



Land and Environment Court
New South Wales

Case Name: Kolenda v Northern Beaches Council

Medium Neutral Citation: [2021] NSWLEC 1052

Hearing Date(s): Conciliation conference on 21-22 January 2021

Date of Orders: 01 February 2021

Decision Date: 1 February 2021

Jurisdiction: Class 1

Before: Dickson C

Decision: The Court orders:
(1) The Applicant's written request pursuant to clause 4.6 of Manly Local Environmental Plan 2013 (MLEP) seeking to justify contravention of the height of buildings standard under clause 4.3 of MLEP, has been considered and the necessary opinion of satisfaction formed under clause 4.6(4) of MLEP.
(2) The Applicant's written request pursuant to clause 4.6 of MLEP seeking to justify contravention of the Floor Space Ratio development standard under clause 4.4 of MLEP, has been considered and the necessary opinion of satisfaction formed under clause 4.6(4) of MLEP.
(3) The appeal is upheld.
(4) Development consent is granted to development application DA2019/1265 for alterations and additions to an existing dwelling at 15 Monash Crescent, Clontarf subject to the conditions in Annexure 'A'.

Catchwords: DEVELOPMENT APPLICATION – alterations and additions to an existing dwelling – breach of height limit – breach of Floor Space control – amended plans – conciliation conference – agreement between the parties – orders

Legislation Cited: Environmental Planning and Assessment Act 1979
Environmental Planning and Assessment Regulation 2000
Land and Environment Court Act 1979
Manly Local Environmental Plan 2013
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
State Environmental Planning Policy (Coastal Management) 2018
State Environmental Planning Policy No 55—Remediation of Land
Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

Category: Principal judgment

Parties: Milena Kolenda (Applicant)
Northern Beaches Council (Respondent)

Representation: Counsel:
I Hemmings SC (Applicant)
S Patterson (Solicitor) (Respondent)

Solicitors:
Pikes & Verekers Lawyers (Applicant)
Wilshire Webb Staunton Beattie Lawyers (Respondent)

File Number(s): 2020/187181

Publication Restriction: No

JUDGMENT

- 1 **COMMISSIONER:** This is an appeal pursuant to s 8.7(1) of the Environmental Planning and Assessment Act 1979 (EPA Act) by Ms Milena Kolenda (the Applicant) against the Respondent's actual refusal of development application DA/2019/1265. The development application seeks consent for alterations and additions to a dwelling house and garage at 15 Monash Crescent, Clontarf.
- 2 In exercising the functions of the consent authority on the appeal, the Court has the power to determine the development application pursuant to s 4.16 of the EPA Act.

- 3 The appeal was listed for conciliation on 21 January 2021, in accordance with the provisions of s 34AA of the Land and Environment Court Act 1979 (LEC Act). At the conciliation conference, an agreement, under s 34(3) of the LEC Act, was reached between the parties as to the terms of a decision in the proceedings that was acceptable to the parties on the basis of amended plans. A signed agreement prepared in accordance with s 34(10) of the LEC Act was filed with the Court on 22 January 2021.
- 4 As the presiding Commissioner, I am satisfied that the decision is one that the Court can make in the proper exercise of its functions (this being the test applied by s 34(3) of the LEC Act). I have formed this state of satisfaction for the following reasons:
- (1) In accordance with the requirements of cl 49(1) of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation), consent has been provided by the owners of the land the subject of the Development Application.
 - (2) State Environmental Planning Policy No 55—Remediation of Land (SEPP 55) applies to the site. Clause 7(1) of SEPP 55 requires the consent authority to consider whether the site is contaminated. The Respondent notes that its records indicate that the subject land has been used for residential purposes for a significant period of time with no prior land uses. I accept the agreed submission of the parties that the site poses a negligible risk of contamination and that the land is suitable for the proposed use.
 - (3) An updated BASIX Certificate has been provided to satisfy the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
 - (4) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 applies to the subject site. The site is within the Foreshores and Waterways Area but is unzoned under the instrument. In determining the development application, I have taken into consideration the matters in Division 2 of the instrument as are relevant to the development application.
 - (5) Pursuant to cl 15 of State Environmental Planning Policy (Coastal Management) 2018, I am satisfied that the Applicant's assessment is sufficient to demonstrate that the development proposed by the application is not likely to cause increased risk of coastal hazards on subject site or other land.
 - (6) Pursuant to Manly Local Environmental Plan 2013 (MLEP) the site is zoned E3 Environmental Management. The development proposed (Dwelling Houses) is permissible in the zone. In determining the

development application, I have had regard to the objectives of the zone.

