

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1190
----------------------------	-------------

Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 19 DP 758016, 18 Libya Crescent ALLAMBIE HEIGHTS NSW 2100
Proposed Development:	Alterations and additions to a Dwelling House
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Matthew John Blackband Nicole Lee Blackband
Applicant:	Cape Cod Australia Pty Ltd

Application Lodged:	22/07/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	02/08/2021 to 16/08/2021
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 300,872.00
---------------------------------	---------------

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the construction of a first floor addition.

The works include the following:

- New bedroom (No. 4) with a walk-in-robe, an ensuite
- New sitting room with front balcony
- New staircase from the ground floor to the first floor

During the assessment amended plans were received to address the specific non-compliance with the

building envelope. The amended plans are utilised in the assessment report below.

Consistent with the Northern Beaches Council Community Consultation Plan, the amended design was not required to be re-notified.

As a courtesy, the amended plans were emailed to the south-eastern and north-western adjoining neighbours their further response.

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 Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 19 DP 758016 , 18 Libya Crescent ALLAMBIE HEIGHTS NSW 2100
Detailed Site Description:	<p>The site is legally known as Lot 19, Section 17, DP758016, and commonly referred to as 18 Libya Crescent Allambie Heights. The subject site is located within the R2 Low Density Residential zone as mapped within the Warringah Local Environment Plan 2011.</p> <p>The site is generally regular in shape with a width at the site frontage of 17.92m and an average depth of 53m equating to a site area of 1026sqm.</p>

The site features a slope of 10% from south to north over the depth of the site.

Vehicle and pedestrian access is from Libya Crescent at the site frontage

The site is currently occupied by a single detached dwelling with a separate shed and swimming pool at the rear.

Surrounding sites consist of one and two storey dwelling houses, of varying ages, within a landscaped setting.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time.

A search of Council's records has revealed the following relevant history:

- Development Application **DA2013/0794** for the alterations additions to a dwelling house was approved by Council on the 16/09/2013.

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	See discussion on "Environmental Planning Instruments" in this

Section 4.15 Matters for Consideration'	Comments
of any environmental planning instrument	report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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&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&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the first floor proposal to address specific DCP non-compliances.</p> <p><u>Clause 92</u> of the EP&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>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&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&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) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social</p>

Section 4.15 Matters for Consideration'	Comments
	<p>impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Sydney Bushfire Consultants, dated 28 June 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 02/08/2021 to 16/08/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mr Scott Anthony Fitz-Gerald	16 Libya Crescent ALLAMBIE HEIGHTS NSW 2100

A submission was received by No. 16 Libya Crescent as a result of the first public notification.

During the assessment of the application amended plans were received to address the specific planning concerns.

Consistent with the Northern Beaches Council Community Consultation Plan the amended design was not required to be re-notified. However, as a courtesy, the amended plans were emailed to the south-

eastern and north-western adjoining neighbours their further response.

No additional submissions were received as a result of the amended plans.

However, the issues raised in the initial submission have been addressed below in reference to the amended plans:

- ***Overshadowing***
- ***Retaining Wall/Fill***
- ***Visual Impact***
- ***Privacy***
- ***Noise***

The matters raised within the submissions are addressed as follows:

- ***Concern that the proposal will overshadow windows and private open space for No.16 Libya Crescent Allambie Heights.***

Comment:

Detailed shadow diagrams have been provided by the applicant to demonstrate the solar impact of the proposal on No.16 Libya Crescent. This property is located towards to the south-east, and at a lower topography than the subject site making the site susceptible to overshadowing.

Whilst the adjacent property has ground floor windows facing the north-west, the private open space area and swimming pool area is located at the rear of the house.

The shadow diagrams, Page 1 - 3 Issue E, drawn by Cape Code include a shadow analysis for the 21 June in order to show the extent of overshadowing affecting No. 16 Libya Crescent at the mid winter solstice. The shadow diagrams also include the existing shadow pattern cast for more detailed clarity of shadow changes throughout the day.

In this regard, the shadow diagrams illustrate that more than 3 hours of direct solar access will be maintained on the 21 June to the private open space at the rear of No. 16 Libya Crescent.

The neighbouring site is constrained by the topography, lot orientation, building alignment and site area / dimensions such that the proposal creates additional overshadowing to the neighbouring ground floor north-west window glazing for No. 16 Libya Crescent. The ground floor north-west windows (on the north-west side of No. 16 Libya Crescent) will be fully shaded by the proposal between 12am and 3pm on the 21 June. However, the overshadowing is compliant with the D6 - Access to Sunlight control.

