZ as 'environment conservation area'. The draft instrument is to be submitted as acceptable to Council prior to Construction Certificate.

The approved instrument is to be registered on the title prior to the issue of the Occupation

Certificate and lodgment with NSW Lands Registry.

Reason: To prevent future loss of native vegetation and habitat outside of development impact areas.

26. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

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

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

27. Sydney Water "Tap In"

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

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

- i "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- i Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

28. On-site loading bay

An on-site loading bay accommodating Small Rigid Vehicle shall be provided in front of Unit 6 and 7 as demonstrated in the traffic Joint Report.

The plan demonstrating above and compliance with Australian Standards shall be submitted to and approved by the Principal Certifying Authority prior to the issue of any Construction Certificate.

Reason: To service ancillary building

29. No Artificial Lighting – Fauna Habitat

No artificial light is to be directed toward or illuminate the retained native vegetation area at any time during or post-construction. No bright lighting or motion detectors which illuminate the bushland areas are to be installed. Low intensity lighting may be used in the formed development area for safety purposes only.

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

Reason: To limit the negative impact of artificial light on fauna habitats adjoining the site

30. Amended Landscape Plans

An amended Landscape Plan shall be issued to the Certifying Authority prior to the issue of a Construction Certificate to update the Landscape Plans dated 20.10.20 prepared by Paul Scrivener Landscape Architecture to be compliant with approved stamped plans dated 26 February 2021.

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

31. Tree Removal within the Property

This consent approves the removal of the trees indicated for removal on Landscape Detail Plan Dwg No. 2 Issue D dated 20.10.20 prepared by Paul Scrivener Landscape Architecture.

Note: Exempt Species as listed in the Development Control Plan do not require Council consent for removal.

Reason: To enable authorised building works.

32. Provision of Construction Environmental Management Checklist

All workers, including sub-contractors, are to be briefed on measures specified in the Construction Environmental Management Checklist (CEMC) through a site induction and given a copy of the CEMC prior to commencing their works. A record of receipt of the CEMC is to be signed by all workers and this record is to be provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To protect native vegetation, wildlife and habitats in accordance with relevant Natural Environment LEP/DCP controls

33. Implementation of the Biodiversity Management Plan

As nominated in the approved BMP, the primary weeding works will occur immediately prior to construction works, and the program of monitoring and inspection will be carried out by a qualified vegetation management consultant (or qualified botanist) for the project establishment period (approximately 12 months from commencement).

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: Management and protection of bushland.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

34. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected including:
 - i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments or legislation and NSW Rural Fire Service requirements for asset protection zones,

- ii) all trees and vegetation located on adjoining properties,
 - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:
- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
 - viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
 - ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

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

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

Reason: Tree and vegetation protection.

35. Road Reserve

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

Reason: Public Safety.

36. Substitution of Stormwater Treatment Measure

The substitution of an "equivalent" device for the stormwater treatment measure approved under the Development Consent must first be approved by the Principal Certifying Authority.

Details must be submitted to the Principal Certifying Authority for approval prior to installation.

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

37. Dewatering Management

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

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

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

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

Reason: Protection of the receiving environment and groundwater resources

38. Removing, Handling and Disposing of Asbestos

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

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

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

39. Demolition Works - Asbestos

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

40. Survey Certificate

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

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

Reason: To demonstrate the proposal complies with the approved plans.

41. Dust management

Dust control measures including best practice, and in accordance with NSW Workplace Health and Safety Regulations and the Protection of the Environment Operations Act 1997, shall be implemented to minimise dust to neighbouring residents and businesses and ensure any airborne substance is kept within the boundaries of the site

Measures may include but are not be limited to:

- Water sprays
- Bunker storage
- Limiting size of stockpiles and covering stock piles
- Vertical barriers e.g. fencing with fine mesh attached
- Exhaust and capture

Reason: To minimise dust to neighbouring residents and businesses and avoid air pollution. (DACHPEDW5)

42. Protection of rock and sites of significance

a) All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

b) Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

c) Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

43. Compliance with Ecologist's Recommendations – During Construction

All biodiversity-related measures are to be implemented during construction in accordance with the approved Biodiversity Management Plan and these conditions of consent.

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls.

44. Dead or Injured Wildlife

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

Reason: To protect native wildlife in accordance with Section 2.1 of the NSW Biodiversity Conservation Act 2016.

45. Installation and Maintenance of Sediment and Erosion Control

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls 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 vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting

The discharge of sediment-laden waters from the site may result in clean-up orders and/or fines under Council's Compliance and Enforcement Policy and legislation including Protection of the Environment Operations Act 1997 and Contaminated Lands Act 1997.

