



Report of Meeting

Sutherland Shire Local Planning Panel

Tuesday, 2 April 2019

6:00pm

Black Box

Sutherland Entertainment Centre

30 Eton Street, Sutherland

SUTHERLANDSHIRE

PANEL: Grant Christmas (Chair), Mary-Lynne Taylor, Jan Murrell and David Corry.

STAFF IN ATTENDANCE: Manager, Development Assessment and Certification (Simone Plummer) and Manager, Major Development Assessment (Mark Adamson)

DISCLOSURES OF INTEREST

File Number: 2015/14239

Mrs Taylor declared an interest in relation to Item 7 (6 Hazel Place Burraneer) in that she knew one of the owners through her law practice, as the practice had acted for the owner's employer on several occasions in the past but not presently. Ms Taylor had had no contact with the owner in relation to this matter. The Chair noted the disclosure and formed the opinion that the interest was not significant and permitted Mrs Taylor to be part of the consideration and determination of the review request.

Additional Item

Land Environment Court Proceedings No 2018/251742

Applicant: Duke Developments Australia 3 Pty Ltd

Property: 5-7 Burke Rd Cronulla

Proposal: Residential flat building

PANEL DECISION:

THAT:

The Panel delegate its functions as a consent authority in relation to legal proceedings arising from a decision that would ordinarily be made by the Local Planning Panel to the Council's General Manager or her nominee.

REASON OR DECISION:

The application was already before the Land and Environment Court and, on the advice of the Council's solicitor, a suitable outcome had been negotiated.

VOTES

The decision was unanimous.

SSLPP010-19	Proposal:	DA17/1390 - Construction of an inground swimming pool, deck and retaining wall
	Property:	Lot 3 Sec B DP18038 No. 7 Neil Street, Bundeena
	Applicant:	Brad John Wheeler
	File Number:	DA17/1390

Speaking against the proposal was Tony Robb (town planner) and Helen Armstrong (resident).

Speaking for the proposal was Jeremy Swan (town planner).

PANEL DECISION:

THAT:

Development Application No. 17/1390 for construction of an inground swimming pool, deck and retaining wall at Lot 3 Sec B DP 18038 (No. 7) Neil Street, Bundeena be refused for the following reasons:

1. The application is not acceptable in that it is inconsistent with the objectives of Zone E3 Environmental Management under the Sutherland Shire Local Environmental Plan 2015, in particular it would not:
 - (a) allow development of a scale and nature that maintains the predominantly natural landscape setting of the locality and other natural features of the locality;
 - (b) limit development in the vicinity of the waterfront so that the locality's natural qualities can dominate.
2. The application is not acceptable having regard to the non-compliances with the Sutherland Shire Council Development Control Plan 2015 relating to (a) retaining wall height and (b) the failure to protect and preserve the rock platform.
3. The proposal would have a negative visual impact on this unique foreshore locality.

REASON FOR THE DECISION:

For the reasons stated above.

VOTES: The decision was by majority 3-1. Mrs Taylor was of the view that the application was acceptable and should be approved in accordance with the Council officer's recommendation.

SSLPP011-19	Proposal:	MA17/0577 - Section 4.55 – Modification of DEV970464: To extend the closing time of the restaurant’s outdoor eating area from 10.00pm to 10.30pm on Fridays and Saturdays, to extend the closing time of the undercroft area from 10.00pm to 11.00pm on Fridays and Saturdays, to operate on New Year’s eve/day till 1.00am on New Year’s day morning and to play live music in the outdoor undercroft area between 2.00pm and 6.00pm on Sundays and on New Year’s eve till 1.00am on New Year’s day morning. Review of Condition (5) of MA16/0202: As part of this assessment Council is also carrying out the Annual Review of Condition (5) of MA16/0202 relating to the number of seats in the outdoor area.
	Property:	Lot 33 S/P 53757, (Shop 3/1) Ocean Grove Avenue, Cronulla
	Applicant:	Gerardo Incollingo
	File Number:	MA17/0577

Speaking against the proposal were Kevin Smith and Rob Wood.

Speaking for the proposal was Kerry Harman.

PANEL DECISION:

THAT:

1. Pursuant to the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act 1979, the consent to Development Application No. 970464 dated 12 December 1996 for Use of Tenancy 33 as Wood Fired Pizza Restaurant with Outdoor Seating at Lot 33 S/P 53757, Shop 3/1 Ocean Grove Avenue, Cronulla be modified.
2. Reviewable Condition 5 of MA16/0202 be reviewed and as a result of that review the number of outdoor seats remain at this time at the 60 seats as currently permitted.
3. The consent to Development Application No. 970464 for use of Tenancy 33 as a Wood Fired Pizza Restaurant with Outdoor Seating at Lot 33 S/P 53757, Shop 3/1 Ocean Grove Avenue, Cronulla be modified as follows:
 - **Condition 5 be modified to read as follows:**

(5) Hours of Operation - Reviewable Condition

This condition is imposed under Section 4.17(10B) of the Environmental Planning and Assessment Act 1979 to enable Council to review the performance of the approved development with respect to extended hours of operation and number of patrons. The review will take place with 14 days' notice, upon receipt of a complaint.