In summary, the requirements of 3 hours of sunlight between 9am and 3pm on the 21 June is achieved as detailed under Part D6 - Access to Sunlight of the WDCP.

Therefore, this issue is not considered to have determining weight.

- ***Concern is raised that the boundary between the subject site and No. 16 Libya Crescent contains a retaining wall to hold the addition of fill, and therefore creates a artificial ground level to measure the proposals building height.***

Comment:

The proposal is accompanied by a Survey (authored by C.M.S Surveyors) to provide evidence of the natural and man-made features and land levels on the site, and a Preliminary Geotechnical Report (authored by Geotechnical Engineer G.A. Chapman) to provide a geotechnical

inspection and description of the property.

The Preliminary Geotechnical Report provides the following summary:

"The street frontage of the block presents with a landscaped rise of approximately two meters from the public footpath to the generally horizontal front yard.

Extensive outcrops of the underlying Hawkesbury Sandstone are visible in the front yard, most noticeably immediately at the front foundations of the existing residence.

The surface features of the block are determined by the underlying Hawkesbury Sandstone bedrock that naturally steps across the site forming sub horizontal benches between the steps.

Upon the lower bench is situated the front yard, the existing House structure, and the swimming pool at the rear of the house.

The upper bench constitutes the elevated backyard extending to the rear boundary. In both situations the underlying Hawkesbury Sandstone is either at very shallow depth or surface exposed in outcroppings.

An under-house inspection indicated that the existing single story rendered brick house is founded directly on the sandstone bedrock. Its walls show no signs of movement or cracking."

As a result, no areas of fill, or retaining walls used for supporting soil laterally so that it can be retained at different levels on the two sides were identified by the the Geotechnical Engineer. This was supported via a site inspection whereby no significant site alteration, or heavy-load retaining walls used to support the existing dwelling house design or to provide stability for the subject site where identified along the shared boundary.

The site is subject to an 8.5m height control which is the vertical distance from Australian Height Datum (AHD) to the highest point of the building pursuant to the definition of building height under *Clause 4.3* of Warringah Local Environment Plan 2011. The definition was amended by in the Standard Instrument LEP by adding (b), as a result of caselaws in the LEC Court, including the case *Bettar v Council of the City of Sydney [2014] NSWLEC 1070* and *Stamford Property Services Pty Ltd v City of Sydney & Anor [2015] NSWLEC 1189* where it is made apparent that the measure of existing building height should relate to the levels and natural topography of the site, and not relate to artificially modified levels.

Therefore, in measuring the "natural" ground level of the site (AHD levels), reliance must be placed on the Site Survey and upon known levels of the site which can be relied on to interpolate the natural slope of the land. In the circumstances of this case, it is evident that the natural landform for the subject site is naturally higher than No. 16 Libya Crescent. This is further evidenced by the gradient and levels of the surrounding properties.

Therefore, for the purpose of this assessment, the relevant ground levels to accurately determine the height of the building are extrapolated from survey points around the perimeter of the site as detailed on the architectural plans accompanying the application. In measuring the building height using this methodology, the development will demonstrate a maximum 7.9m building height, compliant with the requirements of *Clause 4.3* of the Warringah Development Control Plan 2011.

Therefore, this issue is not considered to have determining weight.

- ***Concern is raised that the proposed first floor will create unreasonable visual impacts to No. 16 Libya Crescent.***

Comment:

The topography of No. 16 Libya Crescent is lower than the subject site, which is further evidenced by the gradient and levels of the surrounding properties.

The proposal complies comfortably with the required 8.5m Building Height requirement of the Warringah Local Environment Plan, with a skillion pitched roof design to reduce any significant bulk or unreasonable height to the building.

Whilst the proposal demonstrates a minor variation to the wall height and building envelope requirement, merit assessments of the Building Envelope and Wall Height non-compliance is provided in detail under the heading "B1 Wall Heights" & "B3 Side Boundary Envelope" within this report.

The site constraints of a existing raised ground floor level, slope and building alignment give rise to the breaches of the wall height and building envelope that are not unreasonable. In summary, it is considered that the proposal has minimised the extent of non-compliance in order to also consequently minimise overshadowing and bulk.