Reason: Protection of the receiving environment

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

46. Landscape Completion

- a) Landscaping is to be implemented in accordance with the approved Landscape Plans.
- b) Prior to the issue of any Occupation Certificate details (from a qualified landscape architect, landscape designer or horticulturalist) shall be submitted to the Principal Certifying Authority certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

47. Stormwater Disposal

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

48. Compliance with Ecologist's Recommendations – Post Construction

All biodiversity related measures are to be implemented at the appropriate stage of development in accordance with the approved Biodiversity Management Plan and these conditions of consent.

Satisfactory establishment/initiation of post-construction measures is to be certified by the Project Ecologist prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls.

49. Native Vegetation Protection Covenant

All areas of retained native vegetation located outside of the APZ on Lot 100 is to be protected, conserved, and managed through application of a Section 88E Instrument (Conveyancing Act 1919) in which Northern Beaches Council shall be named as the sole authority to release or modify the restriction. Owners are to be bound to manage the area in perpetuity according to the approved Biodiversity Management Plan prepared for the approved development. The referenced plan must clearly denote areas outside the APZ as 'environment conservation area'.

The approved instrument is to be registered on the title prior to the issue of the Occupation Certificate and lodgment with NSW Lands Registry.

Reason: To prevent future loss of native vegetation and habitat outside of development impact areas

50. Certification for the Installation of Stormwater Treatment Measures

A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the plans prepared by ACOR Consultants dated 12 February 2021. The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment.

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

Reason: Protection of the receiving environment

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

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

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

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

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

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

52. Maintenance contract for stormwater filtration cartridges

A minimum of a five-year contract with a suitably qualified provider is required for the maintenance of the stormwater filtration cartridges.

A copy of the maintenance contract must be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

Reason: To ensure maintenance of the stormwater treatment measures.

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

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

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

Reason: Protection of the receiving environment

53. Stormwater Treatment Measures Operation and Maintenance Plan

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

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

1. Detail on the stormwater treatment measures:
 - a) Work as executed drawings
 - b) Intent of the stormwater treatment measures including modelled pollutant removal rates
 - c) Site detail showing catchment for each device
 - d) Impervious area restrictions to maintain the water balance for the site
 - e) Funding arrangements for the maintenance of all stormwater treatment measures
 - f) Identification of maintenance and management responsibilities
 - g) Maintenance and emergency contact information
2. Maintenance schedule and procedure
 - a) Activity description, and duration and frequency of visits

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

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

Reason: Protection of the receiving environment.

54. Works as Executed Drawings - Stormwater Treatment Measures

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

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

Reason: Protection of the receiving environment

55. Signage and Linemarking

The applicant is to install all signage and linemarking in accordance with Australian Standards. These works are to be completed prior to the issue of any Occupation Certificate.

Reason: To ensure consistent parking amenity.

56. Allocation of parking spaces (strata title)

All parking spaces are to be assigned to individual units. All industrial units and offices must be assigned a minimum of one parking space.

Reason: To ensure parking availability for each unit in accordance with section C3 of Warringah Council's Development Control Plan.

57. Operational Management Plan

An Operational Management Plan (OMP) detailing the operation of the development is required to be prepared in accordance with the traffic report and any associated supplementary documents and submitted to and approved by Council. The OMP shall include, but not be limited to the following:

- Vehicle access and egress.
- Maximum size vehicle accessing the site.
- Vehicles and trucks ingress and egress the site in forward direction.
- Through-site circulation of vehicle movements.
- Management of car parking areas and access roadways
- Complaints management.
- Noise management.
- Truck delivery times and methods of control to manage the sequencing of the loading docks.
- Waste management.

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

Reason: To ensure that the development operates with minimum disruption to the surrounding area

58. Building Code of Australia Access Report

Access and facilities to and within the building are to be provided for Persons with a Disability and are to comply with the Building Code of Australia and AS 1428.1. Details are to be provided to the Certifying Authority prior to the issue of the Construction Certificate and be implemented prior to occupation of the building.

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

59. Compliance with Contamination Management Plan

Prior to the issue of any interim / final occupation certificate, certification from an appropriately qualified person or firm is to be provided to Council and the Principal Certifying Authority stipulating that the requirements of any Contamination Management Plan and recommendations made in the Phase 1 Assessment Report No. 12545/1-AA by Geotechnique Pty Ltd have been complied with throughout excavation, demolition and development work stages. The certification shall also include:

- a) A validation and site monitoring report prepared in accordance with relevant guidelines issued under the Contaminated Land Management Act 1997 must be submitted to the Council within one month from completion of the remediation work.
- b) Records of disposal of contaminated material from the site.

Reason: Protection of the environment, SEPP 55 compliance. (DACHPFPOC5)

60. 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.

61. Removal of All Temporary Structures/Material and Construction Rubbish

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

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

Reason: To ensure bushland management.

