

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/1101
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<b>Responsible Officer:</b>	Anne-Marie Young
<b>Land to be developed (Address):</b>	Lot 102 DP 1185102, 10 Painters Parade DEE WHY NSW 2099
<b>Proposed Development:</b>	Construction of a dwelling house including swimming pool
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Dee Why Property Development Pty Ltd
<b>Applicant:</b>	Wallhouse Holdings Pty Ltd

<b>Application Lodged:</b>	04/10/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	21/10/2019 to 04/11/2019
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 7.4%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 946,000.00
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### PROPOSED DEVELOPMENT IN DETAIL

The proposal is seeking approval for the construction of a new three storey dwelling, double garage and a swimming pool. The proposed works comprise:

- Level 1  
Internal access stairs to upper level, family room with wet bar, WC, cabana, decking and outdoor terrace with BBQ.
- Level 2  
Entry, open plan kitchen/living and dining, pantry, butler's pantry, guest bedroom with ensuite, internal access stairs to upper and lower levels, laundry, WC and media room.

- Level 3 (Street Level)  
Internal access stairs to lower levels, two bedrooms, bathroom, master bedroom with study, robe, ensuite and balcony and attached double garage. It is noted that the amended design increases the setback of the master bedroom, ensuite, bathroom and balcony a further 2.1m from the eastern boundary.
- Ancillary Works  
Swimming pool  
External entrance stairs and elevated courtyard

## ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks  
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land  
 Warringah Development Control Plan - B1 Wall Heights  
 Warringah Development Control Plan - B7 Front Boundary Setbacks  
 Warringah Development Control Plan - B9 Rear Boundary Setbacks  
 Warringah Development Control Plan - D8 Privacy  
 Warringah Development Control Plan - D16 Swimming Pools and Spa Pools

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 102 DP 1185102 , 10 Painters Parade DEE WHY NSW 2099
<b>Detailed Site Description:</b>	The subject site consists of one allotment located on the eastern side of Painters Parade.

The site is regular in shape with a frontage of 36.59m along Painters Parade and a depth of 20.76m. The site has a surveyed area of 759.6m<sup>2</sup>.

The site is located within the R2 Low Density Residential zone and is currently an excavated vacant lot

The site slopes steeply from the south-western front corner down to the rear north-eastern corner, with a slope of approximately 11.97m

The site has minimal landscaping and no known threatened species.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by two storey dwellings to the north, south and west and a residential flat building to the east.

Map:



#### **SITE HISTORY**

There is an extensive history on the site including the following:

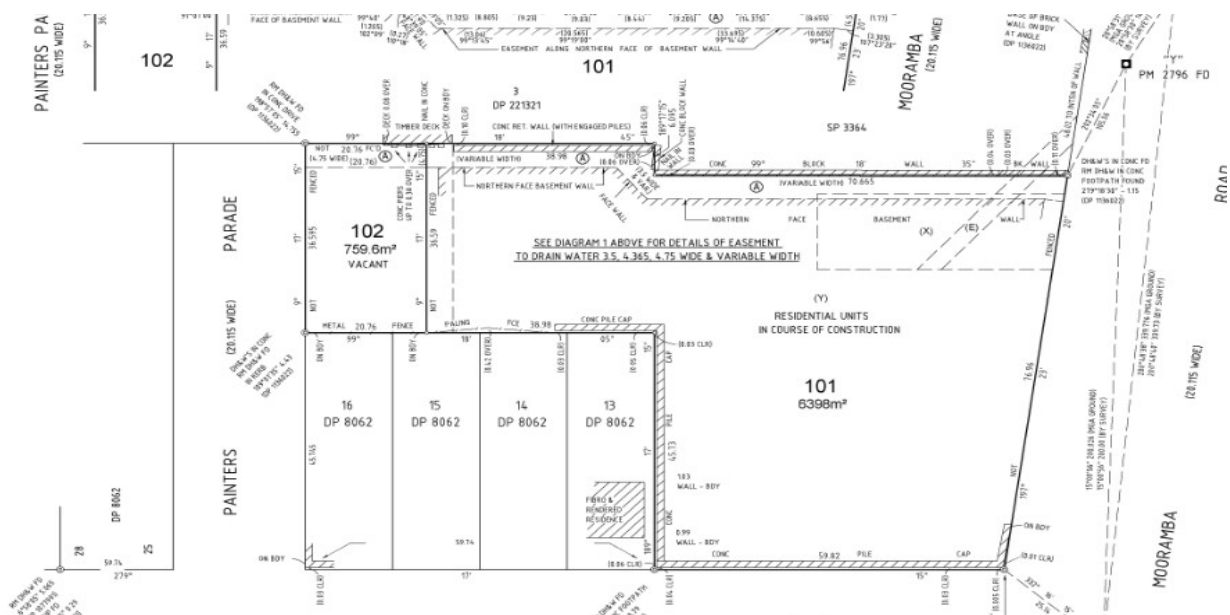
On 13 June 2005, **DA2003/1033** refused consent for the construction of a residential flat building at 2-10 Mooramba Road and a detached dwelling house on the subject site. The reasons for refusal relate to non-compliance with the Residential Flat Design Code and the WLEP and WDCP with respect of access to sunlight, privacy, building bulk and roofs. It is noted that the site 2-10 Mooramba Road at this time was used as a car showroom and mechanical workshop.