A. Design

The use of the premises and all associated plant and equipment must be designed or located so that the noise emitted does not exceed an LAeq sound pressure level of 5dB above the ambient background level when measured at the most affected point on or within any residential property boundary.

Note: The method of measurement of sound must be carried out in accordance with Australian Standard 1055.1

A1. Prior to Commencement of Music on Sundays or Commencement of the Extended Hours of Operation

- (i) The number of seats in the outdoor area (combined undercroft and uncovered areas) shall be a maximum of 60 and their layout shall be amended to provide for a 1 metre wide disabled access path from Ocean Grove to the main entry of the indoor part of the restaurant and to the path to Lots 31 and 32 (Albi's Taverna) clear of obstructions. The tables and chairs to be removed are to be 28 high stools with their related tables.**
- (ii) Rubber feet shall be installed on all tables and chairs in the outdoor and undercroft area.**

B. Ongoing

To protect the amenity of the surrounding environment the trading hours and use of the premises shall be restricted to the following conditions:

- (i) The use of the premises including all plant and equipment must be operated and maintained in accordance with "A" above.
- (ii) Certification from a qualified acoustic engineer shall be provided within **10** weeks from the date of this operation (**ie commencement of music on Sundays/extended hours commencing**) confirming that the design and operation requirements specified within "A" above are being achieved (**i.e. that the noise emitted does not exceed an LAeq sound pressure level of 5dB above the ambient background level when measured at the most affected point on or within any residential property boundary**). The report shall include all post validation results and be based on the restrictions set out below.
- (iii) (a) The indoor dining area must operate between the hours of:

Sunday to Thursday and Public Holidays: 8.00am to 11.00pm

Friday to Saturday: 8.00am to 12.00 midnight

New Year's Eve 8.00am to 1.00am the following morning

- (b) The outdoor dining area **(being the undercroft and uncovered areas combined)** must only operate between the hours of 8.00am to 10.00pm **Sundays to Thursdays and 8.00am to 10.30pm Fridays and Saturdays** ~~seven days a week~~ **with the exception of New Year's Eve when it may operate till 12.30 am.**
- (c) The outdoor dining area **(being the undercroft and uncovered areas combined)** must be restricted to a maximum of 60 patrons.
- (iv) All external doors and windows to the restaurant must be closed from 10.00pm Sundays to Thursdays and 10.30 pm Fridays and Saturdays **except on New Year's Eve when they must be closed from 12.30 am.**
- (v) **For a trial period commencing on 1 May 2019, there may be live music which is not amplified at the premises between 2.00pm and 5.00pm on Sundays only and between 6.00pm and 12.00 midnight on New Year's Eve. On Sundays the music must be performed either inside the building or in the undercroft area and must not be performed in the outdoor uncovered area. Live music is not permitted at other times.**
- (vi) **Whenever music is played there must be no speakers located in the outdoor uncovered seating area and any speakers in the undercroft area must be directed towards the inside of the restaurant and not towards the outside. There must not be more than 4 performers at any one time.**
- (vii) **On New Year's Eve to ensure that the premises operate as a restaurant not as a bar and to minimise impacts on the residents of this and nearby buildings**
- (a) All customers must be prebooked.**
 - (b) All customers must order and consume a meal.**
 - (c) No persons shall be permitted entry after 10.30 pm.**
 - (d) Any music after 10.00pm must only be performed within the internal area of the restaurant.**

Should a complaint be received that on proper investigation discloses that limiting the outdoor seating area and hours of operation is the most efficient and effective means of obviating nuisance then the outdoor seating area and hours of operation will be required, at the expiration of 14 days written notice, to revert to the following:

- (a) The indoor dining area must operate between the hours of:
Sunday to Thursday and Public Holidays: 8.00 am – 11.00pm
Friday and Saturday: 8.00 am – 12.00 midnight
- (b) The outdoor dining area **(being the undercroft and uncovered areas combined)** must only operate between the hours of 8.00 am to 10.00pm.
- (c) The outdoor dining area **(being the undercroft and uncovered areas combined)** must be restricted to a maximum of 44 patrons.
- (d) There is to be no live music in the outdoor dining area.

Condition 7 be amended as follows:

- (7) This approval is for a restaurant/cafe only and does not authorise musical or other forms of entertainment **except as authorised by Condition (5) as modified.**

REASONS FOR THE DECISION:

1. To permit a trial period for live music to assess the impacts that such music would have on nearby residential properties.
2. To permit reasonable New Year's Eve trading hours.

VOTES: The decision was unanimous.

SSLPP012-19	Proposal:	DA18/1247 - Creation of new car parking spaces and reduction of existing visitor car parking spaces
	Property:	S/P 21621 (Nos. 24-26) Croydon Street, Cronulla
	Applicant:	JOHN HATCH
	File Number:	DA18/1247

Speaking against the proposal were Graeme Wettengel, Amanda Cucca and Greg Crumblin.

Speaking for the proposal were John Hatch, Steven Trevitt and Bruce Conneeley.