62. Green Travel Plan

The Applicant shall prepare a Green Travel Plan to promote the modal shift from car travels towards active travel. This shall include but not be limited to providing tenants with incentives for using alternative modes of travel to and from work such as car-pooling. The applicant shall liaise with Transport for NSW to expand the On-demand Transport / Keoride services to incorporate this site.

The applicant shall submit a Green Travel Plan that includes the above and any relevant liaison with Transport for NSW to Council prior to the issue of any Occupation Certificate.

Reason: To promote the modal shift from car travels towards active travel

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

63. Exotic Plant Species/Weeds

All exotic plant species, noxious and environmental weeds are to be managed continuously and are not to be imported to the site. Further information is available on Northern Beaches Council website.

Only certified weed free and contaminant free mulch is to be used on the site, as they may contain weed seeds and viable vegetative matter and other contaminants, which may impact adversely on the vegetation, soil, water quality or ecology of the site.

Reason: To ensure bushland and riparian management

64. Maintenance of Stormwater Treatment Measures

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

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

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

Reason: Protection of the receiving environment

65. Designated service vehicles

The owner and/or tenants of the units within the subject site are to be aware of the dedicated loading area which can accommodate up to Small Rigid Trucks (SRV) for units 30-34 and vans and utes (B99 vehicles) for units 35-39. This condition is to be provided on the property Title.

Reason: To ensure the tenants are aware that they are entitled to only use up to small rigid trucks (SRV).

66. Implementation of Operational Management Plan

All vehicle ingress and/or egress activities are to be undertaken in accordance with the approved Operational Management Plan. Vehicle queuing and reversing on public road(s) is not permitted.

Reason: To ensure that the development operates with minimum disruption to the surrounding area

67. Comply with the recommendation of the Phase 1 Assessment Report

Recommendations made in the Phase 1 Assessment Report No. 12545/1-AA done by Geotechnique Pty Ltd are to be complied with.

Reason: Protect human health and environment (DACHPGOG5)

68. Landscape maintenance

a) 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 and any conditions of consent.

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

Reason: To maintain local environmental amenity.

69. Compliance with Ecologist's Recommendations – Ongoing

All ongoing biodiversity-related measures are to be implemented in accordance with the approved Biodiversity Management Plan and these conditions of consent.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls

70. Delivery Hours

No deliveries, loading or unloading associated with the premises are to take place between the hours of 10pm and 6am on any day.

Reason: To protect ensure the acoustic amenity of surrounding properties.

71. Loading Within Site

All loading and unloading operations shall be carried out wholly within the confines of the site and within the approved loading areas, at all times.

Reason: To ensure that deliveries can occur safely within the site and does not adversely affect traffic or pedestrian safety and amenity.

72. Commercial Waste Collection

Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties

73. Signs/Goods in the Public Way

No signs or goods are to be placed on the footway or roadway adjacent to the property.

Reason: To ensure pedestrian safety and to protect the streetscape.

74. Noise Impact on Surrounding Area

The use of the premises shall not cause a sound level in excess of 5 dB(A) at any time above the background noise level at any point along the site boundaries when measured in accordance with the Environment Protection Authority's Industrial Noise Policy.

Reason: To ensure compliance with acceptable levels of noise established under best practice guidelines.

75. Hours of Operation

The hours of operation are to be restricted to 7am – 6pm Monday – Friday and 8am – 2pm on Saturday (inclusive).

Upon expiration of the permitted hours, all service shall immediately cease, all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

76. Maximum Vehicle size accessing the site.

The size of vehicles ingressing and egressing the site shall not exceed 6.4m long Small Rigid vehicles (SRVs). This excludes private waste management vehicles which shall be up to 8.8m Medium Rigid Vehicles (MRVs). The waste management vehicle access is prohibited during school's AM and PM peak hours, "8.00am – 9.30am and 2.30pm – 4.00pm Monday-Friday".

Reason: To minimise adverse impact on road network

77. No Artificial Lighting – Fauna Habitat

No artificial light is to be directed toward or illuminate the retained native vegetation area at any time during or post-construction. No bright lighting or motion detectors which illuminate the bushland areas are to be installed. Low intensity lighting may be used in the formed development area for safety purposes only.

Reason: To limit the negative impact of artificial light on fauna habitats adjoining the site

78. Lighting

External lighting shall be restricted to the approved hours of operation with the exception of security sensor lighting and low-level bollard style lighting compliant with AS/NZS 4282:2019.

Reason: To control the obtrusive effects of outdoor lighting

79. Roof Terrace

The use of the roof top terrace shall be restricted to the hours from 8:00am until 6:00pm Monday – Friday.

The roof top terrace shall be for the exclusive use of people working on the site and shall not be open for use of the public.

Reason: Neighbour amenity and to ensure the use is consistent with the approved development