

## REVIEW OF DETERMINATION ASSESSMENT REPORT

<b>Application Number:</b>	REV2020/0001
<b>Responsible Officer:</b>	Adam Croft
<b>Land to be developed (Address):</b>	Lot 8 DP 6984, 18 Alexander Street COLLAROY NSW 2097 Lot 9 DP 6984, 18 Alexander Street COLLAROY NSW 2097
<b>Proposed Development:</b>	Boundary adjustment part demolition for alterations and additions to a dwelling house construction of a detached dwelling house and a Secondary dwelling.
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential 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>	Simone Victoria Waights
<b>Applicant:</b>	Brendan Andrew Waights
<b>Application Lodged:</b>	20/01/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	29/01/2020 to 12/02/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.1 Minimum subdivision lot size: 8.75% 4.3 Height of buildings: 2.35%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 955,500.00

### PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for a boundary adjustment, demolition works and alterations and additions to a dwelling house, construction of a detached dwelling and one (1) secondary dwellings on two (2) lots.

#### Lot 8

- New detached dwelling-house with kitchen/living.dining, rumpus, library, laundry, 5 bedrooms and 3 baths
- Teenagers wing/retreat
- Secondary Dwelling
- Private open space area
- Landscaping

#### Lot 9

- Alterations and additions to a dwelling to create a 3 level dwelling (garage level, ground floor level and first floor level)
- Driveway to connect undercroft with garage under house
- Private open space area
- Landscaping

### **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 - 4.1 Minimum subdivision lot size

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Local Environmental Plan 2011 - 6.1 Acid sulfate soils

Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land

Warringah Development Control Plan - B1 Wall Heights

Warringah Development Control Plan - B3 Side Boundary Envelope

Warringah Development Control Plan - B5 Side Boundary Setbacks

Warringah Development Control Plan - C6 Building over or adjacent to Constructed Council Drainage Easements

Warringah Development Control Plan - D6 Access to Sunlight  
 Warringah Development Control Plan - D7 Views  
 Warringah Development Control Plan - D8 Privacy  
 Warringah Development Control Plan - E1 Preservation of Trees or Bushland Vegetation  
 Warringah Development Control Plan - E2 Prescribed Vegetation  
 Warringah Development Control Plan - E10 Landslip Risk

## SITE DESCRIPTION

<b>Property Description:</b>	<p>Lot 8 DP 6984 , 18 Alexander Street COLLAROY NSW 2097</p> <p>Lot 9 DP 6984 , 18 Alexander Street COLLAROY NSW 2097</p>
<b>Detailed Site Description:</b>	<p>The subject site consists of two allotments located on the southern side of Alexander Street.</p> <p>The site is regular in shape with a frontage of 24.39m (12.19m and 12.2m) along Alexander Street and a maximum depth of 47.995m. The site has a surveyed area of 581.3m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house on site.</p> <p>The site slopes approximately 5.5m from the rear (south) to front (north).</p> <p>The site has various and dense vegetation to the front and rear of the existing dwelling.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by dwelling houses.</p>

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:

DA2015/0816 - Alterations and additions to a dwelling house and construction of front and side fencing - Approved 12/10/2015.

DA2019/0306 - Boundary adjustment, part demolition for alterations and additions to a dwelling house, construction of a detached dwelling house and a Secondary dwelling - Refused 09/12/2019

DA2020/0205 for Part Demolition works and construction of Boarding House with associated carparking and Landscaping - Under assessment

DA2020/0261 for Partial demolition works and construction of a boarding house with associated carparking and Landscape works - Under assessment

## 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 6 months after the date of determination of the development application. The application was determined on 9 December 2019 and the notice of determination was issued on 10 December 2019. The review was lodged on 20 January 2020 and is to be considered by Delegation on 21 April 2020,

which is within 6 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

#### **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 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

#### **REFERRALS**

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Landscape Officer	<p>The review application REV2020/0001 of the proposed boundary realignment, alterations and additions to the existing dwelling, a separate new dwelling and granny flat on separate titles, has been assessed by an alternate Landscape Officer.</p> <p>The Landscape Referral for DA2019/0306 raised issues with the lack of information including a suitable landscape plan and a arboricultural impact assessment.</p>