THAT:

1. Pursuant to the provisions of Clause 4.6 of Sutherland Shire Local Environmental Plan 2015, the written submission in relation to the non-compliance with the landscaped area development standard is supported and the Panel considers that consent can be granted despite the non-compliance.
2. Development Application No.18/1247 is approved in part for creation of new resident car parking spaces and reduction of existing visitor car parking spaces within the building at Strata Plan 21621 (Nos 24-26) Croydon Street, Cronulla subject to the conditions contained in Appendix "A" of the Council officer's report.

REASONS FOR THE DECISION:

1. The Panel considered the applicant's Clause 4.6 request regarding the minimum Landscaped Area development standard within Clause 6.14 of Sutherland Shire LEP 2015 and formed the view the applicant's written request satisfactorily addressed the required matters within Clause 4.6(3) of the LEP (as it related to the proposal for the conversion of the existing visitor spaces to resident spaces). The Panel was satisfied the proposal was consistent with the zone objectives and the objectives of the development standard, notwithstanding the non-compliance, and granting consent was in the public interest. The proposal is relatively minor and the landscaped area was not being reduced by the proposal.
2. The Panel considers that each Owners' Corporation of the respective affected Strata Plans should obtain its own legal advice to better understand their rights under the right of way.
3. The Panel was of the opinion that control of, and access over, the right of way was a civil matter that was not within the Council's jurisdiction.

VOTES: The decision was unanimous.

SSLPP013-19	Proposal:	DA18/0180 - Construction of a secondary dwelling, garage and carparking area
	Property:	Lot 2 DP205963 No. 9 Carina Road, Oyster Bay
	Applicant:	Poppy Home
	File Number:	DA18/0180

There were no speakers registered.

PANEL DECISION:

THAT:

Development Application No. 18/0180 for the construction of a secondary dwelling, garage and carparking area at Lot 2 DP 205963 (No. 9) Carina Road, Oyster Bay is determined by the refusal of development consent for the reasons outlined below:

1. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposed development exceeds the maximum height development standard permitted under Clause 4.3(2) of the Sutherland Shire Local Environmental Plan 2015, it has not been demonstrated by means of a suitable written request pursuant to Clause 4.6 of Sutherland Shire Local Environmental Plan 2015 that the development standard is unreasonable or unnecessary in the circumstances of the case or that there is a public benefit in allowing a contravention of the development standard or that there are sufficient environmental planning grounds to justify a non-compliance with the development standard.
2. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as the proposed development provides less than the minimum landscaped area required under Clause 6.14(3) of the Sutherland Shire Local Environmental Plan 2015, it has not been demonstrated by means of a suitable written request pursuant to Clause 4.6 of Sutherland Shire Local Environmental Plan 2015 that the development standard is unreasonable or unnecessary in the circumstances of the case or that there is a public benefit in allowing a contravention of the development standard and that there are sufficient environmental planning grounds to justify a non-compliance with the development standard.
3. Pursuant to the provisions of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment, it is considered that the proposed development fails to satisfy objective 5.1(1) of Chapter 3a of the Sutherland Shire Development Control Plan 2015 in that the dedicated area of private open space allocated for the secondary dwelling is of insufficient area that is open to the sky and has insufficient width, making it not adequately functional for its intended purpose.

4. On a merit assessment, the proposal is not suitable as there is inadequate landscaping and the development is not in the public interest.

REASON FOR THE DECISION:

For the reasons contained above.

VOTES: The decision was unanimous.

SSLPP014-19	Proposal:	DA18/0913 - Alterations and additions to a dwelling
	Property:	Lot 1 DP 787869 (No. 42) Coachwood Crescent. Alfords Point
	Applicant:	Inkon Plans
	File Number:	DA18/0913

There were no speakers registered.

PANEL DECISION:

THAT:

1. The application be deferred to enable the submission of amended plans which provide for the removal of the unauthorised awning structure in the rear yard and compliance with the landscaped area development standard of 40%.
2. The Panel may determine the amended application at a later date by electronic means.

REASON FOR THE DECISION:

1. The Panel considered that there was an excess of hard paved area on the site and compliance with the landscaped area development standard was a reasonable requirement.
2. The proposed first floor addition was otherwise acceptable and had no external amenity impacts.

VOTES: The decision was unanimous.

SSLPP015-19	Proposal:	DA18/0266 - Alterations and additions to approved residential flat building (DA15/1452)
	Property:	Lots 1 and 2 DP204265, Lots 8 and 9 DP23748 (No. 138-144) Willarong Road, Caringbah
	Applicant:	ACN 600 882 095 PTY LTD
	File Number:	DA18/0266

There were no speakers registered.

PANEL DECISION:

THAT:

Pursuant to the provisions of Section 4.16 of the Environmental Planning and Assessment Act 1979, Development Application No. 18/0266 for alterations and additions to approved residential flat building (DA15/1452) at Lots 1 and 2 DP 204265, Lots 8 and 9 DP 23748, 138-144 Willarong Road is determined by refusal for the following reasons:

1. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the objectives of Clause 4.3 of Sutherland Shire Local Environmental Plan 2015 and does not comply with the maximum building height development standard of 16 metres stipulated under Clause 4.3 and the Panel does not agree with the Clause 4.6 request.
2. Pursuant to the provisions of Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposal is inconsistent with the objectives of Clause 4.4(1) of Sutherland Shire Local Environmental Plan 2015 and does not comply with the maximum floor space ratio development standard of 1.2:1 stipulated under Clause 4.4(2) and the Panel does not agree with the Clause 4.6 request.