On 13 February 2007, S82A Review of the DA2003/1033 was refused.

On 10 February 2011, **DA2010/1839** approved a residential flat building (RFB) development at No. 2 - No. 10 Mooramba Road (DA2010/1838). A search of Council records confirm that the under DA2010/1838 the subject site was approved as part of the landscape area for the RFB. Condition 62 required validation of remediation work. A validation report was submitted which was assessed by Council's Health Officers as satisfying the condition.

On 23 January 2013, **DA2012/1450** approved for a boundary adjustment which will result in the entirety of the basement car parking structure approved under DA2010/1839, to be contained within Lot 1. The boundary adjustment will result in total lot areas of: Lot 1(2 Mooramba Road) 6398m<sup>2</sup> and Lot 2 (10 Painters Parade) 756.9sqm.

On 18 December 2013, sub-division DP1185102p was registered to create the separate lot, the subject site, from No 2 - 10 Mooramba Road refer to plan below.



*Subdivision plan*

On 24 February 2014, Modification Ref **Mod2014/0022** approved the deletion of condition 67 (in addition to other conditions). Condition 67 required a covenant is to registered on the title of the land for Lot 2 (No. 10 Painters Parade). The assessing report noted that "these conditions have become redundant to the consent as development consent DA2012/1450 dated 23/01/2013, resulted in the basement car park being contained entirely within Lot 1. (2 Mooramba Road). The modification reflected the realigned boundary approved under DA2012/1450.

### Prelodgement

On 9 April 2010, a prelodgement meeting took place to discuss the proposed dwelling. The plans tabled at the meeting are consistent with those lodged with the original subject DA. The concluding comments in the PLM notes advised that the proposal is generally acceptable subject to an amendment to increase the front setback by 1m, amend the design to have a progressive stepping in of the building to the rear boundary as the height increases. The landscaping buffer to be increased / widened at the rear of the site and a reduction in the floor to ceiling height to minimise the building height breach.

### History of subject DA

On 28 August 2020 the application was amended to reduce the height of the development and increase

the setback of level three from the eastern boundary. Pursuant to the Community Participation Plan the amendment do not require re-notification as there will be no new environmental impacts.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the stormwater drainage easement.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>

Section 4.15 Matters for Consideration'	Comments
	<b>(iii) Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 21/10/2019 to 04/11/2019 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Adela Rosamund Lamb Mr Kenneth Wayne Lamb	4/6 Amber Grove MOUNT WAVERLEY NSW 3149

The following issues were raised in the submissions and each have been addressed below:

- **Inappropriate screening / solar access issues.**

The matters raised within the submissions are addressed as follows:

- **The west side of the the affected unit on level 2 looks directly out on 10 Painters Parade, Dee Why. There is a concern that if the owners of the property plant screening along the western boundary that it will cover rises to the height of our windows resulting in loss of solar access.**

### Comment:

The canopy planting to the eastern boundary consists of Kentia Palms, Elaeocarpus reticulatus,

and Cupaniopsis anacardioides. The Cupaniopsis shall be deleted and replaced with a small native tree. The Kentia and Elaeocarpus are unlikely to impact upon solar access in maturity, if at all, as the Kentia is a single tall trunk species with small canopy (fronds) at the top and is unlikely to reach the height of the proposed dwelling, and similarly the Elaeocarpus is restricted to a mature height of 6 to 8 metres.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	Landscape Plan submitted with application is noted.  The DA is considered acceptable with regard to the relevant controls relating to landscape issues, subject to conditions.
NECC (Development Engineering)	Reference is made to Development Engineering Referral Responses dated 23/10/19 and 9/1/20 and additional information provided by the Applicant.  No objections are raised to the proposed development, subject to conditions.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The property is partially affected by the low flood risk precinct. There are no flood related controls applicable for this development.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)\*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

### State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

#### SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been vacant for a significant time. The site was previously part of No. 2 - 10 Moorambra Road which was used as a car showroom and mechanical workshop. A search of Council's maps confirm that the particular area of land to which the subject DA relates was comprised an area of vegetation, see screen shot below.



1996 aerial photo showing the car showroom and workshop on the site and No 2-10 Moorambra Road.

