

Resolution in writing of the Northern Beaches Local Planning Panel approved in writing on 4 May 2018.

This resolution follows the Panel meeting held on Wednesday 18 April 2018 when a decision on the development application the subject of this resolution was deferred for further consideration.

Panel Members

Peter Biscoe	Chair
Annelise Tuor	Town Planner
Ray Mathieson	Community Representative

Vote: 2/1 (Community Representative dissenting)

Resolved as follows:

3.0 DEVELOPMENT APPLICATIONS

3.4 DA2017/0662 - 44 ROSE AVENUE AND 46 ROSE AVENUE, WHEELER HEIGHTS AND 43 LANTANA AVENUE, WHEELER HEIGHTS - DEMOLITION WORKS, CONSTRUCTION OF A SENIORS HOUSING DEVELOPMENT, STRATA SUBDIVISION AND ACCESS WORKS

PROCEEDINGS IN BRIEF

A brief description of these proceedings appears in the Panel's minutes of meeting held 18 April 2018.

DECISION ON DEVELOPMENT APPLICATION

That the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority, **approves** Application No. DA2017/0662 for demolition works, construction of a Seniors Housing Development and Strata Subdivision and access works at Lot 4 DP 203378, Lot 4 DP 26532 and Lot 3 DP 203378, at 44 Rose Avenue, 43 Lantana Avenue and 46 Rose Avenue, Wheeler Heights subject to the conditions and for the reasons set out below.

REASONS FOR DECISION

1. The Council officer's recommendation in the assessment report is that the development application be refused on the sole ground that there is no consent in writing from the owners of 45 Lantana Avenue for works within the right of carriageway to Lantana Avenue and intensification of the use of the right of carriageway.
2. The Panel disagrees. In the Panel's opinion, consent in writing from the owners of 45 Lantana Avenue is not a legal requirement and the development application may be granted approval subject to the conditions set out below.
3. The amended development application seeks consent to carry out development on 43 Lantana Avenue and 44 Rose Avenue as well as on 46 Rose Avenue's access handle to Rose Avenue. It does not propose any development on 45 Lantana Avenue.
4. 43 Lantana Avenue and 44 Rose Avenue share a common rear boundary. 43 Lantana Avenue and the adjoining 45 Lantana Avenue are battle axe blocks with adjoining access handles to Lantana Avenue. Each has a right of carriageway over the other's access handle. 44 Rose Avenue and the adjoining 46 Rose Avenue are battle axe blocks with adjoining access handles to Rose Avenue. Each has a right of carriageway over the other's access handle.
5. A development application may be made by the owner of land to which the development application "relates", or by any other person with the consent in writing of the owner of that land: clause 49(1) of the Environmental Planning and Assessment Regulation 2000 ("EPA Regulation"). The land to which a development application "relates" is the land identified in the written development application as the land on which the specified development is proposed to be carried out: *North Sydney Council v Ligon 302 Pty Ltd* (1996) 137 ALR 644 at 647, [1996] HCA 20; *Hillpalm v Tweed Shire Council* [2003] NSWCA 332 at [12]; *Huntington v Hurstville City Council* [2004] NSWLEC 694 at [22]-[25]. Clause 50(1)(a) requires that a development application must contain the information, and be accompanied by the documents, specified in Part 1 of Schedule 1 of the EPA Regulation. Clause 1(1)(i) of Part 1

of Schedule 1 requires that information to include evidence that the owner of the land on which the development is to be carried out consents to the application, but only if the application is made by a person other than the owner and the owner's consent is required by this Regulation.