REASON FOR THE DECISION:

For the reasons stated above.

VOTES: The decision was unanimous.

SSLPP016-19	Proposal:	RA18/0010 - Section 8.2(1)(a) Review of DA18/0001 - Demolition of existing dwelling and garage and the construction of a dwelling house, front fence and foreshore access tunnel
	Property:	Lot 4 DP 12558 (No. 6) Hazel Place, Burraneer
	Applicant:	Megan Ryan
	File Number:	RA18/0010

Speaking for the proposal were Julie Ryan, Chris Ryan, Aaron Sutherland and Christina Renner.

PANEL DECISION

THAT:

- A. Pursuant to Section 8.3(1) of the Environmental Planning and Assessment Act 1979, the Council's decision to refuse consent of Development Application No. 18/0001 for demolition of the existing dwelling and garage and the construction of a dwelling house, front fence and foreshore access tunnel is reviewed.
- B. Pursuant to Section 8.3(5) of the Environmental Planning and Assessment Act, 1979, the Local Planning Panel determines the review by granting consent to Development Application No. 18/0001 for demolition of the existing dwelling and garage and the construction of a dwelling house, front fence and foreshore access tunnel subject to the conditions at Annexure "A" to this Report.

REASON FOR THE DECISION:

1. The majority of the Panel considered that the proposed development was a re-building of an existing dwelling within the meaning of clause 6.9(1)(a) of the LEP. As such, the proposal met the pre-conditions to the sub-clause.
2. The majority of the Panel considered that the proposal was consistent with the relevant zone objectives and complied with the applicable development standards in the LEP.
3. The majority of the Panel considered that the proposal was well designed, was contained within the existing footprint and had no significant amenity impacts on neighbouring properties.

VOTES:

The decision was by majority 2-1. Mr Christmas considered that the application proposed the construction of a new dwelling and was subject to clause 6.9(2)(b) of the LEP. In this regard, its design did not satisfy the pre-condition of the sub-clause in regard to a "reasonable alternative" location and was therefore development to which consent could not be granted.

The Meeting closed at **8.25pm**.

ANNEXURE "A"**CONDITIONS OF CONSENT Development Application No. 18/0001****Lot 4 DP 12558 – 6 Hazel Place Burraneer****1. APPROVED PLANS AND DOCUMENTS (UNI2005)**

The development must be undertaken substantially in accordance with the details and specifications set out on the Plan / Drawings in the table below:

<i>Plan number</i>	<i>Reference</i>	<i>Prepared by</i>	<i>Date</i>
DA1000	Site Plan	Megan Ryan	01.08.18 Rev C
DA1100	Site Analysis Plan	Megan Ryan	01.08.18 Rev C
DA2100	Floor Plans (Ground Floor, First Floor)	Megan Ryan	01.08.18 Rev C
DA2200	Floor Plans (Lower Floor, Tunnel Water Level)	Megan Ryan	01.08.18 Rev C
DA2300	Roof Plan, Section D, Balustrade Detail	Megan Ryan	01.08.18 Rev C
DA3000	Sections (Section A & B)	Megan Ryan	01.08.18 Rev C
DA3100	Section C	Megan Ryan	01.08.18 Rev C
DA4000	Elevations	Megan Ryan	01.08.18 Rev C
DA6200	Landscape & Deep Soil Calculations	Megan Ryan	01.08.18 Rev C
DA5000	Tunnel Exit Plan	Megan Ryan	01.08.18 Rev C
DA5001	Tunnel Exit- East Elevation	Megan Ryan	01.08.18 Rev C
DA5002	Tunnel Exit- North Elevation	Megan Ryan	01.08.18 Rev C
L01	Landscaping legend + indicative planting schedule	Amber Road	October 2017
L02	Landscape Plan- ground floor part a	Amber Road	October 2017
L03	Landscape Plan- ground floor part b	Amber Road	October 2017
L05	Landscape Plan- first floor part a	Amber Road	October 2017
L06	Landscape Plan- first floor part b	Amber Road	October 2017
L08	Landscape Plan- lwr ground floor	Amber Road	October 2017

and any details on the application form and on any supporting information received with the application except as amended by the following conditions.

Note: The following must be submitted to Sutherland Shire Council prior to the commencement of any building work.

- i) A Construction Certificate.
- ii) Notification of the appointment of a Principal Certifying Authority and a letter of acceptance from that
Principal Certifying Authority.
- iii) Notification of the commencement of building and/or subdivision works with a minimum of 2 days' notice of such commencement.

