

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/0959
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<b>Responsible Officer:</b>	Kye Miles
<b>Land to be developed (Address):</b>	Lot 4 DP 628329, 5 Cadow Street FRENCHS FOREST NSW 2086
<b>Proposed Development:</b>	Alterations and additions to a dwelling house
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Christopher David Newell Claire Nicole Newell
<b>Applicant:</b>	Christopher David Newell

<b>Application Lodged:</b>	24/06/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	01/07/2022 to 15/07/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 650,000.00
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### PROPOSED DEVELOPMENT IN DETAIL

Development application for alteration and additions to an existing dwelling. The works include;

- Construction of a first floor addition, comprising three bedroom and two bathrooms,
- Internal alterations to ground floor,
- New covered terrace off living area,
- Associated landscaping works.

### Amended plans dated 26 September 2022:

Following a review of the application, Council raised concern with the proposed first floor addition's

impacts on neighbouring sites. Amended plans were received on 26 September 2022, which included;

- Re-configuring the first floor to provide a greater rear setback and southern side setback,
- Altering the roof pitch, resulting in a reduction of the building height by 662mm,
- Reduce the first floor ceiling height by 150mm.

In accordance with the provisions of the Northern Beaches Community Participation Plan, as the amendments are considered to be minor and will result in a lesser environmental impact on nearby properties and the public domain, re-notification of the application was not required. The amended plans form basis of the assessment of this proposal.

## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B9 Rear Boundary Setbacks

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

Warringah Development Control Plan - D6 Access to Sunlight

Warringah Development Control Plan - D7 Views

Warringah Development Control Plan - D8 Privacy

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 4 DP 628329 , 5 Cadow Street FRENCHS FOREST NSW 2086
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western side of Cadow Street, Frenchs Forest.</p> <p>The site is generally regular in shape with a frontage of 21.57m along Cadow Street and a depth of between 25m and 26m. The site has a surveyed area of 689.2m<sup>2</sup>.</p>

The site is located within the R2 Low Density Residential zone and accommodates a detached brick dwelling with an in-ground swimming pool located in the front yard.

The site front yard of the site inclines from east to west (front to rear) by some 2.0m via a gradual slope.

The site also includes several trees of varying age and size within the front yard.

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

Adjoining and surrounding development is characterised by other detached residential dwellings of varying age, size and construction.

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:

##### **DA2017/0905**

Application for the construction of retaining walls, landscaping and fencing in the front area of the site. The application was approved on 14 November 2017.

##### **Mod2018/0659**

Modification of Development Consent DA2017/0905 approved on 12 March 2019.

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p>Part 4, <u>Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider “Prescribed conditions” of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p><b>(i) Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p><b>(iii) Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 01/07/2022 to 15/07/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Ms Jasmine Soghomonian	8/21-23 Station Street NAREMBURN NSW 2065
Mr Jim Haikalis Mrs Bonita Kwan Wai Haikalis	C/- Starr Constructions Pty Ltd Po Box 475 MOOREBANK NSW 2170

The following issues were raised in the submissions:

- **Rear setback non-compliance,**
- **Overshadowing,**
- **Bulk and scale,**
- **View loss,**
- **Privacy.**

The above issues are addressed as follows:

- **Rear setback non-compliance**

The submissions raised concerns that the proposal is non compliant with the Warringah DCP rear setback provisions.

### Comment:

This matter is discussed in detail under Part B9 of this report. In summary, the proposed addition is constrained to the existing footprint and incorporates sufficient design solutions to minimise the non-compliance, and as a result the bulk and scale of the development does not give rise to any unreasonable impacts upon the adjoining properties.



This matter does not warrant the refusal of this application.

- **Overshadowing**

The submissions raised concerns that the proposal result in unreasonable overshadowing.

Comment:

An assessment of the application against Part D6 of the Warringah DCP reveals that the application is acceptable with the requisite provisions for solar access and does not unreasonably overshadow adjoining properties. In addition, clear attempts to minimise overshadowing impacts to the concerned properties are evident within the dwelling's design, as the proposal sits well below the maximum allowable height and provides a generous southern side setback, which exceeds the minimum requirements.

This matter does not warrant the refusal of this application.

