

DEVELOPMENT APPLICATION ASSESSMENT REPORT

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| Application Number: | DA2019/0349 |
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| Responsible Officer: | Benjamin Price |
| Land to be developed (Address): | Lot 2 DP 758566, 25 Ballyshannon Road KILLARNEY HEIGHTS NSW 2087 |
| Proposed Development: | Alterations and additions to a dwelling house including conversion of a garage to secondary dwelling |
| Zoning: | Warringah LEP2011 - Land zoned R2 Low Density Residential |
| Development Permissible: | Yes |
| Existing Use Rights: | No |
| Consent Authority: | Northern Beaches Council |
| Land and Environment Court Action: | No |
| Owner: | Gary Wayne Spencer Karen Lynne Spencer |
| Applicant: | Matt Elkan Architect |

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| Application lodged: | 09/04/2019 |
| Integrated Development: | No |
| Designated Development: | No |
| State Reporting Category: | Residential - New second occupancy |
| Notified: | 23/04/2019 to 07/05/2019 |
| Advertised: | Not Advertised |
| Submissions Received: | 0 |
| Clause 4.6 Variation: | 4.3 Height of buildings: 3.5% |
| Recommendation: | Approval |

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| Estimated Cost of Works: | \$ 872,701.50 |
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ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral

to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

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| Property Description: | Lot 2 DP 758566 , 25 Ballyshannon Road KILLARNEY HEIGHTS NSW 2087 |
| Detailed Site Description: | <p>The subject site consists of one (1) allotment located on the southern side of Ballyshannon Road.</p> <p>The site is regular in shape with a frontage of 18.29m along Ballyshannon Road and a depth of 38.1m. The site has a surveyed area of 696.8m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two storey dwelling house.</p> <p>The site slopes from north to south and includes a crossfall of 7.4m.</p> <p>The site is landscaped with lawns and a garden on the street frontage. The site does not include any significant landscape features.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by one and two storey 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:

DA2019/0349 - After concerns were raised by the eastern neighbour the plans were amended to create more openings on the eastern elevation to allow access to light and some other minor changes. In particular the changes include:

- Full height operable venetians to basement floor and ground floor instead of privacy screens
- Increased setback of elevated access to secondary dwelling
- Alteration to window W3
- Altered carport roof-form
- Sunshading to northern facing windows of Bed 2 and 3

The amended application differs only in minor respects from the original application, and does not result in a greater environmental impact. As such re-notification was not required.

PLM2018/0282 - Alterations and additions to the existing dwelling house - Two sets of plans were submitted for this meeting. It was advised that the development is to reduce the building height and building envelope non-compliances in accordance with the first set of plans. It was also advised that the development is to comply with the landscaped open space and front setback controls. The current development application is consistent with this advice.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes the following:

Ground Floor:

- Alterations and additions to provide open plan kitchen, dining and living with attached deck, bathroom, two bedrooms, master bedroom with ensuite and quiet room.

Basement Floor Plan:

- Alterations and additions to provide two bedrooms, laundry, bathroom and secondary dwelling with attached deck

Site

- Double Carport
- Swimming pool and terrace area
- Landscaping

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

| Section 4.15 Matters for Consideration' | Comments |
|---|---|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument | See discussion on "Environmental Planning Instruments" in this report. |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument | None applicable. |
| Section 4.15 (1) (a)(iii) – Provisions of any development control plan | Manly Development Control Plan applies to this proposal. |
| Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement | None applicable. |
| Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000) | <p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading</p> |

| Section 4.15 Matters for Consideration' | Comments |
|--|---|
| | <p>of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p> |
| Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | <p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p> |
| Section 4.15 (1) (c) – the suitability of the site for the development | The site is considered suitable for the proposed development. |
| Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs | See discussion on “Notification & Submissions Received” in this report. |
| Section 4.15 (1) (e) – the public interest | No matters have arisen in this assessment that would justify the refusal of the application in the public interest. |

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document

entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application (prepared by Building Code & Bushfire Hazard Solutions Pty Limited, dated 9 April 2019). The report stated that the bushfire attack level of the site is "Flame Zone".