- (7) The development application seeks a variation to the maximum height control standard of 8.5m for a new lift structure providing access to the existing roof. The maximum height sought by the development application is 9.24m. The Applicant has filed a written request pursuant to cl 4.6 of MLEP prepared by Vaughan Milligan Development Consulting Pty Ltd. This request accords with the amended plans and seeks a variation to the height development standard. I have reviewed the request and, in accordance with cl 4.6 of MLEP, I am satisfied that:
- (a) The written request demonstrates that compliance with the height development standard is unreasonable and unnecessary as the objectives of the height development standard are met notwithstanding the noncompliance (cl 4.6(3)(a) of MLEP).
 - (b) The written request adequately establishes sufficient environmental planning grounds that justify the breach of the height standard (cl 4.6(3)(b) of MLEP).
 - (c) On the preceding basis I am satisfied that the requirements of cl 4.6(4)(a)(i) of MLEP are met.
 - (d) For the reasons outlined in the written request I am satisfied that the development is in the public interest as it is consistent with the objectives of the E3 Environmental Management zone and the height development standard. On this basis I am satisfied that the requirements of cl 4.6(4)(a)(ii) of MLEP are met.
 - (e) Pursuant to cl 4.6(5) I am satisfied the proposal is not considered to raise any matter of significance for State or regional development.
 - (f) The states of satisfaction required by cl 4.6 of the MLEP have been reached and there is therefore power to grant development consent to the proposed development notwithstanding the breach of the height control.
- (8) Further, the development application seeks a variation to the maximum floor space ratio (FSR) control standard of 132.28m² or 0.625:1. The maximum FSR standard applicable to the site is 0.4:1. I note the existing dwelling has an FSR of 0.599:1 and as such the development seeks an addition 14m². The Applicant has filed a written request pursuant to cl 4.6 of MLEP prepared by Vaughan Milligan Development Consulting Pty Ltd. This request accords with the amended plans and seeks a variation to the height development standard. I have reviewed the request and, in accordance with cl 4.6 of MLEP, I am satisfied that:
- (a) The written request demonstrates that compliance with the FSR development standard is unreasonable and unnecessary as the objectives of the height development standard are met notwithstanding the noncompliance (cl 4.6(3)(a) of MLEP).

- (b) The written request adequately establishes sufficient environmental planning grounds that justify the breach of the FSR standard (cl 4.6(3)(b) of MLEP).
 - (c) On the preceding basis I am satisfied that the requirements of cl 4.6(4)(a)(i) of MLEP are met.
 - (d) For the reasons outlined in the written request I am satisfied that the development is in the public interest as it is consistent with the objectives of the E3 Environmental Management zone and the FSR development standard. On this basis I am satisfied that the requirements of cl 4.6(4)(a)(ii) of MLEP are met.
 - (e) Pursuant to cl 4.6(5) I am satisfied the proposal is not considered to raise any matter of significance for State or regional development.
 - (f) The states of satisfaction required by cl 4.6 of the MLEP have been reached and there is therefore power to grant development consent to the proposed development notwithstanding the breach of the FSR control.
- (9) The subject site is within the foreshore protection area as mapped on the Foreshore Scenic Protection Area Map of MLEP. In granting consent, I am satisfied that the matters listed at cl 6.10(3) of MLEP are met by the development application.
- (10) In granting consent to the application, I have given consideration to the matters at cl 6.13(4) and find that the development exhibits design excellence as defined by the instrument.
- (11) The application was notified in accordance with the relevant development control plan and the submissions have been considered.
- 5 As the parties' decision is a decision that the Court could have made in the proper exercise of its functions, I am required under s 34(3) of the LEC Act to dispose of the proceedings in accordance with the parties' decision.
- 6 In making the orders to give effect to the agreement between the parties, the parties have not raised, and I am not aware of any jurisdictional impediment to the making of these orders.
- 7 The final orders to give effect to the parties' agreement under s 34(3) of the LEC Act are:
- (1) The Applicant's written request pursuant to clause 4.6 of Manly Local Environmental Plan 2013 (MLEP) seeking to justify contravention of the height of buildings standard under clause 4.3 of MLEP, has been considered and the necessary opinion of satisfaction formed under clause 4.6(4) of MLEP.