- **Bulk and scale**

The submissions raised concerns that proposal gives rise to adverse building bulk that is closely sited to the rear boundary.

Comment:

The proposal achieves a high level of compliance with the controls used to regulate building bulk being building height and side boundary envelope. Overall, the proposal has been sufficiently articulated to reduce building bulk and it will not result in any adverse amenity impacts to adjoining land.

This matter does not warrant the refusal of this application.

- **View loss**

The submissions raised concerns that the proposal results in unreasonable view loss.

Comment:

This matter has been discussed with further detail in part 'D7 Views' of this report. In short, it was found that the extent of view loss is considered to be minor to moderate. Therefore, the proposal is deemed reasonable within its context.

This matter does not warrant the refusal of the application.

- **Privacy**

The submissions raised concerns that the proposed first floor encroachment within the rear setback will give rise to unacceptable privacy impacts.

Comment:

The above-mentioned privacy impacts have been discussed in further detail in part 'D8 Privacy' of this report. In summary, the development, as to be amended by recommended Condition will not give rise to any adverse privacy impacts to adjoining dwellings.

This matter has been resolved via the recommended conditions of consent.

## REFERRALS

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs 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 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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A453201\_03 dated 16 September 2022).

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

### SEPP (Transport and Infrastructure) 2021

#### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

#### Comment:

The proposal was referred to Ausgrid who raised no objections, subject to recommended conditions which have been included in the recommendation of this report.

## SEPP (Resilience and Hazards) 2021

### Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

## 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	Complies
Height of Buildings:	8.5m	6.3m	Yes

### Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

## Warringah Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	5.6m	N/A	Yes
B3 Side Boundary Envelope	4m - North	No encroachment	N/A	Yes



	4m - North	No encroachment	N/A	Yes
B5 Side Boundary Setbacks	0.9m - North	5.0m	N/A	Yes
	0.9m - South	2.8m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	8.9m	N/A	Yes
B9 Rear Boundary Setbacks	6m	4.8m	20%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (262.4m <sup>2</sup> )	31.9% (209.1m <sup>2</sup> )	20.25%	No

### 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
C4 Stormwater	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	No	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
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

### Detailed Assessment

#### **B9 Rear Boundary Setbacks**

## Description of non-compliance

The proposed first floor is set back at a minimum of 4.8 meters from the rear boundary. WDCP requires a minimum rear setback of 6.0 meters.

