

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2021/0005
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 13 DP 23390, 11 Ferguson Street FORESTVILLE NSW 2087
Proposed Development:	Review of Determination of Application DA2020/0923 granted for construction of a secondary dwelling
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Leo Boghossian
Applicant:	Shady Chahine

Application Lodged:	24/03/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	14/05/2021 to 28/05/2021
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 92,600.00
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The report is submitted to the Northern Beaches Development Determination Panel (DDP) for consideration of Review of Determination REV2021/0005 for construction of a secondary dwelling at 11 Ferguson Street, Forestville.

This application is a review of Development Application DA2020/0923, which was refused by Council staff under delegated authority 22 December 2020. The reasons for refusal are outlined later within this report. It is noted that the reasons for refusal largely pertained to engineering matters. As the application involves a review of a determination, this application must be referred to the DPP for determination.

The application was exhibited in accordance with the Northern Beaches Community Participation Plan

and did not receive any submissions.

The amended plans and documentation submitted with the review of determination have been considered against the reasons for refusal for DA2020/0923 and is discussed in detail later within this report. In summary, the assessment has found that the proposal has been amended in a satisfactory way to respond to the reasons for refusal and the applicant has put forward further supporting documentation and reasons to warrant support.

It is recommended that the reasons for refusal should not be maintained following the detailed assessment of the amended plans and documentation submitted with the application and the DPP approve the application, subject to the conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

Proposed Development under Development Application DA2020/0923

The application sought approval for the following works:

- Construction of a detached secondary dwelling, with a floor area of 59.4sqm.
- Demolition of an existing outbuilding ("garage") adjoining the east boundary, behind the existing dwelling.
- Removal of one (1) tree.

Key components of the secondary dwelling included:

- Two bedrooms.
- Bathroom and laundry.
- Kitchen and dining area.
- Entryway.
- Vergola.

Proposed Development under this Review of Determination

The applicant seeks a review of DA2020/0923 for construction of a detached secondary dwelling, including landscaping works and demolition of existing outbuilding.

Key components of the secondary dwelling are as follows:

- Two bedrooms.
- Bathroom and laundry.
- Kitchen and dining area.
- Entryway.
- Vergola.

The size and configuration of the secondary dwelling subject this review is consistent with the previously refused secondary dwelling. However, the secondary dwelling subject to this review has a minimum rear setback of 1.5m, which is approximately 600mm greater than the proposal previously refused (although only refused on engineering grounds not built form non-compliances).

It is noted that the works will be sited over an existing concrete slab, was subject of enforcement action by Council. This is discussed in further detail throughout the report.

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

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3

Warringah Local Environmental Plan 2011 - 5.4 Controls relating to miscellaneous permissible uses

Warringah Development Control Plan - B9 Rear Boundary Setbacks

Warringah Development Control Plan - C8 Demolition and Construction

Warringah Development Control Plan - C9 Waste Management

Warringah Development Control Plan - D10 Building Colours and Materials

Warringah Development Control Plan - D12 Glare and Reflection

SITE DESCRIPTION

Property Description:	Lot 13 DP 23390 , 11 Ferguson Street FORESTVILLE NSW 2087
Detailed Site Description:	<p>The subject site consists of one allotment located on the southern side of Ferguson Street, Forestville.</p> <p>The site is irregular in shape with a frontage of 15.24m along Ferguson Street and respective depths of 44.69m and 42.61m along the western and eastern side boundaries. The site has a surveyed area of 689sqm.</p> <p>The site is located within the R2 Low Density Residential zone pursuant to WLEP 2011 and accommodates a single storey dwelling house, including a small outbuilding in the</p>

rear yard.

The site contains a small canopy tree within the front yard. The rear yard comprises a lawn area and is devoid of significant landscaping. It is noted that a large concrete slab and retaining wall is located in the rear yard. These structures have been constructed without a planning approval and are subject to a current investigation by Council's Environmental Compliance Department.

The site experiences a fall of approximately 2.7m that slopes away from the south-eastern rear corner towards the north-eastern front corner.

Description of Surrounding Development

The surrounding built environment is characterised by detached low density residential development.