The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS have been included as part of the recommended conditions of consent.

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 respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p> |
| Environmental Health (Solid Fuel/Oil Heater) | <p>General Comments</p> <p>Environmental Health has assessed this referral with regard to the installation of a wood-fired heater. Council is adverse to the installation of more wood-fired heaters that potentially create air pollution. In saying this, it may be unfair to reject the application if the correct procedures have been followed. As no information was given about the unit to be installed, Council will need this information before the final Occupation Certificate can be released. A standard set of conditions will be required to be followed and if the unit is not installed as required it will contravene DA conditions.</p> <p>Besides the installation of a solid fuel heater, we recommend refusal of the proposed fire-pit. According to <i>Protection of the Environment Operations (Clean Air) Regulation 2010</i>: PART 3 Division 3 Control of burning in local government areas 12 Offences (1) A person must not burn anything: (a) in the open, or</p> |

| Internal Referral Body | Comments |
|----------------------------------|--|
| | <p>(b) in an incinerator, in a local government area specified in Part 1 of Schedule 8 except in accordance with an approval.</p> <p>Recommendation</p> <p>APPROVAL of solid fuel heater - subject to conditions</p> <p>REFUSAL of fire pit</p> <p><u>Planning Comments</u> A condition has been included requiring the fire pit be deleted from the plans.</p> |
| NECC (Bushland and Biodiversity) | No objections raised |
| NECC (Coast and Catchments) | The proposed development has been assessed to comply with clauses 13, 14 and 15 of SEPP Coastal Management and is supported without condition. It is not likely to alter coastal processes to the detriment of the environment or other land and is not likely to reduce public amenity or existing access to and use of the foreshore. |
| NECC (Development Engineering) | Development Engineer has no objection to the application subject to the following condition of consent. |
| NECC (Riparian Lands and Creeks) | No objection to the proposed development with no additional conditions recommended. |

| 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. |
| NSW Rural Fire Service – local branch (s79BA EPAA) | The application was referred to the NSW RFS. No issues were raised subject to the recommended conditions. The recommended conditions have been included as a consent document. |
| Aboriginal Heritage Office | <p>There are known sites in the Killarney Heights area, however, no sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council should be contacted.</p> |

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:

"secondary dwelling means a self-contained dwelling that:

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

Clause 20: Land to which this Division applies:

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

Clause 21: Development to which this Division applies

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

Clause 22: Development may be carried out with consent

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

| Requirement | Comment |
|--|---|
| (2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling. | Complies The development will result in only one principal dwelling and a secondary dwelling. |
| (3) A consent authority must not consent to development to which this Division applies unless: (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 (b) the total floor area of the secondary dwelling is no more than 60m ² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning | Complies The proposed secondary dwelling has a total floor area of 57sqm. |

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| instrument, that greater floor area. | |
| (4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds: (a) site area if: (i) the secondary dwelling is located within, or is attached to, the principal dwelling, or (ii) the site area is at least 450 square metres. (b) parking if no additional parking is to be provided on the site. | Complies The proposed secondary dwelling is attached to the principal dwelling. The site area is 696.8sqm. The development includes a double carport. |

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. | Consistent. This application does not propose any subdivision of the existing allotment. |

Conclusion

The development is consistent with this policy and is therefore supported.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A332030 dated 2 April 2019).

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.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Foreshores and Waterways Area therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(2) (aims of the SREP), Clause 14 (nominated planning principles), Clause 22 (relating to public access to and use of foreshores and waterways), Clause 23 (relating to maintenance of a working harbour), Clause 24 (relating to interrelationship of waterway and foreshore uses), Clause 25 (relating to foreshore and waterways scenic quality), Clause 26 (relating to maintenance, protection and enhancement of views) and Clause 27 (relating to boat storage facilities) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was/ was not considered necessary.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

10 Development on certain land within coastal wetlands and littoral rainforests area

- (1) *The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
 - (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
 - (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
 - (c) *the carrying out of any of the following:*
 - (i) *earthworks (including the depositing of material on land),*
 - (ii) *constructing a levee,*
 - (iii) *draining the land,*
 - (iv) *environmental protection works,*
 - (d) *any other development.*

Comment:

Not applicable.

