



Land and Environment Court New South Wales

Case Name: Dukor 24 Pty Ltd v Northern Beaches Council

Medium Neutral Citation: **[2018] NSWLEC 1315**

Hearing Date(s): 21 May 2018

Date of Orders: 27 June 2018

Date of Decision: 27 June 2018

Jurisdiction: Class 1

Before: Chilcott C

Decision: The Court orders:

- (1) The appeal is upheld.
- (2) Development consent is granted to development application DA2017/0206, for demolition works and construction of a residential care facility, subject to the conditions of consent attached as Annexure 'A'.
- (3) The exhibits are returned, with the exception of Exhibits A, B and 2.

Catchwords: Development Application: Residential care facility, deferred matter, desired future character, retention of distinctive environmental features; protection of flora.

Legislation Cited: Environmental Planning and Assessment Act 1979
Land and Environment Court Act 1979
Roads Act 1993
State Environmental Planning Policy No 5 - Housing for Older People or People with a Disability 2003
State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004
Warringah Development Control Plan 2013
Warringah Local Environment Plan 2000
Warringah Local Environment Plan 2011

Cases Cited: GPC No 5 (Wombarra Pty Ltd v Wollongong City Council [2003] NSWLEC 268

Texts Cited:

Category:	Principal Judgment
Parties:	Dukor 24 Pty Ltd (Applicant) Northern Beaches Council (Respondent)
Representation:	Counsel: M Staunton (Applicant) Solicitors: Mills Oakley (Applicant) S Patterson, Wilshire Webb Staunton Beattie Lawyers (Respondent)
File Number(s):	2017/236706
Publication Restriction:	Nil

JUDGMENT

Background

- 1 **COMMISSIONER:** Dukor 24 Pty Ltd (the Applicant) has appealed a decision by Northern Beaches Council (the Respondent) to refuse its development application (DA2017/0206) for demolition works and construction of a residential care facility at 1113 Oxford Falls Road, Frenchs Forest (the Subject Site).
- 2 The appeal is made pursuant to section s97(1) (now s8.7(1)) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).
- 3 The Subject Site is formally described as Lot 1113 in DP 752038.
- 4 The appeal was the subject of a conciliation conference under s34 of the *Land and Environment Court Act 1979* (the LEC Act) on 11 December 2017.
- 5 An inspection of the Subject Site was undertaken as part of the conciliation conference, and submissions taken from a number of resident objectors during the inspection.
- 6 The Parties were unable to resolve the contentions between them during the s 34 conciliation, and so the conciliation process was terminated, and the matter was listed for hearing.
- 7 The Applicant was granted leave by the Court to reply on amended plans and supporting documentation (including amended landscape plans and an amended statement of environmental effects) on 29 March 2010. The amended plans proposed the following:
 - (1) demolition of existing structures;
 - (2) construction of a 71 bed (reduced from an originally proposed 72 beds) residential care facility with 16 staff;

- (3) an amended layout for the facility to provide a built form reflecting a 'detached style housing';
 - (4) on-grade car parking spaces for 36 vehicles (increased from an originally proposed 33 vehicles);
 - (5) landscaping works and drainage works;
 - (6) construction of internal roads.
- 8 At the commencement of the hearing, four residents sought leave to make submissions concerning the proposed development. With the consent of the Parties, submissions were received from the following residents:
- (1) Ms Jacquie Marlow, of Narrabeen, whose submission addressed:
 - (a) the potential impact of the proposed development on native fauna, in particular on the eastern pygmy possum and powerful owl;
 - (b) the proposed removal of trees and bushland associated with the proposed development and the potential impact of this on the functionality of vegetation corridors across the Subject Site which she said provided regional vegetation connectivity and supported wildlife movement;
 - (c) the desirability of prohibiting future residents of the proposed development from keeping companion animals on the Subject Site.
 - (2) Mr Richard Cover, a resident of Barnes St, Frenchs Forest, whose submission addressed:
 - (a) the response of the proposed development to the desired future character of the area;

- (b) potential flora and fauna impacts arising from the proposed development;
 - (c) the suitability of the Subject Site for the proposed development;
 - (d) the potential bushfire risks associated with the proposed development;
 - (e) the potential impact of increased traffic access to and from the Subject Site and the need for the Applicant to:
 - (i) regulate the times of delivery vehicle access to the proposed development;
 - (ii) upgrade the footpaths and roads connecting the Subject Site to other footpaths and roads in the local area.
- (3) Ms Ann Sharp, a representative of the friends of Narrabeen Lagoon catchment, and resident of Curl Curl, whose submission addressed:
- (a) the footprint of the proposed development within the Middle Creek catchment;
 - (b) the alignment of the proposed development with the desired future character of the area;
 - (c) the potential impacts of the proposed development in relation to:
 - (i) increased traffic and parking on the Subject Site;
 - (ii) the development's site coverage;
 - (iii) native flora ;
 - (iv) bushfire risk and its management;

- (v) stormwater run-off from hard surfaces and flows into a tributary of Middle Creek;
 - (vi) the location of asset protection zones vis-a-vis revegetation works and wildlife corridors on the Subject Site.
- (4) Mr John Dillon (on behalf of Ms Marilyn Dillon), a resident of Barnes Road, Frenchs Forest, whose submission addressed:
 - (a) the potential of the proposed development to give rise to increased local traffic and, in particular, increased vehicle movements in the local area;
 - (b) the adequacy of on-site parking within the proposed development; and
 - (c) the benefits of retaining a row of cypress pines on the western boundary of the Subject Site.

Statutory context

Environmental Planning and Assessment Act 1979

- 9 The *Environmental Planning and Assessment Act 1979* (EP&A Act) Section 79C(1) requires that in determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) the provisions of:
 - (i) any environmental planning instrument, and
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
 - (iii) any development control plan, and

(iia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph), and

(v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979),

that apply to the land to which the development application relates,

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

(c) the suitability of the site for the development,

(d) any submissions made in accordance with this Act or the regulations,

(e) the public interest."

10 Section 79C(3A) Development Control Plans further provides that:

If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority:

(a) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and

(b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and

(c) may consider those provisions only in connection with the assessment of that development application.

Roads Act 1993

11 Section 138(2) of the Roads Act 1993 (the Roads Act) provides that:

a consent may not be given with respect to a classified road except with the concurrence of RMS.

- 12 The Applicant has proposed the establishment of an Asset Protection Zone (APZ) within the Barnes Road reserve, and subject to consent under s.138 of the Roads Act as necessary, that would be subject to a Positive Covenant placed on the title of the Subject Site.

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

- 13 State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (the SEPP) aims (see clause (cl) 2) to encourage the provision of housing (including residential care facilities) that will:

- (a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and
- (b) make efficient use of existing infrastructure and services, and
- (c) be of good design.

- 14 The SEPP further provides that the above aims would be achieved by:

- (a) setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and
- (b) setting out design principles that should be followed to achieve built form that responds to the characteristics of its site and form, and
- (c) ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes.

- 15 The Parties agreed that the relevant local planning controls applicable to the proposed development are those contained WLEP 2000 (see below at [28] and [29]).

- 16 As a consequence, the application in this appeal is not made under the SEPP, as the applicable local planning controls do not prevent the development of housing for seniors or people with a disability that would otherwise meet the development criteria and standards specified in the SEPP.

- 17 The Respondent said in opening that, while the controls in the SEPP did not apply to the proposed development, the aims of the SEPP as provided in cl2(1)(b) and 2(1)(c) were of relevance in the appeal.
- 18 The Applicant submitted, that cl 55 of the SEPP, which requires that the proposed development include fire sprinkler systems, was the only provision of relevance in the appeal. This clause provides:

A consent authority must not grant consent to carry out development for the purpose of a residential care facility for seniors unless the proposed development includes a fire sprinkler system.

- 19 The Respondent said that a fire sprinkler system would be required as a condition of development consent should the proposed development be approved.

Warringah Local Environment Plan 2000

- 20 Warringah Local Environment Plan (WLEP) 2011 entered into force on 9 December 2011 (WLEP 2011). Under this plan the Subject Site is zoned a deferred matter, and, as a consequence (see cl 1.3(1A)), development on the Subject Site is subject to the provisions of WLEP 2000.
- 21 WLEP 2000 cl 3 provides the that purposes of that plan are:
- (a) as far as possible, to integrate into one document all environmental planning instruments affecting the development of land in Warringah and ensure that this plan is the sole environmental planning instrument applying to the land to which it relates, and
 - (b) to describe the desired characters of the localities that make up Warringah and relate the controls on development to the achievement of the desired characters of those places, and
 - (c) to establish limits to the exercise of discretion with regard to the control of development, and
 - (d) to provide decision-making processes appropriate to the nature and extent of discretion to be exercised.

22 Development on lands to which WLEP 2000 applies is controlled by the provisions of Part 2 of the plan. Relevantly, these include the provisions of the following:

- (1) Clause 7, concerning development that requires consent, and which provides:

All development requires consent except:

- (a) exempt development, being development of minimal environmental impact identified in Schedule 1 (Exempt development), when carried out in accordance with the requirements of that Schedule, and
- (b) development identified in Schedule 2 (Other development not requiring consent), when carried out in accordance with the requirements of that Schedule.

- (2) Clause 12, concerning matters that must be considered before consent is granted, and which provides:

- (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.

Note. Before granting consent for development the consent authority must consider the matters set out under section 79C of the Act.

To assist with understanding: Category One development is development that is generally consistent with the desired future character of the locality, Category Two development is development that may be consistent with the desired future character of the locality, and Category Three development is development that is generally inconsistent with the desired future character of the locality.

- (3) Clause 14, concerning the manner by which the use of land will be controlled, and which provides:

(1) For the purposes of clause 12, development of land within a locality is classified by the relevant Locality Statement as being within one of three following categories:

- (a) Category One,
- (b) Category Two,
- (c) Category Three.

(2) Notwithstanding subclause (1), subdivision, other than when exempt development, is Category Two development.