Internal Referral Body	Comments
	<p>The following additional information is provided with application REV2020/0001: Arboricultural Impact Assessment prepared by Hugh The Arborist. The recommendations of the report demonstrate that existing trees potentially impacted by within development activity are to be retained, subject to tree protection measures, and this satisfies WDCP control E1 Preservation of Trees or Bushland Vegetation.</p> <p>No updated Landscape Plan, over and above the hand sketch with insufficient landscape details is provided with REV2020/0001. The design intent of the hand sketched Landscape Plan is capable of satisfying WDCP control D1 Landscaped open Space and Bushland Setting, and D9 Building Bulk.</p> <p>The hand sketch Landscape Plan shall be updated at Construction Certificate in accordance with conditions of consent.</p> <p>The Arboricultural Impact Assessment provides the following assessment:</p> <ul style="list-style-type: none"> <li>• Tree 1 - Port Jackson Fig / Phoenix Palm, are retainable under the current proposal on the provision manual excavations are carried out to install the proposed dwelling footings. This is to be carried out under the guidance of the Project Arborist who is to manage and prune roots located during excavations. The driveways are to remain on the existing footprint and the entire garden bed containing both trees is to be isolated for the duration of construction,</li> <li>• Tree 2 - Cabbage Tree Palm (within adjoining property at 20 Alexander St) minor intrusion that can be managed with tree protection measures,</li> <li>• Tree 3 - Blackbutt (within adjoining property at 21 Eastbank Avenue - Salvation Army) minor intrusion that can be managed with tree protection measures,</li> <li>• Tree 4 - Blackbutt (within adjoining property at 21 Eastbank Avenue - Salvation Army) minor intrusion that can be managed with tree protection measures, and</li> <li>• Tree 5 - Blackbutt (within adjoining property at 21 Eastbank Avenue - Salvation Army) minor intrusion that can be managed with tree protection measures.</li> </ul> <p>Arboricultural recommendations shall be adopted and actioned in accordance with section 10. Recommendations and section 11. Hold Points.</p> <p>The landscape component with the additional information provided satisfies Warringah DCP landscape controls and is acceptable.</p>
NECC (Development Engineering)	<p><u>Overland Flows:</u></p> <p>Development Engineering's preference is for the proposed decking for Lot 9 to be relocated to be clear of the overland flow path, closer to</p>

Internal Referral Body	Comments
	<p>the proposed dwelling. However, the proposed decking is considered non-habitable, and therefore can be supported in this circumstance.</p> <p><u>Note to Planner:</u></p> <p>Please note that some of the plans, including the Stormwater Plans, are registered on DA2019/0306 and not on the current REV2020/0001 application.</p> <p>No objections are raised to the proposed development, subject to conditions.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\*

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

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

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

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

### 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 dwelling house and secondary dwelling (Lot 8).

### 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.	<b>Consistent.</b> The site is located within the R2 Low Density Residential 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.	<b>Consistent.</b> 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 development will result only in the principal dwelling and secondary dwelling on Lot 8. Lot 9 retains the existing single dwelling use.



<p>(3) A consent authority must not consent to development to which this Division applies unless:</p> <p>(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</p> <p>(b) the total floor area of the secondary dwelling is no more than 60m<sup>2</sup> 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>	<p>a) Warringah LEP does not have an FSR control.</p> <p>b) The total floor area of the secondary dwelling is less than 60m<sup>2</sup>.</p>
<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>	<p>a) The site area of Lot 8 exceeds 450m<sup>2</sup>.</p> <p>b) The development provides compliant car parking on Lots 8 &amp; 9.</p>

**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.	<b>Consistent.</b> This application does not propose any subdivision of the existing allotment (although it does include boundary re-alignment).

#### Conclusion

The application is consistent with the above requirements and is supported by Council.

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

A BASIX certificate has been submitted with the application in relation to each Lot (see Certificate Nos. 999799M\_04 and 999710S\_03 dated 25 March 2020 ).

#### **SEPP (Infrastructure) 2007**

#### Ausgrid

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

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

Comment:

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

**Warringah Local Environmental Plan 2011**

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	600m <sup>2</sup>	Lot 8: 547.5m <sup>2</sup>	8.75%	No
		Lot 9: 608.7m <sup>2</sup>	N/A	Yes
Height of Buildings:	8.5m	8.7m	2.35%	No

Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	No (see detail under Clause 4.6 below)
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

## Detailed Assessment

### 4.6 Exceptions to development standards

#### **Clause 4.1 - Minimum subdivision lot size**

##### Description of non-compliance:

Development standard:	Minimum Subdivision Lot Size
Requirement:	600m <sup>2</sup>
Proposed:	547.5m <sup>2</sup>
Percentage variation to requirement:	8.75%

##### Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.1 - Minimum subdivision lot size development standard, has taken into consideration the judgements contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

##### Clause 4.6 Exceptions to development standards:

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

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

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

##### Comment:

Clause 4.1 - Minimum subdivision lot size development standard is not expressly excluded from the operation of this clause.