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 DA2020/0010

This application was lodged to Council seeking approval for demolition works and construction of a dwelling house including a secondary dwelling and swimming pool. Council reviewed the proposal and raised a number of concerns with the development, noting numerous numeric non-compliances and deficient information. The application was subsequently withdrawn by the applicant.

Stop Works Order EPA2020/0185

The owner of the land had undertaken unauthorised land clearing and constructed a retaining wall and concrete slab in the rear yard. The concrete slab pertains to the secondary dwelling subject to this particular Review of Determination. Council's Environmental Compliance Department undertook a site visit at the subject site and issued a Stop Works Order on 6 August 2020.

Development Application DA2020/0923

This application was lodged to Council seeking approval for construction of a secondary dwelling. A number of concerns were raised by Council's Development Engineers with respect to overland flow flooding and development within close proximity to Council's stormwater assets. This application was refused on 22 December 2020. It is important to note that the application was not referred to Council's Landscape Officer and that the development's impact upon existing trees was not properly considered. Hence, this issue was not included as a reason for refusal under this application.

The reasons for refusal were as follows:

1. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.4 Development on Sloping Land of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part C4 Stormwater of the Warringah Development Control Plan 2011.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part C6 Building Over or Adjacent to Constructed Council Drainage Easements of the Warringah Development Control Plan 2011.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part E10 Landslip Risk of the Warringah Development Control Plan 2011.

APPLICATION HISTORY

The Assessment Officer undertook a site visit at the subject site and examined the immediate surrounds on 15 April 2021.

Following preliminary assessment of the application, which included the aforementioned site visit, Council wrote to the applicant raising the following concerns:

- **Rear Setback non-compliance**

Comment:

The proposed secondary dwelling was setback 0.9m from the rear boundary. Council requested that this setback be increased to at least 1.5m, which will allow for the provision of screen planting between the external wall of the secondary dwelling and rear boundary.

- **Landscape Plan**

Comment:

The application was not accompanied by a detailed landscape plan. This was critical as the site has been subject to unauthorised land clearing and suitable replacement planting was required on the site.

- **Overland Flow Flooding**

Comment:

Council's Development Engineers requested that the finished floor level of the secondary dwelling be raised 150mm to provide a minimum freeboard of 300mm.

The applicant subsequently submitted additional information to address Council's concerns. This amended information was re-notified for 14 days, as the applicant failed to provide evidence that the notification sign was displayed during the notification period.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 12 months after the date of determination of the development application. The application was determined on 22 December 2020 and the notice of determination was issued on 22 December 2020. The review was lodged on 24 March 2021 and is to be considered by the Northern Beaches Development Determination Panel on 9 June 2021, which is within 12 months of the date of determination.

Section 8.3 (3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Detailed Description of Works' section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act.

Assessment of Reasons for Refusal DA2020/0923

The applicant has amended the proposal and has provided additional information. Consequently, the Reasons for Refusal of DA2020/0923 that are stipulated in the Notice of Determination are examined

below to determine if they remain applicable or should be overturned:

1. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

Comment:

The proposed development has been amended to address refusal reasons pertaining to flood risk management, construction in proximity to Council's stormwater infrastructure and geotechnical risk management (this only relates to flood risk management as the site is in 'Area A' on the WLEP 2011 Landslip Risk Map and does not require a geotechnical report). Furthermore, the provision of a greater rear setback and landscape treatment will result in a development that is consistent with the aims and objectives of WLEP 2011 and WDCP 2011.

In this regard, it is recommended that this reason for refusal should not be maintained following detailed assessment of amended plans and documentation submitted with this application.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause 6.4 Development on Sloping Land of the Warringah Local Environmental Plan 2011.

Comment:

The Assessment Report for DA2020/0923 stated the following: *"Insufficient information has been provided to determine if the proposed works will not have an adverse geotechnical risk on adjoining properties"*.

In response to the above, it is noted that the site is located within 'Area A' on the WLEP 2011 Landslip Risk Map, which does not warrant a geotechnical report for development. The rear yard is relatively flat and does not present any geotechnical constraints. The works do not require significant excavation works and are not likely to pose a risk to adjoining properties from a geotechnical perspective.