(3) Development of Category Three proposed on the site of a heritage item is taken to be development of Category Two if the consent authority is satisfied that:

- (a) the retention of the item depends on the granting of consent to the proposed development, and
- (b) the proposed development is in accordance with a conservation plan approved by the consent authority, and
- (c) the granting of consent to the proposed development would ensure that all necessary work identified in the conservation plan is carried out, and
- (d) the proposed development would not adversely affect the heritage significance of the heritage item or its setting, and
- (e) the proposed development would not adversely affect the amenity of surrounding land.

- (4) Clause 18, concerning the control of built forms in a development, and which provides:

(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.

23 The Subject Site is located within Oxford Falls Valley, and its locality statement is provided within Appendix B of WLEP 2000. This appendix contains locality statements for areas within the Narrabeen Lagoon Catchment, including for Locality B2 Oxford Falls Valley.

24 Within this locality statement, the desired future character of the Oxford Falls Valley is described 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.

25 The locality statement provides that Category Two development, that is development that may be consistent with the desired future character of the locality in this area, includes development the purposes of:

- agriculture
- housing

- housing for older people or people with disabilities (on land described in paragraph (c) under the heading "Housing density" below)
- other buildings, works, places or land uses that are not prohibited or in Category 1 or 3.

26 The locality statement includes guidance on the density of housing for certain developments, and within paragraph (c) of that section provides:

The maximum housing density is 1 dwelling per 20 ha of site area, except:

(c) on land that adjoins a locality primarily used for urban purposes and on which a dwelling house is permissible, where there is no maximum housing density if the development is for the purpose of "housing for older people or people with a disability" and the development complies with the minimum standards set out in clause 29.

27 The proposed development is for the purpose of housing for older people or people with a disability. As the Subject Site adjoins a locality primarily used for urban purposes, and as a dwelling house is permissible on that locality, there is no maximum housing density applicable to the proposed development should it comply with the minimum standards set out in cl 29 of WLEP 2000.

28 Clause 29 of WLEP 2000 provides the following grounds on which applications for housing for older people or people with disabilities cannot be refused:

(a) building height, if all proposed buildings are 8 metres or less in height when measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point, or

(b) density and scale, if the density and scale of the buildings, when expressed as a floor space ratio is:

(i) 0.5:1 or less, except as provided by subparagraph (ii), or

(ii) 0.75:1 or less, for hostels and residential care facilities located within 400 metres walking distance of a public transport node (being a public transport facility such as a railway station, bus stop, or ferry wharf, that is serviced on a frequent and regular basis in daylight hours), or

(c) landscaped area, if a minimum of 35m² of landscaped area per dwelling and 25m² of landscaped area per hostel or residential care facility bed is provided, or

(d) parking, if at least the following is provided:

(i) in the case of a hostel or residential care facility, at least 1 parking space for each 10 beds in the hostel or residential care facility, and 1 parking space for each two persons to be employed in connection with the development and on duty at any one time, and 1 parking space suitable for an ambulance, and

(ii) in the case of dwellings, at least 0.5 car space for each bedroom where the development application is made by a person other than the Department of Housing or a local government or community housing provider, or 1 car space for each 5 dwellings where the development application is made by, or is made by a person jointly with, the Department of Housing or a local government or community housing provider, or

(e) visitor parking, if, in the case of development that comprises less than 8 dwellings and is not situated on a clearway, no visitor parking is provided within the development, or

(f) landscaped areas, if, in relation to that part of the site (being the site, not only of that particular development, but also of any other associated development to which this clause applies) that is not built on, paved or otherwise sealed, there is soil of a sufficient depth to support the growth of trees and shrubs on an area (preferably located at the rear of the site) of not less than the width of the site multiplied by 15% of the length of the site, or

(g) private open space for in-fill housing, if:

(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and

(ii) in the case of any other dwelling, there is a balcony with an area of not less than 6 square metres, that is not less than 1.8 metres in length and that is accessible from a living area

(1) During the hearing the Parties agreed that the proposed development, as represented in the amended plans, satisfied the above standards, and so could not be refused on the basis of building height, density and scale, landscaped areas, parking, including visitor parking, or private open space for in-fill housing. Having reviewed the amended plans I

am also satisfied that the proposed development is compliant with the requirements of cl 29.

- 29 Clause 40 of WLEP 2000 provides further requirements for developments that house older people or people with disabilities:

Support services:

Development for the purpose of housing for older people or people with disabilities must provide residents with adequate access to:

- (a) shops, banks and other retail and commercial services that residents may reasonably require, and
- (b) community services and recreation facilities, and
- (c) the practice of a general medical practitioner.

Access is adequate only if:

- (a) the facilities and services referred to above are located at a distance of not more than 400 metres from the site of the proposed development, or
- (b) there is a transport service available to the residents who will occupy the proposed development:
 - (i) that is located at a distance of not more than 400 metres from the site of the proposed development, and
 - (ii) that will take those residents to a place that is located at a distance of not more than 400 metres from the relevant facilities or services, and
 - (iii) that is available both to and from the proposed development during daylight hours at least once per day from Monday to Friday (both days inclusive).

The consent authority must not consent to development for the purpose of housing for older people or people with disabilities on land that adjoins land in a locality used primarily for urban purposes unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have reasonable access to:

- (a) home delivered meals, and
- (b) personal care and home nursing, and
- (c) assistance with housework.

In deciding whether the level of access residents have to each facility and service listed above is reasonable (whether provided by the management or

by an external service provider) the consent authority will consider the following:

- the type of housing proposed and the needs of the people who are most likely to occupy that type of housing, and
- whether the type or scale of housing proposed could, or may reasonably be expected to, provide some facilities and services on-site in a cost-effective manner, and
- the affordability of any relevant facility or service.

If infrastructure for a facility or service is provided as part of the development, it will be available to residents when the housing is ready for occupation. In the case of a staged development, the buildings and works comprising the infrastructure can be provided proportionately according to the number of residents in each stage.

Wheelchair access:

Development for the purpose of housing for older people or people with disabilities must comply with the following access standards:

(a) site gradient

(i) if the whole of the site has a gradient of less than 1:10, 100% of the hostel or residential care facility beds and 100% of the dwellings must have wheelchair access by a continuous path of travel (within the meaning of AS 1428) to an adjoining public road or an internal road or a driveway that is accessible to all residents, or

(ii) if the whole of the site does not have a gradient of less than 1:10, a percentage (which is not less than the proportion of the site that has a gradient of less than 1:10, or 50%, whichever is the greater, and which in this subparagraph is called the specified minimum percentage) of any hostel or residential care facility beds and the specified minimum percentage of any dwellings must have wheelchair access by a continuous path of travel (within the meaning of AS 1428) to an adjoining public road or an internal road or a driveway that is accessible to all residents, and

(b) road access, at least 10% of any hostel or residential care facility beds and at least 10% of any dwellings which meet the requirements of paragraph (a) must have wheelchair access by a continuous path of travel (within the meaning of AS 1428) to an adjoining public road, and

(c) common areas, access must be provided so that a person using a wheelchair can use common areas and common facilities associated with the development, and

(d) adaptability 10% of any hostel or residential care facility beds and 10% of any dwellings which meet the requirements of paragraph (a) must also have, or be capable of being modified so that they have, wheelchair access by a continuous path of travel (within the meaning of AS 1428) to all essential areas and facilities inside the hostel, residential care facility or dwellings, including a toilet, bathroom, bedroom and a living area.

Other principles and standards

Development for the purpose of housing for older people or people with disabilities must also comply with the standards and principles in Schedule 16.

- (1) During the hearing the Parties agreed that the proposed development, as represented in the amended plans, satisfied the standards within cl 40. Having reviewed the amended plans I am also satisfied that the proposed development is compliant with the requirements of cl 40.

- 30 Schedule 16 of WLEP 2000 establishes principles and standards for housing for older people or people with disabilities, and addresses the following points:

- (1) Identification, including street signage at each intersection.
- (2) Security, including, pathway lighting:
- (3) Letterboxes in multi-dwelling developments
- (4) Private car accommodation
- (5) Accessible entry
- (6) Exterior access
- (7) Interior dimensions
- (8) Living room and dining room design
- (9) Kitchen design
- (10) Main bedroom design
- (11) Bathroom design
- (12) Toilet design
- (13) Access to kitchen, main bedroom, bathroom and toilet
- (14) Laundry design
- (15) Storage provision
- (16) Door design
- (17) Surface finishes for balconies and external paved areas.
- (18) Ancillary items, including switches and general purpose
- (19) Garbage storage
- (20) Requirements concerning development applications made by, or by a person jointly with, the Department of Housing or a local government or community housing provider,
- (21) Neighbourhood amenity and streetscape design.

- (1) During the hearing the Parties agreed that the proposed development, as represented in the amended plans, satisfied the above standards, and so satisfied the principles and standards set down within Schedule 16. Having reviewed the amended plans I am also satisfied that the proposed development is compliant with the requirements of Schedule 16.

31 As a consequence of specific features within the Subject Site, the following further provisions of WLEP 2000 are of relevance in this appeal:

- (1) Clause 56, concerning the retention of distinctive environmental features on sites, and which provides:

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.

- (2) Clause 58, concerning the protection of existing flora on a site, and which provides:

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.

Warringah Development Control Plan 2000

32 Development on the Subject Site is also subject to the provisions of Warringah Development Control Plan 2000 (WDCP).

33 The Respondent confirmed at the hearing that the Applicant's development application and amendments thereto had been notified in accordance with the requirements set out in WDCP 2000.

Contentions

34 In addition to agreed position of the Parties with respect to the requirements of WLEP 2000 (see above at [28(1)], [29(1)] and [30(1)]), at the commencement of the hearing the Parties advised that, on the basis of the amended plans and other supporting documentation for which the Applicant had been granted leave, certain matters that had been in contention between them were resolved and were no longer pressed by the Respondent. These were:

- (1) the consistency of the proposed development with respect to the requirements of the SEPP;
- (2) the consistency of the proposed development in relation to the desired future character of the Oxford Falls Valley locality;
- (3) the consistency of the proposed development with requirements of WLEP 2000 with respect to the protection of existing flora;
- (4) the location of asset protection zones for the proposed development;
- (5) the consistency of the character and building design of the proposed development with the scale and design of adjacent development;
- (6) the suitability of the proposed development for the Subject Site;
- (7) the consistency of the support services within the proposed development with requirements of WLEP 2000, particularly in relation to proximity to public bus stops;
- (8) the response of the proposed development to submissions received following exhibition of plans by Council and, as a consequence, whether the development was in the public interest;
- (9) the retention of unique environment of features, in particular the retention of rocky outcrops on the Subject Site;
- (10) the consistency of the proposed development with the requirements of WLEP 2000 cl 40 with respect to the provision of a private bus for the use of future residents;
- (11) the demonstration by the Applicant that it has provided safe operational access, and emergency evacuation routes, consistent with the requirements of the NSW Rural Fire Service (RFS).