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

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

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*

- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicants written request argues, in part:

- *"The existing land sizes for both Lots 8 and 9 are currently below minimum subdivision requirements as prescribed in the minimum Lot Size map.*
- *The total land size of the combined blocks of 1,156 sqm is not changing as a result of the proposed development.*
- *The frontage of both blocks remains the same at approx. 12m wide, consistent with the residential character of the lots within the locality.*
- *The exemption is requested to maintain a significant portion of the existing property rather than demolishing an existing structure in its entirety to rebuild the property in the proposed development (ie maintain the character and minimise the waste of building materials being sent to land waste through demolition).*
- *It is noted that the proposed amendments to the land sizes enables lot 9 to meet the minimum land size as prescribed in the act (previously below the minimum land size).*
- *It is noted that the pattern of land size around the immediate area is consistent with the proposed development, being subject to a previous land subdivision criteria and being below the current land size requirements. Accordingly, the proposed boundary realignment is consistent with the surrounding properties as follows:*
  - 20 Alexander Street – 569 sqm (adjoining property to the west);*
  - 22 Alexander Street – 556 sqm*
  - 24 Alexander Street – 550 sqm*
  - 26 Alexander Street – 514 sqm*
  - 13 Alexander Street – 464 sqm (directly opposite lot 9)*
  - 11 Alexander Street – 321 sqm (directly opposite lot 8)*
- *No other objectives as outlines above are adversely affected by the minor boundary realignment to Lots 8 and 9."*

The existing Lots 8 & 9 are non-compliant and the proposed boundary realignment results in a further non-compliance to Lot 8. The purpose of the realignment is to minimise demolition by allowing for the retention of a larger portion of the existing dwelling on Lot 9, which will now comply with the minimum lot size. Both Lots 8 & 9 maintain their existing frontage widths and remain consistent in area with the surrounding properties.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, therefore satisfying cls 1.3 (c) of the EPA Act.

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



(3)(b).

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

**Objectives of development standard**

The underlying objectives of the standard, pursuant to Clause 4.1 – 'Minimum subdivision lot size' of the WLEP 2011 are:

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

*(a) to protect residential character by providing for the subdivision of land that results in lots that are consistent with the pattern, size and configuration of existing lots in the locality.*

Comment:

The development takes place over 2 existing lots and the proposed realignment will maintain consistency with the surrounding subdivision pattern.

*(b) to promote a subdivision pattern that results in lots that are suitable for commercial and industrial development.*

Comment:

The proposal does not materially alter the existing pattern, resulting in only a minor realignment of the rear portion of the boundary between lots 8 & 9.

*(c) to protect the integrity of land holding patterns in rural localities against fragmentation.*

Comment:

N/A

*(d) to achieve low intensity of land use in localities of environmental significance.*

Comment:

The land use is appropriate in the context of the site.

*(e) to provide for appropriate bush fire protection measures on land that has an interface to bushland.*

Comment:

N/A

*(f) to protect and enhance existing remnant bushland.*

Comment:

The proposal does not include the removal of any significant vegetation.

*(g) to retain and protect existing significant natural landscape features.*

Comment:

The development will not unreasonably impact natural features on the site.

*(h) to manage biodiversity.*

Comment:

The proposal appropriately manages biodiversity.

*(i) to provide for appropriate stormwater management and sewer infrastructure.*

Comment:

The relevant services are existing at the site and appropriate conditions are included in relation to stormwater.

## **Zone objectives**

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

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

Comment:

The proposal maintains a density consistent with that of the surrounding land.

It is considered that the development satisfies this objective.

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

Comment:

N/A

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

Comment:

The proposal will not significantly alter the landscape setting and suitable landscaping of the site is proposed/conditioned.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018 issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Minimum Subdivision Lot Size Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

**Clause 4.3 – Height of Buildings**

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	8.7m
Percentage variation to requirement:	2.35%

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

(a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*

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

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

Comment:

