

# **DEVELOPMENT APPLICATION ASSESSMENT REPORT**

Application Number:	DA2018/1220	
Responsible Officer:	Hugh Halliwell	
Land to be developed (Address):	Lot 2 DP 801340, 18 Windermere Place WHEELER HEIGHTS NSW 2097	
Proposed Development:	Alterations and additions to an existing 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:	Stefano Adrian Caproni Marisa Virginia Caproni	
Applicant:	Stefano Adrian Caproni Marisa Virginia Caproni	
Application lodged:	16/07/2018	
Integrated Development:	No	
Designated Development:	No	
State Reporting Category:	Residential - Alterations and additions	
Notified:	24/07/2018 to 09/08/2018	
Advertised:	Not Advertised	
Submissions Received:	2	
Recommendation:	Approval	
Estimated Cost of Works:	\$ 100,000.00	
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# **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;

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- 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 Development Control Plan - D1 Landscaped Open Space and Bushland Setting

### SITE DESCRIPTION

Property Description:	Lot 2 DP 801340 , 18 Windermere Place WHEELER HEIGHTS NSW 2097
Detailed Site Description:	The site is known as 18 Windermere Place, Wheeler Heights and legally referred to as Lot 2 in Deposited Plan 801340. The site is irregular in shape and has a total site area of 558.8m². Vehicular and pedestrian access is gained via the 24.38m wide, east facing frontage. The site is located on the western side of Windermere Place and adjoins other similar low-density residential dwellings on all sides. The site experiences a fall of 10m from the eastern frontage of the site towards the western rear boundary, with a slope of 26.25%. The site is currently occupied by a single dwelling to the central portion of the site and an attached single car garage located to the front of the dwelling with a driveway and pedestrian stairs located along the northernn side boundary. A site inspection was carried out on 23 August 2018.

Map:

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### SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

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

# PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to the existing dwelling comprising the following works:

- Extension of an existing ground floor deck to provide a greater outdoor recreational area with a new roof above; and
- New and refurbished access pathway/stairs to the rear of the dwelling and the lower backyard area.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment C.

# **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
	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning	None applicable.

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I	
Section 4.15 Matters for Consideration'	Comments
instrument	
Section 4.15 (1) (a)(iii) – Provisions of	Warringah Development Control Plan applies to this
any development control plan	proposal.
Section 4.15 (1) (a)(iiia) – 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)	<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.
	Clause 50(1A) of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.
	Clauses 54 and 109 of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.
	Clause 92 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.
	Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.
	Clause 98 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.
	Clause 98 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.
	Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and	(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.

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Section 4.15 Matters for Consideration'	Comments
economic impacts in the locality	(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.
	(iii) <b>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.

### **NOTIFICATION & SUBMISSIONS RECEIVED**

The subject development application has been publicly exhibited 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 2 submission/s from:

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

- Excessive total floor area of proposed deck;
- Excessive height of proposed deck;
- Privacy and noise;
- Stormwater; and
- Miscellaneous concerns.

The matters raised within the submissions are addressed as follows:

Excessive total floor area of proposed deck

Comment:

The submission states:

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"The regulation states that any deck area must not have an area greater than 25 square metres, or cause the total floor area of all such structures to be more than 15% of the ground floor area of the dwelling on the lot. By our calculations, the proposed development exceeds these limits."

Clause D2 of WDCP 2011 states that dwelling houses with 3 or more bedrooms must have a minimum area of private open space of  $60m^2$  with minimum dimensions of 5 metres. Furthermore, clause D2 requires that POS be directly accessible from a living area of a dwelling and be capable of serving as an extension of the dwelling for relaxation, dining, entertainment, recreation and children's play. The proposal seeks consent to extend an existing balcony that is situated off a internal living/dining/kitchen area, thus providing an area of POS that is functional and located directly off a living area, therefore servicing as an extension of the dwelling. There is no known restriction under WDCP requiring deck areas to not exceed  $25m^2$ . It is thought that the neighbour is referring to the SEPP (Exempt and Complying Development Codes) 2008 that restricts decks to  $25m^2$  in area, but which is not applicable in this case. Overall, the deck is not considered an unreasonable size, but adequate in servicing the dwelling as an area of private open space.