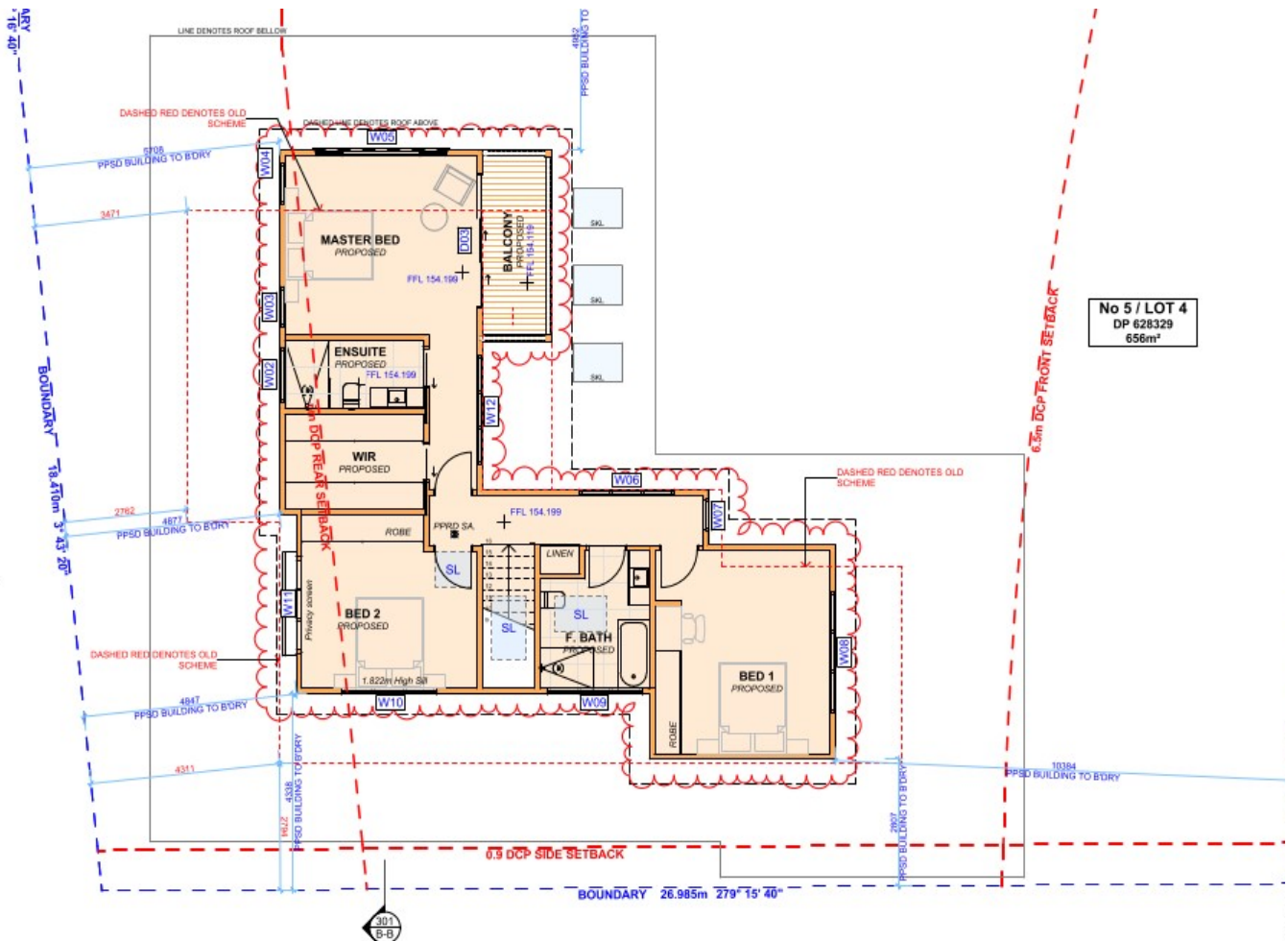


Figure 1. First floor rear setback non-compliance.

## 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:

As discussed later in this report, the proposal maintains adequate opportunities for deep soil landscaping. In addition, proposed addition will be constructed above the existing building footprint and will not involve the removal of any significant vegetation.

- To create a sense of openness in rear yards.

### Comment:

The existing rear setback is primarily occupied by the ground floor of the dwelling and the rear terrace. Notwithstanding, the proposal maintains open yard space within the northern and

eastern setbacks. In addition, amended plans have been provided, which include limiting the first-floor encroachment within the rear setback, accounting for 7.3% (9.2m<sup>2</sup>) of the total area. Overall, the works will create an acceptable sense of openness in the rear yard.

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

Comment:

This matter has been discussed in further detail under Part D8 Privacy of this report. In summary, the amended proposal provides an acceptable rear setback with consideration of the site constraints, while preserving reasonable privacy between buildings. The proposed first floor rear windows as to be amended by way of recommended condition will prevent casual overlooking into No. 42 Dundilla Road's private open space. Overall, the proposal has been appropriately sited to preserve privacy for the occupants of the development and occupants of the adjoining site.

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

Comment:

The proposed first floor represents a minor encroachment within the total rear setback and will therefore retain consistency with the pattern of adjoining dwellings, which are also found on varied rear setbacks.

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

Comment:

As above, the proposal will provide reasonable opportunities to maintain privacy between dwellings.

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 Section 1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

### Description of non-compliance

The proposed landscaped open space (LOS) for the subject site is 31.9% (209.1m<sup>2</sup>). The control requires 40% (262.4m<sup>2</sup>). It is noted that the site as existing provides for a deficient landscaped area or 32.5%, with the development resulting in a 4m<sup>2</sup> reduction in landscaped area over the existing.

### Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

Comment:

The proposed works are generously set back from the front boundary and will maintain existing vegetation within the frontage, which will continue to enhance the streetscape.