In this regard, the first floor has been designed with suitable architectural variation to reduce the appearance uninterrupted bulky mass and the proposal will not create any unreasonable impacts of bulk and scale or loss of natural light to adjacent dwellings of No. 16 Libya Crescent.

Therefore, this issue is not considered to have determining weight.

- ***Concern is raised that the first floor addition will create amenity impacts on No. 16 Libya Crescent.***

Comment:

The proposed first floor south-eastern side windows and balcony area may potentially allow overlooking across the the front setback of No. 16 Libya Crescent due to the higher elevation and building alignment.

To address this overlooking issue a condition for a privacy screen (1.65m high) is recommended for south-eastern edge of the balcony. The south-eastern window for the first floor provide natural light and amenity to the new sitting room. The sitting room is considered a primary living area with potential overlooking possible. To address this issue a condition for a external privacy screen or opaque glazing up to 1.5m in height is recommended for window W8.

Therefore, this issue is not considered to have determining weight.

- ***Concern is raised in regards to acoustic impacts due to air-conditioning devices.***

Comment:

No mechanical devices that cause additional mechanical noise are included as part of this proposal. The creation of noise through normal residential occupancy is a civil matter which is to be addressed between the two neighbours and is not a planning matter. However, a condition will be applied to ensure no mechanical equipment is to emit noise over 5dba above background noise at the nearest residential boundary. Therefore, this issue is not considered to have determining weight.

REFERRALS

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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 used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, 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. A407320_03, dated 22 September 2021). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. A407320_3, dated 22 September 2021).

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

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

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 who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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	5.9m - 7.9m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	%	Complies
--------------------	-------------	----------	---	----------

			Variation*	
B1 Wall height	7.2m	5.8m - 7.8m	8.3%	No
B3 Side Boundary Envelope	4m South-East	0.8m in height for a length of 2.8m	20%	No
	4m North-West	No encroachment	-	Yes
B5 Side Boundary Setbacks	0.9m South-East	3.1m - 3.7m	-	Yes
	0.9m North-West	5.8m - 8.5m	-	Yes
B7 Front Boundary Setbacks	6.5m	12.3m - 12.9m	-	Yes
B9 Rear Boundary Setbacks	6m	23m - 35m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	65.5% (673sqm)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	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
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

Part B1 of the WDCP 2011 prescribes a 7.2m high wall height control for singular planar elements of a dwelling. The proposal breaches the wall height control by up to 8.3% to a total height of 5.8m - 7.8m above existing ground level.

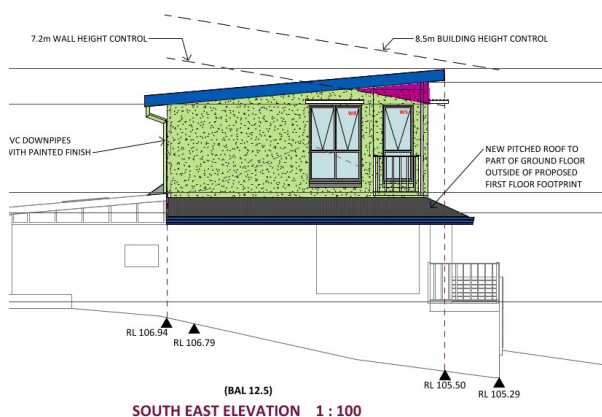


Figure 1: Wall height non-compliance shown in pink.

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 general intent of the wall height control is to limit the proportions of large planar elevations of a house that could be overly visually dominant and bulky. Such is not the case with this proposal, where the facade is recessed inwards from the floor below and contains a balcony area to provide a more open, stepped look. The proposal presents as a well designed home and, when compared to the proportions of neighbouring properties, does not have any excessive visual impact significantly over and above other buildings.

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

Comment:

There are significant trees on the site, and scattered mature trees within the landscaped areas of houses and along the street with the tree canopy generally being higher than most houses.

The proposed site layout maintains sufficient deep soil landscaping zones that is capable of accommodating trees and other vegetation that could grow to a height equal to or greater than the house itself.

Accordingly, the proposal satisfies the objective.

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

Comment:

The proposal has not been found to result in any unreasonable impacts upon the provision of views enjoyed by surrounding properties.

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

Comment:

The non-complying sections of wall are influenced by the existing natural ground level of the site and slope.