6. In contrast to clause 49(1), clause 55 of the EPA Regulation, which permits the applicant to amend the development application with the agreement of the consent authority, contains no owner's consent requirement.
7. Absence of owner's consent at the time of lodgement of a development application can be rectified at any time before determination of the application by the consent authority or on appeal by the Land and Environment Court: *Currey v Sutherland Shire Council* (2003) 129 LGERA 223 at [34]-[35](CA); *Becton Corporation v Minister for Infrastructure, Planning and Natural Resources* [2005] NSWLEC 197 at [7]-[10].
8. Accordingly, owner's consent is only required if a development application is lodged for development on land not owned by the applicant. "Owner" is defined in the Environmental Planning and Assessment Act 1979 as having the same meaning as in the Local Government Act 1993 where it is relevantly defined as including:
 - (i) every person who jointly or severally, whether at law or in equity, is entitled to the land for any estate of freehold in possession, and
 - (ii) every such person who is entitled to receive, or is in receipt of, or if the land were let to a tenant would be entitled to receive, the rents and profits of the land, whether as beneficial owner, trustee, mortgagee in possession, or otherwise."
9. In the present case, the amended development application seeks consent for development on 43 Lantana Avenue, 44 Rose Avenue and the 46 Rose Avenue access handle. It deletes a proposal in the original development application for vehicular access over 45 Lantana Avenue's access handle. The amended development application does not propose any development (including intensification of use) on 45 Lantana Avenue's access handle.
10. 45 Lantana Avenue's right of carriageway over 43 Lantana Avenue's access handle does not make the owners of 45 Lantana Avenue "owners" of any part of the proposed development land within the statutory definition of "owner" referred to earlier. The statutory powers to control development are not qualified or affected by private rights except in so far as the statute fastens on the holders of interests in land to impose restrictions or duties: *Ligon*. The rights of carriageway as between 43 Rose Avenue and 45 Lantana Avenue constitute proprietary rights which are governed by the instruments creating the rights and the law relating to easements. Development consent, of itself, affords no right to the beneficiary of the development consent to interfere with the proprietary rights of those owners against their wishes. See *Rothwell* at [37]-[38]; *Wharf 11 Pty Ltd v Sydney City Council* [1991] NSWLEC 21.
11. Accordingly, there is no legal requirement that the owners of 45 Lantana Avenue consent to the development application or its amendment.
12. The written consent of the owner of 46 Rose Avenue to the development application was required, and was provided conditionally upon, among other things, the works being carried out in accordance with specified drawings (which were later amended). When the development application was amended the owner of 46 Rose Avenue purported to withdraw owner's consent. The purported withdrawal was ineffective. Landowner's consent to an amended development application is not a statutory requirement. The consent of the owner of 46 Rose Avenue to the development application was sufficient for the purpose of clause 1(1)(i) of Part 1 of Schedule 1 of the EPA Regulation so as to enable the development application to be determined in its amended form: *Rothwell Boys Pty Ltd v Coffs Harbour City Council* [2012] NSWLEC 19 at (31-[42]); *Rose Bay Afloat Pty Ltd v Woollahra Council* [2002] NSWLEC 208, (2002) 126 LGERA 38 at (86)-(89).

13. The case of *Owners Strata Plan 37762 v Pham & Ors [2005] NSWLEC* cited in the Council officer's assessment report is distinguishable on the facts and is not on point.
14. The result that the consent of the owners of 45 Lantana Avenue to the amended development application is not required and that the consent of the owner of 46 Rose Avenue to the development application cannot be withdrawn, works no injustice to those owners when the true nature of a development consent is understood.
15. Implementation of the amendments to the development application may intensify the use of the 46 Rose Avenue access handle beyond that contemplated in the consent of the owner of 46 Rose Avenue to the original development application. That is capable of affecting the discretion to grant or refuse the development application: *Ligon*. However, the Panel does not consider this to be a sufficient discretionary consideration as to lead to refusal particularly given that the grant of development consent, of itself, has no impact upon proprietary rights. It is only if the beneficiary of the development consent seeks or threatens to implement the development consent against the wishes of adjoining owners whose proprietary rights will be affected by the implementation that the question of protection of those proprietary rights arises.
16. Subject to the foregoing, the Panel substantially agrees with the assessment report.
17. For these reasons, and for the reasons in the assessment report insofar as they are not inconsistent with these reasons, the Panel grants development consent subject to the conditions set out below.