In this regard, it is recommended that this reason for refusal should not be maintained following detailed assessment of amended plans and documentation submitted with this application.

3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part C4 Stormwater of the Warringah Development Control Plan 2011.

Comment:

Council's Development Engineers have reviewed the application and overland flow report and raised no objections, subject to conditions.

In this regard, it is recommended that this reason for refusal should not be maintained following detailed assessment of amended plans and documentation submitted with this application.

4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part C6 Building Over or Adjacent to Constructed Council Drainage Easements of the Warringah Development Control Plan 2011.

Comment:

Council's Development Engineers have considered the development against Clause C6 of WDCP 2011 and are satisfied that the proposal will not have an adverse impact upon Council's stormwater infrastructure.

In this regard, it is recommended that this reason for refusal should not be maintained following detailed assessment of amended plans and documentation submitted with this application.

5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part E10 Landslip Risk of the Warringah Development Control Plan 2011.

Comment:

The Assessment Report for DA2020/0923 stated the following: *"Insufficient information has been provided to determine if the proposed works will not have an adverse geotechnical risk on adjoining properties"*.

In response to the above, it is noted that the site is located within 'Area A' on the WLEP 2011 Landslip Risk Map, which does not warrant a geotechnical report for development. The rear yard is relatively flat and does not present any geotechnical constraints. The works do not require significant excavation works and are not likely to pose a risk to adjoining properties from a geotechnical perspective.

In this regard, it is recommended that this reason for refusal should not be maintained following detailed assessment of amended plans and documentation submitted with this application.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 14/05/2021 to 28/05/2021 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>This application is for the construction of a secondary dwelling at the rear of an existing residential property. Councils Landscape Referral section has considered the application against the Warringah Local Environment Plan, and the following Warringah DCP 2011 controls:</p> <ul style="list-style-type: none">• D1 Landscaped Open Space and Bushland Setting• E1 Preservation of Trees or Bushland Vegetation

Internal Referral Body	Comments
	<p><u>Original Comments - 31/03/2021</u></p> <p>The Arboricultural Impact Assessment provided with the application has identified a total of nine trees within close proximity to the proposed site, eight of which are located within the site boundaries, and the remaining one tree is a street tree within the road reserve. This existing street tree has been identified as retained and shall be protected in accordance with the Arboricultural Impact Statement as well as Section 4 of the Australian Standard 4970-2009 Protection of Trees on Development Sites. The remaining eight trees within the site have been recommended for removal. Of these eight trees, three trees, Trees No. 4, 5 and 7, are exempt species, and therefore do not require Council's approval to be removed. Concern is raised regarding the remaining five trees proposed for removal as majority of these trees are native, with all of the trees significant and should be protected and retained where possible. It is worth noting that the Arboricultural Impact Assessment provided does not include a plan of Trees identified and their associated identification numbers, making it difficult to make a sound judgement on which trees are impacted where.</p> <p>Tree No. 1 is located at the front of the property adjacent to the existing driveway. This tree has been assessed for removal as "the proposed driveway widening cuts through the trunk ", hence why it has been proposed for removal. It is worth noting that the proposed Architectural Plans do not indicate a driveway widening, instead indicates the existing driveway is to remain. This tree provides valuable screening and built form mitigation, a key component of control D1. For this reason, the removal of this tree would not be supported. If a driveway widening is required as part of the proposal, amended Architectural Plans shall be provided, however the design should explore alternative layouts to ensure this tree is retained and protected.</p> <p>Similarly, Tree No. 2 is located at the front of the property, and has been indicated for removal as "construction of main dwelling occurs within TPZ/SRZ". It is noted that no works are proposed within the main dwelling as this is an existing residential dwelling. The removal of this tree would therefore not be supported as no works are proposed in this area, and this tree also provides valuable built form softening and mitigation which seeks to satisfy control D1.</p> <p>Tree No. 3 appears to be located adjacent to the western boundary, towards the rear of the existing residential dwelling. The Arboricultural Impact Assessment indicates that this tree has been structurally compromised as a result of earthworks and trenching that has taken place on the neighbouring property at 15 Ferguson Street. This tree has lost significant root volume due to these works and has been recommended for removal irrespective of the proposed works. For this reason, the removal of this tree would be supported, however replacement planting shall be required.</p> <p>Tree No. 6 is also located along the western boundary, however is</p>