35 Notwithstanding this, during the hearing testimony was received from the following expert witnesses in order that the Court could be satisfied as to the resolution of contentions, and to address specific matters raised by local objectors at the commencement of the hearing:

- (1) town planning experts, Mr David Ryan (for the Applicant) and Ms Lashta Haidari (for the Respondent);
- (2) urban design experts, Ms Gabrielle Morrish (for the Applicant) and Mr Dominic Chung (for the Respondent);
- (3) landscape architecture experts, Mr John Cheetham (for the Applicant) and Mr Anthony Powe (for the Respondent)
- (4) ecology expert, Mr Michael Sheather-Reid (for the Applicant)
- (5) stormwater management expert, Mr Terry Hams (for the Applicant)
- (6) bushfire expert, Mr Graham Swain (for the Applicant).

Does the evidence of the town planning experts confirm resolution of the contentions?

36 The town planning experts, Mr Ryan and Ms Haidari, had prepared a joint report that was tabled as evidence during the hearing. In that report, the town planning experts had agreed that the amended plans for the proposed development had:

- (1) reduced the heights of individual buildings from three storeys to two storeys;
- (2) altered the building design such that the buildings would have the appearance of detached style housing, whilst, as far as practicable, meeting the operational requirements of a residential aged care facility;

- (3) incorporated and protected existing trees and natural landforms on the Subject Site.

37 The town planning experts also noted that, on the basis of additional material and information provided by the Applicant, it had been demonstrated to their satisfaction that the proposed community bus for use by future residents was satisfactory.

38 Finally, the town planning experts agreed that the proposed development, as represented in the amended plans, now satisfied the following matters that required consideration under cl12 of WLEP 2000:

- (1) consistency with the relevant general principles of development control in Part 4 of WLEP 2000;
- (2) consistency with the SEPP;
- (3) compliance with the relevant requirements of Part 2 and Part 3 of the development standards set out in the locality statement for locality B2 Oxford Falls Valley;
- (4) consistency with the desired future character of the locality;

39 The experts concluded in their joint report that, on the basis of the above points, contentions 1, 2, 5, 6, 7, 8 and 10 as summarised at [34] had been resolved to their mutual satisfaction.

40 In their evidence during the hearing Mr Ryan and Ms Haidari confirmed that none of the evidence provided by the objectors (see above at [8]), had provided cause for them to change the conclusions within their joint report.

41 They also noted that a number of matters raised by the objectors had been addressed through the inclusion of proposed conditions of development consent drafted by the Respondent in consultation with the Applicant, including limiting the number of residential rooms within the proposed

development to 71 rooms. These conditions were tendered as evidence at the hearing.

- 42 Ms Haidari said that she had prepared the draft conditions of consent on behalf of the Respondent and had been explicitly mindful of residents' submissions in that drafting process.

Does the evidence of the urban design experts confirm resolution of the contentions?

- 43 The urban design experts, Ms Morrish and Mr Chung, had prepared a joint report that was tabled as evidence during the hearing, along with an single expert report prepared by Mr Morrish.

- 44 In the joint report, the urban design experts had agreed that the amended plans had:

- (1) incorporated and retained significant natural features of the Subject Site including existing trees and rocky outcrops;
- (2) ensured that rooms within the proposed development had been positioned so as to provide a reasonable separation using landscaped courtyards while minimising potential impacts to site topography and rocky outcrops;
- (3) balanced the landscape character of the site with breaks between the 'room pods' to reduce the bulk and massing of the proposed development and to allow rooms to sit appropriately within the landscape setting of the Subject Site;
- (4) provided outlooks for residents over the top of adjacent rows of rooms, providing high-quality outlooks and amenity to residents whilst reducing the apparent massing of the proposed development;

- (5) provided a reasonable, appropriate and compatible response to the existing character of other dwellings in the same zone near the subject site;
- (6) responded to the scale and form of detached housing in the precinct, and broader area, through use of a 2 storey built form and separation of those built forms by courtyards;
- (7) achieved visual consistency with the non-urban character of the locality;
- (8) minimised the visual bulk impacts of the development and responded to the existing site benching and landscape features;
- (9) achieved a low impact and low intensity development for the site;
- (10) achieved a character and bulk that was consistent and compatible with the neighbourhood, adjacent dwellings and the desired future character for Oxford Falls area, as envisaged under Council's controls.

45 These conclusions confirmed for me that contentions 2 and 5, as summarised at [34] had been resolved to the satisfaction of the urban design experts.

46 During the hearing, Ms Morrish and Mr Chung confirmed that none of the submissions of the local objectors (see above at [8]), had provided cause for them to change the conclusions of their joint report.

47 Ms Morrish added that, in her assessment:

- (1) the site coverage of the proposed development had not increased as a result of the amended plans;
- (2) while the location of the proposed development on the Subject Site had been shifted to the north, it had, in her assessment, improved

landscape outcomes and facilitated improved retention of rocky outcrop landform features on the Subject Site (contention 9 at [34]).

48 In closing, the Respondent submitted that the detached building style design of the proposed development was consistent with the implementation of a planning principle for the design of seniors housing proposed by former Senior Commissioner Roseth in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council* [2003] NSWLEC 268.

49 In that case, and in relation to the compatibility of a seniors housing development (under the then State Environmental Planning Policy No 5—Housing for Older People or People with a Disability (SEPP 5)) the Senior Commissioner had said that:

...where the size of a SEPP 5 development is much larger than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping.

Does the evidence of the landscape, ecology and stormwater experts confirm resolution of the contentions?

50 Landscape architecture experts Mr John Cheetham (for the Applicant) and Mr Anthony Powe (for the Respondent) had prepared a joint report that was tabled as evidence during the hearing, along with a single expert report prepared by Mr Cheetham.

51 Expert evidence was also received during the hearing from expert ecologist, Mr Michael Sheather-Reid, and stormwater management expert, Mr Terry Hams. Both experts had prepared single expert reports and these reports were tendered as evidence during the hearing.

52 In their joint report, the landscape experts agreed that the Applicant's amended plans had:

- (1) satisfactorily resolved in the landscape related contentions between the parties, through:
 - (a) providing further landscape treatments and upgrades immediately around the proposed building pods;
 - (b) minimising potential impacts through shifting the internal driveway alignment to the north side of the site;
 - (c) providing additional landscape plantings of trees and screen shrubs between proposed residential building pods;
 - (d) using the existing sandstone outcrops wherever possible as natural features of the native landscape;
 - (e) retaining 25 native trees within the sandstone rock outcrops;
 - (f) providing additional native canopy tree plantings within the sandstone outcrops and between residential buildings;
 - (g) relocating the proposed culinary and herb gardens which have also been enlarged to provide a full sized working kitchen garden;
 - (h) retaining the memorial and formal gardens;
 - (i) enhancing the landscape treatment on the site through the provision of additional trees and tall shrubs between residential buildings,
 - (j) improving the retention of sandstone ridge lines and rock outcrops, and retaining native trees adjacent to and within the sandstone outcrop areas.

53 The landscape experts also noted that the amended plans had addressed contentions in relation to:

- (1) desired future character, through the Applicant's proposed amendments that:
 - (a) revised the layout of residential buildings and provided the appearance of a low intensity and low impact residential development which was terraced and graded to reflect the landform of the site;
 - (b) re-located proposed building footprints so as to minimise potential impacts on the two natural sandstone ridgelines/ outcrops that traverse the Subject Site in an east-west direction;
 - (c) moved the lower of the residential buildings in a northwards direction so as to site them away from the Subject Site's lower sandstone outcrops;
 - (d) retained several native trees within, and adjacent to, the sandstone outcrops.
- (2) the protection of existing flora, through:
 - (a) proposing opportunities to remove identified weed species and some moribund trees on the Subject Site and replace these with endemic and exotic trees and shrubs species that are compatible with the Oxford Falls Valley locality character and existing vegetation communities;
 - (b) the vegetation management plan that included a replanting program of the lower, northern pasture meadows within the Subject Site and which will add trees and shrubs and groundcover species to enhance the ecological and habitat value of the site.

- 54 These conclusions confirmed for me that contentions 2, 3 and 9, as summarised at [34], had been resolved to the satisfaction of the landscape experts.
- 55 During the hearing Mr Powe said that the evidence of the local residents did not give him cause to require amendments to his evidence in the joint report.
- 56 Mr Powe added that:
- (1) the shift of the proposed development to the north had provided a net benefit to the landscape outcomes in the proposed development in terms of the retention of a greater number of existing trees (contention 3 at [34]), the retention of rock platform areas (contention 9 at [34]), and the opportunity to increase landscaping between buildings (contention 5 at [34];
 - (2) the Applicant now proposed retaining the screen of cypress trees on the western side of the Subject Site, along with replacement of any of those trees should they fail over time (contention 3 at [34]).
- 57 Mr Cheetham said that he had also noted the comments made by Mr Dillon in relation to the retention of cypress trees screen plantings along the western edge of the Subject Site, and that he would support of the proposed condition of development consent concerning the management of those trees to maintain the screening benefit they provided.
- 58 The Applicant agreed to include a condition of development consent to support the retention of the boundary screen plantings.
- 59 Mr Sheather-Reid, said during his testimony that in his opinion the proposed landscape plan would provide significant additional native and other trees and shrubs within the Subject Site, and that the overall density vegetation on the Subject Site would increase.