2. CONSISTENT PLANS

The approved landscaping details/plans prepared by Amber Rose that are referenced in Condition 1 of this Consent must be amended where necessary to be consistent with the details of the architectural drawings and landscape calculations plan that are referenced in Condition No. 1, and the BASIX Certificate, and any other condition of this Consent.

Details of compliance with the above must be included in the plans/documentation of the **Construction Certificate**.

3. FENCING

The front yard fencing shall be in accordance with the fencing details shown in the approved plans referenced in Condition 1 of this Consent, except as amended by the following:

- i) The front fence including the vehicle and pedestrian gates shall not exceed a height of 1.5m.
- ii) The 50% open aperture portion of the fence that is located on the front allotment boundary, shall continue to the pedestrian gate.
- iii) The pedestrian and vehicle gates shall be open style construction.
- iv) The solid portions of the fence to the north and south of the driveway shall be screened with the use of landscaping that is capable of reaching a height of at least 1.5m.
- v) So as to maintain adequate sight lines of vehicles and pedestrians when vehicles exit the property, landscaping provided within 1.5m of the where the driveway meets the front allotment boundary shall be restricted to species capable of growing to a height of 1.0m maximum.

Details of compliance with the above must be reflected on the plans forming part of the **Construction Certificate**.

4. **PRIVACY**

The following privacy measures/design changes must be incorporated into the development to ensure that reasonable privacy is maintained for neighbouring properties:

- i) The Ground Floor northern living room window and Ground Floor southern dining area window shall be amended to have 1.2m minimum sill heights above the finished floor level of the rooms. ii) Vertical louvres are to be provided to the northern living room window to a minimum height of 1.6m above the FFL, and angled such that views towards the dwelling including the upper level rear balcony at No. 4 Hazel Place, Burraneer are not available.
- ii) The first floor roof terrace balustrading where shown to the east of the raised garden beds, shall be relocated to be in line with the outer side edges of the raised garden beds. The balustrading to the sides of the garden beds shall be setback a maximum distance of 450mm from the outer side edges of the garden beds.

Details of the above privacy measures must be included in the plans/documentation of the **Construction Certificate** and be in place prior to the issue of an **Occupation Certificate**.

5. **LANDSCAPING WORKS ON THE FORESHORE AREA (UNI9004)**

The material finishes for the landscaping works on the foreshore area shall consist of natural stone for works to the existing retaining walls/walling as indicated on the approved plans referenced in Condition 1 of this Consent, and new balustrading shall be open form or transparent (such as clear glass) construction.

6. **PUBLIC PLACE ENVIRONMENTAL, DAMAGE & PERFORMANCE SECURITY BOND (FIN1015) A. BEFORE ISSUING OF ANY CONSTRUCTION CERTIFICATE**

Prior to the issue of a Construction Certificate or the commencement of any works on site, whichever occurs first, the person acting on this consent must provide security to Sutherland Shire Council against damage that may be caused to any Council property and/or the environment as a consequence of the implementation of this consent. The security may be provided by way of a deposit with Council or a bank guarantee. A non-refundable inspection/administration fee is included in the bond value.

It is the responsibility of the person acting on this consent to notify Sutherland Shire Council of any existing damage to public areas in the vicinity of the development site by the submission of a current dilapidation report supported by photographs. This information must be submitted to Council at least 2 days prior to the commencement of works.

In the event that the dilapidation report is not submitted 2 days prior to commencement and the public area sustains damage the person acting on this consent may be held liable.

Should any public property and/or the environment sustain damage as a result of the works associated with this consent, or if the works put Council's assets or the environment at risk, Council may carry out any works necessary to repair the damage and/or remove the risk. The costs incurred must be deducted from the bond.

The value of the bond is \$10,210.00.

Note: Bond amount includes a non-refundable administration fee which must be paid separately if security is provided by way of a deposit with Council or a bank guarantee.

Use of Bank Guarantee - As bond releases may occur under different timeframes only one bond amount/bond purpose is permitted on a Bank Guarantee. Multiple bonds will require multiple bank guarantees to be lodged.

B. AFTER OCCUPATION

A request for release of the bond may be made to Sutherland Shire Council after all works relating to this consent have been completed. Such a request must be submitted to Council on the 'Bond Release Request

Form' signed by the owner or any person entitled to act on the consent and must be accompanied by a current dilapidation report including photographs.

7. S94A 2016 PLAN - SUTHERLAND SHIRE (FIN3005) A. BEFORE CONSTRUCTION

Pursuant to s.80A(1) of the Environmental Planning and Assessment Act 1979, and Sutherland Shire Council Section 94A Plan 2016, a contribution of **\$25,300.00** must be paid to Sutherland Shire Council towards the cost of works contained in the contribution plan. The amount to be paid is to be adjusted at the time of the actual payment, in accordance with the provisions of the Section 94A Development Contributions Plan.

The rate used to index the contribution rate and outstanding contributions is the Consumer Price Index (All Groups Index) for Sydney. Outstanding levies will be adjusted on the first of July each year in accordance with the following formula:

The formula to review a contribution rate is:

$$\text{Adjusted Contribution} = \text{Current Contribution} \times \frac{\text{Current CPI}}{\text{Previous year's CPI}}$$

Payment must be made before whichever is the first to occur:

- the issue of a construction certificate, or
- the release of the subdivision certificate/ linen plan, or
- the commencement of the use/occupation of the premises.