Internal Referral Body	Comments
	<p>located towards the south-west corner of the site. Like Tree No. 3, the Arboricultural Impact Assessment has indicated this tree has been structurally compromised as a result of the earthworks, trenching and construction work that have taken place on the neighbouring property at 15 Ferguson Street. From photos provided, clear root severance has occurred within the neighbouring property, and therefore has been recommended for removal irrespective of the proposed works. The removal of this tree would therefore be supported; however, replacement planting shall be required.</p> <p>The remaining tree proposed for removal is Tree No. 8, which is located along the rear boundary within the site. The Arboricultural Impact Assessment has noted the proposed works have an encroachment of 50% into the TPZ, as well as encroachments into the Structural Root Zone has been recommended for removal as a result. The removal of this tree would not be supported because insufficient evidence has been provided regarding design alternatives with particular emphasis on the secondary dwelling location. Concern is raised regarding the proposed rear setback which has been identified as 884mm at its smallest, and 951mm at its largest. This setback raises concerns in relation to privacy, as all screen vegetation has been proposed for removal, with no replacements evident. With this reduced setback, the ability to plant substantial screen vegetation or replacement trees is significantly reduced.</p> <p>In its current form, the landscape component of the proposal would not be supported due to the significant impact on existing canopy trees, the minimal rear setback provided, as well as insufficient information regarding proposed compensatory planting. It would be recommended that an amended Architectural Plan be provided exploring the relocation of the proposed secondary dwelling, ensuring that existing significant canopy trees are protected. In addition, it would be recommended that a Landscape Plan be provided with the application in accordance with the Northern Beaches Development Application Lodgement Requirements.</p> <p>That being said, following further investigation it is evident that work has already commenced for the secondary dwelling, despite no prior approval being granted. Currently, the foundations of the secondary dwelling have been poured, and all significant trees within the property have been removed. This has had severe impacts of the landscape amenity of the area and does not satisfy control E1. Key objectives of this control include "to protect and enhance the scenic value and character that trees and/or bushland vegetation provide", as well as "to protect and enhance the urban forest of the Northern Beaches". It is noted that a Stop Works Order has been issued to prevent further work being completed.</p> <p>As these trees have already been removed, a Landscape Plan shall be required, in accordance with the Northern Beaches Development Application Lodgement Requirements, in order to demonstrate that compensatory planting is proposed to take place, ensuring all canopy</p>

Internal Referral Body	Comments
	<p>trees are replaced with locally native alternatives both within the front and rear of the property. These trees shall be required to be replaced on a 1 for 1 basis, with trees capable of reaching a minimum height of 8m at maturity. This Landscape Plan is required to satisfy control D1. as key objectives of this control include "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", as well as "to enhance privacy between buildings".</p> <p>The landscape component of the proposal is therefore not supported. Should additional information and required documents be provided, further assessment can be made.</p> <p><u>Updated Comments - 11/05/2021</u></p> <p>Following previous comments, updated Architectural and Landscape Plans have been provided with the application. The amendments made on the provided documents demonstrate an increase in the rear setback to 1.5m, as well as additional tree planting to compensate trees previously removed.</p> <p>The Landscape Plans highlight the presence of five additional canopy trees, supported by screen planting along the rear boundary. No issues are raised with the proposed tree planting, however it should be noted these trees are required to be located at least 3m from existing and proposed buildings.</p> <p>Concern is raised with the use of <i>Juniperus chinensis</i> 'Spartan' as this is a very slow growing shrub, and would take a number of years to achieve the required screening and built form softening. For this reason, it is recommended that the species be substituted for an alternative species, such as <i>Acmena smithii</i> 'Minor', which is native species capable of achieve the desired screening at a much fast and efficient rate.</p> <p>The landscape component of the proposal is therefore supported subject to the protection of existing trees and vegetation, as well as the completion of landscape works as proposed on the Landscape Plans, inclusive of the above species change.</p>
NECC (Development Engineering)	<p>Comments 24/5/21</p> <p>The applicant has raised the secondary dwelling floor level to RL 112.13 m AHD providing a 300mm freeboard above the determined flood level provided by Northern Beaches consulting Flood Report. The existing level of the secondary dwelling slab will need to be raised accordingly.</p> <p>No objections subject to conditions.</p> <p>Previous comments</p> <p>The proposed finished floor levels for the granny flat does not comply</p>