CONDITIONS OF APPROVAL

Application Number:	DA2017/0662
Land to be developed (Address):	Lot 4 DP 203378 44 Rose Avenue WHEELER HEIGHTS NSW 2097
Proposed Development:	Demolition works, Construction of a Seniors Housing Development, Strata Subdivision and access works

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
A02A	25/08/17	Barry Rush & Associates
A03	25/08/17	Barry Rush & Associates
A04A	25/08/17	Barry Rush & Associates
A05A	25/08/17	Barry Rush & Associates
A06	23/06/17	Barry Rush & Associates
A07	20/06/17	Barry Rush & Associates
A08	20/06/17	Barry Rush & Associates
A09	20/06/17	Barry Rush & Associates
A10	20/06/17	Barry Rush & Associates
A11	20/06/17	Barry Rush & Associates
A12	23/06/17	Barry Rush & Associates
A13	23/06/17	Barry Rush & Associates
A15	19/05/17	Barry Rush & Associates

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Development Impact Assessment Report (submission version 3.7.17)	Undated	Trish Dobson Landscape Architecture

Access Report	28 June 2017	Accessibility Solutions
BCA Compliance Assessment For Development Application Lodgement	26 June 2017	TJS Building Certifiers
Report On Geotechnical Site Investigation	May 2017	Crozier Geotechnical Consultants

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:

Landscape Plans		
Drawing No.	Dated	Prepared By
1707/DA-L01A	03/09/17	Trish Dobson Landscape Architecture
1707/DA-L02A	03/09/17	Trish Dobson Landscape Architecture
1707/DA-L03A	03/09/17	Trish Dobson Landscape Architecture
1707/DA-L04A	03/09/17	Trish Dobson Landscape Architecture

Waste Management Plan		
Drawing No.	Dated	Prepared By
Waste Management Plan	20 June 2017	Bayview Links Pty Ltd

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. **Amendments to the approved plans**

The following amendments are to be made to the approved plans:

- All reference to vehicular access to Lantana Avenue is to be deleted from all plans referred to in Condition No. 1.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

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

- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

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

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

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

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

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

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)

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches Council Section 94A Development Contribution Plan

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

The following monetary contributions are applicable:

Northern Beaches Council Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 6,247,937.00		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 59,355.40
Section 94A Planning and Administration	0.05%	\$ 3,123.97
Total	1%	\$ 62,479.37

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

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

Reason: To provide for contributions in accordance with Northern Beaches Council's Development Contributions Plan.

7. **Security Bond**

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

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

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

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

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

8. **Works Bonds**

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

A Bond of \$5,000 as security against any damage to Council's stormwater drainage system as part of this consent.

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

A Bond of \$10,000 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 (Failure to Remove Waste)

A bond of \$5,000 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.

(d) Construction, Excavation and Associated Works Bond (Maintenance for civil works)

The developer/applicant must lodge with Council a Maintenance Bond of \$5,000 for the construction of footpath along Rose Avenue. The Maintenance Bond will only be refunded on completion of the Maintenance Period, if work has been completed in accordance with the approved plans to the satisfaction of Council.

(e) Construction, Excavation and Associated Works Bond (Footpath)

A bond of \$30,000 as security against any damage or failure to complete the construction of the footpath as part of this consent.

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

9. **On-site Stormwater Detention Construction 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 Civil & Structural Engineering Design Services, drawing number B-11-265337 - 1A and 2A dated 10/5/2017.

Stormwater runoff from the development must be piped to the existing concrete pit located with the north eastern corner of the development site. The pipe downstream of this pit may need to be augmented to cater for all catchments draining to this stormwater drainage system.

A Construction Certificate pursuant to Section 109C of the Environmental Planning and Assessment Act 1979 must be issued by a C3 and C15 Accredited Certifier, ensuring that the stormwater drainage design complies with all requirements of this condition and Council's Water Management Policy.