The portion of the building which exceeds the wall height control is located to the front of the first floor and does not cause any unacceptable impact on neighbours. No unreasonable amenity, overshadowing, or building bulk impacts will result from the non-compliant wall height with regard to adjoining properties. The submitted shadow diagrams demonstrate compliance for 21 June, 9am to 3pm period for adjacent private open space.

It is therefore considered that the development satisfies this objective.

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

Comment:

The proposal is for a first floor addition wholly atop of the existing building and does not modify the topography of the site. Accordingly, the development satisfies this objective.

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

Comment:

The proposal has a flat roof which is sympathetic to the design of the house, and contributes to lessening impacts upon neighbouring properties.

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.

B3 Side Boundary Envelope

Description of non-compliance

Part B3 of the WDCP 2011 prescribes a 4m building envelope to the elevations of a house. To the western elevation of the subject dwelling, the first floor extension encroaches this envelope for the entire depth of the building at a height up to 0.7m, see Figure 2 below.

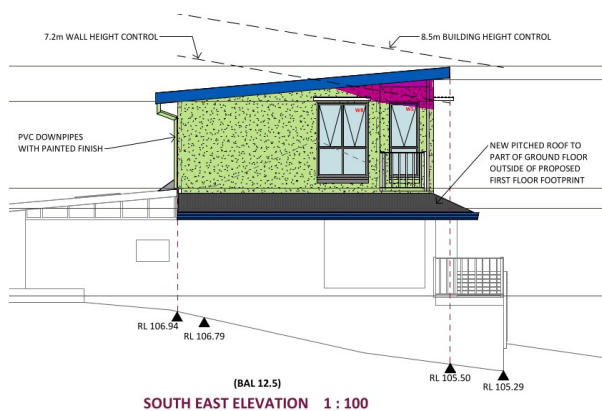


Figure 2: Building Height Envelope non-compliance shown in pink.

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 that development does not become visually dominant by virtue of its height and bulk.*

Comment:

The proposed development generally complies with the built form controls prescribed by Part B of the WDCP 2011, with the exception of the wall height and envelope breach on the western elevation. Given the general compliance of the development, which in part exceeds all setback requirements, and given the modest scale of the first floor addition and the complementary architecture proposed, it is not considered that the development will be of a visually dominant height and bulk than what currently exists. See Photo 1 below.

The overall architecture of the development is articulated in a manner that is consistent with the general typology of buildings in the immediate vicinity, thereby negating any impact of the variation sought, and ensuring compatibility with surrounding developments by virtue of height and bulk.

In the circumstances of the application, it is considered that the development satisfies this objective.

- *To ensure adequate light, solar access and privacy by providing spatial separation between*

buildings.

Comment:

The development has been designed in a manner that does not unreasonably nor detrimentally overshadow nor overlook adjoining and nearby properties. Adequate spatial separation is proposed between the proposed works and western neighbouring buildings, see Photo 2 below.

The minor first floor extension has not been found to result in any unreasonable amenity impacts to neighbouring properties, and provides a significant improvement to the amenity of occupiers of the subject dwelling both through natural light and increased space.

Accordingly, the development satisfies this objective.

- *To ensure that development responds to the topography of the site.*

Comment:

The proposal does not seek to modify the existing topography of the site. The first floor addition is stepped back from the level below where appropriate to ensure that the building does not present as a bulky structure. Accordingly, the development satisfies this objective.

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.

C3 Parking Facilities

Approval for the two parking bays along side the driveway were approved under DA2013/0794.

D8 Privacy

Description of non-compliance

Clause D8 of the WDCP 2011 requires the building layout to be designed to optimise privacy for occupants of the development and occupants of adjoining properties.

The proposal includes an elevated balcony and two (2) floor-to-ceiling windows at the first floor orientated to the south-east side boundary. The low sill level and elevated balcony is expected to cause unreasonable overlooking and privacy impacts to the south-east adjacent dwelling, which is contrary to the intent of this control.

Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

The proposed first floor development design is considered appropriate within the context of an R2 zone.

The one (1) new window opening on the north-west elevation service the WIR and a bathroom. The window (W13) minimal in size and is not located directly adjacent to any adjoining neighbours windows or private open space areas. Accordingly, private mitigation measures are not required.

However, visual privacy for occupants of the south-eastern neighbouring dwelling could be unreasonably impacted as a result of the construction of the elevated balcony located 3.1m - 3.2m from the south-eastern boundary without the utilisation of a screening and/or a landscape buffer. This is not considered an innovative design and does not achieve a reasonable amenity of privacy. See Photo 1 below.