- (2) The Applicant's written request pursuant to clause 4.6 of MLEP seeking to justify contravention of the Floor Space Ratio development standard under clause 4.4 of MLEP, has been considered and the necessary opinion of satisfaction formed under clause 4.6(4) of MLEP.
- (3) The appeal is upheld.
- (4) Development consent is granted to development application DA2019/1265 for alterations and additions to an existing dwelling at 15 Monash Crescent, Clontarf subject to the conditions in Annexure 'A'.

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D M Dickson

Commissioner of the Court

Annexure A (413482, pdf)

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Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: 2019/1265

Development: alterations and additions to a dwelling house and garage

Site: 15 Monash Crescent, Clontarf (Lot 54 DP 9745)

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

Date of determination: 1 February 2021

Date from which consent takes effect: Date the consent is registered on the NSW Planning Portal.

TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the “applicant” means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the “site”, means the land known as 15 Monash Crescent, Clontarf (Lot 54 DP 9745).

The conditions of consent are as follows:

Detail of Conditions

The conditions, which have been applied to the consent, aim to ensure that the Environmental Impacts of Development are minimised and the Health and Safety of the community is maintained in accordance with the relevant standards and the Building Code of Australia.

Note:

If the works are to be certified by a Private Certifying Authority, then it is the certifier's responsibility to ensure all outstanding fees and bonds have been paid to Council prior to the issue of the Construction Certificate or as otherwise specified by Consent conditions.

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
DA001 - RevB - Site Location	21.01.21	Mathieson
DA002 - RevB - Site Analysis	21.01.21	Mathieson
DA003- RevB - Ground, Level 1 + Roof Terrace	21.01.21	Mathieson
DA004- RevB - N.E, S.W, N.W + Section	21.01.21	Mathieson
DA006- RevB - GF Existing + Proposed	21.01.21	Mathieson

Engineering Plans		
Drawing No.	Dated	Prepared By
SWDA 1.2 - Stormwater Drainage Services Ground Floor Layout and Details	September 2019	Partridge
SWDA 1.3 - Stormwater Drainage Services Erosion and Sediment Control Plan and Details	September 2019	Partridge

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Investigation	18 October 2019	JK Geotechnics

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	18 October 2019	Vaughan Milligan

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

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

2. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the

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

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

Reason: Legislative requirement.

3. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- ┆ 7.00 am to 5.00 pm inclusive Monday to Friday,
 - ┆ 8.00 am to 1.00 pm inclusive on Saturday,
 - ┆ No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

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

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

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

erection of any fences, hoardings or other temporary works.

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

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

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

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

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

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

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

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

4. Restrictions on Noise

Noise levels from the use of the rooftop terrace shall not exceed 5dB(A) above the background noise level (L90, 15 min) measured at the boundary of the nearest residential receiver between 10pm-8am. This includes that there is to be no amplified sound during this time period.

Reason: To ensure the appropriate acoustic amenity for neighboring properties.

5. Use of the Roof Terrace

There are to be no permanent structures located on the rooftop terrace. Any temporary shade structures are to be taken down when not in use and stored in the shade structure storage location shown on the plans.

Reason: To minimise impact on public and private views toward the harbour.

6. Lighting on the Roof Terrace

Lighting is to be low level being restricted to below the height of the balustrade.

Reason: To avoid light spill.

7. Surrender of Tennis Court Use

Prior to the issue of any occupation certificate the applicant is to surrender the Rooftop Tennis Court Approval issued by Manly Council and dated 1 August 1984.

Reason: To minimise acoustic impact on neighbouring properties.

FEES / CHARGES / CONTRIBUTIONS**8. Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$15,000.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$1,500,000.00.

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

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

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

at www.northernbeaches.nsw.gov.au

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

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

9. Security Bond

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

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

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

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

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

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

10. Stormwater Disposal

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003.

Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. Road Reserve

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

Reason: Public Safety.

12. Property Boundary Levels

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

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

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

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

13. Stormwater Disposal

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

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

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

14. No Planting Environmental Weeds

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

Reason: Weed management.