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

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

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

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

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

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

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

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

*(b) the concurrence of the Secretary has been obtained.*

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

- *"The existing house is 2 storeys with a garage underneath, that is at ground level at the front and almost fully underground at the rear of the garage. The existing house currently breaches the height plane. The alterations and additions to the existing property also slightly breaches the height plane, but is substantially reduced as a result of the proposed changes to roof pitch reducing the overall height of the development. See attached Appendix 2, existing height plane non-compliance and Appendix 1, the proposed changes that results in a lower impact on the height plane to the existing property. The proposed development with a lower pitched roof is considered more favourable to the western neighbour from a view sharing perspective, it reduces the overall non-compliance from the existing dwelling and is considered reasonable with reference to site conditions.*
- *The new dwelling on lot 8 has a small non-compliance to the height plane. This breach is considered immaterial and is primarily in line with the existing dwelling non-compliance of lot 9, which is the front of the property of the primary dwelling where the ground level starts to rise quite quickly. The non-compliance is small in nature and is not considered unreasonable with reference to the site and proposed development.*



- *The minor non-compliance to the height plane to the additional dwelling on Lot 8 at the front of the property has no impact on the visual amenity of the property from the street. The applicant has pushed the wall back of the second story at councils request to break up the front facade. The non-compliance does not negatively affect the visual street appeal of the proposed development and is considered reasonable to enable the under passage of cars to the primary dwelling that is located at the rear of the site.*
- *The building height is consistent with other dwellings within 100m of the property that includes 3-4 storey apartment blocks, a backpackers hostel, and commercial property. The neighbouring property to the west is also 4 storey in height and is much higher than the proposed development."*

The main area of non-compliance relates to the works to the existing dwelling located on Lot 9. The proposed works, including new low-pitched roof, move the non-compliant roof section lower down the site away from the adjoining dwelling to the west. The height breaches of both primary dwellings on Lots 8 & 9 occur centrally within the respective sites and are not considered to result in any unreasonable amenity impacts. The secondary dwelling breach on Lot 8 is negligible in extent and will not have any material impact.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, therefore satisfying cls 1.3 (c) of the EPA Act.

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

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

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

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

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

#### Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

#### **Objectives of development standard**

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

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

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

Comment:

The proposed breaches are minor in extent and are generally consistent with the heights of surrounding development.

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

Comment:

The proposal will not result in unreasonable visual, view, privacy or overshadowing impacts.

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

Comment:

The proposed non-compliance will not unreasonably impact scenic quality.

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

Comment:

The areas of non-compliance are located centrally within the site and will not adversely impact views from public places.

## **Zone objectives**

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

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

Comment:

The proposed height non-compliance will not impact the existing residential environment.

It is considered that the development satisfies this objective.

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

Comment:

N/A

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

Comment:

The proposed height breaches will not unreasonably impact the landscape setting of the site.

It is considered that the development satisfies this objective.

#### Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018 issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

#### **6.1 Acid sulfate soils**

Under Clause 6.1 (6), development consent is not required if:

- (a) *the works involve the disturbance of less than 1 tonne of soil, and*
- (b) *the works are not likely to lower the watertable.*

#### Comment:

Clause 6.1 Acid sulfate soils requires Council to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage. In this regard, development consent is required for the carrying out of works described on land shown on the Acid Sulfate Soils Map as being of the class specified for those works.

Works within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below 5 metres Australian Height Datum and by which the watertable is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land is required to be assessed to determine if any impact will occur.

The parts of the site that are affected by Class 5 Acid Sulfate Soils are generally clear of the proposed excavation.

#### **6.4 Development on sloping land**

Geotechnical assessment of the site concluded that the site is suitable for the development.

#### **Warringah Development Control Plan**

##### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	9.1m	26.4%	No
B3 Side Boundary Envelope	Lot 8: 4m	E: Outside	Dwelling: 42.1% -	No

			46.9% Secondary dwelling: 13.4%	
		W: Outside	Dwelling: 55.1% Secondary dwelling: 62.5%	No
	Lot 9: 4m	E: Outside	53%	No
		W: Outside	11.64%	No
B5 Side Boundary Setbacks	Lot 8: 0.9m	0.9m	N/A	Yes
	Lot 9: 0.9m	0.7m - 0.9m	22.2%	No
B7 Front Boundary Setbacks	Lot 8: 6.5m	7.3m	N/A	Yes
	Lot 9: 6.5m	7.1m	N/A	Yes
B9 Rear Boundary Setbacks	Lot 8: 6m	6.9m	N/A	Yes
	Lot 9: 6m	6.8m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	Lot 8: 40%	40% 219m <sup>2</sup>	N/A	Yes
	Lot 9: 40%	45% 280m <sup>2</sup>	N/A	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	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C1 Subdivision	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

#### **B1 Wall Heights**

##### Description of non-compliance

The proposed dwellings on Lot 8 & 9 exceed the maximum wall height of 7.2m

##### Merit consideration:

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

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

##### Comment:

The proposal is consistent with the surrounding residential development and will not result in excessive bulk or visual impact.