- 60 He further said that, in his opinion, the plantings proposed under the Applicant's landscape plan would increase the potential use of vegetation corridors across the Subject Site by eastern pygmy possums. He said that in his opinion there was currently no functional vegetation link across the Subject Site that might be utilised by this small mammal.
- 61 In response to the submission from Ms Marlow (see[8(1)]), Mr Sheather-Reid said that it was unlikely that placing a restriction on companion animals would have a significant impact, one way or the other, on the abundance of native fauna in the area or on the functionality of vegetation corridors across the Subject Site.
- 62 He said that, in his opinion, a more effective mechanism to increase the efficacy of vegetation corridors would be by way of introducing fencing to deter access by feral animals into those vegetated spaces.
- 63 In response to Mr Sheather-Reid's proposition, the Applicant agreed that a condition of development consent would be added to the draft conditions prepared by the Respondent that would require the installation of protective wildlife fencing along the southern boundary of the wildlife corridors located across the northern portion of the Subject Site.
- 64 Mr Hams said during his evidence that the proposed development would not give rise to any negative impacts on water quality within Narrabeen Lagoon.
- 65 He said the proposed landscaping and treatment of stormwater flows on the Subject Site would represent an improvement on the current situation, which he assessed, provided no effective treatment nor containment of stormwater flows.
- 66 He noted that future stormwater flows would be directed to on-site detention basins that would provide treatment of those waters prior to their discharge and would result in improved water quality of stormwater flows exiting the Subject Site.

67 These conclusions confirmed for me that relevant elements of contention 2, as summarised at [34], in relation water quality in Narrabeen Lagoon had been resolved to the satisfaction of the stormwater expert.

Does the evidence of the bushfire expert confirm resolution of the contentions?

68 During the hearing evidence was received Mr Graham Swain in relation to the management of bushfire risk associated with the proposed development.

69 An expert report from Mr Swain was tendered as evidence during the hearing, in which he responded to issues raised in relation to contention 4 (see above at [34]).

70 In his expert report Mr Swain said that he was satisfied that the matters raised in Council's contention in relation to the location of asset protection zones would be addressed by the application of conditions included within the draft conditions of development consent, including conditions for:

- (1) the establishment of an asset protection zone within the Barnes Road reserve through placement a positive covenant on the title of Lot 1113 in DP 752038; and
- (2) the preparation of an emergency management plan (EMP) to restrict emergency egress from the development to the primary access off the western portion of Barnes Road.

71 These conclusions confirmed for me that contentions 4 and 11, as summarised at [34], in relation asset protection zones and other requirements of the RFS associated with the proposed development, had been resolved to the satisfaction of the bushfire expert.

72 During his evidence at the hearing, Mr Swain said that he had discussed his expert report recommendations with the Respondent's bushfire expert Mr Watson, and who had concurred with those recommendations

- 73 Mr Swain noted that the EMP should include definition of an evacuation route and protocol for resident evacuation in the event of fire.

Conclusion

- 74 Based on the submissions of the Parties and the evidence of the expert witnesses, I am satisfied that: the contentions between the Parties have been resolved through the amended plans and further conditions of development consent agreed to by the Applicant in this hearing.

- 75 I am satisfied that the Applicant's proposed development is consistent with the aims and requirements of the SEPP to the extent that they are applicable to the proposed development.

- 76 Further, I am satisfied that I have considered the matters within WLEP 2000 that require consideration by the consent authority before a grant of consent can be made to the proposed development, and specifically in relation to the requirements of:

- (1) Clause 12, concerning matters that must be considered or complied with before consent is granted, and in which:

- (a) I am satisfied that the development is consistent with:

- (i) the relevant general principles of development control in Part 4 of WLEP 2000, including its requirements concerning the retention of distinctive environmental features on sites (cl 56), and the protection of existing flora (cl 58);

- (ii) the SEPP, including its requirements with respect to good design (cl 2) and fire sprinkler systems (cl 55);

- (b) I am satisfied that the development will comply with the relevant requirements within Part 2 of WLEP 2000, including:

- (i) Clause 18, concerning the control of built forms in a development (see below at [(2)]);
 - (ii) Clause 29, concerning grounds upon which applications for housing for older people or people with disabilities cannot be refused (see below at [(3)]).
- (c) I am satisfied that the development will comply with development standards set out in the Locality Statement for the B2 Oxford Falls Valley, in which locality the proposed development will be undertaken, to the extent that these apply to the development, noting that the requirements of cl 29 (see below at [(3)]) also apply and if satisfied cannot be used as a basis for refusal of the proposed development.
- (d) I am satisfied that the development is consistent with the desired future character of the Oxford Falls Valley as described in Locality Statement B2, including that the proposed development:
 - (i) is of a style consistent with a detached style housing, conforms with the housing density standards set out in WLEP 2000, and will be a low intensity and low impact use of the Subject Site;
 - (ii) does not create development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway;
 - (iii) protects and enhances the natural landscape including landforms and vegetation of the Subject Site;
 - (iv) provides buildings that are located and grouped so as to minimise disturbance of vegetation and landforms and

minimise the potential impact of associated works, including access roads and services;

- (v) provides buildings that are designed to blend with the natural landscape;
 - (vi) does not impact on any bushland buffer along Forest Way and Wakehurst Parkway;
 - (vii) does not include fencing that would detract from the landscaped vista of the streetscape;
 - (viii) will not create siltation or pollution of Narrabeen Lagoon and its catchment
 - (ix) will ensure that ecological values of natural watercourses are maintained.
- (2) Clause 18, concerning the control of built forms in a development, and I am satisfied that the development is consistent with:
- (a) the general principles of development control in WLEP 2000;
 - (b) the desired future character of the locality and
 - (c) the development standards set out in the Locality Statement.
- (3) Clause 29, concerning grounds upon which applications for housing of older people or people with disabilities cannot be refused, and I am satisfied that the development is consistent with the requirements of the clause with respect to building height, density and scale, parking, visitor parking and landscaped areas.
- (4) Clause 40, concerning requirements for support services and wheelchair access;

- (5) Schedule 16, concerning the principles and standards for housing for older people or people with disabilities set out therein;
 - (6) Clause 56, concerning the retention of distinctive environmental features on sites, and in particular, that the development is to be designed to incorporate and be sympathetic to the rock outcrops, remnant bushland and watercourses on the Subject Site.
 - (7) Clause 58, concerning the protection of existing flora on a site, and which provides such that the proposed development is sited and designed to minimise the impact on remnant indigenous flora.
- 77 I am satisfied that the requirements of s79C (now section 4.15) of the EP&A Act have also been met and, as a consequence, I have concluded that the proposed development on the Subject Site is in the public interest.
- 78 Consequently, I have concluded that the Applicant's proposed development for the demolition of structures and construction of a residential care facility at 1113 Oxford Falls Rd in Frenchs Forest should be approved, subject to the conditions of development consent agreed between the Parties, and tendered as evidence at the hearings.

Orders

79 The Court orders that:

- (1) The appeal is upheld.
- (2) Development consent is granted to development application DA2017/0206, for demolition works and construction of a residential care facility, subject to the conditions of consent attached as Annexure 'A'.
- (3) The exhibits are returned with the exception of Exhibits A, B and 2.



Michael Chilcott

Commissioner

Annexure A

Dukor 24 Pty Limited v Northern Beaches Council

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
DA0.00 – Rev I	03.15.2018	Marchesepartners
DA0.01 – Rev G	03.05.2018	Marchesepartners
DA 1.05 – Rev.C Demolition Plan	02.15.2017	Marchesepartners
DA 2.00 – Rev.I	03.15.2018	Marchesepartners
DA 2.01 – Rev.I	03.15.2018	Marchesepartners
DA 2.02 – Rev.I	03.15.2018	Marchesepartners
DA 2.03 – Rev.I	03.15.2018	Marchesepartners
DA 2.04 – RevI	03.15.2018	Marchesepartners
DA 2.05 – Rev.I	03.15.2018	Marchesepartners
DA 2.06 – Rev.I	03.15.2018	Marchesepartners
DA 2.07 – Rev.I	03.15.2018	Marchesepartners
DA 3.01 – Rev.I Elevation North West	03.15.2018	Marchesepartners
DA 3.02 – Rev.I Elevation South East	03.15.2018	Marchesepartners
DA 3.03 – Rev.I Elevation North East	03.15.2018	Marchesepartners
DA 4.01 – Rev.G Section A	03.05.2018	Marchesepartners
DA 4.02 – Rev.G Section B	03.05.2018	Marchesepartners
DA 4.03 – Rev.G Section C	03.05.2018	Marchesepartners
DA 7.05 – Rev.I Material Board	03.15.2018	Marchesepartners

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Comments and Assessment on Contamination and Geotechnical Issues JC03029A-L1	18.01.2004	GeoEnviro Consultancy Pty Ltd
Stability Assessment JG03029A-L6	23.09.2004	GeoEnviro Consultancy Pty Ltd

Geotechnical Appraisal Report JC03029B – r2	05.08.2016	GeoEnviro Consultancy Pty Ltd
Accessibility Report	14.03.2018	Mark Relf
Bushland Regeneration and Biodiversity Management Plan A16087Bio	07.07.2016	Travers bushfire & ecology
Flora and Fauna Assessment File No. A14054F Ref. A16087	05.09.2014	Travers bushfire & ecology
Stormwater Concept Plan 12253(C)	05.09.2014	JMD Development Consultants
Building Code of Australia Statement CS14016-ST01b	13.03.2018	Advance building approvals
Waste Management Plan	25.10.2016	Dukor 24 P/L
Traffic Report Ref. 10212	June 2016	Colston Budd Rogers & Kafes Pty Ltd
Water Impact Study A16087WIS	06.07.2016	Travers bushfire & ecology
Acoustic Assessment TJ318-01F02	25.08.2016	Renzo Tonin & Associates

- b) Any plans and /or documentation submitted to satisfy the Conditions of this consent.
- c) No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.
- d) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
LE – 01 – rev P22	16.03.2018	JCA Urban Designers Landscape Architects
LE – 02 – rev P22	16.03.2018	JCA Urban Designers Landscape Architects
LE – 03 – rev P22	16.03.2018	JCA Urban Designers Landscape Architects
LE – 04 – rev E	06.03.2018	JCA Urban Designers Landscape 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. (DACPLB01)

2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with the following:

Other Department, Authority or Service	eServices Reference	Dated
NSW Rural Fire Services	Referral – RFS – Oxford Falls Road Frenchs Forest	18 April 2018
Department of Primary Industries - Water	Referral – DPI Water – Oxford Falls Road Frenchs Forest	28 April 2017

(NOTE: For a copy of the above referenced document/s, please see Council's 'E-Services' system at www.warringah.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other Department, Authority or Body's.
(DACPLB02)

3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:

- A. the name and licence number of the principal contractor, and

B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

A. the name of the owner-builder, and

B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

(i) protect and support the adjoining premises from possible damage from the excavation, and

(ii) where necessary, underpin the adjoining premises to prevent any such damage.

(iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

(iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative Requirement (DACPLB09)

4. General Requirements

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

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

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

(f) Where works are to be carried out to a Class 1a building, smoke alarms are to be installed throughout all new and existing portions of that Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.

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

(h) No building, demolition, excavation or material of any nature 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) All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

(k) 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.

(l) 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.

(m) Any Regulated System (e.g. air-handling system, hot water system, a humidifying system, warm-water system, water-cooling system, cooling towers) as defined under the provisions of the Public Health Act 2010 installed onsite is required to be registered with Council prior to operating.

Note: Systems can be registered at www.warringah.nsw.gov.au

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

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

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 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.

(n) New solid fuel burning heaters or existing solid fuel heaters affected by building works must comply with the following:

- (1) AS 2918:2001 Domestic Solid Fuel Burning Appliances – Installation.
- (2) AS 4013:2014 Domestic Solid Fuel Burning Appliances – Method of Determination of Flue Gas Emissions.

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

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

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

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

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

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

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

AND

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

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

Reason: Statutory requirements. (DACPLB11)

6. A Waterway Impact Statement to be Submitted That is Specific to the Creek Bank Stabilisation Works

- Waterway Impact Statement for Creek Bank Stabilisation Works to be submitted prior to the Operational Certificate.

A Waterway Impact Statement that is specific to creek bank stabilisation works as per Guidelines for Preparing a Waterway Impact Statement that includes:

- o Waterway Analysis
- o Assessment of Impacts
- o Assessment of Compliance with the Warringah Development Control Plan
- o Provision of Mitigation Measures

See the following link for the Guidelines for Preparing a Waterway Impact Statement
<http://www.warringah.nsw.gov.au/sites/default/files/documents/general-information/waterways/2014-022181-guidelines-preparing-waterways-impact-statement-updated-final.pdf>

Reason: Environmental Protection, Monitoring and Enhancement (DACNEBOC1)

7. Further Information Required for Creek Bank Stabilisation Works

Further Information Required for Creek Bank Stabilisation Works prior to the Operational Certificate.

All in-stream works/activities must be designed and certified by suitably qualified persons.

The following additional information is required:

- Detailed design drawings of proposed works (engineering certification may also be required).
- Detailed design drawings which include a surveyed plan, cross sections (across the watercourse) and a long section of the watercourse, showing the proposed works relative to existing and proposed bed and bank profiles and water levels. The cross section should extend to the landward limit of the identified riparian corridor. All plans must include a scale bar.
- Detailed report of pre and post construction hydraulic conditions. The report should address bank full discharge, velocity, tractive force or sheer stress, afflux (Modified RTA method is acceptable), Froude and Manning's 'n' roughness values, relative to the proposed structure.

- Detailed plans of permanent bed and bank stabilisation works for scour protection.
- Photographs of the site. To assist with future monitoring and reporting, all photo points should be identified by GPS coordinates or by survey

Reason: Environmental Protection, Monitoring and Enhancement (DACNEBOC2)

FEES / CHARGES / CONTRIBUTIONS

8. Policy Controls

Warringah Section 94A Development Contribution Plan

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

The following monetary contributions are applicable:

<i>Warringah Section 94A Development Contributions Plan</i>		
Contribution based on total development cost of		\$27,492,888
Contribution - all parts Warringah	Levy Rate	Contribution Payable
Total S94A Levy	0.95%	\$261,182
S94A Planning and Administration	0.05%	\$13,746
Total	1.0%	\$274,929

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

Reason: To provide for contributions in accordance with the Warringah Section 94A Development Contributions Plan 2012.

9. Bonds

(a) Security Bond

A bond (determined from cost of works) of \$10,000.00 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

(b) Construction, Excavation and Associated Works Bond (Pollution)

A Bond of \$5000.00 as security to ensure that there is no transmission of material, soil etc. off the site and onto the public road and/or drainage systems.

(c) Construction, Excavation and Associated Works Bond (Drainage)

A Bond of \$5000.00 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

(d) Construction, Excavation and Associated Works Bond (Failure to Remove Waste) a bond of \$5000.00 as security against damage to Council's road(s) fronting the site caused by the transport and disposal of materials and equipment to and from the site.

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

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

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

Reason: To ensure adequate protection of Councils infrastructure. (DACENZ01)

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

10. Stormwater Disposal

Engineering Plans certified by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, and paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the water course generally in accordance with plans prepared by JMD Development Consultants reference 12253(B)E1 dated 11-07-2014

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

Reason: To ensure appropriate provision for disposal and stormwater management arising from the development. (DACENC06)

11. Fire Sprinkler System

Fire Sprinkler system must be installed for the development in accordance with the requirement of Clause 55 of SEPP (Housing for seniors or People with a Disability) 2004.

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

Reason: compliance with SEPP (HSPD) 2004

12. Submission of Engineering Plans

Engineering plans are to be submitted to Council for approval under the provisions of Sections 68 Local Government Act 1993. The submission is to include four (4) copies of Civil Engineering plans for the design and construction of pit and 3.0 metres wide lintel at the vehicular entrance which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1 and or Council's Minor Works Policy.

The Fee Associated with the assessment and approval of the plans is to be in accordance with Council's Fees and Charges.

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

Reason: To ensure compliance with Council's specification for engineering works. (DACENC08)

13. Sydney Water (Fire Hydrant System)

Subdivisions involving the creation of private roads are to be serviced with fire hydrant systems to ensure that coverage of no less than 90 metres is maintained to all areas of the development.

(Note: The fire hydrants are to be installed in accordance with all relevant Australian Standards and the requirements of the Sydney Water Authority and the NSW Fire Brigades.)

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

Reason: NSW Fire Brigades Requirement. (DACENC11)

14. Vehicle Crossings Application Formwork Inspection

An application for street levels shall be made with Council subject to the payment of fee applicable at the time of payment. The fee includes all Council inspections relating to the driveway construction and must be paid.

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

Reason: To facilitate suitable vehicular access to private property. (DACENC12)

15. Positive Covenant - Asset Protection Zone

The establishment of an Asset Protection Zone (APZ) within the Barnes Road reserve, subject to s.138 of the Roads Act, 1993 consent as necessary, is to be subject to a Positive Covenant placed on the title of Lot 1113 in DP 752038 Barnes Road that outlines the property owner's responsibilities under the "Planning for Bushfire Protection 2006".

The applicant is required to meet Council's requirements in establishing an appropriate Positive Covenant, including but not limited to:

- i) A detailed survey plan is to be provided to Council indicating the extent of the position of the APZ by reference to the road reserve and a plan in registrable form showing the APZ.
 - ii) The applicant/owner is to pay any associated fees and charges for the establishment of Positive Covenant including all legal fees and costs of registration.
 - iii) The Positive Covenant is to outline the responsibilities of the property owner benefiting from the APZ including initial start-up works and ongoing maintenance in accordance with the requirements of Council and any other relevant authority.
 - iv) Provide that the owner take out and maintain all necessary insurances and indemnify Council against any claims or damages arising from the works upon the road reserve in establishing the APZ and failure to maintain the APZ area.
 - v) Provide that written notice by the Council can require the registered proprietor to promptly attend to any matters and to carry out works within such time as the Council may require to ensure that the APZ is maintained to the requirements of Council or any other relevant authority.
 - vi) Provide for the applicant/owner to obtain consent under s.138 of the Roads Act, 1993 as necessary.
 - vii) Ensure current and future owners are bound by the covenant.
 - viii) If the development, the subject of this consent, does not proceed then the covenant is to be extinguished. In any event, the party with the right to vary, modify or extinguish the covenant is Warringah Council.
- Details are to be submitted to Council for approval and registered on the title prior to the issue of the Construction Certificate.

Reason: Fire Safety and appropriate property management. (DACHPCPCC1)

16. Approval of an on-site sewage management system

Where there is a requirement from Sydney Water for a waste water pre-treatment device to be provided prior to connection to the Sydney Water Sewerage System, prior to the release of the Construction Certificate, the applicant must receive an 'Approval to Install an On Site Sewage Management System' from Council.

Reason: To fulfil the requirements under Section 68 of the Local Government Act 1993. (DACHPCPCC3)

17. Confirmation of Waste Water disposal to Sydney Water Sewage System

A Section 73 Approval under the Sydney Water Act 1994 must be obtained from Sydney Water and provided to Council prior to the issue of a construction certificate.