15. Dead or Injured Wildlife – Manly LEP Clause 6.5

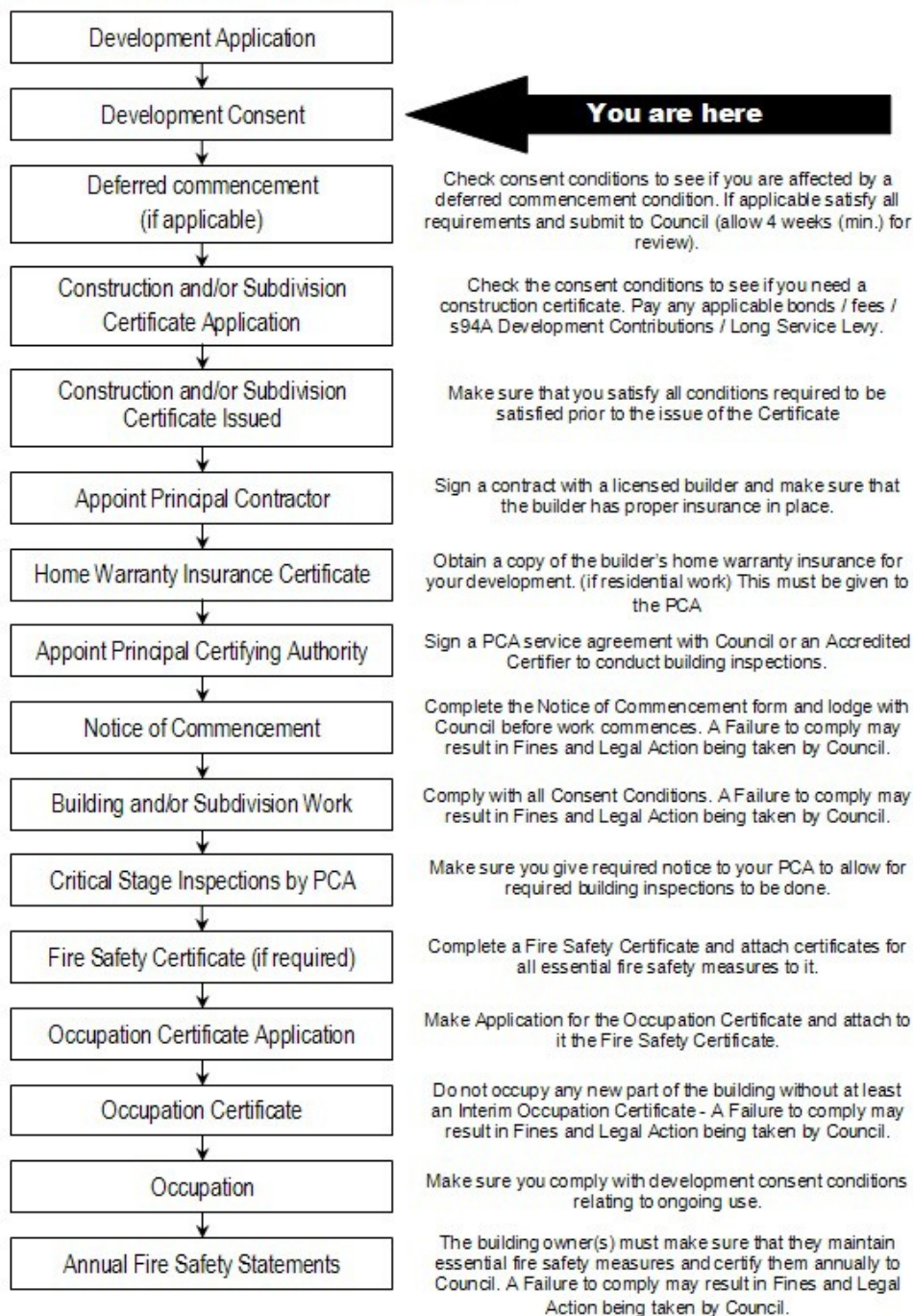
If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

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

GENERAL ADVICE

Advisory Notes (General)

Where are you in the development process?