# Excessive height of proposed deck

#### Comment

The submission has noted that the proposed deck exceeds the maximum allowable height for decks. As above, there is no known restriction under WDCP for the height of decks, but it is thought that the neighbour is referring to the SEPP (Exempt and Complying Development Codes) 2008 that restricts the height of decks to 3m, but which is not applicable in the case of this application. However, under WLEP 2011, the height of buildings (including decks) must not exceed 8.5m, but in some cases may exceed 8.5m, subject to an assessment under clause 4.6 of WLEP 2011 (see clause 4.6 for assessment).

# Visual and acoustic privacy

# Comment:

The submission raises concern about the potential impact to visual and acoustic privacy as a result of the larger balcony area. The proposed balcony extension will remain considerable distance from the rear boundary while being screened by existing established screen planting. A site visit to both the subject site and neighbour's property confirmed that the built form will be screened by this vegetation proving difficult for any overlooking to be achieved. Furthermore, the existing private open space at the neighbours property is situated further west away within the central part of the site and well-away from the balcony extension. The balcony extension is unlikely to create any unreasonable impact on acoustic privacy beyond what is expected or typical for a low-density residential area. The proposal is able to achieve the objectives and requirements of clauses D3 and D8 with respect to visual and acoustic privacy. To request a change to the proposal to address both visual and acoustic privacy would be unwarranted.

Although there is considered to be no unreasonable impact on the neighbouring property to the rear with respect to visual privacy, a site inspection of the subject site confirmed potential for overlooking of the property to the south. Therefore, a condition requiring a privacy screen to be erected on the southern elevation of the balcony is recommended.

#### Stormwater

#### Comment:

The submission has raised concern regarding stormwater and sediment run-off issues. It is expected that any stormwater will be disposed of through the existing system, and any sediment/erosion concerns being dealt with via conditions of consent to be addressed prior to

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construction certificate and at time of work.

#### Miscellaneous concerns

#### Comment:

The same submission has referenced a fire pit, embankment area and state of an existing rear fence. These concerns fall outside the scope of this particular application with no fire pit proposed, work to an existing embankment or an existing rear fence. The neighbour is advised to pursue these concerns outside the development application process by contacting Council separately.

#### **MEDIATION**

No requests for mediation have been made in relation to this application.

#### **REFERRALS**

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	Council's Bushland and Biodiversity section considers the Development Application to be consistent with the following Warringah DCP 2011 Controls:
	Part E The Natural Environment E1 Preservation of Trees or Bushland Vegetation E2 Prescribed Vegetation E4 Wildlife Corridors E6 Retaining Unique Environmental Features

External Referral Body	Comments
	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.

# **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)

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#### 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. A321384 dated 3 July 2018).

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

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Height of Buildings:	8.5m	9m	5.88%	No	
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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

The proposal is non-compliant with the maximum 8.5m building height limited prescribed by the Height of buildings map under WLEP 2011.

Pursuant to clause 4.6(2) of WLEP 2011, consent may be granted for development even though the development would contravene a development standard prescribed by an environmental planning instrument. However, pursuant to clause 4.6(4), consent can only be granted if Council is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) and if the proposal is in the public's interest by being consistent with the objectives of the specific development standard and the relevant zoning.

Requirement:	8.5m
Proposed:	9.15m
Is the planning control in question a development standard?	YES
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	7.64%

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the WLEP 2011. The assessment is detailed as follows:

# Is the planning control in question a development standard?

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the WLEP 2011 is a development standard.

# What are the underlying objectives of the 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

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### development,

#### Comment:

Notwithstanding the technical non-compliance, the proposal is considered to be compatible and consistent with the surrounding and nearby development. The proposed works will largely comply with the maximum height limit pursuant to Clause 4.3 of WLEP 2011. The proposal will remain substantially below the existing building with the upper floor being situated notably above the building height plane. The proposal is considered reasonable and compatible within the context of the existing dwelling. Due to the slope of the subject site and those immediately adjoining to either side, the proposed works and non-compliance will remain consistent with the built form in nearby sites.

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

# Comment:

The additional building height will not result in further visual impact and not result in a reduction to privacy or solar access and will not impact on views. Submitted shadow diagrams show no further unreasonable overshadowing of the adjoining property to the south with sufficient separation and vegetation providing privacy between adjoining properties. The extension to the balcony will be largely screened by existing vegetation along the rear boundary along with some canopy trees elsewhere onsite.

c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments.