11 Development on land in proximity to coastal wetlands or littoral rainforest

- (1) *Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:*
 - (a) *the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or*

- littoral rainforest, or*
- (b) *the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.*

Comment:

Not applicable.

12 Development on land within the coastal vulnerability area

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) *if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) *the proposed development:*
- (i) *is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) *is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) *incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) *measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.*

Comment:

Not applicable.

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal*

environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) *coastal environmental values and natural coastal processes,*
- (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

Comment:

The development is located on edge of the coastal environment area map. The development is located over the existing building footprint and the lawns of the site. Furthermore conditions of consent have been recommended to ensure appropriate sediment and erosion controls and stormwater disposal. The development will not cause unreasonable adverse impacts on the items (1) (a)-(g)

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The development is designed and sited to ensure it has no unreasonable impacts on the items in subclause (1).

14 Development on land within the coastal use area

- (1)
 - (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) *Aboriginal cultural heritage, practices and places,*
 - (v) *cultural and built environment heritage, and*
 - (b) *is satisfied that:*
 - (i) *the development is designed, sited and will be managed to avoid an adverse*

- impact referred to in paragraph (a), or
- (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The development is designed and sited to ensure no unreasonable impacts on the items (1) (a) (i)-(v).

As such, it is considered that the application complies with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

| Standard | Requirement | Proposed | % Variation | Complies |
|----------------------|-------------|-------------|-------------|----------|
| Height of Buildings: | 8.5m | 6.4m - 8.8m | 3.5% | No |

Compliance Assessment

| Clause | Compliance with Requirements |
|---|---|
| 4.3 Height of buildings | No (see detail under Clause 4.6 below) |
| 4.6 Exceptions to development standards | Yes |
| 5.4 Controls relating to miscellaneous permissible uses | Yes |
| 6.2 Earthworks | Yes |
| 6.4 Development on sloping land | Yes |

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

| | |
|--------------------------------------|---------------------|
| Development standard: | Height of buildings |
| Requirement: | 8.5m |
| Proposed: | 8.8m |
| Percentage variation to requirement: | 3.5% |

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 recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

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 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 identified area of non-compliance on the south-eastern corner of the gable roof promotes good design and amenity of the built environment through the following factors:

- Consistency with DCP D11.1 – Roofs should complement the roof pitch and forms of the existing buildings in the streetscape*
- Consistency with DCP D11.4 - Roofs shall incorporate eaves for shading*
- Colourbond Roofs and deep eaves are synonymous with that of the Australian design language and vernacular.*
- The visual impact is considered to be virtually non-existent.*
- The height and scale is consistent with the neighbouring dwellings and other properties within the locality.*
- The design actually offers a better view corridor for the dwellings on the north of Ballyshannon Road."*

In this regard, the applicant's written request has demonstrated that the proposed development is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (g) 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).

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 roof ridge is non-compliant by a maximum of 300mm for a length of 1.6m. The proposal does not include a significant non-compliance with the development standard. The development is generally consistent with the desired height and scale of development within the locality. Furthermore, the elevations submitted with the development application demonstrate that the proposal is consistent with the scale of the adjoining development.

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

Comment:

The site falls from the street and the non-compliance is set to the rear of the development. As a result the non-compliance will not result in any unreasonable visual impact on the streetscape of the locality. The bulk and scale of the development is consistent with the neighbouring properties and will not result in any unreasonable visual impact on the private open spaces or windows of habitable rooms.

The development is suitably designed to retain the privacy of the neighbouring properties.