Internal Referral Body	Comments
	with the minimum freeboard required in accordance with Council standards. Based on the levels determined in the Flood Report by NB Consulting, the FFL of the granny flat shall be raised by 150mm to RL 112.13m AHD to provide a minimum freeboard of 300mm. Amended architectural plans are to be submitted for further assessment.

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 (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 2: Secondary dwellings

Clause 19: Definition

Development for the purposes of a secondary dwelling includes the following:

- (a) the erection of, or alterations or additions to, a secondary dwelling,
- (b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.

Note: The standard instrument defines secondary dwelling as follows:

"secondary dwelling means a self-contained dwelling that:

(a) is established in conjunction with another dwelling (the principal dwelling), and
 (b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and
 (c) is located within, or is attached to, or is separate from, the principal dwelling."

Comment:

The proposed use is defined under WLEP 2011 as a secondary dwelling, which is consistent with the Standard Instrument definition.

Clause 20: Land to which this Division applies:

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but <i>only if</i> development for the purposes of a dwelling house is permissible on the land:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone R5 Large Lot Residential.	Consistent. The site is located within the R2 Low Density Residential zone and, as such, the proposed use is permissible with consent under WLEP 2011.

Clause 21: Development to which this Division applies

Requirement	Comment
This Division applies to development, on land to which this Division applies, for the purposes of a secondary dwelling.	Consistent. The development involves the construction of a secondary dwelling, as defined by the Standard Instrument. Therefore, this Division applies.

Clause 22: Development may be carried out with consent

Development to which this Division applies may be carried out with consent.

Requirement	Comment
(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.	The proposal will result in one principal dwelling (existing) and one secondary dwelling on the site. The proposed secondary dwelling is detached from the existing principal dwelling.
(3) A consent authority must not consent to development to which this Division applies unless:	The site is not subject to a Floor Space Ratio development standard.
(a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and	Clause 5.4(9) of WLEP 2011 limits the maximum gross floor area of secondary dwellings to 11% of the total floor area of the principal dwelling or 60sqm, whichever is greater. The gross floor area of the proposed secondary dwelling is 59.6sqm and therefore, complies with WLEP 2011 and this SEPP.
(b) the total floor area of the secondary dwelling is no more than 60m ² or, if a greater floor area is	

permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.	
<p>(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds:</p> <p>(a) site area if:</p> <p>(i) the secondary dwelling is located within, or is attached to, the principal dwelling, or</p> <p>(ii) the site area is at least 450 square metres.</p> <p>(b) parking if no additional parking is to be provided on the site.</p>	The proposed development is not being refused on the grounds specified within subclause (4).

Note: A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (4).

Clause 24: No subdivision

Requirement	Comment
A consent authority must not consent to a development application that would result in any subdivision of a lot on which development for the purposes of a secondary dwelling has been carried out under this Division.	<p>Consistent.</p> <p>This application does not propose any subdivision of the existing allotment.</p>

Conclusion

Having regard to the above assessment, it is concluded that the proposed secondary dwelling is consistent with the requirements set out within SEPP (Affordable Rental Housing) 2009.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate has been submitted with the application (see Certificate No. 885738S_1).

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

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	53

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this

plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

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	3.96m (RL115.43)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

5.4 Controls relating to miscellaneous permissible uses

Clause 5.4(9) of the WLEP 2011 limits the gross floor area of secondary dwellings to 60sqm or 11% of the floor space of the principal dwelling, whichever is greater.