8. APPROVALS REQUIRED UNDER ROADS ACT OR LOCAL GOVERNMENT ACT (ENG1005)

A. BEFORE CONSTRUCTION

No occupation or works are to be carried out on public land (including a road or footpath) or access provided over a public reserve adjacent to the development site without approval being obtained from Sutherland Shire Council and the necessary fee paid under the Roads Act 1993 and/or the Local Government Act 1993. These approvals must be to the satisfaction of Council for the required development works and may include but are not limited to the following:

- Frontage works including construction of a driveway, footpath, etc.
- Road openings and restoration to provide services to the development.
- Work Zones and hoardings.
- Skip bins.
- Shoring / anchoring.
- Standing of cranes, concrete pumps, etc.

Note: All Plans and Permits are required to be on site, at all times and may be requested by Council officers at any time.

Note: Approval under the Roads Act or Local Government Act cannot be granted by a Principal Certifying Authority or by a Private Certifier. Failure to obtain approval may result in fines or prosecution.

9. SITE MANAGEMENT (ENG2020)

A. BEFORE COMMENCEMENT OF WORKS INCLUDING DEMOLITION

Appropriate environmental site management measures must be in place and incorporate the following throughout demolition and construction:

- i) Safe access to and from the site during construction and demolition.
- ii) Safety and security of the site, road and footpath area including details of proposed fencing, hoarding and lighting.
- iii) Method of loading and unloading excavation machines, building materials.
- iv) How and where, construction materials, excavated and waste materials will be stored.
- v) Methods to prevent material being tracked off the site onto surrounding roadways.

- vi) Erosion, sediment and dust control measures.
- vii) All trees and their protection zones on and around the site identified for retention are to be protected according to Australian Standard AS 4970 - 2009 Protection of Trees on Development Sites using the methods outlined in that Standard.

B. DURING WORKS

The site management measures set out in the above must remain in place and be maintained throughout the period of works and until the site has been stabilised and landscaped.

10. STORMWATER DESIGN - GENERAL (ENG5010)

A. DESIGN

The stormwater drainage system where altered or newly constructed must be designed to comply with Australian Standard AS/NZS 3500.3:2015; the requirements of the BASIX Certificate; and connect to the existing point of discharge within the seawall.

11. SUPERVISING ENGINEER (LIFT-SHAFT AND DISABILITY ACCESS TUNNEL INSTALLATION) (ENG4005)

A. BEFORE CONSTRUCTION

The applicant must engage an Accredited Geotechnical and Structural Engineer to:

- i) To minimise vibration damage and loss of support to buildings / structures and properties in close proximity to the development site, a Geotechnical Engineers Report must be prepared detailing constraints to be placed on excavation, earth moving and tunnel boring machine and the method of excavation, shoring, underpinning and support (if required). This report must be provided to the person undertaking the excavation / tunnel boring and the Principal Certifying Authority.
- ii) Supervise the installation of the lift-shaft and disability access tunnel.

B. DURING CONSTRUCTION

The engineer must supervise the works as listed above to ensure compliance with:

- i) Approved Installation methodology.
The lift shaft is to be excavated (open cut) or a method less intrusive, whilst the accessibility tunnel must be tunnel bored or excavated horizontally from the base of the lift-shaft using a small excavator. Open cut excavation is not permitted to be undertaken for the installation of the accessibility tunnel. Waste soil and rock is to be removed from

the lift-shaft only and removed immediately from site or stockpiled on a flat surface away from Gunnamatta Bay.

- ii) That the constraints and recommendations of the Geotechnical Engineers Report are implemented.
- iii) Any area backfilled around the lift-shaft that is intended to be constructed upon must be certified as having the correct compaction rate prior to commencement of construction.

C. BEFORE OCCUPATION

The supervising engineer must certify the works required in “A” above were undertaken and completed in accordance with the requirements of this Development Consent and to their satisfaction.

12. FLOOD REQUIREMENTS

A. DESIGN

- i) All building materials must be flood resistant, or flood compatible to a height of 2.22m AHD. All internal electrical switches, power points or similar utilities liable to flood damage must be set at a minimum level of 2.22m AHD.
- ii) A suitably qualified engineer must certify that the structure can withstand the forces of floodwater, scour, debris and buoyancy up to and including 2.22m AHD.
- iii) Flood indicators are to be provided at the eastern end of the tunnel.

Details and certification must accompany the application for a construction certificate.

B. BEFORE OCCUPATION

Certification that the above works have been undertaken must form part of the application for an Occupation Certificate.

C. ONGOING

Materials which may be damaged by flood waters must be stored, or able to be stored at or above 2.22m AHD.