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

##### Comment:

The proposed building height non-compliance is minor and is generally below the surrounding tree canopy level.



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

Comment:

The proposal does not result in unreasonable impact to views. Further, as the non-compliant wall height does not contribute to the loss of views, the view sharing in relation to this control is reasonable.

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

Comment:

The proposed building height and separation is considered to be acceptable and will not result in unreasonable amenity impacts.

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

Comment:

The development responds sufficiently to the topography, with the majority of the proposal maintaining compliance with the height of buildings control. The extent of excavation is not excessive.

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

Comment:

The proposed roof design is appropriate in the context of the surrounding area.

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

### **B3 Side Boundary Envelope**

Description of non-compliance

The proposed upper level of each dwelling is non-compliant with the side boundary envelope control.

Merit consideration

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

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

Comment:

The proposed non-compliance does not result in a visually dominant development. The proposal is generally consistent with the surrounding development and maintains adequate physical separation from the street frontage and adjoining properties.

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

Comment:

The proposal maintains sufficient amenity to adjoining properties despite the building envelope breach.

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

Comment:

The development responds appropriately to the topography of the site with only minor building height non-compliances at the leading edge of the 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 s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

## **B5 Side Boundary Setbacks**

### Description of non-compliance

The proposed eastern setback of the Lot 9 dwelling is 0.7m and is non-compliant with the 0.9m control.

### Merit consideration

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

- *To provide opportunities for deep soil landscape areas.*

Comment:

The proposed 3.3m western setback on Lot 9 allows sufficient deep soil area on the site despite the eastern side breach.

- *To ensure that development does not become visually dominant.*

Comment:

The dwelling is separated from the street frontage and the non-compliance is minor.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

The proposed non-compliance does not result unreasonable bulk and scale.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy,*

*amenity and solar access is maintained.*

Comment:

The proposed dwellings are appropriately designed ensure appropriate amenity is maintained, notwithstanding the setback breach.

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

Comment:

The proposed setback non-compliance will not impact any 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.

#### **C6 Building over or adjacent to Constructed Council Drainage Easements**

Council's Development Engineer has reviewed the application and raised no objections to the proposed development, subject to the included conditions of consent.

#### **D6 Access to Sunlight**

The development will result in additional overshadowing to the front and rear of the subject site (Lots 8 & 9) and No. 16 Alexander Street to the west, as well as minor impact to No. 21 Eastbank Avenue to the south. Lot 8 and No. 16 will achieve the required minimum sunlight hours to private open spaces and living areas, being unaffected from 9am until early afternoon. Lot 9 will achieve the requirement from late morning until 3pm. The subject and adjoining properties will maintain adequate sunlight access due to their northern orientation, and the proposal is considered to be acceptable.

#### **D7 Views**

This assessment maintains consistency with the previous assessment undertaken under DA2019/0306 and is considered as follows.

The proposal will result in the loss of a distant ocean view obtained from No. 20 Alexander Street over the subject site to the rear of the existing roof ridge (Figure 1). This part of the proposed development complies with the building height control, and the view is heavily obscured by a chimney and significant vegetation located between the site and the subject view. Despite the extent of the impact, the value of the view is considered to be minor and the proposal is acceptable.





Figure 1. View from No. 20 Alexander Street.

## **D8 Privacy**

The proposal incorporates appropriate privacy measures and design, and is considered to be acceptable in relation to privacy. The adjoining sites contain extensive vegetation which will provide supplementary privacy.

Lot 8: The proposed ground floor eastern windows and three rear first floor eastern windows have sufficient sill height. The three front full-height eastern windows are to Bedroom 4, which is a low traffic room, and will view over the adjoining roof of No. 16 Alexander Street. The eastern windows to the secondary dwelling are located forward of the dwelling and any private open space at No. 16. The proposed western windows are designed for privacy with suitable sill heights and obscured glazing. The proposed first floor terrace is screened to the east by a 1.5m privacy screen and is adequately set back by 4.2m (to the planter box) from Lot 9 to the west.

Lot 9: The new western windows are to the Master Bedroom and Bedroom 1, and are offset from the existing windows at No. 20 Alexander Street. The proposed eastern window is a highlight window. The remaining side windows (with the exception of the the Butler's Pantry window) are existing. The proposed BBQ/deck area adjoins the driveway of No. 20.

## **E1 Preservation of Trees or Bushland Vegetation**

Tree/vegetation removal from the site is limited to palm trees. Council's Landscape Officer raised no objection to the proposed tree removal.