On 15 February 2011, DA2010/1839 approved a residential flat building and the subject site was approved as part of the landscape area for the RFB. Condition 62 required validation of remediation work. A validation report was submitted which was assessed by Council's Health Officers as satisfying the condition. In summary, the site has been remediated in accordance with the conditions of DA2010/1839 and it is considered that the site poses no risk of contamination. No further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

#### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.20931\_02 dated 1 December 2020). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0004216297 dated 18 Sep 2019).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	51

A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

#### SEPP (Infrastructure) 2007

##### Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the

- electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

### Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.15m	7.64%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

### 4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.1m
Percentage variation to requirement:	7.64%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

**Clause 4.6 Exceptions to development standards:**

*(1) The objectives of this clause are as follows:*

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

*(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

**Comment:**

Clause 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

*(a) the consent authority is satisfied that:*

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) the concurrence of the Secretary has been obtained.*

**Clause 4.6 (4)(a)(i) (Justification) assessment:**

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

**Comment:**

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

*'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'*

s 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

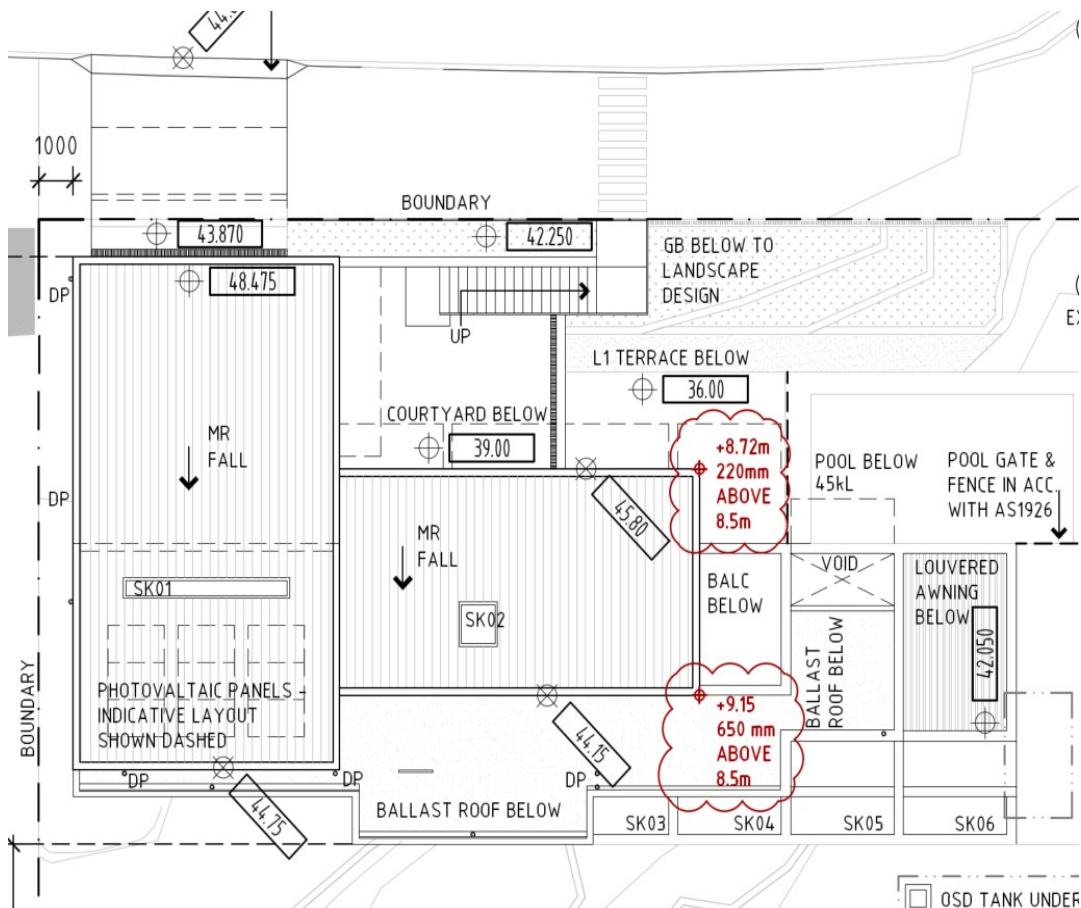
The applicants written request argues, in part:

- The works maintain a bulk and scale which is in keeping with the extent of surrounding development.
- The dwelling has been located to mitigate any adverse impacts of overshadowing and loss of view towards any neighbouring properties.