Note: The advice within this document is provided in good faith as a guide to assist applicants understand the broad process and will not detail every step or every requirement for demolition, building construction works or subdivision required or business operating requirements under New South Wales or Commonwealth Legislation. If you require clarification or have any questions, please contact your Certifier or Council's Planning and Development Enquiries Team.

The attached Notice of Determination includes conditions of consent which must be complied with.

(Note: A failure to gain approval prior to the works being carried out is a serious breach of the Environmental Planning & Assessment Act 1979 which attracts penalties and may also result in legal

action.)

Building Certification

The Environmental Planning and Assessment Act 1979 provides that:

- Building work cannot occur unless a construction certificate has been issued;
- Occupation of building works cannot occur unless an occupation certificate has been issued
- Subdivision cannot be registered until a subdivision certificate has been issued
- Mandatory Inspection for building work must be completed

Please refer to process chart for more detail.

(Note: A failure to gain approval prior to the works being carried out is a serious breach of the Environmental Planning & Assessment Act 1979 which attracts penalties and may also result in legal action.)

Certification Services

Construction Certificates / Occupation Certificates / Subdivision Certificates / Strata Certificates, can be issued by Council or an accredited private certifier (Note Council must be the Principal Certifying Authority (PCA) for subdivisions).

Council is well placed to provide Certification Services. Council can issue Construction Certificates and act as your Principle Certifying Authority at competitive rates. Please visit our web site www.northernbeaches.nsw.gov.au or speak to our Customer Service Officers if you have any further questions about our Certification Services or if you wish to use Council as your certifier.

Charges Associated with the Development Consent

All bonds, fees, Development Contributions or the Long Service Levy detailed within the Notice of Determination are required to be paid prior to the issuing of any Construction Certificate.

Bonds are released after:

1. 'Final Occupation Certificate' has been received by Council; and
 2. Final inspection by a Council Officer where:
 - the development is complete
 - damage has not been caused to council assets during the works
 - conditions of development consent have been met.
- The bond will be released to the person or business who paid the bond to Council (The name that appears on the original receipt)

Acceptable Form of Security Bonds

Council will accept bank guarantee (in a form acceptable to Council) in lieu of cash and is required prior to the issue of a construction certificate.

Modifications to the consent

If you seek to make any changes to the development (which may include internal / external configuration of the building, variation to facades, site layout or any changes to the proposed operation

or use), the modifications may require the submission and approval of an application to modify the development consent prior to the issuing of a Construction Certificate and prior to the works being carried out. The proposed changes should be discussed with the PCA.

(Note: A failure to gain approval prior to the works being carried out is a serious breach of the Environmental Planning & Assessment Act 1979 which attracts penalties and may also result in legal action.)

Other Matters not detailed within the Notice of Determination

The Notice of Determination does not stipulate every requirement that must be completed to satisfy New South Wales and Commonwealth legislation.

You should check, as may be relevant, with other authorities including but not limited to:

- ┆ Workcover NSW for work safety and asbestos requirements
- ┆ Sydney Water – Quick Check Agent for the provision of water and sewer services
- ┆ Energy & Gas suppliers for utility services
- ┆ Department of Fair Trading for advice about builders and licensing
- ┆ Building Professionals Board for advice about private certifiers
- ┆ NSW Roads and Maritime Services for works on state roads only
- ┆ Human Rights and Equal Opportunity Commission for access issues
- ┆ NSW Land and Property Information for Land Title matters
- ┆ Australia Post for the positioning and dimensions of mail boxes in new commercial and residential developments;

Dial Before You Dig

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial before you dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

Telecommunications Act 1997 (Commonwealth)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact :Telstra's Network Integrity Team on Phone Number 1800810443.

- (1) if the development is likely to disturb or impact upon telecommunications infrastructure, written confirmation from the service provider that they have agreed to the proposed works must be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate or any works commencing, whichever occurs first; and
- (2) The arrangements and costs associated with any adjustment to telecommunications infrastructure shall be borne in full by the applicant/developer.

Model

If you submitted a model with the application it must be collected from the Council offices within fourteen (14) days of the date of this determination. Models not collected will be disposed of by Council.

Trade waste agreement

A Trade Waste Agreement must be obtained from Sydney Water prior to the discharge of trade wastewater to the sewer system. Trade wastewater is defined as 'discharge water containing any substance produced through industrial or commercial activities or operation on the premises'.