The submitted shadow diagrams demonstrate that the development will not result in any unreasonable overshadowing of the neighboring properties.

The proposed non-compliance will not result in any unreasonable impacts on the amenity of the locality.

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 result in any unreasonable impacts on the scenic quality of Warringah's coastal and bushland environments.

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

Comment:

The proposal will be of a consistent bulk and scale of the neighbouring properties and will not result in an unreasonable visual impact as viewed 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 proposal includes the addition of a secondary dwelling on the site. The proposal will provide additional housing for the needs of the community.

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

-

Comment:

Not applicable

- *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 provides a large landscaped setback to the street and the national park to the rear. The proposal sits comfortably within the landscape setting and will harmonise with the natural environment.

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, as issued by the NSW Department of Planning, 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.

Warringah Development Control Plan

Built Form Controls

| Built Form Control | Requirement | Proposed | % Variation* | Complies |
|---|-------------------|----------------------------------|--------------|----------|
| B1 Wall height | 7.2m | East 7.9m-5.4m West 3.6m-6.6m | 9.7% | No |
| B3 Side Boundary Envelope | East 4m | Outside Envelope | 35% | No |
| | West 4m | Outside Envelope | 9.4% | No |
| B5 Side Boundary Setbacks | East 0.9m | 2.1m-0.9m | N/A | Yes |
| | West 0.9m | 1m-1.3m | N/A | Yes |
| B7 Front Boundary Setbacks | 6.5m | 6.5m | N/A | Yes |
| B9 Rear Boundary Setbacks | 6m | 7.5m-9.3m | N/A | Yes |
| D1 Landscaped Open Space (LOS) and Bushland Setting | 40% (278.7sqm) | 40.2% (279.9sqm) | 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 | Yes | Yes |
| B7 Front Boundary Setbacks | Yes | Yes |
| B9 Rear Boundary Setbacks | Yes | Yes |
| C2 Traffic, Access and Safety | Yes | Yes |
| C3 Parking Facilities | Yes | Yes |
| C4 Stormwater | Yes | Yes |
| C5 Erosion and Sedimentation | Yes | Yes |
| C7 Excavation and Landfill | Yes | Yes |
| C8 Demolition and Construction | Yes | Yes |
| C9 Waste Management | Yes | Yes |
| D1 Landscaped Open Space and Bushland Setting | 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 |
| D21 Provision and Location of Utility Services | Yes | Yes |
| D22 Conservation of Energy and Water | Yes | Yes |
| E1 Preservation of Trees or Bushland 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 Warringah DCP 2011 permits a maximum wall height of 7.2m within this area. The proposal includes a wall height of 7.9m on the eastern side.

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 neighbouring property to the east is developed with a two storey built form setback 0.9m from the side boundary. This development's primary outlook is directly to the south with smaller bedroom windows overlooking the subject site. The non-compliance of 0.7m makes up a small proportion of the rear of the proposed development. The non-compliance will not be visually prominent from the neighbouring properties, streets, waterways or land zoned for recreation purposes. The proposed non-compliance will not result in any unreasonable visual impact within the locality.

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

Comment:

There is no tree canopy close by the development. However the development will not be of a bulk or scale that is out of character for the locality.

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

Comment:

The proposal will provide for the reasonable sharing of views to and from public and private properties.

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

Comment:

The development is suitably designed to ensure no unreasonable impacts on the adjoining or nearby properties.

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

Comment:

The proposed non-compliance is a small proportion of the total development and is a result of the sloping of the site. The proposal makes suitable attempts to minimise the bulk and scale of the development and step with the topography of the locality.

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

Comment:

The roof of the development is designed to minimise the bulk and scale of the development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of 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 Warringah DCP requires development to be within a building envelope projected at 45 degrees from 4.5m above the side boundary. The western elevation includes a small non-compliance, a maximum of 0.3m of wall outside the envelope, on the southern side. The eastern elevation includes a larger variation, a maximum of 2m of wall outside the envelope, due to the southern side of the living room. It is noted that the non-compliance is mostly due to the pop-out feature associated with the living room. This feature, while on a reduced setback, is within the eaves of the dwelling.