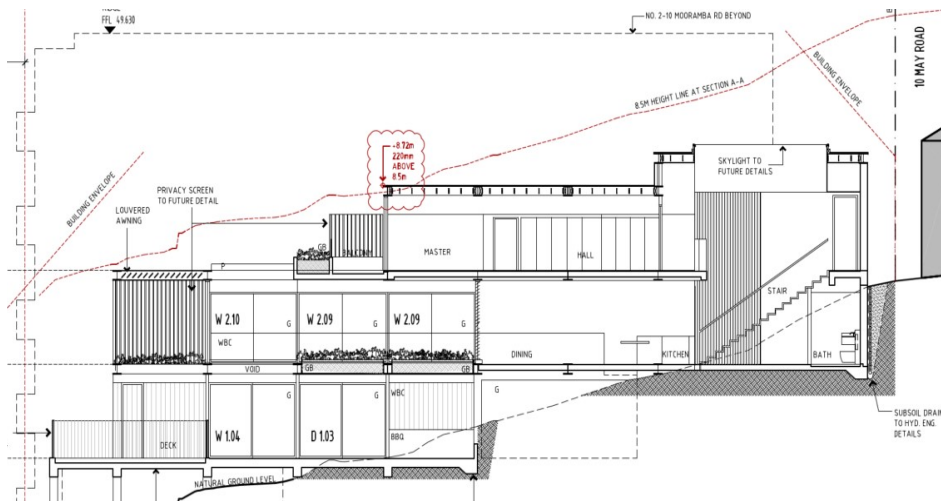
- The dwelling has been designed to respect the sloping topography and the further setbacks of Level 2 and Level 3 will minimise any adverse impacts of overshadowing or privacy of neighbouring properties.

The proposal as amended reduced the breach of the height development standard from 45.4% (3.86m) to 7.64 (0.65m). The breaching elements relates only to the eastern and western corner of the top floor and correspond to the topography of the site. The remainder of the proposed dwelling sits well below the 8.5m height limit and the proposal presents a single storey presentation to the street consistent with the character of the area. Refer to roof plan below which identifies the corners that breach the height limit.

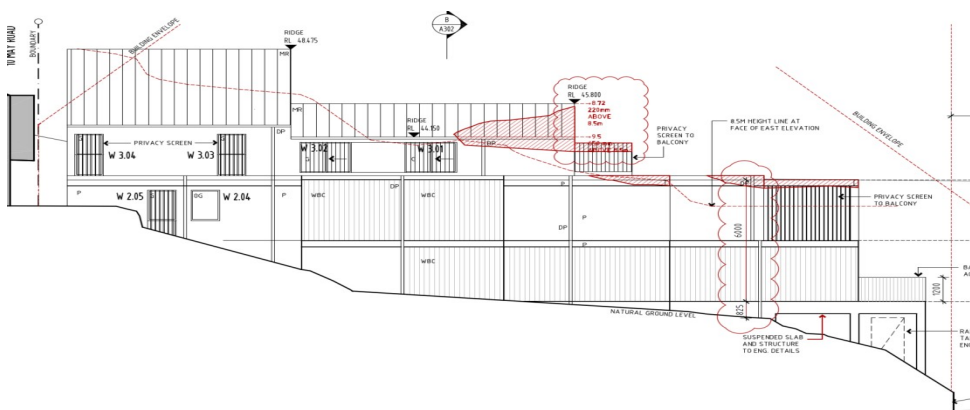
The proposal will not result in unreasonable amenity impacts. Amended shadow diagrams have been submitted which demonstrate that the proposal retains a minimum of 50% solar access to the private open space of the neighbouring dwelling at No 10 May Road for at least 3 hours between 9am and 3pm on 21 June. The proposal will not result in view loss or visual or acoustic privacy impacts.



*Roof plan annotated to show the corners that breach the height limit.*



Section showing breach in height limit



1 ELEVATION - EAST  
1:100

East elevation showing breach in height limit

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

#### Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

#### Comment:

In considering whether or not the proposed development will be in the public interest, consideration

must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

### Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the WLEP 2011 are:

(1) The objectives of this clause are as follows:

*a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Comment:

The surrounding area is predominantly characterised by one and two storey development along Painters Avenue and medium density apartment blocks to the east. The proposal dwelling has a single storey presentation to Painters Parade consistent with the built form of the streetscape. The height increases to the east of the site to respond to the topography and the increased density of the residential apartment block that adjoins the eastern boundary. The design has been amended to increase the setbacks of the upper floor from the boundaries thereby reducing the visual impact associated with the height and scale of the dwelling on neighbouring properties.

*b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*

Comment:

Due to the topography of the site and the siting and amended design of the dwelling the proposal will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

*c) to minimise adverse impact of development on the scenic quality of Warringah’s coastal and bush environments,*

Comment:

The proposal is located within an established residential zone and any longer distance view of the proposed additions will not read the works as out of scale or incompatible with its neighbours. The proposal will not have any direct impact on the nearby coastal or bush environment.

*d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,*

Comment:

The proposal presents a single storey dwelling to the street which reflects the predominant scale and form of the surrounding development in Painters Parade. Landscaping is proposed which will help maintain an appropriate balance between the landscaping and the built form.

### Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

***a) To provide for the housing needs of the community within a R2 Low Density Residential zone***

Comment:

The proposal provides for additional housing stock on a vacant site which will contribute to the

***b) To enable other land uses that provide facilities or services to meet the day to day needs of the community***

Comment:

The proposal is for a residential dwelling as such this clause is not relevant to the assessment

***c) To ensure that low density residential environments are characterised by landscaped areas***

Comment:

The scale, bulk and height of the proposed dwelling is consistent with the low density residential zone

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

**Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:**

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard is assumed.

**6.2 Earthworks**

Clause 6.2 requires:

Before granting development consent for earthworks, the consent authority must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,
- (b) the effect of the proposed development on the likely future use or redevelopment of the land,
- (c) the quality of the fill or the soil to be excavated, or both,
- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,
- (e) the source of any fill material and the destination of any excavated material,
- (f) the likelihood of disturbing relics,
- (g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.

The proposed dwelling is designed to step down the existing slope, however, excavation up to an

approximate depth of 3.5m will be required at the western and southern sides of the site, for the construction of Level 2 of the residence which has a Finished Floor Level (FFL) at approximately RL 40.0m. The new proposed swimming pool will be located within the north-west section of the proposed structure at approximately RL 36.85m and will require excavation up to 3.00m depth for construction. Extensive new footings will also be required as well as a retaining wall structures along the western and southern sides of the property adjacent to the excavations.

The application is supported with a geotechnical report which makes recommendations for the excavations. Subject to the recommendations of the geo-technical report the proposal is unlikely to have any adverse impact on drainage, adjoining properties or the watercourse.

The measures include:

- Drainage measures will need to be in place during excavation works to divert any surface flow away from the excavation crest and any batter slope.
- Dilapidation reports to adjoining properties.
- Construction Monitoring / Inspections.
- Vibration limits.

The geo-technical report also notes:

*The proposed new pool will likely be near (and above) the existing Sydney Water sewer asset. Based on experience it is considered that Sydney Water will require plans/methodology detailing how the asset is to be protected throughout excavation/construction and following completion of works. Based on previous experience, structural design in the vicinity of Sydney Water assets would involve piers to below invert levels and Sydney Water should be contacted as early as possible to confirm required protection measures.*

In this regard a condition will be placed on the consent advising the applicant to contact Sydney Water to resolve any issues associated with the pool location .

## 6.4 Development on sloping land

Cause 6.4 requires:

*(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*

*(a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and*

*(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and*

*(c) the development will not impact on or affect the existing subsurface flow conditions.*

This site is located within landslip risk Class 'B' within the Geotechnical Risk Management Map. The application is supported with a geotechnical report which confirms that subject to compliance with recommendation of the report that the development is unlikely to cause risk of landslides, detrimental impacts on stormwater discharge or subsurface flow conditions. Refer to discussion under Clause 6.2 of the WLEP.

## Warringah Development Control Plan

### Built Form Controls

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Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	10.7m	48%	<b>No</b>
B3 Side Boundary Envelope	North - 4m	Within envelope	N/A	Yes
	South - 4m	Within envelope	N/A	Yes
B5 Side Boundary Setbacks	North - 0.9m	5.6m	N/A	Yes
	South - 0.9m	1m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	Level 3 - 1m to garage Level 3 - 6.9m to the dwelling Level 2 - 8.7m Level 1 - 4.1m to the deck / pool	83.4% N/A N/A 37%	<b>No</b> Yes Yes <b>No</b>
B9 Rear Boundary Setbacks	6m	Level 3 - 6m - 7.9m Level 2- 5.2m to (4m to stair) Level 1 - 4m (pool level)	N/A 13.4% 33.4%	Yes <b>No</b> <b>No</b>
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	44% (336m <sup>2</sup> )	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	No	Yes
D20 Safety and Security	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

#### Detailed Assessment

#### **B1 Wall Heights**

##### Description of non-compliance

Due to the typography of the site and the tiered design of the dwelling the wall height varies from 3.9m x to 8.2m

##### Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

##### Comment:

The wall height varies as a result of the typography and the the tiered design of the development as it steps down the site. The wall height from as viewed from the public domain / the street frontage is 3.9m, as such, there is no visual impact to the streetscape. The wall height reaches a maximum of 8.2m in the area of the dwelling where it presents as a 3 storey dwelling in the middle of the site. The breaching elements are not visible from the public domain and given the context of the site with the presence of a residential apartment block to the immediate east the wall height is not out of character with the area or unreasonable in this instance.

- *To ensure development is generally beneath the existing tree canopy level*

Comment:

The proposal will sit below the canopy of the existing street trees. A landscape plan has been submitted which also includes planting of native species and kentia palms which will ensure that the development sits below the canopy of future trees.