## **E2 Prescribed Vegetation**

Council's Landscape Officer raised no objection to the proposed development, subject to conditions.

## **E10 Landslip Risk**

The Geotechnical Report prepared by White Geotechnical Report dated 4 April 2019 is considered to remain relevant to the revised proposal. The report confirms that the development is suitable for the site and includes appropriate recommendations.

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

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

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

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

A monetary contribution of \$9,555 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$955,500.



## CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.1 Minimum Subdivision Lot Size and Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

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

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

## RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.1 Minimum Subdivision Lot Size and 4.3 Height of Buildings development standard pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development

is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to REV2020/0001 for Boundary adjustment part demolition for alterations and additions to a dwelling house construction of a detached dwelling house and a Secondary dwelling. on land at Lot 8 DP 6984, 18 Alexander Street, COLLAROY, Lot 9 DP 6984, 18 Alexander Street, COLLAROY, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

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

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

#### a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA100 Site Plan	Rev. B 20 January 2020	Walsh2 Architects
DA120 Boundary Changes	Rev. B 20 January 2020	Walsh2 Architects
DA121 Garage and Ground Floor Plans	Rev. E 20 January 2020	Walsh2 Architects
DA122 First Floor & Roof Plans	Rev. C 20 January 2020	Walsh2 Architects
DA200 Sections	Rev. D 20 January 2020	Walsh2 Architects
DA201 Sections	Rev. C 20 January 2020	Walsh2 Architects
DA300 North & South Elevations	Rev. C 20 January 2020	Walsh2 Architects
DA301 East Elevations	Rev. C 20 January 2020	Walsh2 Architects
DA302 West Elevations	Rev. C 20 January 2020	Walsh2 Architects
DA303 Internal Elevations	Rev. B 20 January 2020	Walsh2 Architects

<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>
Geotechnical Report	4 April 2019	White Geotechnical Group
Floor Study Report	February 2020	BMB Engineers
Arboricultural Impact Assessment Report	26 June 2019	Hugh The Arborist

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

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
18 Alexander Street, Landscape Plan	No date	N/A

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

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

## 2. Prescribed Conditions

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

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

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

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

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

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

Reason: Legislative requirement.

### 3. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;  
  
Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2008
    - (iv) Australian Standard AS1926 Swimming Pool Safety

- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$9,555.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$955,500.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

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

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

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

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

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

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

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

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

The applicant is to lodge a bond of \$16,000 as security against any damage or failure to complete the construction of stormwater drainage works as part of this consent.

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

Reason: Protection of Council's infrastructure.

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

7. **Overland Flow Flooding**

In order to protect property and occupants from flood risk the following is required:

Building Components and Structural Soundness – C1

All new development shall be designed and constructed as flood compatible buildings in Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-N Committee (2006).

Building Components and Structural Soundness – C2

All new development must be designed and constructed to ensure structural integrity up the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion confirming the above.

Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any c waterproofed and/or located above the Flood Planning Level. All existing electrical equip Planning Level must have residual current devices installed cut electricity supply during

Floor Levels – F2

The undercroft area below the 1% AEP flood level is to be designed and constructed to a perimeter of the undercroft shall remain open.

### Fencing – H1

Fencing (including pool fencing, boundary fencing, balcony balustrades and accessway waters - All new fencing on the property must be design with a minimum of 50% open ar level, to allow flood waters to pass through.

### Recommendations

The development must comply with all recommendations outlined in:

- The Flood Study Report prepared by BMB Engineers, reference FSR176

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

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

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

Reason: Protection of Council's infrastructure.

## 9. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Warringah Water Management Policy PL850, and generally in accordance with the concept drainage plans prepared by Michal Korecky, drawing number 18040, sheet SW-1 and SW-2, issue 1, dated 18/3/19. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

#### 11. **Utilities Services**

Prior to the issue of the Construction Certificate, the Applicant is to obtain the following:

- (a) A letter from the utility provider confirming that satisfactory arrangements have been made for the approved development have been made; and
- (b) Evidence that notification has been received from a utility authority that, requirements for the development can be provided.

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

Reason: To ensure that services have been provided as required by this Consent.

#### 12. **Soil and Water Management Program**

A Soil and Water Management Plan prepared in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and implemented on site until the works are completed.