#### Comment:

Given the minor nature of the development, in particular the extent of non-compliance, it is not anticipated that the development will have an adverse impact on the scenic quality of Warringah's coastal or bush environments.

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

# Comment:

The proposed works will not be visible from any public place, including parks, reserves, roads or community facilities, and as such will not have a visual impact on those areas.

# What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R2 Low Density Residential zone.

The underlying objectives of the R2 Low Density Residential zone:

To provide for the housing needs of the community within a low density residential environment.

#### Comment:

The proposal will will not dramatically alter the existing dwelling, and as such will continue to provide for the housing needs for the community within a low density residential environment.

It is considered that the development satisfies this objective.

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

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#### residents.

#### Comment:

As above, the proposal will not dramatically alter the existing development, therefore, the proposal will ensure facilities and/or services will remain in order to meet the day to day needs of residents.

It is considered that the development satisfies this objective.

• To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

# Comment:

The proposal will not result in the removal of any existing vegetation, therefore ensuring the existing landscaped setting remains with no unreasonable impact on the natural environment.

It is considered that the development satisfies this objective.

# Is the variation to the development standard consistent with the objectives of Clause 4.6 of the WLEP 2011?

- (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.

### Comment:

Due to the constraints of the site, most notably the slope of the property, it is considered appropriate to apply some degree of flexibility in applying the building height development standard. By not applying such flexibility would result in a dwelling with no area of function private open space that is adequately sized and easily accessible from internal living areas of the existing dwelling.

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

# Comment:

To allow for a variation in this instance would allow for an improved area of function private open space for the occupants of the dwelling. It is therefore considered appropriate to allow for flexibility in this particular circumstance, in light of the site constraints and needs for an improved area of private open space.

- (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.
- (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

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

# Comment:

Due to the minor nature of non-compliance and minimal built form above the height plane, there is considered to be sufficient environmental planning ground to justify contravening the development standard. The non-compliance is unlikely to result in an unreasonable impact on neighouring properties or the character of the surrounding area, remaining consistent with the existing bulk and scale. The applicant argues (as discussed below) that the proposal is able to achieve the provisions of clause 4.6, including remaining consistent with the objectives of Clause 4.6 and objectives of clause 4.3. In light of this, it is argued compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

- (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

# Comment:

The application has been supported by a Clause 4.6 variation request, which provides reasoning and justification for varying the development standard. The justification notes that the only proposed elements above the height standard are a small portion of the roof structure covering the proposed extension to the existing ground floor deck. The applicant also notes that the proposed works are notably below the height of the existing building which is 11.1m. Expressed as a three-dimensional figure, the applicant states that the volume of the proposed roof structure above the height standard is approximately 1.72m<sup>3</sup>, which equates to 18% of the proposed roof structure, which has a total volume of 9.56m<sup>3</sup> meaning that 82% of the proposed roof structure is compliant with the height standard.

The proposal is argued to meet the objectives of clause 4.6 with the non-compliance being relatively minor. On this basis, the applicant has requested that some flexibility be granted. The applicant correctly notes that the area of non-compliance is largely setback from both the western rear boundary and the southern side boundary, therefore providing sufficient separation from adjoining properties and minimising impact to those properties. Due to a sizable change in levels in the natural topography of the site, it is difficult to comply with the height standard. The significant change in levels mean that the proposed roof structure will largely comply with the northern section of the roof being largely below the height plane.

The applicant has argued that the works will remain consistent with the zone objectives with the height, bulk and scale being generally consistent with the form and scale in the area. The proposal will not impact public or private views with the works being located in the rear of the property and screened by existing vegetation. The built form will be screened by existing planting along the rear boundary resulting in minimal impact to adjoining properties. With respect to the objectives of clause 4.3, the proposal will not be visible from the street or public domain while not presenting an unreasonable level of bulk and scale as viewed from adjoining properties or impact on solar access or amenity. It is not considered that the area of non-compliance will impact on any existing views from

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adjoining properties. The applicant contends that the works will satisfactorily meet the objectives of clause 4.3.

The submission is considered to be well-founded and satisfactorily addresses the provisions of clause 4.6.

(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:

For reasons detailed above, the proposal is considered to be consistent with the objectives of Clause 4.6 of WLEP 2011 and the R2 Low Density Residential zone of WLEP 2011.