- *To provide a reasonable sharing of views to and from public and private properties.*

Comment:

The proposal will not see any unreasonable loss of views for neighbouring properties.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

Conditions are recommended requiring privacy screens to be installed to windows and a deck to ensure visual privacy is maintained.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The development steps down the site in response to the topography.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

The proposed flat roof form will complement the surrounding development, maintain consistency with the character of residential development in the locality and help ensure that the visual bulk of the development is minimised.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **B7 Front Boundary Setbacks**

### Description of non-compliance

The proposal breaches the 6.5m front set back as detailed below:

- The garage has a 1m front setback; and
- The level 1 deck and pool area have a 4.1m front setback.

The main dwelling is setback a compliant 6.7m from the frontage.

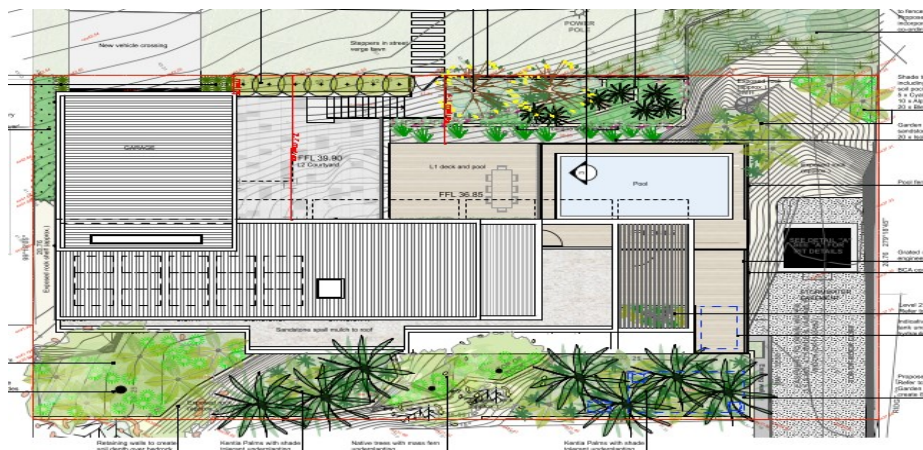
Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To create a sense of openness.*

Comment:

The site is severely constrained by a steep slope from the western front and southern side boundary to the rear north-eastern corner, a 4.8 metres (m) wide easement along the northern boundary. The dwelling has a compliant setback of 6.7m at the top level (level 3) and 8.7m setback to the mod and lower levels. Due to the site constraints a variation of the front set back non-compliance was suggested at the PLM meeting subject to the garage being setback 1m off the boundary. The applicant has complied with this request and it is considered that the proposal will retain a sense of openness to the street as demonstrated in the landscape plan below.



*Landscape plan*

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The siting of the garage maintains the visual continuity and pattern of buildings along Painters Avenue including the location of the garage to No 10. May Road to the immediate south. The pool and deck are positioned at a lower level and the will not be visible from the streetscape. The pool and deck will add to the openness of the development and the amenity to the future residents.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

Painters Avenue is a short dead end road with a limited number of dwellings access of the

road. The proposed variation of the front setback to allow for the garage will not have a negative impact on the visual quality of the streetscape.

- *To achieve reasonable view sharing.*

Comment:

There are no views to neighbouring properties that will be impacted by the development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **B9 Rear Boundary Setbacks**

### Description of non-compliance

Level 1(the pool level) has a 4m rear setback which results in a 33.4% (2m) breached the 6m rear setback control. Level 2 has a 5.2m rear set back which results in a 13.4% (0.8m) breaches of the control. It is noted that in accordance with the pre-lodgement advice the setback of the third floor has increased by approximately 2m to achieve a 7.9m rear setback.

Despite the numerical non-compliance, the proposal has been assessed as meeting the objectives of the control as discussed below:

### Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment:

Despite the non-compliance with the rear setback control sufficient area are retained to the east (rear) and west (front) of the site for deep soil planting. The landscape plans shows that there is sufficient space within the 4m setback for screen planting

- *To create a sense of openness in rear yards.*

Comment:

A 4m setback is provided to the rear of site. The lower level setback and the stepped design of the dwelling including the 2m the increased setback of level 3 (7.9m) will help ensure that a sense of openness is provided to the rear yard.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

The 2m increase in the setback of level 3 to the rear boundary will help ensure that privacy is

maintained between the existing apartments to the west and the proposed dwelling. Conditions will ensure that privacy screens are fixed to the windows and balconies on the east elevation.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

Given the context of the site, namely the short dead end road there is not a strong consistent pattern of built form. The property to the immediate south faces is a corner allotment therefore the rear setback control does not apply. Despite this it is noted that a garage is sited within the rear boundary of the site. The property to the north at No. 9 Painters Parade has a rear setback of approximately 4m which is consistent with the ground level setback of the proposed dwelling.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

The stepped design of the dwelling combined with privacy measures to the upper floor windows will ensure that the proposal will not result in overlooking to the residential apartments to the east.