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

Comment:

The proposed landscaped open space areas equates to 31.9% (209.1m<sup>2</sup>) of the site, these areas contain small turfed areas, garden beds, shrubs, and medium sized trees. In addition, the proposal does not involve any substantial excavation or the removal of any significant vegetation. Overall, the proposed development will conserve and enhance 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:

It is considered that the existing and proposed landscape open space is sufficient to allow for the mitigation of the perceived height, bulk and scale of the proposal.

- *To enhance privacy between buildings.*

Comment:

This matter has been discussed in further detail under Part D8 Privacy of this report. In summary, the slight reduction of landscaped open space (0.6%/4.3m<sup>2</sup>) will have an indiscernible impact on privacy between buildings.

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

Comment:

The proposal will continue to provide appropriate outdoor recreational areas that meet the needs of the occupants.

- *To provide space for service functions, including clothes drying.*

Comment:

The site will continue to have space for appropriate service functions.

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

Comment:

The site will retain its ability to adequately facilitate water management.

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.

## **D6 Access to Sunlight**

Concerns has been raised that the proposal will unreasonably overshadow the neighbouring private open space at No. 3 Cadow Street. The proposal overshadows the adjoining private space, such that 50% of the required area does not receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.

### Merit consideration

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

- *To ensure that reasonable access to sunlight is maintained.*

#### Comment:

With the east-west orientation of the site, the northern private open space of No. 3 Cadow Street is highly vulnerable to overshadowing by any first-floor development at the subject site. Notwithstanding, the amended proposal retains equitable access to sunlight for No. 3 Cadow Street's covered deck and associated lawn areas throughout mid-winter, as indicated. While the proposed development results in additional overshadowing to No. 3 Cadow Street, this overshadowing is not considered unreasonable, as detailed below.

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

#### Comment:

The proposed first floor addition provides a high level of compliance with the height of buildings development standards set by the WLEP 2011. In addition, the proposed development is also compliant with the side setback requirements set by the WDCP. In fact, the amended proposal includes greater southern side setbacks than the minimum requirements and sits well below the maximum building height standard with a low roof pitch and minimum floor to ceilings. Full compliance with this control would highly constrain any first floor development on the subject site, to the extent that first floor development is not viable, which is contrary to the objectives of the low density zone, which allows for 2 storey development. As such, the proposed development is demonstrated to be suitably designed for the subject site, does not present an over-development, and is overall equitable as to solar access.

- *To maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.*

#### Comment:

With reference to the discussion above, the proposal is considered to sufficiently maximise mid winter sunlight penetration to neighbours.

- *To promote passive solar design and the use of solar energy.*

#### Comment:

The proposal will have limited impacts on the roofs of neighbours.

- *To minimise the need for artificial lighting.*

#### Comment:

The proposal does not unreasonably impact on the solar access of neighbours, and as such is considered to adequately minimise the need for artificial lighting.

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.

## D7 Views

Concerns were raised by the neighbours to the south at No. 3 Cadow Street, regarding view loss.

### Merit consideration

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

- *To allow for the reasonable sharing of views.*

#### Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

#### **1. Nature of the views affected**

*"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".*

#### Comment to Principle 1:

The views affected are district views of houses, Garigal National park and Baha'i temple in the horizon, which are generally obscured by existing canopy trees in and residential development the foreground.





Figure 1. No. 3 Cadow Street's first floor bedroom.

## 2. What part of the affected property are the views obtained

*"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".*

### Comment to Principle 2:

The views impacted by the proposal are directly across the side boundaries, from both sitting and standing positions. The views are from the first floor bedroom and study.

## 3. Extent of impact

*"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but*

*in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.*

Comment to Principle 3:

The views will be partially impacted, with the most significant impacts occurring to eastern bedroom. Given the value of the views and that they are directly across the side boundaries, the view loss is considered minor to moderate in the context of these principles.

#### **4. Reasonableness of the proposal that is causing the impact**

*“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”*

Comment to Principle 4:

The part of the development that causes the view loss is the southern elevation of the proposed new upper level. This part of the building generally complies with the relevant built form controls, including overall height, wall height, front, and side setbacks. There are non-compliant elements located on the eastern elevation being the varied rear setback, however, full compliance with this control would not have a significant bearing on the retention of the views. Given the high level of compliance with the controls on the eastern side of the proposal, it is not considered reasonable to require redesign of the development, considering the nature of the view loss as discussed above. The proposal is considered to maintain a reasonable sharing of views, taking into account the considerations discussed above.