(b) the concurrence of the Director-General has been obtained

### Comment:

Planning Circular PS 08-003 dated 9 May 2008, 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.

### **Warringah Development Control Plan**

#### **Built Form Controls**

Built Form Control	Requirement	Proposed	% Variation*	Complies
B3 Side Boundary Envelope	4m	Complies	N/A	Yes
	4m	Complies	N/A	Yes
B5 Side Boundary Setbacks	0.9m	2m (north)	N/A	Yes
	0.9m	>0.9m (south)	N/A	Yes
B7 Front Boundary Setbacks	6.5m	>6.5m	N/A	Yes
B9 Rear Boundary Setbacks	6m	5.85m	2.5%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	39.06%	2.35%	No

# Compliance Assessment

		Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes

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Clause	Compliance with Requirements	Consistency Aims/Objectives
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	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	No	Yes
D2 Private Open Space	Yes	Yes
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
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

# **Detailed Assessment**

# **D1 Landscaped Open Space and Bushland Setting**

# Description of non-compliance

The proposal results in a minor 2.35% reduction to the 40% landscaped open space requirement, as stipulated by clause D1 of WDCP. The reduction is largely a result of the increased deck area. Although the proposal is non-compliant, it seeks to improve the existing LOS (38.09%) which represents a 4.775% shortfall in required LOS.

# Merit consideration

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

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To enable planting to maintain and enhance the streetscape.

#### Comment:

The proposed works are located to the rear of the property and therefore unlikely to impact the existing streetscape. Notwithstanding this, sufficient planting will be maintained to help screen the built form from adjoining properties.

To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.

# Comment:

The proposed works do not result in the removal of indigenous vegetation, topographical features and habitat for wildlife.

• To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.

#### Comment:

A site inspection of the subject property confirmed adequate planting within the rear of the property where the works are located. Existing screen planting will provide screening to mitigate the height, bulk and scale of the building as viewed from adjoining properties, in particular those properties to the rear. Ample space will continue to be provided should additional planting be implemented within the rear of the property.

To enhance privacy between buildings.

# Comment:

Existing screening planting, in conjunction with separation and a privacy screen will ensure privacy between buildings is maintained.

 To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.

#### Comment:

Existing open space in the rear yard will allow for outdoor recreational opportunities will be provided to meet the needs of the occupants.

To provide space for service functions, including clothes drying.

# Comment:

Sufficient space will remain for service functions, including clothes drying.

To facilitate water management, including on-site detention and infiltration of stormwater.

#### Comment:

It is not anticipated that water management, including the infiltration of water will be impacted by the small reduction in landscaped open space.

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.

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### THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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 Council Contributions Plan 2018**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

#### 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 DA2018/1220 for Alterations and additions to an existing dwelling house on land at Lot 2 DP 801340, 18 Windermere Place, WHEELER

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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	
DA02 through to DA15	4/07/2018	Action Plans	

Reports / Documentation – All recommendations and requirements contained within:			
Report No. / Page No. / Section No.	Dated	Prepared By	
BASIX Certificate, A321384	3/07/2018	Actions Plans	
Geotechnical Assessment Report	4/06/2018	Ascent Geotechnical Consulting	

- b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.
- c) 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. (DACPLB01)

# 2. Prescribed conditions (Demolition):

- (a) 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 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
  - (ii) 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.

- (b) 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:

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- 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.

- (c) 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.

Reason: Legislative Requirement (DACPLB09)

#### 3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.
  - Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act.

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

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

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

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

Reason: Legislative Requirement (DACPLB09)

# 4. General requirements (Demolition):

(a) Unless authorised by Council:

Demolition and excavation works are restricted to:

o 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 a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. 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.

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- (e) The applicant shall bear the cost of all works that occur on Council's property.
- (f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)
- (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.

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

# 5. **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

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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

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that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

(4) Swimming pools and spas must be registered with the Division of Local Government.

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

# FEES / CHARGES / CONTRIBUTIONS

# 6. 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 to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

# 7. Compliance with standards (Demolition):

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 Council prior to the commencement of demolition works.

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

### 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.

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

#### 9. External Finishes to Roof

The external finish to the roof shall have a medium to dark range (BCA classification M and D) 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. (DACPLC03)

# 10. Privacy Screen

A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost southern edge of the deck located off the living 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.