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

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

#### 13. **Amended Landscape Plan**

An Amended Landscape Plan prepared by a qualified landscape architect or landscape designer shall be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate demonstrating detail design for landscape elements to satisfy the landscape controls of Warringah DCP and the DA Lodgement Requirements, including:

- calculations of the landscape area (and open space) on the site as per the definition in the relevant DCP.
- proposed surface treatments and materials, including but not limited to structures, features, walling, fences, pavements, gardens, lawns, ground stabilisation, drainage, irrigation etc.,
- existing and proposed ground levels,
- outline of proposed buildings, driveways and structures, including swimming pools, pavements, walls and fences, all consistent and co-ordinated with building and services plans,
- location, height and materiality of proposed retaining walls and fences,
- existing street trees or trees on neighbouring properties,
- existing trees and other vegetation to be retained or removed, All trees are to be located, identified and numbered, and shall coincide with the arborist's report,
- proposed planting scheme including species selection, location, quantities, mature heights and pot sizes,
- rock outcrops and other landscape features,
- location of any underground services or basements,
- soil depth of planter boxes on-slab, and

- any irrigation systems.

All new planting for screening to private open spaces shall be capable of attaining a mature height of 3 metres, and be installed at a minimum 300mm pot container size, and shall be planted no more than 900mm apart.

The Amended Landscape Plan shall be based on the hand sketch landscape plan provided with application DA2019/0306, in terms of retention of vegetation and intent for new planting.

Reason: to ensure the provision of adequate landscape amenity.

#### 14. **Pre-Construction Stormwater Assets Dilapidation Report**

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

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

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

Reason: Protection of Council's infrastructure.

#### 15. **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.

#### 16. **Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

**17. Tree protection measures**

Tree protection measures shall be undertaken as recommended in the Arboricultural Impact Assessment prepared by Hugh The Arborist.

a) The Certifying Authority or Project Arborist must ensure that:

- i) the activities listed in section 4.2 of AS4970- 2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site, and
- ii) 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.

b) 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.

Note. A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.

Reason: to ensure tree protection is provided and maintained.

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

**18. 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.

**19. Project Arborist**

During the works, a Project Arborist with AQF minimum Level 5 qualifications in arboriculture/horticulture is to be engaged to attend site to supervise and approve the location of tree protection measures and development works such as tree fencing, truck protection, and ground protection, in accordance with the recommendations of the Arboricultural Impact Assessment prepared by Hugh The Arborist.

a) The Project Arborist shall document all the associated works including site instructions, recommendations during the works, and photographic evidence to report acceptance of the works within the tree protection zones of all existing trees to be retained and protected in accordance with the Arboricultural Impact Assessment, including supervision, approval and certification of the following:

- o manual excavations in the locations of the proposed footings to locate and prune roots of existing tree numbered 1 - Port Jackson Fig / Phoenix Palm, as identified in section 10.2. All roots are to be pruned and documented by the Project Arborist. Where possible, the structure should be cantilevered within 2.7 metres (the radius of the notional SRZ area) to minimise disturbance. It is noted in the development impacts discussion earlier in the report the tree is in a location that may alter the findings of the assessment and corresponding manual excavation,
- o existing garden bed in which tree 1 is growing shall remain undisturbed and isolated for the duration of construction, as identified in section 10.3,
- o the proposed driveway is to be maintained on the existing footprints and retained for the duration of construction. In the event the surface is removed, ground protection is to be

installed under the guidance of the Project Arborist immediately and retained for the duration of works, as identified in section 10.4,

- inspection and approval of the replacement driveway surfaces. Tree roots located below the driveway that are greater than 50mm in diameter are to be retained and protected under the guidance of the Project Arborist, as identified in section 10.5,
- works within the TPZ and SRZ of retained trees are to be overseen by an AQF Level 5 Arborist to assist with minimising development impact, as identified in section 10.7, and
- all services plans shall be subject to review by a consulting Arborist. Where possible underground services should be located outside the TPZ of trees to be retained. All underground services located inside the TPZ of any tree to be retained must be installed via tree sensitive techniques and inspected and approved by the Project Arborist. This should include either directional drilling methods or manual excavations to minimise the impact to trees identified for retention, as identified in section 10.8.

b) All works within the tree protection zone of existing trees shall satisfy the specific tree protection requirements as recommended in the Arboricultural Impact Assessment, including:

- tree protection fencing, as identified in Appendix 1, and Table 4 of section 11.5,
- general tree protection measures as identified in sections 11.7, 11.8, 11.9, 11.10, 11.11, 11.12, 11.13 and 11.14, and
- hold point inspections and approval of works as identified in sections 12.1.

The Project Arborist shall provide approval by certification to the Certifying Authority that the above works in a) and b) are completed to the satisfaction of the project Arborist.

Reason: ensure the correct procedures and construction techniques are in place and utilised to retain trees required for retention.