The gross floor area of the proposed secondary dwelling is 59.6sqm, thereby compliant with Clause 5.4 (9) of the WLEP 2011.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	3.96m	-	Yes
B3 Side Boundary Envelope	4m then projected at 45 degrees (east)	within envelope	-	Yes

	4m then projected at 45 degrees (west)	within envelope	-	Yes
B5 Side Boundary Setbacks	0.9m (east)	1.8m	-	Yes
	0.9m (west)	3.92m	-	Yes
B7 Front Boundary Setbacks	6.5m	33.8m	-	Yes
B9 Rear Boundary Setbacks	6m	1.5m - 5.72m	4.67% - 75%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (275.6sqm)	40.09% (276.2sqm)	-	Yes

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	No	Yes
C9 Waste Management	No	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	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	No	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	No	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes

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

Detailed Assessment

B9 Rear Boundary Setbacks

Description of non-compliance

Clause B9 of WDCP 2011 requires development to be setback at least 6m from rear boundaries. The proposed secondary dwelling is setback between 1.5m - 5.72m from the rear boundary, which fails to meet the numeric requirement. It is important to note that the proposal has been amended to increase the rear setback from 0.9m, which was originally proposed.

Merit consideration:

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

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

Comment:

The proposed development complies with the 40% landscaped open space numerical control. Therefore, Council is satisfied that there is adequate deep soil landscaping incorporated into the development.

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

Comment:

The proposed secondary dwelling does not occupy the entire rear yard and there is adequate landscaped private open space to serve the occupants of the principal and secondary dwellings. Moreover, the built form is relatively modest and will not detract from a sense of openness within the rear yard.

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

Comment:

The 1.5m rear setback allows for the establishment of landscape screen planting along the rear boundary, which will provide a visual buffer between the secondary dwelling and southern adjoining property (622 Warringah Road). The existing 1.8m high boundary fencing also assists in providing privacy.

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

elements.

Comment:

There are examples of similar detached outbuildings and secondary dwellings in similar locations within rear yards. Furthermore, the eastern site (9A Ferguson Street) contains a detached dwelling house located in close proximity to the rear boundary. Therefore, the proposal will not be inconsistent with the surrounding area and will maintain the existing visual continuity and pattern of buildings.

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

Comment:

The 1.5m - 2.78m rear setback, coupled with the proposed landscape treatment and rear boundary fencing, will ensure a reasonable level of visual privacy is maintained. Conditions have been included with this consent to limit potential acoustical privacy impacts.

Concluding Remarks

Having regard to the above assessment, it is concluded that the proposed development is consistent with the objectives of the control. Therefore, the application is supported on merit in this particular circumstance.

C8 Demolition and Construction

The application was not accompanied by a Waste Management Plan. To ensure the proper disposal of builder's waste, a suitable condition has been included with this consent requiring the applicant to prepare a Waste Management Plan in accordance with Council's Waste Management Guidelines. The plan is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

C9 Waste Management

The application was not accompanied by a Waste Management Plan. To ensure the proper disposal of builder's waste, a suitable condition has been included with this consent requiring the applicant to prepare a Waste Management Plan in accordance with Council's Waste Management Guidelines. The plan is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

D10 Building Colours and Materials

No schedule of colours and materials has been provided. A condition of consent is recommended for a schedule to be provided prior to the issue of the Construction Certificate. The chosen colours must be sympathetic to the natural environment.

D12 Glare and Reflection

A suitable condition has been included with this consent requiring the roofing material to be within a medium to dark range to minimise solar reflections.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

In summary, a detailed assessment has been required for the following specific issues:

- Variation to the WDCP 2011 rear setback provision.
- Assessment of the amended plans and supporting documentation against the reasons for refusal of DA2020/0923 .

When considered on its merits, the proposed secondary dwelling is found to be consistent with the aims and objectives of relevant state and local planning controls and therefore, is worthy of support. 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 REV2021/0005 for Review of Determination of Application DA2020/0923 granted for construction of a secondary dwelling on land at Lot 13 DP 23390, 11 Ferguson Street, FORESTVILLE, 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
DA 1000 (Revision D) - Site Plan	10/05/2021	Shady Chahine
DA 1100 (Revision D) - Floor Plan	10/05/2021	Shady Chahine
DA 1101 (Revision D) - Roof Plan	10/05/2021	Shady Chahine
DA 1102 (Revision D) - Elevations	10/05/2021	Shady Chahine

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Overland Flow Assessment Report Ref. 201090	07/12/2020	Northern Beaches Consulting Engineers Pty Ltd
BASIX Certificate No. 885738S_1	24/05/2021	Shady Chahine

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

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
DA 1004 (Revision D) - Landscape Concept Plan	10/05/2021	Shady Chahine

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. **Approved Land Use**

Nothing in this consent shall authorise the use of the approved structure beyond the definition of

a secondary dwelling.