Reason: To ensure that the development is permitted to dispose of waste water to the Sydney Water Sewage System (DACHPCPC4)

18. Contaminated Land Requirements

Prior to the issue of any Construction Certificate a Contamination Management Plan is to be prepared by an appropriately qualified Environmental Consultant and provided to the satisfaction of the Certifying Authority. The plan shall detail:

- a) How all the requirements and / or recommendations contained within the Contamination Reports entitled Preliminary comments and assessment on contamination and geotechnical issues prepared by Geo Enviro Consultancy Pty Ltd dated January 2004 are to be implemented;
- b) A Remedial Action Plan (RAP) prepared by a suitably qualified Environmental Consultant in accordance with State Environmental Planning Policy No. 55 - Remediation of Land, and with any contaminated land planning guidelines under the Contaminated Land Management Act 1997;
- c) Stipulate reporting and processes associated with discovery of any new contamination that is revealed during excavation, demolition or development works. This process shall include the ability to contact NSW Fire and Rescue for pollution incidents, have on call (24 hours a day), a suitably qualified Environmental Consultant to undertake immediate investigations and provide recommendations for containment and rectification of contaminants or toxins and a process for notification to Warringah Council and the Principal Certifying Authority.
- d) A requirement to complete ongoing water and soils testing during excavation, demolition and development works as follows:
- e) During construction in order to monitor water and soil quality the following is to be implemented.
 - I. Water testing is to be completed in accordance with Section 3 of the NSW RTA's Guideline for Construction Water Quality Monitoring
 - II. Soil Testing in order to detect contaminants is occur weekly with two (2) samples in accordance with the NSW EPA Contaminated Site Sampling Design Guidelines.
- f) The requirements of (i) and (ii) above are to be implemented from the commencement of works as follows:

- I. Fortnightly during excavation works
- II. Monthly during building works

- g) To ensure water quality is maintained runoff must be drained to an adequately bunded central collection sump and treated, to meet NSW Department of Environment and Climate Change (formerly Environment Protection Authority) discharge criteria.

Note: Other options for the disposal of excavation pump-out water include disposal to sewer with prior approval from Sydney Water, or off-site disposal by a liquid waste transported for treatment/disposal to an appropriate waste treatment/processing facility.

- h) All stockpiles of potentially contaminated soil must be stored in a secure area on the site (no greater than 48 hours) so as not to cause pollution or public health risk until disposed of at a waste facility.

All contaminated soil removed from the site must be disposed of at a waste facility that can lawfully receive that waste and must be done in accordance with all relevant Acts, Regulations and Guidelines. Copies of all test results and disposal dockets must be retained for at least 3 years and be made available to authorised Council officers on request.

Note: The following Acts and Guidelines applied at the time of determination:

- i) Protection of the Environment Operations Act 1997; and
- ii) Environment Protection Authority's Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes (1999).

- i) Hazardous or intractable wastes arising from the demolition process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the Environment Protection Authority and the provisions of all relevant Acts, Regulations and Guidelines.

Note: The following standards applied at the time of determination:

- i) Environment Protection Authority's Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes (1999).

- h) Stipulate protocols for the importation of any landfill material onto the site the protocols shall include:

- o 'Chain of Custody' documentation shall be kept and submitted for the transport of the validated fill material from a site, to the subject premises.

- Requirement that any landfill material being brought to the site shall be free of contaminants or toxins and shall suitable for the use on the land.
- Any landfill material being brought to the site shall have a validation report prepared to the satisfaction of the Principal Certifying Authority (prepared in accordance with the Department of Environment & Climate Change's guidelines).

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

Reason: Protection of the environment, SEPP 55 compliance. (DACHPCPCC6)

19. Trees and / or Landscaping

In order to protect and enhance onsite vegetation and trees the following applies to the development site:

(a) Existing trees which must be retained

All trees not indicated for removal on Landscape Plans - Endorsed with Council's stamp		
Drawing Numbers	Dated	Prepared By
LE-01 – Rev P22	16/03/2018	JCA Urban Designers Landscape Architects

(b) Tree protection

- i) No tree roots greater than 50mm diameter belonging to trees to be retained are to be cut unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge or tunnel bore under tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures. .
- iv) All tree protection measures, including fencing, are to be in place prior to commencement of works
- v) Tree pruning within the subject site is approved to enable construction in accordance with the approved plans.
- vi) Tree pruning is not to exceed 15% of any existing tree canopy
- vii) All tree pruning to be in accordance with AS4373-2007 Pruning of amenity trees.

viii) All trees not indicated for removal on the approved landscape plans shall not be removed pursuant to the 10/50 Vegetation Clearing Code of Practice for NSW issued by the NSW Rural Fire Service.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAC01)

20. Soil and Water Management Plan

A Soil and Water Management Plan (SWMP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The SWMP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The SWMP must include the following as a minimum:-

- Site boundaries and contours;
- Vehicle access points, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Location of all drains, pits, downpipes and waterways on and nearby the site;
- Planned stages of excavation, site disturbance and building;
- Stormwater management and discharge points;
- Integration with onsite detention/infiltration;
- Sediment control basin locations and volume (if proposed);
- Proposed erosion and sediment controls and their locations;
- Location of wash-down and stockpile areas including covering materials and methods;
- Vegetation management including removal and revegetation;
- A schedule and programme of the sequence of the sediment and erosion control works or devices to be installed and maintained.
- Inspection and maintenance program;
- North point and scale.

All Site drainage and sediment and erosion control works and measures as described in the SWMP, and any other pollution controls, as required by these conditions, shall be implemented prior to commencement of any other works at the Site.

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

Reason: To promote the long-term sustainability of ecosystem functions (DACNEC11)

21. Utilities and Services

Utility and service lines are not to be located within riparian zones, unless they:

- a) Do not require access tracks for maintenance or other purposes; and
- b) Do not restrict existing vegetation or rehabilitation.

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

Reason: Environmental Protection, Monitoring and Enhancement (DACNEC16)

22. Erosion and Sediment Control Plan

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:-

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

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

Reason: To mitigate environmental impact resulting from site disturbance (DACNEC22)

23. Compliance with Standards

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

Advice to Applicants: At the time of determination in the opinion of Council, the following (but not limited to) Australian Standards are considered to be appropriate:

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites'**
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking**
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
- (l) AS 1428.1 - 2009* Design for access and mobility - General requirements for

access - New building work**

(m) AS 1428.2 - 1992*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities**

(n) AS 4674 Design, construction and fit out of food premises

(o) AS1668 The use of mechanical ventilation

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website

http://www.humanrights.gov.au/disability_rights/buildings/good.htm

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.

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. (DACPLC02)

24. External Finishes to Roof

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

25. External Colours and Materials (Industrial, Commercial, Mixed & Apartment Buildings)

(a) External Glazing - The reflectivity index of external glazing for windows, walls or roof finishes of the proposed development is to be no greater than 20% (expressed as a per centum of the reflected light falling upon any surface).

(b) External Roofing - The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance from glazing does not occur as a result of the development. (DACPLC04)

26. Geo-Technical Report

A Geo-Technical Report and certificate shall be prepared by an appropriately qualified Geo-technical Engineer certifying that the existing rock formations and substrate on the site are capable of withstanding:

the proposed loads to be imposed;

- a) the extent of the proposed excavation, including any recommendations for shoring works that may be required to ensure the stability of the excavation;
- b) protection of adjoining properties;
- c) the provision of appropriate subsoil drainage during and upon completion of construction works.

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

Reason: To ensure the structural integrity of the subject site and adjoining sites during the excavation process. (DACPLC14)

27. Surrender of Consent

The applicant shall surrender to Council Development Consent's No DA2013/0575 and DA2014/1062 in accordance with the requirements of the Environmental Planning and Assessment Act 1979.

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

Reason: To prevent inconsistencies between consent applying the site (ref s80A (5) EPAA & cl97 EPA Reg). (DACPLC10)

28. Tree Protection Plan

In order to protect and enhance onsite vegetation and trees the following applies to the development site:

(a) A Tree Protection Plan prepared by a AQF Level 5 Arborist (or equivalent) showing the following:

- Layout of the approved development
- Location of trees identified for retention
- Extent of canopy spread
- Location of tree protection fencing / barriers (fencing in accordance with AS2470 – 2009)
- General tree protection measures

(b) The Tree Protection Plan is to be submitted to the Principal Certifying Authority for approval prior to issue of a Construction Certificate.

(c) Tree protection measures identified on the plan are to be in place prior to

commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAC01)

29. Noise and Vibration Management Plan

Prior to the issue of the Construction Certificate, a Noise and Vibration Management Plan is to be prepared by a suitably qualified person addressing the likely noise and vibration from demolition, excavation and construction of the proposed development and provided to Council or the Principal Certifying Authority.

The plan is to identify amelioration measures to ensure the noise and vibration levels will be compliant with the relevant legislation and Australian Standards. The report that itemise equipment to be used for excavation works. The plan shall address, but not limited to, the following matters:

- Identification of activities carried out and associated noise sources
- Identification of potentially affected sensitive receivers, including residences, churches, commercial premises, schools and properties containing noise sensitive equipment
- Determination of appropriate noise and vibration objectives for each identified sensitive receiver
- Noise and vibration monitoring, reporting and response procedures
- Assessment of potential noise and vibration from the proposed demolition, excavation and construction activities, including noise from construction vehicles
- Description of specific mitigation treatments, management methods and procedures to be implemented to control noise and vibration during construction
- Construction timetabling to minimise noise impacts including time and duration restrictions, respite periods and frequency
- Procedures for notifying residents of construction activities likely to affect their amenity through noise and vibration
- Contingency plans to be implemented in the event of non-compliances and/or noise complaints. A register should be kept of complaints received, and the action taken to remediate the issue.

Reason: To protect acoustic amenity of surrounding properties and the public. (DACHPCPC6)

30. Southern Carpark Blind Aisle Extension

Amendments to the design of the southern carpark showing a blind aisle extension by

1m is to be provided. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of a construction certificate.

Reason: To ensure compliance with Australian Standards.(DACTRCPC1)

31. Updated Stormwater Concept Plan and Report

The Stormwater Concept Plan and Report prepared by JMD Development Consultants dated 21 July 2016 (revised) shall be updated to reflect the stormwater quality targets as provided in section 8.1 of the Water Management Policy. The updated plan and report must remove any reference to the Northern Beaches Stormwater Management Plan which has been superseded by the Warringah Water Management Policy.

The updated Stormwater Plan and Report shall be submitted to the Principal Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the Environment

32. Vehicle Access for NSW Rural Fire Service Secondary Access – Unformed Barnes Road (to the north of the site)

The secondary road access from Oxford Falls Road which is situated within the northern section of Barnes Road is to meet the design requirements of Planning for Bush Fire Protection 2006 issued by the NSW Rural Fire Service. In this regard the access, with the exception of the culvert, is to maintain a maximum of 4.0m width to a private driveway standard.

Full details of any upgrade to the access road to satisfy the NSW Rural Fire Service requirements are to be submitted to Council for approval.