Photo 1: View lines from the front setback area of the south-eastern neighbouring site towards the proposed first floor balcony and window openings.

As a result, the proposal is therefore not consistent with the objectives of Clause D8 Privacy or the NSW Land and Environment Court Planning Principle: Protection of visual privacy; detailed by *Roseth SC in Meriton v Sydney City Council [2004] NSW LEC 313*.

Whilst it is acknowledged that the balcony will predominantly overlook the front setback area of the neighbouring dwelling house, the balcony does service a sitting room, which is considered to be utilised as second living room space (regarded by the Land and Environment Court as a higher usage room), meaning, this area will most likely be utilised more than if it was just a recreational area off a bedroom only.

A condition has been included within the consent to allow for a privacy screen along the south-eastern balcony edge to enhance the privacy and amenity of the subject dwelling and neighbouring dwelling house.

The proposal also includes two new window openings (W8 & W5) on the south-eastern elevation. Window W8 will be obscured by the conditioned privacy screen, therefore no further mitigation measures are required. However, window W8 is located approximately 3m from the south-eastern side setback, with a sill height of 0.4m from the finished floor level. As a result, direct overlooking, and the perception of overlooking can occur. A condition will be applied to provide privacy mitigation to the window by either opaque glazing up to a height of 1.5m or

external louvered screening.

As conditioned, the proposals privacy impacts are not considered unreasonable.

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

Comment:

Privacy impacts have been raised by the adjoining south-eastern property.

Subject to conditions to address privacy concerns along the south-eastern elevation (i.e. a privacy screen and opaque glazing) to maintain reasonable privacy to adjacent land, it is considered the proposal is consistent with this objective.

- *To provide personal and property security for occupants and visitors.*

Comment:

The proposal has appropriate design for personal and property security for a low density residential environment.

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 2021

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$3,009 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$300,872.

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/1190 for Alterations and additions to a Dwelling House on land at Lot 19 DP 758016, 18 Libya Crescent, ALLAMBIE HEIGHTS, 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

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan 2 of 10 Issue F	Undated	Cape Cod Australia Pty Ltd
Proposed Ground Floor Plan 3 of 10 Issue F	Undated	Cape Cod Australia Pty Ltd
Proposed First Floor Plan 4 of 10 Issue F	Undated	Cape Cod Australia Pty Ltd
Elevations 5 of 10 Issue F	Undated	Cape Cod Australia Pty Ltd
Elevations 6 of 10 Issue F	Undated	Cape Cod Australia Pty Ltd

Sections 7 of 10 Issue F	Undated	Cape Cod Australia Pty Ltd
--------------------------	---------	----------------------------

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Preliminary Geotechnical Report	17 June 2021	G. A. Chapman

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

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

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

2. Prescribed Conditions

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

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

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which

the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

3. **General Requirements**

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009

- (iii) Swimming Pools Regulation 2018
- (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

4. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$3,008.72 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 2021. The monetary contribution is based on a development cost of \$300,872.00.

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 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

5. **Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

6. **Stormwater Drainage Disposal**

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifying Authority prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifying Authority prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

7. **Amendments to the approved plans**

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

- A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost south-eastern edge of the first floor balcony located off the

sitting room 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.

- Window (W8) on the south-eastern elevation shall be opaque glazing to a minimum height of 1.5m (when measured from the finished floor level), or incorporate external fixed panels or louver style vertical privacy screening (with a maximum spacing of 20mm) to a minimum height of 1.5m over window (W8).

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.

8. **Compliance with Standards**

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

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

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

9. **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.

10. **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 TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

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

Reason: To demonstrate the proposal complies with the approved plans.

12. Installation and Maintenance of Sediment Control

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site.

13. 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.

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

14. Stormwater Drainage Disposal Certification

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Certifying Authority prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system 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 as to user for the on-site stormwater detention system 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 satisfactory management of stormwater.

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

15. **Mechanical Acoustics**

Any mechanical equipment, such as air-conditioners and swimming pool pumps, are not to not emit noise over 5dba above background noise at the nearest residential boundary.

Reason: To protect the acoustic amenity of surrounding properties

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

Signed



Catriona Shirley, Planner

The application is determined on 07/10/2021, under the delegated authority of:



Rodney Piggott, Manager Development Assessments