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)

#### 11. Sewer / Water Quickcheck

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

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

- Quick Check agents details see Building Developing and Plumbing then Quick Check;
   and
- Guidelines for Building Over/Adjacent to Sydney Water Assets see Building Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92.

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

# CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

# 12. 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.

### 13. Installation and Maintenance of Sediment Control

Measures used for erosion and sediment control on building sites are to be adequately

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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

# 14. 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.

**Note:** The following Standards and Codes applied at the time of determination:

- (a) Australian/New Zealand Standard **AS/NZS 3500.3** 2003 Plumbing and drainage Stormwater drainage
- (b) Australian/New Zealand Standard **AS/NZS 3500.3** 2003/Amdt 1 2006 Plumbing and drainage Stormwater drainage
- (c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

### 15. Removal of All Temporary Structures/Material and Construction Rubbish

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management. (DACPLF01)

# 16. **House / Building Number**

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

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

Reason: Proper identification of buildings. (DACPLF04)

# 17. 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.

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

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

# 18. No Planting Environmental Weeds

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

**Reason:** Weed management.

# 19. Works to cease if item found

If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

**Reason:** To protect Aboriginal Heritage.

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

Signed

Hugh Halliwell, Planner

Heallicell

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

**Lashta Haidari, Acting Development Assessment Manager** 

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# ATTACHMENT A

**Notification Plan** 

Title

Date

2018/460320

Plan - Notification

08/07/2018

# ATTACHMENT B

**Notification Document** 

**Title** 

**Date** 

2018/466381

**Notification Map** 

24/07/2018

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# ATTACHMENT C

Reference Number	Document	Date
<b>2018/460325</b>	Report - Statement of Environmental Effects	08/07/2018
<b>2</b> 018/460328	Report - Clause 4.6 Variation	08/07/2018
<b>2</b> 018/460392	Plans - Master Set	08/07/2018
<b>2</b> 018/460374	Plans - Certification of Shadow Diagrams with Plans	08/07/2018
<b>2</b> 018/460314	Plans - Survey	08/07/2018
<b>2</b> 018/460330	Report - BASIX Certificate	08/07/2018
<u>&gt;</u> 2018/460320	Plan - Notification	08/07/2018
<b>2</b> 018/460369	Report - Waste Management	08/07/2018
<b>2</b> 018/460334	Report - Geotechnical	08/07/2018
DA2018/1220	18 Windermere Place WHEELER HEIGHTS NSW 2097 - Development Application - Alterations and Additions	16/07/2018
2018/450878	DA Acknowledgement Letter - Marisa Virginia Caproni - Stefano Adrian Caproni	16/07/2018
<b>2</b> 018/460388	Photos	19/07/2018
<b>2</b> 018/460296	Development Application Form	19/07/2018
<b>2</b> 018/460298	Applicant Details	19/07/2018
<b>2</b> 018/460367	Plans - Sewer Service Diagram	19/07/2018
<b>2</b> 018/460401	Plans - External	19/07/2018
<b>2</b> 018/460410	Plans - Internal	19/07/2018
<b>2</b> 018/466210	Request for Further Information - DA2018/1220	24/07/2018
<b>2</b> 018/466363	ARP Notification Map	24/07/2018
2018/466372	DA Acknowledgement Letter (not integrated) - Marisa Virginia Caproni - Stefano Adrian Caproni	24/07/2018
<b>2</b> 018/466381	Notification Map	24/07/2018
2018/466389	Notification Letter - 10	24/07/2018
2018/478824	Request for meeting - 18 Windermere Place Wheeler Heights	28/07/2018
2018/479193	Confirmation of notification sign - 18 Windermere Place Wheeler Heights	29/07/2018
2018/478669	Request for update - 18 Windermere Place Wheeler Heights	30/07/2018
2018/479225	Submission - Swinson	30/07/2018
<b>2</b> 018/513456	Submission - Swinson	09/08/2018
2018/521621	Natural Environment Referral Response - Biodiversity	15/08/2018

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<u>V</u> 2018/522078	Submission Acknowledgement Letter - Jeffrey Leon Swinson - SA2018/513456	16/08/2018
2018/582190	Site Photos - 18 Windermere Place	07/09/2018
2018/582195	Site Photos - 107 Rose Avenue	07/09/2018

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