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

Comment:

Given that the proposal will maintain a reasonable sharing of views, it is considered sufficiently innovative.

- *To ensure existing canopy trees have priority over views.*

Comment:

No canopy trees are to be removed to obtain views.

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.

#### **D8 Privacy**

Concern has been received that alterations to the ground floor windows and the construction of the first floor addition will result in an unreasonable privacy impacts to neighbouring sites.

Merit consideration

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

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

Comment:

From the first floor - The first floor addition proposes generous side setbacks and is not considered to give rise to any adverse privacy impacts to those sites adjoining the sides of the development, subject to conditions relating to suitable privacy screening of southern bathroom window. The proposed western (rear) elevation includes four windows that are sited between 4.8 meters and 5.7 meters from the rear boundary. However, these windows are associated with bedrooms and an ensuite, which are not considered to be highly used parts of the dwelling, as established within the planning principal of *Meriton v Sydney City Council [2004] NSWLEC 313*, where overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time. Notwithstanding, the amended plans demonstrate that all efforts have been made to encourage a high level of visual and acoustic privacy. Suitable privacy treatment, including 1.6 metre sill heights and external privacy louvres are indicative of this. In addition, a condition of consent is recommended to ensure that first floor ensuite window (W02) is made obscure to provide a greater level of visual privacy for the occupants of the subject site and those of adjoining properties.

From the ground floor - The proposal involves the installation of sliding doors (D02) to the existing ground floor, which will replace two bedroom windows. In addition, internal alterations are proposed to ground floor layout, including the conversion of this space to a living area. The proposed sliding doors will maintain the existing minimum rear setback of 3.0 metres, which includes a raised planter and rear boundary fence that provide adequate screening of the adjoining site. Overall, that the ground floor works are constrained to the existing footprint and will not give rise to adverse privacy impacts, as suitable building separation is maintained.

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

Comment:

As discussed above, all efforts have been made to ensure a reasonable level of privacy (both visual and acoustic) is provided to the occupants of the subject site and those of adjoining properties. Subject to compliance with the above recommended conditions, the proposal will provide a design that is considered acceptable in the context of the development and the surrounding locality.

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

Comment:

The proposed development will result in personal and property security for the occupants of the subject site, and those of adjoining properties.

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

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

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

their habitats.

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2022**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$6,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$650,000.

## **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- 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 DA2022/0959 for Alterations and additions to a dwelling house on land at Lot 4 DP 628329, 5 Cadow Street, FRENCHS FOREST, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

#### a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA04 - RevB: Site plan	19 September 2022	Action Plans
DA05 - RevB: Existing ground floor plan	19 September 2022	Action Plans
DA06 - RevB: Ground floor plan	19 September 2022	Action Plans
DA07 - RevB: First plan	19 September 2022	Action Plans
DA08 - RevB: North/east elevation	19 September 2022	Action Plans
DA09 - RevB: South/west elevation	19 September 2022	Action Plans
DA10 - RevB: Sections	19 September 2022	Action Plans

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate No. A453201_03	16 September 2022	Actions Plans
Preliminary Geotechnical Report	07 April 2022	White Geotechnical Group

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:

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	Not stated	Not stated

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. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

<b>Other Department, Authority or Service</b>	<b>EDMS Reference</b>	<b>Dated</b>



(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

### 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.

## **FEES / CHARGES / CONTRIBUTIONS**

### **5. Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$6,500.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$650,000.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

### **6. Security Bond**

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

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

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

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

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

## **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. Amendments to the approved plans**

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

- Obscure glazing is to be applied to W02 & W09.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

### **9. Compliance with Standards**

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

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

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

### **10. 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](http://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.

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

### 11. Survey Certificate

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

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

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

### 12. Installation and Maintenance of Sediment Control

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

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

### 13. Waste Management During Development

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

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

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

### 14. Waste Management Confirmation

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

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

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

**Signed**



**Kye Miles, Planner**

The application is determined on 28/09/2022, under the delegated authority of:



**Adam Richardson, Manager Development Assessments**