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 neighbouring property to the east is developed with a two storey built form setback 0.9m from the side boundary. This development's primary outlook is directly to the south with smaller bedroom windows overlooking the subject site. The non-compliance is mostly due to a pop-out feature that will not impose on the neighbouring property. The non-compliance will not result in a development that is visually dominant by virtue of its height and bulk.

The non-compliance on the western side is not to an extent that will be visually prominent from nearby properties. This non-compliance will not result in a development that is visually dominant.

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

Comment:

The proposed ground floor, top floor, is setback 1.7m-2.1m from the eastern side boundary. This is adequate physical separation between the side boundary to ensure reasonable access to light, solar access and privacy between the buildings.

The non-compliance on the western side will not result in any unreasonable overshadowing or privacy impacts on the neighbouring property. Furthermore, compliance will not result in any significant change to solar access or privacy.

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

Comment:

The development adequately responds to the topography of the site.

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

D7 Views

The development will not result in any unreasonable loss of views within the locality. The proposal is consistent with the objectives of this control and will maintain reasonable view sharing in accordance with the views planning principle established by the NSW Land and Environment Court.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

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 \$8,727 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$872,702.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

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 4.3 Height of Buildings development standard, 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.

Accordingly Council as the consent authority grant Development Consent to DA2019/0349 for Alterations and additions to a dwelling house including conversion of a garage to secondary dwelling on land at Lot 2 DP 758566, 25 Ballyshannon Road, KILLARNEY HEIGHTS, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

| |
|--|
| Architectural Plans - Endorsed with Council's stamp |
|--|

| Drawing No. | Dated | Prepared By |
|--------------------------------|--------------|----------------------|
| DA1 Site/Roof Plan | August 2019 | Matt Elkan Architect |
| DA2 Ground Floor Plan | August 2019 | Matt Elkan Architect |
| DA3 Basement Floor Plan | August 2019 | Matt Elkan Architect |
| DA4 East and West Elevation | August 2019 | Matt Elkan Architect |
| DA5 North and South Elevations | August 2019 | Matt Elkan Architect |
| DA6 Section AA | August 2019 | Matt Elkan Architect |
| DA14 Section BB | August 2019 | Matt Elkan Architect |

| Reports / Documentation – All recommendations and requirements contained within: | | |
|---|---------------|---|
| Report No. / Page No. / Section No. | Dated | Prepared By |
| Bushfire Assessment Report | 9 April 2019 | Building Code & Bushfire Hazard Solutions Pty Limited |
| Preliminary Landslip Risk Assessment for 25 Ballyshannon Road, Killarney Heights. | 2 April 2019 | Crozier Geotechnical Consultants |
| Development Application - 2/81/758566 - 25 Ballyshannon Road Killarney Heights 2087 | 5 August 2019 | NSW RFS |

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

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

| Landscape Plans | | |
|------------------------|--------------|----------------------|
| Drawing No. | Dated | Prepared By |
| L1 Landscape Plan | April 2019 | Matt Elkan Architect |

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

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

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

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

| Other Department, Authority or Service | EDMS Reference | Dated |
|---|---|---------------|
| NSW Rural Fire Service | Referral - RFS - 25 Ballyshannon Road Killarney Heights | 5 August 2019 |

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

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other Department, Authority or Body's.

3. **Prescribed Conditions**

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost

of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative Requirement

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths,

roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(j) Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

(k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$8,727.02 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 \$872,701.50.

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

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.

6. **Security Bond**

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

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

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

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

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

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

7. Stormwater Disposal

Stormwater shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's WARRINGAH WATER MANAGEMENT POLICY PL850.

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

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

8. Amendments to the approved plans

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

- The notation "*IF REQUIRED BY OWNERS*", referring to the full height external operable venetians, is to be deleted from the plans.