The site is heavily constrained with a steep slope and rocky outcrops. Having regard to the above assessment, it is concluded that the proposed development responds appropriately to the site constraints and is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **D8 Privacy**

The rear (east) elevation is sited 8.7m from the western elevation of the RFB at 2-10 Moorambra Road. In order to ensure that the visual privacy is maintained to the existing apartments a conditions requires the following windows and balconies to have fixed privacy screen installed:

Level 2 - bedroom window ref W2.04 in addition a privacy screen shall be installed to the balcony. It is noted and W2.05 is the window to the pantry.

Level 3 - Bathroom windows ref W3.01, W3.02, and bedroom windows ref W3.03 and W3.04

## **D16 Swimming Pools and Spa Pools**

### Merit consideration

The proposed pool is located forward of the dwelling within the front setback contrary to the clause D16. The development is considered against the underlying Objectives of the Control as follows:

- *To ensure swimming pools and spas are located to preserve the natural environment, streetscape and residential amenity.*

Comment:

The location of the pool is the most logical position given the steepness of the site and the site constraints. The location of the pool sits below street level, as such, it will not detract from the visual quality of the streetscape. The pool is setback 6.4m from the southern boundary and will not impact on the residential amenity of neighbouring properties.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

Given the site constraints the proposal is considered to represent an innovative design solution to a challenging site while minimising environmental impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2019**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$9,460 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$946,000.

## **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

2) The proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

Accordingly Council as the consent authority grant Development Consent to DA2019/1101 for Construction of a dwelling house including swimming pool on land at Lot 102 DP 1185102, 10 Painters Parade, DEE WHY, subject to the conditions printed below:

### 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

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
A 001 Rev G Drawing List and Schedule	15 November 2020	Zanazan Architecture
A 101 Rev M and M Site Plan and Roof Plan (levels added)	13 November 2020	Zanazan Architecture

A 101 Rev N and M Site Plan and Roof Plan (levels added)	15 November 2020	
A 102 Rev J Level 3 (Street)	06 September 2020	Zanazan Architecture
A 103 Rev I Level 2	06 September 2020	Zanazan Architecture
A 104 Rev H Level 1 (pool level)	06 September 2020	Zanazan Architecture
A 201 Rev J Elevation - west boundary	15 November 2020	Zanazan Architecture
A 202 Rev K Elevation West	15 November 2020	Zanazan Architecture
A 203 Rev G Elevation North	15 November 2020	Zanazan Architecture
A 204 Rev G Elevation East	15 November 2020	Zanazan Architecture
A 205 Rev E Elevation South	06 September 2020	Zanazan Architecture
A 301 Rev J Section A-A	15 November 2020	Zanazan Architecture
A 302 Rev E Section B-B	25 August 2020	Zanazan Architecture

#### Engineering Plans

Drawing No.	Dated	Prepared By
DA1.01 Rev 3 Stormwater Management Cover Sheet	29 August 2019	Sparks and Partners Consulting Engineers
DA2.01 Rev 3 Stormwater Management Erosion and Sediment Control Plan and Detail	29 August 2019	Sparks and Partners Consulting Engineers
DA4.01 Rev 3 Stormwater Management site and roof plan	29 August 2019	Sparks and Partners Consulting Engineers
DA4.02 Rev 3 Stormwater Management Level 2 Plan	29 August 2019	Sparks and Partners Consulting Engineers
DA4.04 Rev 3 Stormwater Management Level 1 Plan	29 August 2019	Sparks and Partners Consulting Engineers
DA4.05 Rev 4 Stormwater Management Ground Floor Plan	4 April 2020	Sparks and Partners Consulting Engineers
DA4.11 Rev 4 Stormwater Management Detail Sheet	4 April 2020	Sparks and Partners Consulting Engineers
DA4.12 Rev 1 Stormwater Management Stormwater Drainage and Easement Details	4 March 2020	Sparks and Partners Consulting Engineers

#### Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
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Waste Management Plan	20 September 2020	Joesph Wallhouse
Geotechnical Report *	5 July 2019	Crozier

\* Sydney Water should be contacted as early as possible to confirm required protection measures for the pool.

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
LS01 Rev C Landscape Plan*	17 September 2019	Melisa Wilson

\* The landscape plan shall be amended to:

- replace the the nominated Cupaniopsis anacardioides tree planting, due to self-seeding into bushland, with Elaeocarpus reticulatus. Tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views.
- include the amended stormwater plans.

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

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

## 2. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and

- B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
  - A. the name of the owner-builder, and
  - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

### 3. **Prescribed Conditions (Crown Land Only)**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

Reason: Legislative Requirement.

### 4. **General Requirements**

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) 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.

## **FEES / CHARGES / CONTRIBUTIONS**

### **5. Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$9,460.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$946,000.00.