Waste collection

Liquid and solid wastes generated on the site must be collected, transported and disposed of in accordance with the requirements of the Protection of the Environment Operations Act 1997. Records must be kept of all waste disposal from the site.

Material to be removed from the site must be source separated on site to maximise recycling, and the material disposed of to an appropriate disposal and recycling facility in accordance with the approved Waste Management Plan.

Aboriginal Heritage

If in undertaking excavation or works and any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Warringah Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

On-Site Sewage Management System

This approval does not authorise the installation or operation of a new or modification of an existing on-site wastewater management system. An On-Site Sewage Management System must not be installed or operated unless an 'Approval to Install an On Site Sewage Management System' is obtained from Warringah Council.

Cost of Works

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

Relocation of stormwater drainage

Council is not responsible for the cost of relocating Council's stormwater drainage pipes through the subject property.

Tree preservation

Where tree work has not been approved by this Development Consent the developer is notified that a general Tree Preservation Order applies to all trees in the Northern Beaches Local Government Area. This order prohibits the ringbarking, cutting down, topping, lopping, pruning, transplanting, injuring, or wilful destruction of such trees except without the prior written consent of Council.

Storage bins on footpath and roadway

Approval is required from Council prior to the placement of any storage bin on Council's footpath and/or roadway.

Protection of Public Places

(1) If the work involved in the erection or demolition of a building:

(a) is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient; or

(b) building involves the enclosure of a public place,

a hoarding and site fencing must be erected between the work site and the public place.

(2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.

(3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.

(4) Any such hoarding, fence or awning is to be removed when the work has been completed.

(5) No access across public reserves or parks is permitted.

Note: Prior to the erection of any temporary fence or hoarding over property owned or managed by Council, written approval must be obtained.

Road Opening Permit

The developer/applicant is to obtain a "Road Opening Permit" from Council and pay all appropriate charges prior to commencement of any work on Council property. The developer/applicant shall be responsible for all public utilities and services in the area of the work, and as such shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

Special Permits

Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development are to occur entirely on the property. The applicant, owner or builder must apply for specific permits available from Council. A minimum of forty-eight (48) hours notice is required for all permits except work zones, which may require additional assessment time.

┆ **Permit for on-street mobile plant**

Restrictions apply to the hours of operation and the area of operation for on street mobile plant equipment (for example cranes, concrete pumps, cherry pickers). Separate permits are required for each occasion and each piece of equipment. It is the responsibility of the applicant, owner and builder to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

┆ **Hoarding Permit**

Permits are required to erect Class A, Class B and Class C hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

┆ **Storage of building materials and building waste containers (skips) on Council's property**

Permits to utilise Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice

being given.

I Kerbside restrictions, work zones

Existing kerbside restrictions apply. An application must be made to Council for the alteration of existing kerbside restrictions or the provision of a construction zone.

Other permits may include out of construction hours permits.

Licensing requirements for removal of bonded asbestos

Anyone who removes, repairs or disturbs bonded asbestos must hold a bonded or a friable asbestos licence, or a demolition licence in accordance with Workcover requirements and the Occupational Health and Safety Act 2000.

Pool Access

Access to pools are required to be restricted by a child resistant barrier in accordance with the regulations prescribed in all relevant Acts, Regulations and Australian Standards including:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2012;
- (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

It is your responsibility as a land owner to ensure any fencing is maintained.

Dewatering

Where dewatering works are required on the development site during construction, the developer/applicant must apply for and obtain a bore license from the NSW Department of Water and Energy. The bore license must be obtained prior to commencement of dewatering works.

Requirement to Notify about New Contamination Evidence

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

Flood Evacuation Plan

If your site is on flood prone land you may wish to consider the preparation of a flood evacuation plan.

Generally a Flood Evacuation Plan would be prepared by suitably qualified Engineer (e.g. Hydraulic) with a number of years experience in flood management and who is eligible for Membership to the Australian Institute of Engineers.

Some matters that you may wish to consider (but not limited to) include:

- (i) a route of evacuation to higher ground and / or point of shelter
- (ii) depth of water for a Possible Maximum Flood event surrounding the building
- (iii) details of 'last chance' evacuation water levels / times for evacuation prior to floodwaters surrounding the building
- (iv) provide details of flood warning systems and protocols
- (v) details of how this information will be distributed and people educated for users of the site.