All costs related to the above works are to be borne by the applicant/developer.

Details demonstrating compliance with this condition are to be submitted to Northern Beaches Council's satisfaction, prior to the issue of the Construction Certificate.

Reason: To ensure engineering works are constructed in accordance with relevant standards

33. On-site Stormwater Detention Compliance Certification

Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Warringah Council's "On-site Stormwater Detention Technical Specification" and the concept drawing by John M Daly & Associates Pty Ltd, drawing number 12253(B)E1 dated 14/6/2014 and Stormwater report, reference no.12253(B) from John M Daly & Associates, dated 24 February 2017.

A Compliance Certificate pursuant to Section 109C of the Environmental Planning and Assessment Act 1979 must be issued by a C# and C15 Accredited Certifier, stating that the stormwater drainage design complies with all requirements of this condition.

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

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

34. Submission of Engineering Plans for Civil works in the Public Road Reserve

Engineering plans are to be submitted to Council for approval under the provisions of Sections 138 and 139 of Roads Act 1993.

The engineering plans must detail the design and construction of the following:

Southern end of Barnes Road

- Road widening to 7.3 metres wide of Barnes Road between the development site and Leagay Crescent to allow for two way traffic;
- Construction of kerb and gutter along the south side of the above new section of Barnes Road;
- Adjustment/extension of Council's stormwater drainage network to the north east of 1 Leagay Crescent to accommodate the above works and
- 1.5 metre wide concrete footpath and associated kerb ramps between the development site and nearest bust stop in Iris Street.

Northern end of Barnes Road

- The works required by condition 32 to satisfy the requirements of Planning for Bush Fire Protection 2006 pertaining to the construction and the ongoing maintenance of a private emergency accessway driveway along the northern end of Barnes Road linking the internal road of the development site and Oxford Falls Road are to be in accordance with the access requirements as detailed in the NSW Rural Fire Service's letter dated 18 April 2018:

The developer/applicant must lodge with council a Maintenance Bond for the construction of the above works. The maintenance Bond will only be refunded on completion of the Maintenance Period, if work has been completed in accordance with the approved plans and to the satisfaction of Council. The security bond will be equivalent to 10% of the above security bond.

All costs related to the above works (including relocation of any utility services, CCTV, etc) are to be borne by the applicant/developer.

Details demonstrating compliance are to be submitted to Northern Beaches Council's satisfaction in order to activate the Consent.

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

35. Public Liability Insurance - Works on Public Land

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Warringah Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land. (DACEND01)

36. Tree Protection

- i) All tree protection measures as required by the conditions of this consent are to be installed prior to commencement of approved works on the site.
- ii) Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to commencement of construction.

Reason: Protection of retained trees (DACLADPC1)

37. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site (DACNED06)

38. Project Arborist

- (i) A Project Arborist with minimum qualification equivalent to AQF Level 5 is to be appointed prior to commencement of works.
- (ii) The Project Arborist is to oversee all tree protection measures, removals and works adjacent to protected trees as outlined in the Tree Protection Plan.
- (iii) The Project Arborist is to familiarise themselves with and ensure compliance as relevant with, any other environmental requirements conditioned under this consent.

Reason: Environmental Protection (DACLAPC1)

39. Service Vehicle Access – Bus and Ambulance Parking Areas

Minimum dimensions for service areas intended for minibus and ambulance are to comply with AS2890.2:2002 with regards to length, width and vertical clearance. Heavy vehicles are to be able to access service areas with only one reverse manoeuvre. The area designated as manoeuvring areas must be kept clear of obstructions at all times. Vehicles must not be required to queue on public roads at any time.

Reason: To ensure compliance with Australian Standards. (DACTRCPC2)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

40. Vehicle Crossings

The provision of normal vehicle crossing 6.0 metres wide in accordance with Warringah Council Drawing No A4-3330/1 and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property. (DACENE05)

41. Layback Construction

A layback 6.0 metres wide (excluding the wings) is to be constructed in accordance with Warringah Council Drawing No A4-2276 and specifications. The lay back shall be constructed 1.0 metres away from Council's pit located at the low point.

Reason: To ensure suitable vehicular access to private property. (DACENE08)

42. Maintenance of Road Reserve

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

Reason: Public Safety. (DACENE09)

43. Requirement to Notify about New Contamination Evidence

Any new information revealed during demolition works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.

Reason: To protect human health and the environment. (DACHPE01)

44. Trees Condition

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring

that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

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

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

Reason: Protection of Trees. (DACLAEO3)

45. Protection of rock

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

Reason: Preservation of significant environmental features (DACLAEDW1)

46. Works Environmental Protection Plan

A Works Environment Protection Plan (WEPP) is to be prepared and must be kept in the site office. All staff must be inducted by the Project Ecologist with an induction record being maintained and available onsite at all times.

Personnel conducting the site induction will be able to:-

- (a) Be familiar with the names and contact details of relevant people and authorities in the event of any environmental or site management emergency that may arise.
- (b) Be familiar with the presence of environmentally significant areas within and surrounding the site.
- (c) Be familiar with the location of trees with hollows and the importance of tree hollows to a variety of wildlife species and the protection and significance of tree hollows.
- (d) Be familiar and aware of the presence of weed locations, spoil mounds and the potential of weed infections and weed seed propagules accidentally being introduced to the site.

- (e) Identify threatened species of fauna that may venture into the subject site.
- (f) Identify threatened species of fauna that may be cryptic such as the Red-crowned Toadlet, Heath Monitor, etc.
- (g) Be familiar with animal welfare issues and procedures should human-wildlife interactions take place during the construction phase.
- (h) Have an understanding of flora and fauna management issues.

A certificate demonstrating compliance must be prepared by the Project Ecologist and submitted to the Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Bushland (DACNEE03)

47. Installation and Maintenance of Sediment Control

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Warringah Council Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites. (DACPLE02)

48. Property Boundary Levels

The property boundary levels shall match the existing levels except where modified for the vehicular crossing. The applicant shall design and construct having regard for the existing levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

Any retaining structures and batters for the development, including for the internal access road, must be located wholly within the development site. No encroachment to the unformed public roadway will be permitted.

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

Reason: To maintain the existing profile of the nature strip/road reserve. (DACENE01)

49. Civil Works Supervision in Public Road Reserve

All civil (road, drainage, footpath) works approved in the Construction Certificate are to be constructed and completed, and must be supervised by an appropriately qualified and practising Civil Engineer.

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

Reason: To ensure compliance of civil works with Council's specification for engineering works. (DACENE06)

50. Footpath Construction

The applicant shall construct a 1.5 metre wide concrete footpath and associated kerb ramps to the nearest bus stop in Iris Street. The works shall be in accordance with the following:

- (a) All footpath works are to be constructed in accordance with Council's minor works policy
- (b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Council's specification for footpath.

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

Reason: To ensure compliance of footpath works with Council's specification for engineering works.(DACENE07)

51. Notification of Inspections

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

- (a) Installation of Silt and Sediment control devices
- (b) Prior to backfilling of pipelines
- (c) Prior to pouring of stormwater gully pits
- (d) Prior to pouring of kerb and gutter
- (e) Subgrade level / basecourse level
- (f) Sealing road pavement

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification. Council approval or acceptance of any stage of the work must be obtained in writing, and will only be issued after completion of the work to the satisfaction of Council and receipt of the required certification.

Reason: To ensure new Council infrastructure is constructed to Council's requirements. (DACENE10)

52. Traffic Control During Road Works

Lighting, fencing, traffic control and advanced warning signs shall be provided for the

protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control at Work Site Manual. Traffic movement in both directions on public roads, and vehicular access to adjoining private properties is to be maintained at all times during the works.

Reason: Public Safety. (DACENE11)

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

53. 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.

Note: The following Standards and Codes applied at the time of determination:

- (a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
- (c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

54. Waste Water System

Where a waste water treatment device is required prior to disposal of sewage to Sydney Water Sewage System, a s68 (Local Government Act 1993) approval to operate the Waste Water System must be obtained from Council, and the waste water system must be activated and effectively operating to the satisfaction of the Principal Certifying Authority, prior to the issuing of any interim / final occupation certificate.

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

Reason: To fulfill the requirements under Section 68 of the Local Government Act 1993. (DACHPFPOC6)

55. Post-Construction Dilapidation Survey

A post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at <http://www.warringah.nsw.gov.au/sites/default/files/documents/general->

information/engineering-
specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwater
assets2.pdf

The post construction dilapidation report must be submitted to the Council for review and the Certifying Authority prior to the issue of the Occupation Certificate. Any damaged to Council's stormwater infrastructure is to be rectified in accordance with Council's technical specifications prior to the release of the security bond.

Reason: Protection of Council's Infrastructure (DACNEF11)

56. 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. (DACPLF01)

57. Sydney Water

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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 compliance with the statutory requirements of Sydney Water. (DACPLF08)

58. 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 Fire and Rescue NSW.

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 Fire and Rescue NSW, 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. (DACPLF07)

59. Certification for the Installation of Stormwater Quality System

A certificate from a Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER-3), stating that the stormwater quality management system has been installed in accordance with the updated Stormwater Concept Plan and Report prepared by JMD Development Consultants and as required by the conditions of consent.

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

Reason: Protection of the receiving environment

60. Certification for the Installation of Stormwater Quality System

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

The Plan must contain the following:

- a) Inspection and maintenance schedule of all stormwater quality treatment devices
- b) Record keeping and reporting requirements
- c) Funding arrangements for the maintenance of all stormwater quality treatment devices
- d) Waste management and disposal
- e) Traffic control measures (if required)
- f) Relevant contact information
- g) Renewal and replacement requirements of all stormwater quality treatment devices
- h) Work Health and Safety requirements

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

61. Positive Covenant for Stormwater Quality Devices

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater quality devices. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Council), at the applicant's expense and endorsed by Council's delegate prior to lodgement with the Department of Lands.

The Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

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

Reason: To ensure ongoing maintenance of the stormwater quality treatment system

62. Works as Executed Drawings

Works as Executed Drawings for all stormwater quality devices 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

63. Installation of Water Efficient Fittings

For uses not subject to BASIX the following Water Efficiency Labelling and Standards (WELS) Scheme rated fittings must be installed:

- i. 4 star dual-flush toilets
- ii. 3 star showerheads
- iii. 4 star taps (for all taps other than bath outlets and garden taps)
- iv. 3 star urinals
- v. 3.5 star washing machines
- vi. 4 star dishwashers.

A certificate from a licenced plumber shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate demonstrating compliance with this condition.

Reason: To conserve potable water

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

The original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works.

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

Reason: To create encumbrances on the land. (DACENF01)

65. Registration of Encumbrances for On-site Stormwater Detention

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

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

Reason: To identify encumbrances on land. (DACENF02)

66. Restriction as to User for On-site Stormwater Detention

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such restriction.

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 modification to the on-site stormwater detention structure is not carried without Council's approval. (DACENF04)

67. On-Site Stormwater Detention Compliance Certification

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.

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 stormwater disposal is constructed to Council's satisfaction. (DACENF10)

68. Positive Covenant for On-site Stormwater Detention

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Warringah Council's delegate prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

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

Reason: To ensure ongoing maintenance of the on-site stormwater detention system. (DACENF12)

69. Creation of Positive Covenant and Restriction as a User

Where any conditions of this Consent require the creation of a positive covenant and/or restriction as a user, the original completed request forms, (Department of Lands standard forms 13PC and/or 13RPA), shall be submitted to Northern Beaches Council for authorisation.

A certified copy of the documents shall be provided to Warringah Council after final approval and registration has been affected by the "Department of Lands".

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

Reason: To identify encumbrances on land. (DACENF14)

70. Certification of Road and Drainage Works and Works as Executed Data

A suitably qualified Civil Engineer shall certify that the completed works have been constructed in accordance with this consent and the approved Construction Certificate plans. Works as Executed data for the completed road and drainage works must be certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Stormwater Assets' shall be submitted to the Council for approval prior to the issue of the Occupation Certificate. Council's guidelines are available at <https://www.warringah.nsw.gov.au/sites/default/files/documents/generalinformation/stormwater-and-development/guideline-preparing-works-executed-data-council-stormwater-assets.pdf>

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

Reason: To ensure compliance of road and drainage works with Council's specification for engineering works. (DACNEF12)

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

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

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

Reason: To ensure statutory requirements have been completed, public safety, and equitable access for seniors of people with a disability. (DACPLF12)

71A. Wildlife Protection – Fencing

- i. Protective fencing is to be installed along the southern boundary of the wildlife corridor located across the northern part of the site
- ii. The fencing is to comprise a minimum 1.2m high ringlock design suitably connected to the ground to prevent entry by cats or dogs;
- iii. Details of compliance with the conditions are to be provided to the Principal Certifying Authority prior to the issue of any interim/final Occupation Certificate.

Reason: Protection of the environment

71B. Screen Planting/Western Boundary

- i. Existing screen planting along the western boundary of the site is to be retained and maintained to a minimum height of 3.5m;
- ii. Should any existing screen plants fail, replacement planting is to be immediately installed to maintain the density of the screen;
- iii. Replacement planting is to comprise suitable low flammable native species capable of attaining a minimum height of 3.5m at maturity, be of a minimum pot size of 25 Litres and planted, watered and fertilized as per industry best practice.

Reason: To maintain environmental amenity.

71C. Emergency Management Plan

Prior to the issue of the final Occupation Certificate, an Emergency Management Plan is to be prepared by a suitably qualified person outlining the path of an emergency evacuation in the event of a bushfire.

Reason: Fire Safety and appropriate property management

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

72. Rehabilitation and maintenance

The consent holder must carry out a maintenance period of 2 years after completion of works within the 'river' or 'waterfront land' as defined by the Water Management Act 2000, including rehabilitation and vegetation management works in accordance with the Biodiversity Management Plan required under this development consent.

Reason: Environmental Protection, Monitoring and Enhancement. (DACNEG02)

73. 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

Warringah Council's 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 (DACNEG05)

74. Visitors Sign

A sign, legible from the street, shall be permanently displayed to indicate that visitor parking is available on the site and the visitor car parking spaces shall be clearly marked as such.

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 that visitors are aware that parking is available on site and to identify those spaces to visitors. (DACPLG04)

75. 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. (DACPLG20)

76. Delivery Hours

No deliveries, loading or unloading associated with the premises are to take place between the hours of 9pm and 6am Monday to Saturday.

No deliveries are to occur on Sundays.

Reason: To protect ensure the acoustic amenity of surrounding properties. (DACPLG21)

77. Monitoring Reports to be submitted to Council

Monitoring reports are to be submitted to Council in accordance with the Bushland Regeneration and Biodiversity Management Plan (Travers Bushfire and Ecology, dated July 2016)

Monitoring reports are to be submitted to Council upon completion of revegetation works, prior to construction certificate and prior to occupation certificate. Post construction monitoring reports are to be submitted annually during the four year maintenance period. Monitoring reports must detail the BMP activities, work hours and locations worked within unformed Barnes Road reserve for a period of four years from commencement of construction, or until all actions are complete.

Reason: Environmental monitoring (DACNEBOC1)

78. Tree Management in Barnes Road Reserve

No native trees on the unformed Barnes Road reserve is to be removed without written approval from Council. Management of fuel loads in the bushfire Asset Protection Zone is to Outer Protection Area standard and is to remove weeds in preference to native trees and vegetation.

Reason: To ensure bushland management (DACNEGOG1)

79. Implementation of Bushland Regeneration and Biodiversity Management Plan

All actions as listed in the Bushland Regeneration and Biodiversity Management Plan (Travers Bushfire and Ecology, dated July 2016) must be implemented at all times or until completed as specified in the plan.

Reason: To ensure bushland and riparian management (DACNEGOG2)

80. Project Ecologist

A Project Ecologist is to be employed for the duration of the approved works to ensure all bushland and riparian protection measures are carried out according to the conditions of consent.

The Project Ecologist will provide certification that conditions relating to the Biodiversity Management Plan and/or Vegetation Management Plan and/or Soil Seedbank Translocation Plan and/or Weed Management Plan and/or Vegetation Restoration Plan are carried out. The Project Ecologist will ensure that all conditions relating to the biodiversity management of the property are fully implemented. The Project Ecologist is to be a vegetation management specialist and to have at least 4 years' experience in the management of native bushland in the Sydney region and have at least a TAFE Certificate III in Bush Regeneration or Conservation and Land Management - Natural Area Restoration.

Reason: To ensure bushland management. (DACNEC07)

81. General Watercourse and Riparian Areas Matters

Unless in accordance with the approved works the Consent holder must ensure that:

a) No materials or cleared vegetation that may obstruct flow or cause damage to river banks are left within the riparian zone.

b) All drainage works must not obstruct flow of water within the watercourse. Drain discharge points are stabilised to prevent erosion. Any excavation must not result in diversion of any watercourse, bank instability or damage to native vegetation.

c) The surfaces of river banks are graded to enable the unimpeded flow of water and bank retaining structures result in a stable river bank.

d) Any vegetation or other material removed from the area of operations shall be disposed of lawfully. Burning of the material is not permitted.

e) The riparian zones are to function as ecological systems and as such, all works, access routes, roads, recreational areas, asset protection zones, service easements and any other non-ecologically functioning work or activity are to be located beyond the riparian zones other than provided by the consent.

Reason: Environmental Protection, Monitoring and Enhancement (DACNEG06)

82. Commercial Waste Collection Required

The applicant will be required to engage a private waste collection service to remove waste off the premises.

Reason: Ensure waste is adequately and lawfully removed off site (DACHEBOC1)

83. Waste/Recycling Requirements (Waste Plan Submitted)

During demolition and/or construction the proposal/works shall be generally consistent with the submitted Waste Management Plan.

Reason: To ensure waste is minimised and adequate and appropriate waste and recycling facilities are provided. (DACWTE01)

84. Waste/Recycling Compliance Documentation

Evidence of disposal for recycling from the construction/demolition works shall be submitted to the Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure waste is minimised and recycled. (DACWTF02)

85. Maintenance period for civil works under the provisions of the Roads Act 1993 and Environmental Planning and Assessment Act 1979

A Maintenance Period of six (6) months shall apply to the road, drainage, footpath and associated works located in, on or over a public road as approved under the provisions of Section 139 of the Roads Act 1993 and Section 80A of the Environmental Planning and Assessment Act 1979, after it has been completed and approved in writing by the appropriate Roads Authority. In that period the applicant shall be liable for any part of the work which fails to perform in the manner outlined in Roads Authority's specifications, or as would be reasonably be expected under the design conditions.

Reason: To ensure works are appropriately constructed and repaired where defective. (DACENG01).

86. Transport services to local centres

For the life of the development a bus capable of carrying at least 10 passengers is to be provided for the residents of the development:

- (a) That will drop off and pick up passengers at a local centre that provides residents with access to the following:
 - (i) Shops, bank service providers and other retail and commercial services that residents may reasonably require,

- (ii) Community services and recreation facilities,
- (iii) The practice of a general medical practitioner, and
- (b) That is available both to and from the proposed development to any such local centre at least once between 8am and 12pm each day and at least once between 12pm and 6pm each day.

Reason: To comply with the requirement of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

87. Maximum number of beds

The maximum number of beds within the development is limited to 71. No increase in the number of beds is to take place without further development consent from the Council.

Reason: To ensure the site and scale of the development remains consistent with the desired future character statement for the B2 Oxford Falls Valley locality under the Warringah Local Environmental Plan 2000.

88. Registration on Title

The applicant shall do all things necessary at no cost to Council to register a restriction on the use of land under s.88E of the Conveyancing Act 1919 in a form approved by Council which provides for the following restrictions:

- a) No further development shall take place on the site that extends the approved building envelopes or extends site coverage without the written approval of Council.
- b) This restriction on the use of land may only be removed with the consent of the Northern Beaches Council.

The restriction on the use of the land shall be registered prior to the issue of any Occupation Certificate.

Reason: To ensure the site and scale of the development remains consistent with the desired future character statement for the B2 Oxford Falls Valley locality under the Warringah Local Environmental Plan 2000.