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

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

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

at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

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

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

## 6. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

## 7. **Construction, Excavation and Associated Works Bond (Drainage works)**

The applicant is to lodge a bond of \$5,000 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure.

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

## 8. **Structures Located Adjacent to Council Pipeline or Council Easement**

All structures are to be located clear of any Council pipeline or easement. The Applicant is to ensure footings of any new development within this development consent adjacent to an easement or pipeline are to be designed in accordance with Northern Beaches Council's Warringah Water Management Policy PL850. Details and certification prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

9. **Amendments to the approved landscape plan**

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

- Replace the the nominated *Cupaniopsis anacardioides* tree planting, due to self-seeding into bushland, with *Elaeocarpus reticulatus*. In addition, tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views.
- Include the amended stormwater plans.

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.

10. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Warringah Water Management Policy PL850, and generally in accordance with the concept drainage plans prepared by Sparks and Partners Consulting Engineers, job number 19152, drawing number DA1.01, DA2.01, DA4.01, DA4.02, DA4.03, DA4.04, revision 3, dated 29/8/19, drawing number DA4.05, DA4.11 revision 4, dated 4/3/20 and drawing number DA4.12, revision 1, dated 4/3/20. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval 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.

11. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

12. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

13. **Pre-Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a pre-construction/demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at:

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf>

The pre-construction/demolition dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

14. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

15. **Privacy Screen**

Privacy screens shall be added to the eastern elevation to the following windows:

Level 2 - bedroom window ref W2.04 in addition a privacy screen shall be installed to the balcony. It is noted and W2.05 is the window to the pantry.

Level 3 - Bathroom windows ref W3.01, W3.02, and bedroom windows ref W3.03 and W3.04

In addition, a 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost eastern edge of the balcony to the level 3 master bedroom and the level 2 deck as shown on the approved plans. The privacy screen shall be of fixed

panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

Reason: In order to maintain privacy to the adjoining / nearby property. (DACPLC06)

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.

## CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

10 May Road, Dee Why  
8 May Road, Dee Why  
9 Painters Road, Dee Why

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

18. **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.

19. **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 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
  - ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
  - iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
  - iv) All tree 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.

## CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

20. **Road Reserve**

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

Reason: Public Safety.

21. **Removing, Handling and Disposing of Asbestos**

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

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

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

22. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working

with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

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

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

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

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

**23. Vehicle Crossings**

The Applicant is to construct one vehicle crossing 5.8 metres wide at the boundary and 5.0 metres wide at the kerb in accordance with Northern Beaches Council Drawing No A4-3330/5 EL and the driveway levels application approval. 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.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

**24. 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.

**25. Protection of rock and sites of significance**

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

b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

**26. Installation and Maintenance of Sediment Control**

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

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

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

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

### 27. **Landscape completion certification**

Landscaping is to be implemented in accordance with Landscape Plan LS01, issue C, prepared by Melissa Wilson Landscape Architects, inclusive of the following conditions:

- i) the nominated *Cupaniopsis anacardioides* tree planting shall be deleted due to self-seeding into bushland, and replaced with *Elaeocarpus reticulatus*,
- ii) all tree planting shall be a minimum 75 litre container size,
- iii) tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: To ensure that the landscape treatments are installed to provide landscape amenity.

### 28. **Stormwater Disposal**

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

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

### 29. **Post- Construction Stormwater Assets Dilapidation Report (Council stormwater assets)**

The Applicant shall submit a post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf>

The post-construction / demolition dilapidation report must be submitted to Council for review. Any damage to Council's stormwater infrastructure is to be rectified prior to the release of any Drainage security bonds.

Reason: Protection of Council's infrastructure.

**30. Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

**31. Certification of Structures Located Adjacent to Council Pipeline or Council Easement**

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed footing works have been constructed in accordance with this consent, Northern Beaches Council's Warringah Water Management Policy PL850 and the approved Construction Certificate plans. Civil Engineer demonstrating compliance is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's Infrastructure.

**32. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such

covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction 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 final Occupation Certificate.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

**33. Environmental Reports Certification**

Written certification from a suitably qualified person(s) shall submit to the Principal Certifying Authority and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

(a) Geotechnical Report, dated 5 July 2019, prepared by Crozier.

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

Reason: To ensure compliance with standards.

**34. Required Planting**

Trees shall be planted in accordance with the following schedule:

Minimum No. of Trees Required.	Species	Location	Minimum Pot Size
2	Tree species capable of attaining a minimum height of 5 metres at maturity	1 x Front Yard 1 x Rear Yard	200mm

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.

**35. House Number**

House 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.

**36. 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.

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**Anne-Marie Young, Planner**

The application is determined on 11/12/2020, under the delegated authority of:



**Anna Williams, Manager Development Assessments**