You may seek to discuss this with the State Emergency Service of NSW.

Utility Service Requirements

Where development requires the installation of, or the relocation of utility services being (but not limited to) gas, water, electricity and telecommunications, the installation of, or the relocation of utility services shall be conducted in accordance with the requirements of the relevant service provider / authority (unless stipulated by any other condition of the consent or will result in damage to threatened or endangered species defined under the Threatened Species Conservation Act 1995).

Plant & Equipment Kept Within Site

All plant and equipment used in the erection of the building, including concrete pumps, wagons, lifts, mobile cranes, etc, shall be situated within the boundaries of the site and so placed that all concrete slurry, water, debris and the like shall be discharged onto the building site, and is to be contained within the site boundaries. This does not prevent any requirement to comply with the Protection of the Environment Operations Act.

Lighting

Illumination of the site is to be arranged in accordance with the requirements of Australian Standard 4282 - 1997 Control of the obtrusive effects of outdoor lighting so as not to impact upon the amenity of the occupants of adjoining and nearby residential premises.

Silt and Sediment Control

During any onsite demolition, excavation and construction works, the site should be maintained in accordance with "The Blue Book - Managing Urban Stormwater (MUS): Soils and Construction".

In managing the site provision shall be made throughout the period of works to prevent transmission of soil to the public road, drainage system, any riparian lands or off site in any manner. Upon completion of the development, any measures to prevent the transition of soil off site to remain in place until the site is stabilised.

A failure to prevent the transmission of silt and sediment and / or causing, water pollution, air pollution, noise pollution or land pollution may result in a breach of the Protection of the Environment Operations Act and orders, penalties and prosecutions may occur.

Maintenance of Sediment and Erosion Control Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain.

Reason: To avoid erosion and sedimentation impacts that will result in an adverse change in watercourse or riparian land condition

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

Dividing Fences Act 1991

The construction and maintenance of side boundary fences is to be agreed upon by all adjoining property owners of the fence. Works are to be in accordance with the Dividing Fences Act 1991.

OTHER MATTERS

Child Care Centres

A license to operate a child care centre must be obtained from the NSW Department of Community Services prior to the commencement of the use of the child care centre.

Disability Access

This decision does not ensure compliance with the Commonwealth Disability Discrimination Act 1992. Applicants are strongly advised to investigate their requirements under that Act

Food Premises

Food premises are required to comply with the requirements of the Food Act 2003, the Food Standards Code and Australian Standards.

The proprietor of a food business must notify the NSW Food Authority of the details of the business. Notification may be done either online at www.foodnotify.nsw.gov.au or by lodging a completed NSW Food Authority notification form to the NSW Food Authority or Council.

Wheel washing facility

All trucks leaving the site, having had access to unpaved or contaminated areas, shall depart via a wheel wash facility in order to prevent mud, dust or debris from being deposited on Council's roads. The wheel wash facility shall be constructed prior to any truck movements occurring. Water from the wheel wash facility must not cause pollution. Any direction of Council with regard to cleaning trucks or the clean up of road pavements adjoining the site shall be complied with immediately.

Monitoring State of Roadways

The applicant shall monitor the state of roadways leading to and from the site and shall take all necessary steps to clean up any adversely impacted road pavements as directed by Council.

Storage of Dangerous Goods

Prior to the storage of any "dangerous goods" on the premises, a copy of a license obtained from the Chemical Safety Branch of Work Cover Authority must be submitted to Council.

Storage of Flammable and Combustible Liquids

Flammable and combustible liquids must be stored in accordance with Australian Standard 1940 The Storage and Handling of Flammable and Combustible Liquids.

Noise and Vibration

The premises, including operation of vehicles, shall be conducted so as to avoid offensive noise or vibration and cause no interference to adjoining or nearby occupants. Special precautions must be taken to avoid nuisance in neighbouring residential areas, particularly from machinery, vehicles, warning sirens, public address systems and the like.

Hairdressing/Beauty Treatment/ Skin penetration Requirements

The premises must comply with the following requirements before the commencement of business:

- i) A hand wash basin with warm water delivered through a common spout must be provided in the treatment area. The hand wash basin must be provided with liquid soap and paper towel.
- ii) The wall behind the hand wash basin from the floor to a height of 450mm above the top of the washbasin and from the centre of the washbasin to a distance of 140mm beyond each side of the wash basin, must be finished with a material that is durable, smooth, impervious to moisture and capable of being easily cleaned (eg tiles).