13. LANDSCAPE WORKS (NEW DWELLING HOUSES, LARGE SCALE ALTS & ADDS >\$200,000 AND WHERE THERE IS AN APPROVED LANDSCAPE PLAN)

A. DESIGN

The landscaping must be designed in accordance with the approved landscape plan, except where modified by the following:

- i) The site is to be provided with a minimum landscaped area amount of 40% of the Site Area as required and defined in Sutherland Shire LEP 2015.
- ii) In accordance with the BASIX Certificate for the development, 400m² of indigenous or low water use species of vegetation must be planted throughout the site.
- iii) Four (4) trees with a minimum mature height of 5m must be planted within the property, two (2) within the front setback and two (2) within the rear setback. The trees planted within the front setback must be planted at least 3.5m clear of the dwelling/garage foundations. The trees within the rear setback must be planted at least 3.5 metres clear of the dwelling foundations. The four (4) trees are to be selected from the lists of large and small trees below and are to include at least one large tree that is to be planted in the front setback area:

Large trees: Angophora costata- smooth-barked apple; Angophora floribunda- rough-barked apple; Eucalyptus betryoides- southern mahogany; Eucalyptus piperita- peppermint; Syncarpia glomulifera- turpentine.

Small trees: Banksia integrifolia- coast banksia; Glochidion ferdinandi- cheese tree.

Details of compliance with the above must be reflected on a Landscape Plan forming part of the **Construction Certificate**.

B. Prior to Issuing of the Final Occupation Certificate

The landscape works must be completed in accordance with this development consent.

C. ONGOING

All landscaping works required by 'A' must be maintained for 12 months from the date of the Final Occupation Certificate. Trees required by this consent must be maintained and protected until they are covered by Council's Controls for Preservation of Trees and Bushland Vegetation (SSCDCP 2015 Chapter 38).

14. Trees on Private Land (ENV2031)

A. Tree Removal

All existing trees are approved for removal.

15. MANAGEMENT OF SITE SOIL / FILL MATERIAL (ENV3011)

A. DURING WORKS

I) DISPOSAL OF SITE SOILS

Any soils to be excavated and disposed of from the site must be analysed and classified by an appropriately qualified, skilled and experienced environmental consultant, in accordance with

relevant NSW EPA guidelines including the "Waste Classification Guidelines" 2014, prior to off-site disposal.

Excavated material is to be transported to an appropriately licensed waste facility by an EPA licensed waste contractor in accordance with relevant NSW EPA guidelines. All excavated rock from the lift shaft and access tunnel that is VENM is to be separated from the site's other waste streams and appropriately recycled.

II) REUSED SOILS

Any existing soils excavated to be reused on the site must be assessed by an appropriately qualified, skilled and experienced environmental consultant in accordance with the National Environment Protection (Assessment of Site Contamination) Measure 1999 (amended 2013) and any relevant guidelines approved under *the Contaminated Land Management Act 1997*; to verify that the material is suitable for the intended land use, prior to reuse.

Any soils not suitable for the intended land use must be removed from site and disposed of in accordance with i) above.

III) IMPORTATION OF FILL MATERIAL

Any fill material that is imported onto the site must comprise Virgin Excavated Natural Material (VENM),

Excavated Natural Material (ENM) or other suitable material in accordance with the relevant Resource

Recovery Exemption issued under the *Protection of the Environment Operations (Waste) Regulation 2014*.

Note: An appropriately qualified and experienced environmental consultant must be certified by one of the following certification schemes, or demonstrate an equivalent standard:

- EIANZ 'Certified Environmental Practitioner - Site Contamination' scheme (CEnvP SC).
- Soil Science Australia 'Certified Professional Soil Scientist - Contaminated Site Assessment & Management' scheme (SSA CPSS CSAM).

16. MANAGEMENT OF POTENTIAL ACID SULFATE SOILS

A. DURING WORKS

- (i) If excavations extend beyond rock and into natural sediments then works must cease immediately and a suitably qualified environmental consultant must be engaged to carry out an acid sulfate soils investigation.

- (ii) Any exposed sediments must be kept moist and under the water table where possible.
- (iii) If acid sulfate soils are encountered during works; the situation is to be promptly evaluated by an appropriately qualified, experienced and certified environmental consultant. The acid sulfate soils must then be treated and/or managed under the supervision of the environmental consultant in accordance with the requirements of the NSW Acid Sulfate Soil Manual (ASSMAC 1998).

Note: The appropriately qualified and experienced environmental consultant must be certified by one of the following certification schemes, or demonstrate an equivalent standard acceptable to Sutherland Shire Council, Manager Environmental Science:

- EIANZ 'Certified Environmental Practitioner - Site Contamination' scheme (CEnvP SC).
- Soil Science Australia 'Certified Professional Soil Scientist - Contaminated Site Assessment & Management' or "Soil Survey" scheme (SSA CPSS CSAM or SS)

B. PRIOR TO RECOMMENCEMENT OF WORKS

If unexpected acid sulfate soils are treated and/or managed onsite; the appropriately qualified environmental consultant must certify that the acid sulfate soils were appropriately managed in accordance with the requirements of the NSW Acid Sulfate Soil Manual (ASSMAC 1998).

This certification must be provided to the satisfaction of the Principal Certifying Authority (PCA) and copied to Sutherland Shire Council, Manager Environmental Science, prior to the recommencement of works.