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. (DACENC03)

10. **Pump-Out System Design for Stormwater Disposal**

The design of the pump-out system for stormwater disposal will be permitted for drainage of basement areas only, and must be designed in accordance with Council's Stormwater Drainage Policy. Engineering details demonstrating compliance with this requirement and certified by an appropriately qualified and practising hydraulic engineer.

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

Reason: To ensure adequate provision is made for the discharge of stormwater from the excavated parts of the site. (DACENC04)

11. **Application for Works to be Approved within Councils Roadway**

An application for works to be approved within Councils roadway under Sections 138 & 139 of the Roads Act 1993 is to be submitted to Council for approval. The submission is to include four (4) copies of Civil Engineering plans for the design and construction of two driveway crossings, laybacks and 1.5 metre wide concrete footpath between the development site and 22 Rose Avenue along the Rose Avenue frontage 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 application 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)

12. **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)

13. **Off Street Parking Facility and internal driveway**

The off-street parking facility gradients, levels, internal dimensions and driveway design are to comply with AS/NZS 2890.1:2004 Parking facilities Part 1: Off-street car parking.

A suitably experienced and qualified civil engineer is to certify that the proposed car parking facility and driveway design comply 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 suitable vehicular access to private property. (DACENC13)

14. **Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required.

All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

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

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

Reason: Safety. (DACENC19)

15. **Shoring of Adjoining Property**

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings. Council approval is required if temporary rock anchors are to be used within Council land.

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

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the

protection of adjoining properties and Council land. (DACENCO5)

16. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

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

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

17. **Compliance with Standards**

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

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

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

18. **Sydney Water Tap in**

The approved plans must be submitted to the 'Sydney Water Tap in' online service prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

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

- Register or log in now at 'Sydney Water Tap in'.
- Email us at swtapin@sydneywater.com.au.
- Call our team on 13 000 TAP IN (1300 082 746) during business hours - 8.30 am to 5.30 pm.

Reason: To ensure compliance with the statutory requirements of Sydney Water. (DACPLC12)

19. **Requirements for Seniors Housing or Housing for Persons with a Disability**

The development is for the purposes of Seniors Housing or Housing for Persons with a Disability and is required to comply with all the standards specified in Schedule 3 - "*Standards concerning accessibility and useability for hostels and self-contained dwellings*".

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

Reason: To ensure public safety and equitable access for seniors or people with a disability. (DACPLC16)

20. **Pedestrian Site Distance**

A pedestrian sight triangle of 2.0 metres by 2.5 metres is required to be provided at the vehicle access to the property, to ensure adequate sight distance between vehicles exiting the property and pedestrians proceeding along the footpath, in accordance with AS2890.1.

Reason: Compliance with Australian Standards AS2890.1:2004.(DACTRCPC2)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

21. **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 Northern Beaches 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)

22. **Tree protection**

(a) Existing trees which must be retained

- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
- ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by the Project Arborist on site.
- ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by the Project Arborist on site.
- iii) All tree protection to be in accordance with the Arboricultural Development Impact Assessment Report dated 3.7.17 prepared by Trish Dobson and AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

23. **Stormwater Pipeline Construction**

Where connection to Council's nearest stormwater drainage system is required, being to a Council stormwater inlet pit in Lantana Avenue, the applicant shall construct the pipeline in accordance with Council's specification for engineering works (see www.warringah.nsw.gov.au) and shall reconstruct all affected kerb and gutter, bitumen reinstatements, adjust all vehicular crossings for paths, grass verges and household stormwater connections to suit the kerb and gutter levels. All works shall be undertaken at the applicant's cost, and upon completion certified by an appropriately qualified and practicing Civil Engineer.

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

Reason: To ensure compliance of drainage works with Council's specification for engineering works. (DACENE03)

24. **Vehicle Crossings**

The provision of two vehicle crossings six metres wide each vehicle crossing, in accordance with Warringah Council Drawing No A4-3330 Normal High (Lantana Avenue frontage) and Normal Low (Rose Avenue frontage) and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

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

25. **Footpath Construction**

The applicant shall construct a 1.5 metre wide concrete footpath along Rose Avenue frontage between the development site and 22 Rose Avenue. 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.

