

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2632
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Responsible Officer:	Nick England
Land to be developed (Address):	Lot 6 DP 736961, 10 Fern Creek Road WARRIEWOOD NSW 2102
Proposed Development:	Construction of a Dual Occupancy
Zoning:	R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Pic 10 Warriewood Pty Ltd
Applicant:	Lachlan Maas

Application Lodged:	14/01/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	25/01/2022 to 08/02/2022
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.1B Minimum lot sizes for dual occupancies: 0.96%
Recommendation:	Deferred Commencement Approval

Estimated Cost of Works:	\$ 932,535.00
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PROPOSED DEVELOPMENT IN DETAIL

The application consists of the construction of a dual occupancy (attached), know as Lot 5A and Lot 5B, on the existing approved Lot 5 at No.10 Fern Creek, Warriewood.

Additional information was received by Council in regards to concerns of the landscape officer in regards to the retention of existing vegetation. This consisted of amended architectural plans and landscaped plans received on 8 June 2022. It was considered these amendments were of a less environmental impact and were not required to be re-notified in accordance with the Northern Beaches Community Participation Plan.

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

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards

Pittwater Local Environmental Plan 2014 - 6.1 Warriewood Valley Release Area

Pittwater Local Environmental Plan 2014 - 7.2 Earthworks

Pittwater Local Environmental Plan 2014 - 7.10 Essential services

SITE DESCRIPTION

Property Description:	Lot 6 DP 736961 , 10 Fern Creek Road WARRIEWOOD NSW 2102
Detailed Site Description:	<p>The subject site is legally described as Lot 6 in Deposited Plan 736961 with a surveyed area of 10,233m² and is located on the eastern side of Fern Creek Road. Specifically, the proposal is located on approved allotment No.5 in an approved community title subdivision on the subject land, which is yet to be legally created.</p> <p>Lot No.5 has an approved / surveyed area of 793m² and is accessed from a private cul-de-sac which connects with Fern Creek Road to the west.</p> <p>The site is located within the R3 Medium Density Residential zone and is currently vacant, with the exception of the constructed access roads and associated services infrastructure.</p> <p>The site subject to the proposed dwelling site has a gradient of 1:8, with two (2) existing trees.</p> <p>Adjoining and surrounding development is characterised by vacant land to the north, south and east. To the northwest is detached dwelling houses.</p>

Map:



SITE HISTORY

The land has been used for commercial (agricultural) purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

N0540/15: Development consent (via a Section 34 agreement in the NSW Land and Environment Court) granted for "The creation of a twenty (20) lot community title subdivision and construction of associated infrastructure and access roads" on 20 June 2016. The subject application relates to approved Lot No.4 of this consent.

N0460/16: Construction of a residential flat building, comprising thirteen (13) dwellings, on a yet to be created lot (Lot 21) approved in the NSW Land and Environment Court on 13 April 2017.

MOD2018/0073: S4.55 Modification of consent N0460/16 for the construction of a residential flat building comprising thirteen (13) dwellings on a yet to be created lot (Lot 21) approved 10 June 2018.

MOD2018/0376: S4.55 Modification of consent N0540/15 granted for a twenty (20) lot community title subdivision and construction of associated infrastructure and access roads approved 23 October 2018.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any	Pittwater 21 Development Control Plan applies to this

Section 4.15 Matters for Consideration	Comments
development control plan	proposal.
Section 4.15 (1) (a)(iii) – 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 allow Council to request additional information. Additional information was requested in relation to landscape and arborist reports, in correspondence dated 18 May 2022.</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 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	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control

Section 4.15 Matters for Consideration	Comments
locality	Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
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 not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 25/01/2022 to 08/02/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	This application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns regarding this application, subject to conditions.
Environmental Health (unsewered lands)	General Comments This property has connection directly to off-site public sewerage treatments systems. There will be no holding or disposal of effluent