## 20. **Tree and vegetation protection - General**

a) Existing trees and vegetation shall be retained and protected as identified in the Arboricultural Impact Assessment prepared by Hugh The Arborist, including:

- i) all trees and vegetation within the site not approved for removal, excluding exempt 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 generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a qualified AQF minimum Level 5 Arborist,
- iii) existing ground levels shall remain under the tree protection zone of trees to be retained, unless authorised by a qualified AQF minimum Level 5 Arborist,
- iv) any tree roots exposed during excavation with a diameter greater than 25mm within the tree protection zone must be assessed by a qualified AQF minimum Level 5 Arborist. Details including photographic evidence of works undertaken shall be submitted to the Certifying Authority,
- v) to minimise the impact on trees and vegetation to be retained and protected, 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,
- vi) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified AQF minimum Level 5 Arborist on site,
- vii) all structures are to bridge tree roots greater than 25mm diameter unless directed by a qualified AQF minimum Level 5 Arborist on site,



viii) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with a qualified AQF minimum Level 5 Arborist, including advice on root protection measures,  
ix) should either or all of vi), vii) and viii) occur during site establishment and construction works, a qualified AQF minimum Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,  
x) 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 AS 4970-2009,  
xi) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

c) All protected trees are to be retained for the life of the development, or for their safe natural life. Trees that die or are removed by approval must be replaced with a locally native canopy tree.

d) Any subsequent request for tree removal is subject to a Section 4.55 modification application.

Reason: to retain and protect significant planting on development and adjoining sites.

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

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

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

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

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

22. **Landscape completion**

Landscaping is to be implemented in accordance with the Amended Landscape Plan.

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

Reason: to ensure that the landscape treatments are installed to provide landscape amenity and soften the built form.

23. **Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with AQF minimum Level 5 qualifications in arboriculture/horticulture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including existing tree numbered 1 located within the development site, and existing trees numbered 2, 3, 4, and 5 located within adjoining properties, as a result of the development works, including the following information:

- i) compliance to any Arborist recommendations for tree protection and excavation works,
- ii) extent of damage sustained by vegetation as a result of the construction works,
- iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: to retain and protect significant planting on development sites.

**24. Stormwater Disposal**

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

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

**25. Restriction as to User for Undercroft Area**

The Applicant shall create a restriction as to user (under the provisions of Section 88B of the Conveyancing Act) on the title over the undercroft area of the raised decking area of Lot 9, restricting the perimeter of the undercroft area to remain open and restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared by a registered surveyor with terms acceptable to Council at the applicant's expense. Council shall be nominated as a party to release, vary or modify such restriction.

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

Reason: To ensure no modification of the overland flow path without Council's approval.

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

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy; (in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification). Any proposed landscaping within a Council easement or over a drainage system is to consist of ground cover or turf only (no trees are permitted) - Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure

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

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

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

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

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

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

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

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

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

Reason: Protection of Council's infrastructure.

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

**29. Landscape maintenance**

Any existing landscaping including trees required to be retained together with any additional landscaping required by this consent is to be maintained for the life of the development.

A 12 month establishment period shall apply for all new landscaping. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. All planting must be maintained for the life of the development, or for their safe useful life expectancy. Planting that may die or is approved for removal must be replaced.

Reason: to maintain local environmental amenity and ensure landscaping continues to soften the built form.

## **CONDITIONS THAT MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF ANY STRATA SUBDIVISION OR SUBDIVISION CERTIFICATE**

**30. Provision of Services for Subdivision**

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots.

31. **Restriction as to User (Overland Flow)**

The Applicant shall create a restriction as to user (under the provisions of Section 88B of the Conveyancing Act) on the title over the overland flow path, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared by a registered surveyor with terms acceptable to Council at the applicant's expense. Council shall be nominated as a party to release, vary or modify such restriction.

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

Reason: To ensure no modification of the overland flow path without Council's approval.

32. **Sydney Water Compliance Certification**

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site [www.sydneywater.com.au](http://www.sydneywater.com.au) <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

33. **Easement for Drainage**

The Applicant shall create an easement for drainage (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all drainage infrastructure is located within the appropriate easement(s).

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

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

34. **Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, four copies of the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

35. **Title Encumbrances**

The Applicant shall ensure all easements, rights of carriageway, positive covenants and

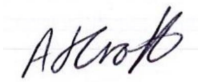
restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

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

Reason: To ensure proper management of land.

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

**Signed**



**Adam Croft, Planner**

The application is determined on 24/04/2020, under the delegated authority of:



**Anna Williams, Manager Development Assessments**