Applicant or developer must lodge an application for street levels.

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)

26. **Layback Construction**

Two laybacks six metres wide each layback (excluding the wings) is to be constructed in accordance with Warringah Council Drawing No A4-2276 and specifications.

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

27. **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)

28. **Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

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

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

29. **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)

30. **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 Arboricultural Development Impact Assessment Report (submission version 3.7.17) prepared by Trish Dobson Landscape Architecture.
- iii) The Project Arborist is to familiarize themselves with and ensure compliance as relevant with, any other tree or environmental requirements conditioned under this consent.

Reason: Environmental protection (DACLADPC1)

31. **Traffic Control on Right of Way**

The provision of traffic control through the provision of mirrors and 'Give Way' signs is required to provide visibility and priority for the exiting vehicles from the basement car park to the access handle to Rose Avenue.

Reason: To minimise traffic conflict (DACTREDW1)

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

32. **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)

33. **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)

34. **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)

35. **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)

36. **Positive Covenant for the Maintenance of Stormwater Pump-out Facilities**

A Positive Covenant (under the provisions of Section 88B of the Conveyancing Act 1919) is to be created on the property title to ensure the on-going maintenance of the stormwater pump-out facilities on the property being developed.

Warringah Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Warringah Council's delegate shall sign these documents prior to the submission to the Land & Property Information Department.

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 adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard. (DACENF11)

37. **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)

38. **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 Warringah 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)

39. **Off Street Parking Facility and internal driveway certification**

The off-street parking facility gradients, levels, internal dimensions and internal driveway design are to comply with AS/NZS 2890.1:2004 Parking facilities Part 1: Off-street car parking.

A suitably experienced and qualified civil engineer is to certify that the constructed car parking facility and internal driveway comply with all requirements of this condition and approved Construction Certificate plans.

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

Reason: To ensure suitable vehicular access and parking to private property. (DACENFPO1)

40. **Required Planting**

Trees shall be planted in accordance with the following schedule:

No. of Trees Required.	Species	Location	Minimum Pot Size
All trees	As indicated on Landscape Plans referred to in Condition No. 1 c)	As indicated on the Landscape Plans	As indicated on the Landscape 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 maintain environmental amenity. (DACLAF01)

41. **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)

42. **Garbage and Recycling Facilities**

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area. (DACPLF03)

43. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings. (DACPLF04)

44. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**

The units within the development are to be numbered in accordance with the Australia Post Address Guidelines (https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf).

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website (<https://www.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/unit-numbering-multi-unit-developments-residential-commercial-and-industrial-form/unit-numbering-multi-unit-developments-residential-commercial-and-industrial-form.pdf>).

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of

an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access. (DACPLF05)

45. **Waste Management Confirmation**

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

46. **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)

47. **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)

48. **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)

49. **Positive Covenant for Waste Services**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to provide access to the waste storage facilities prior to the issue of an Interim/Final Occupation Certificate. 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 Council prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

Reason: To ensure ongoing access for servicing of waste facilities (DACWTF03)

50. **Authorisation of Legal Documentation Required for Waste Services**

The original completed request form (Department of Lands standard form 13PC) must be submitted to Council for authorisation prior to the issue of the Interim/Final Occupation Certificate. A copy of the work-as-executed plan (details overdrawn on a copy of the approved plan) must be included with the above submission. Where required by Council or the Certifying Authority, a Compliance Certificate shall also be provided in the submission to Council.

If Council is to issue the Compliance Certificate for these works, the fee is to be in accordance with Council's Fees and Charges.

Reason: To create encumbrances on the land. (DACWTF04)

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

51. **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 civil 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)

52. **Landscape maintenance**

- i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.
- ii) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: To maintain local environmental amenity