The Warringah Local Environmental Plan 2011 defines this land use as follows:

secondary dwelling means a self-contained dwelling that—

- (a) is established in conjunction with another dwelling (the principal dwelling), and*
- (b) is on the same lot of land as the principal dwelling, and*
- (c) is located within, or is attached to, or is separate from, the principal dwelling.*

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

3. **Prescribed Conditions**

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

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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.

5. No Consent for existing Unauthorised Works

No consent is granted for the following:

- Previous tree removal on the subject site.
- Existing retaining wall(s) located within the rear yard.
- Existing concrete slab constructed within the rear yard.

Reason: A Development Application cannot retrospectively approve works / land clearing undertaken without a planning approval.

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 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

7. **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.

8. **Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority demonstrating the works are in compliance with Sydney Water requirements.

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

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

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. **Schedule of Colours and Materials**

A schedule of colours and materials is to be prepared and submitted to the Principal Certifying Authority prior to the issuing of a Construction Certificate. The proposed colours and materials

are to be sympathetic to the natural environment.

Reason: To ensure colours and materials blend into the natural landscape in order to minimise the visual impact of the development on the environment.

11. Waste Management Plan

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with Council's Waste Management Guidelines.

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

12. Protection of Existing Street Trees

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture.

All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Tree protection.

13. Tree and Vegetation Protection

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site not approved for removal, including the existing *Callistemon sp.* located at the front of the site, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,

- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

- c) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Note: All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree (s) is prohibited.

Reason: Tree and vegetation protection.

14. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a

stressed condition,

ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

15. **Road Reserve**

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

Reason: Public safety.

16. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

17. **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**

18. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan, inclusive of the following conditions:

i) substitute the proposed *Juniperus chinensis* 'Spartan' for an alternative species. Suggested alternatives include: *Acmena smithii* 'Minor'.

Tree planting shall be located within a 9m² deep soil area wholly within the site, with a minimum pot size of 75L. Tree planting shall be located a minimum of 3 metres from existing and proposed buildings, and other trees.

Tree planting shall be located to minimise significant impacts on neighbours in terms of blocking winter sunlight, or where the proposed tree location may impact upon significant views.

Native tree planting species shall be selected from Council's list, specifically the *Native Plant Species Guide - Frenchs Forest Ward*: www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide.

The selected screen planting is to comprise of native species capable of attaining a height of 3 metres at maturity.

Plants are to be installed at minimum 1 metre intervals and be of a minimum container size of 200mm at planting in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch.

Prior to the issue of an Occupation Certificate, details shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

19. **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.

20. **Final finished floor level - Overland Flow**

The finished floor level of the secondary dwelling is to be 300mm above the 1 in 100 Year AEP top water level of the adjoining stormwater overland flow path. The existing concrete floor is to

raised to RL 112.13 m AHD . Certification is to be provided stating that the existing secondary dwelling slab has been raised to RL112.13 by a registered surveyor prior to the issue of the occupation certificate.

All adjoining ground levels are also to be maintained at their current levels.

Reason: To ensure adequate freeboard above the 1 in 100 YEAR AEP overland flow level.

21. **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.

22. **Waste Management Confirmation**

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

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

23. **Stormwater Disposal**

The Applicant shall submit a certificate from a suitably qualified person that the stormwater drainage works have been constructed/installed in accordance with all relevant Australian Standards and Codes.

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

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

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

24. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

25. **Undesirable Trees**

Leighton Green Cypress *Cupressocyparis leylandii* or any of its cultivars, or any other Undesirable Trees identified by Council, must not be planted on the site for the life of the development.

In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views and loss of plant diversity.

26. **Noise**

The use and all associated plant and equipment for the secondary dwelling shall not result in any noise above 5dBa ambient background at any time.

Reason: Ensure reasonable acoustic amenity.