- iii) The premises must be provided with washing, drainage, ventilation and lighting that are adequate for the carrying out of hairdressing/beauty treatment/skin penetration procedures.
- iv) The floor coverings must be smooth and impervious.
- v) All furniture, shelves and fittings must be constructed of, or covered with a material that is smooth, impervious to moisture and capable of being easily cleaned.
- vi) Adequate lockers must be provided for the storage of employees clothing and personal effects.
- vii) The premises must be provided with facilities that are adequate for the purpose of storing of hairdressing/beauty treatment/skin penetration appliance and utensils.
- viii) The premises must be provided with a sink sullied with hot and cold water for washing equipment.

Food Premises Construction Requirements

The food premises must comply with the following specific construction requirements:

Solid walls must be provided in all food handling areas (solid includes brick, cement and foam filled preformed panels);

ix) Walls in food preparation and wash up areas must be finished with a smooth and impervious surface to a height of at least 2 metres.

x) Hand wash basins must be provided with warm water delivered through a common spout with taps that are hands free operation;

xi) Coving with a radius of 25mm must be provided between all floor and wall joints in food handling areas;

xii) The open space between the top of the coolroom and the ceiling must be fully enclosed and kept insect and pest proof;

xiii) The coolroom must be able to be opened from the inside with out a key and fitted with an alarm that can only be operated from within the coolroom;

xiv) The doors to the toilet air lock and toilet compartment must be tight fitting and self closing;

xv) The rear external door must be self closing or be provided with a fly screen that is self closing;

xvi) Where cooking or extensive heating processes or such other processes as may be specified are carried out in food preparation areas, an approved mechanical ventilation system shall be installed and operated in accordance with AS 1668 part 1 & 2.

Legionella Control

Cooling towers, warm water systems, water cooling systems must be registered with the Council.

Details of registration are to be provided to the Council prior to operation.

Pool/Spa Safety

Owners of properties with swimming pools and spa's must meet safety compliance and registration requirements. Provisions also apply when renting/selling properties. Details are available from the Division of Local Government.

Grease Trap

Contact Sydney Water to determine what trade waste provisions you are required to provide to your food premises. Should a grease trap be required by Sydney Water, it must be located in an area that is easily accessible for the removal of waste water and must not be installed in any kitchen, food preparation or food stage area. The design and location of the grease trap should also not impede on any commercial right of way or pedestrian access.

Bandicoot/Penguin

Long-nosed Bandicoots & Little Penguins – Best Practices for Residents Residents are encouraged to follow a number of *Best Practices* to assist with the protection and management of the endangered populations of Long-nosed Bandicoots and Little Penguins:

- Long-nosed Bandicoots, Little Penguins and other native animals should never be fed as it may cause them nutritional problems, hardship if supplementary feeding is stopped, and it may increase predation.
- Feral cats or foxes should never be fed or food left out where they can access it, such as

rubbish bins without lids or pet food bowls, as these animals present a significant threat to Long-nosed Bandicoots, Little Penguins and other wildlife.

- | The use of insecticides, fertilisers, poisons and/or baits should be avoided on the property.
Garden insects will be kept in low numbers if Long-nosed Bandicoots are present.
- | When the North Head Long-nosed Bandicoot Recovery Plan is released it should be implemented where relevant.
- | Dead Long-nosed Bandicoots or Little Penguins should be reported by phoning Manly Council on 9976 1500 or Department of Environment and Conservation on 9960 6266.
- | Please drive carefully as vehicle related injuries and deaths of Long-nosed Bandicoots and Little Penguins have occurred in the area. Care should also be taken at night in the drive way when moving cars as bandicoots will seek shelter beneath vehicles.
- | Cat/s and or dog/s that currently live on the property should be kept indoors at night to avoid disturbance/death of native animals. Ideally, when the current cat/s and/or dog/s that live on the property no longer reside on the property it is recommended that they not be replaced by new dogs or cats.
- | Report all sightings of feral rabbits, feral or stray cats and/or foxes to N B Council.