17. Noise Control - Residential Air Conditioning Unit / Heat Pump Water Heater (HLT4005)

To minimise the noise impact on the surrounding environment:

A. DESIGN

The unit must be designed and/or located so that noise generated does not cause an LAeq (15min) sound pressure level in excess of 5 dB(A) above the ambient background level when measured on or within any residential property.

B. ONGOING

- i) The unit must be operated in accordance with 'A' above.

- ii) Between the hours of 10.00pm and 8.00am on weekends and public holidays and 10.00pm and 7.00am any other day, noise emitted must not be heard within any residence with its windows and/or doors open or closed.

18. Demolition Work (HLT5015)

To ensure that demolition of structures is carried out in an environmentally acceptable and safe manner:

A. BEFORE COMMENCEMENT

If works involve the removal of more than 10 square metres of asbestos material, a bonded asbestos licence is required. A friable asbestos licence is required to remove, repair or disturb any amount of friable asbestos. For further information contact SafeWork NSW.

B. DURING WORKS

- i) The demolition of the existing building must be carried out strictly in accordance with Australian Standard 2601 - The Demolition of Structures.
- ii) The applicant must ensure that the demolition contractor has a current public risk insurance coverage for a minimum of \$5 million. A copy of the Policy must be submitted to the Council prior to demolition.

To ensure that the removal and transportation of any asbestos material, regardless of the quantity, is carried out in an environmentally acceptable and safe manner, all work must comply with the following:

- a) Work Health and Safety Act 2011;
- b) Work Health and Safety Regulation 2011;
- c) Safe Work Australia Code of Practice - How to Manage and Control Asbestos in the Workplace;
- d) Code of Practice for the Safe Removal of Asbestos 2nd Edition [NOHSC:2002(2005)];
- e) SafeWork NSW 'Working with Asbestos - Guide 2008';
- f) Protection of the Environment Operations Act 1997; and
- g) Protection of the Environment Operations (Waste) Regulation 2005.

Asbestos waste in any form must be disposed of at a waste facility licensed by the NSW EPA to accept asbestos waste. Any asbestos waste load over 100kg (including asbestos contaminated soil) or 10m² or more of asbestos sheeting must be registered with the EPA on-line reporting tool WasteLocate. More information can be found at <https://wastelocate.epa.nsw.gov.au>.

19. DILAPIDATION REPORT - ADJOINING PROPERTIES (ORD1005)**A. BEFORE WORKS**

To assist in the resolution of any future disputes about damage to properties adjoining the development site, prior to commencement of open cut excavation and tunnelling for the proposed lift-shaft and disability access tunnel, the Applicant or principal contractor must provide dilapidation reports on the adjacent buildings at No. 4 & 8 Hazel Place, Burraneer and including any basements and ancillary structures. The reports must be provided to the Principal Certifying Authority and to the owners of the properties that are the subject of the reports.

The reports must be prepared by a suitably qualified and experienced person, such as a structural engineer.

20. SYDNEY WATER REQUIREMENTS (ORD4045)**A. BEFORE ANY WORKS**

Prior to the commencement of any works on site, including demolition or excavation, the plans approved as part of the Construction Certificate must also be approved by Sydney Water. Furthermore, Sydney Water has strict requirements for swimming pools / spas discharging to a pressure or vacuum sewer system.

Sydney Water will determine if sewer, water or stormwater mains or easements will be affected by any part of your development. Customers will receive an approval receipt which must be included in the Construction Certificate documentation.

Please refer to the web site www.sydneywater.com.au.

21. DIAL BEFORE YOU DIG (ORD4050)**A. BEFORE CONSTRUCTION**

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).

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.

22. NOISE CONTROL AND PERMITTED HOURS FOR BUILDING AND DEMOLITION WORK (ORD5005)**A. DURING WORKS**

To minimise the noise impact on the surrounding environment:

- i) The LAeq sound pressure level measured over a period of 15 minutes when the construction or demolition site is in operation, must not exceed the ambient background level (LA90 15min) by more than 10dB(A) when measured at the nearest affected premises.
- ii) All building and demolition work must be carried out only between the hours of 7.00am and 6.00pm Monday to Friday inclusive, 8.00am and 3.00pm Saturdays. No work must be carried out on Sundays and Public Holidays.

23. TOILET FACILITIES (ORD5010)**A. DURING WORKS**

Toilet facilities must be available or provided at the work site at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site before works begin and must be maintained until the works are completed.

Each toilet must:

- i) be a standard flushing toilet connected to a public sewer, or
- ii) have an on-site effluent disposal system approved under the Local Government Act 1993, or
- iii) be a temporary chemical closet approved under the Local Government Act 1993.

24. CONTAINMENT OF FILL (ORD5015)**A. DESIGN**

Fill must not extend beyond the perimeter of the building. (The use of a dropped edge beam is a method of complying with this condition.) The exception to this is the raised garden area to the front setback area to 14.00m AHD. The land shall not be raised at the side allotment boundaries.

B. BEFORE CONSTRUCTION

Details of the finished levels around the perimeter of the building must accompany the application for a Construction Certificate.

END OF CONDITIONS