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

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

9. Change of Building Class/Building Upgrade

The proposed modifications to the existing building that include a secondary dwelling will result in a change of classification to a Class 2 building and will be required to be upgraded to comply with Parts C & F (specifically sound transmission ratings) of the Building Code of Australia. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for fire safety and for building occupant safety

10. Laundry Facilities

The proposed modifications to the existing building to include a secondary dwelling is required to comply with Part F2.1 of the Building Code of Australia – 'Facilities in residential buildings'. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for building occupant health and amenity

11. Vehicle Driveway Gradients

Driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in Council's Minor Works Policy. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure suitable vehicular access to private property

12. Deletion of Fire Pit

No consent is granted for the fire pit. The fire pit is to be deleted from the plans. Amended plans

detailing compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issue of the Construction.

Reason: To ensure compliance with the Protection of the Environment Operations (Clean Air) Regulation 2010:PART 3 Division 3 Control of burning in local government areas.

13. 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.

14. Construction in Bush Fire Prone Areas

The recommendations made in the Bush Fire Assessment Report prepared by Building Code & Bushfire Hazard Solutions, dated 9 April 2019, Report Ref No.180722 are to be carried out to the building.

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

Reason: To ensure adequate provision is made for the design and construction of the building to reduce the risk of ignition from a bushfire and provide building occupant safety

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. Aboriginal Heritage

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection. (DACAHE01)

16. 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.

17. Survey

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

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

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

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

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

Reason: To determine the height of buildings under construction comply with levels shown on approved plans. (DACPLE01)

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

18. **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.

19. **Change of Building Class/Building Upgrade**

The existing levels of essential fire safety measures that are to be upgraded to achieve an adequate level of fire safety in accordance with the provisions of clause 94 of the Environmental Planning and Assessment Regulation 2000 and Parts C & F (specifically sound transmission ratings) of Volume 1 of the Building Code of Australia are to be certified upon completion as being capable of performing their intended function/s, by a suitably qualified person/s prior to any use or occupation of the premises/tenancy occurring, and prior to the issue of any interim or final occupation certificate.

Reason: To ensure adequate provision is made for Access, Fire safety and for building occupant safety

20. **Construction in Bush Fire Prone Areas**

The recommendations made in the Bush Fire Assessment Report prepared by Building Code & Bushfire Hazard Solutions, dated 9 April 2019, Report Ref No.180722 are to be carried out in full to the building.

Details demonstrating implementation and compliance are to be submitted to the Principal Certifier prior to the issue of any Interim or Final Occupation Certificate.

Reason: To ensure adequate provision is made for the design and construction of the building to reduce the risk of ignition from a bushfire and provide building occupant safety

21. **Installation of solid/fuel burning heaters**

Installation work must be carried out by an appropriately experienced and qualified person and in accordance with the relevant provisions of AS2918:2001 – Domestic Solid Fuel Burning Appliances – Installation

Reason: To ensure the installation is completed in a legislatively compliant manner.

22. **Certification of solid fuel burning heaters**

A certificate from an appropriately qualified person indicating the system is compliant with all relevant legislation, Building Code of Australia, Australian Standards, Specifications and manufacturer requirements is to be submitted to Council prior to the operation of the solid fuel heater.

Reason: To ensure the system operates in a legislatively compliant manner.

23. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and Fire and Rescue NSW. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Interim or Final Occupation Certificate.

Each year the Owners must send to the Council and Fire and Rescue NSW, an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

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

24. **Maintenance of solid fuel heaters**

The owner/occupier shall ensure servicing of the heater is maintained according to the manufacturer's specifications.

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

25. **Operation of solid fuel burning heaters**


You are requested to take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures should include:

- Using dry seasoned hardwood
- Storing wood in a dry well ventilated place
- Having a hot and well oxygenated fire
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke

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

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

Signed



Benjamin Price, Planner

The application is determined on 11/09/2019, under the delegated authority of:



Rodney Piggott, Manager Development Assessments