Internal Referral Body	Comments
	on-site, and therefore no further investigation or comment required.
Landscape Officer	<p>The development application is for the construction of a dual occupancy development and associated site and landscape works upon Lot 5A and Lot 5B.</p> <p>Council's Landscape Referral staff have assessed the proposal against the following Pittwater 21 DCP Controls (but not limited to):</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping • D16 Warriewood Valley Locality, and in particular D16.5 Landscaped Area for Newly Created Individual Allotments, and D16.12 Fences <p><i>Updated comments 15/06/2022:</i> Amended Architectural Plans and Amended Landscape Plans are submitted and co-ordinated. No additional or addendum Arboricultural Impact Statement is submitted and hence the recommendations of the Arboricultural Impact Statement shall be supported as reported, and the Amended Architectural Plans and Amended Landscape Plans include the retention of existing Sydney Blue Gum trees identified as numbers 13, 24 and 25. The existing exempt species (tree number 23 - <i>Fraxinus griffithii</i>) identified for removal and located within the driveway footprint does not require Council consent for removal under the exempt provisions of the DCP.</p> <p>The Amended Landscape Plans address the previous concerns, and subject to conditions of consent Landscape Referral raise no objections.</p> <p><i>Previous comments 29/04/2022:</i> The property within the lot boundaries contains three small juvenile existing Sydney Blue Gum trees identified in the Arboricultural Impact Statement for retention and protection (tree numbers 13, 24 and 25), and one exempt species (tree number 23) identified for removal that is located within the driveway footprint. Existing tree number 22 within the adjoining Lot is proposed for retention and shall be protected. Existing street trees are present within the road verge of Fern Creek Road as well as other road verge street tree within the development, and all shall be protected and not impacted by construction activities including deliveries, and protection is subject to conditions of consent.</p> <p>The Statement of Environmental Effects notes the presence of the three Sydney Blue Gum trees for protection and it appears that the intent is to remove these trees and the wording has been misapplied. The Landscape Plan does not include retention of the existing trees, and the layout of the external landscape including excavation and retaining walling would not support the retention of these trees.</p> <p>As small juvenile trees, the incorporation of the existing Sydney Blue Gum trees 13, 24 and 25 may be achievable, and this discrepancy</p>

Internal Referral Body	Comments
	<p>between plans and reports shall be updated to provide a clear assessment and intent for the existing trees identified in the Arboricultural Impact Statement for retention and protection.</p> <p>The Architectural Plans include fencing and walling to the development front setback and this shall be removed. Under DCP control D16.12 Fences, the front setback between public and private land shall be delineated by vegetation, such as low hedges, garden beds or the like, and fencing is not permitted forward of the front building line to ensure an appropriate front setback landscape amenity to the streetscape.</p> <p>A Landscape Plan is submitted proposing landscape works to enhance the landscape setting of the lot development and no concerns are raised, with the exception of the intent to either incorporate the existing Sydney Blue Gums into the external design layout or otherwise.</p>
NECC (Development Engineering)	No objections to the proposed dual occupancy development subject to conditions.
NECC (Water Management)	This application has been assessed against relevant legislation and policy relating to waterways, riparian areas and groundwater. No objections to approval subject to conditions as recommended.
Strategic and Place Planning (Development Contributions)	<p>The application proposes the construction of a dual occupancy development and associated site works at proposed Lot 5, 10 Fern Creek Road, Warriewood Valley.</p> <p>The subject site is part of Sector 901A. The Warriewood Valley Strategic Review Addendum Report details a pro-rata dwelling yield allocation for individual land parcels within Sector 901A to provide certainty should individual properties seek to develop on their own. The dwelling yield stipulated for 10 Fern Creek Road is a maximum of 33 dwellings and a minimum of 27 dwellings.</p> <p>N0540/15 was approved on 20 June 2016 and authorised the community title subdivision of 1 lot into 21 lots (comprising 20 residential allotments) and the construction of associated infrastructure at 10 Fern Creek Road. A contribution was applied for the creation of 18 additional residential allotments. No contribution was imposed on proposed Lot 21 which was the subject of a separate application for a residential flat building.</p> <p>N0460/16 was approved on 13 April 2017 and authorised the construction of a residential flat building on a yet to be created Lot 21. A contribution was applied for the creation of 13 residential units.</p> <p>A total of 32 dwellings/lots (19 individual allotments and 13 units) have been approved on 10 Fern Creek Road. The remaining yield on 10 Fern Creek Road is 1 dwelling.</p> <p>DA2021/2632 is within the dwelling yield stipulated in Clause 6.1(3) of</p>

Internal Referral Body	Comments
	the Pittwater LEP and is considered acceptable. A development contribution will be levied on one additional dwelling under the Warriewood Valley Contributions Plan, at a rate of \$71,548 per additional dwelling.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that they had no objections to the proposed development nor any recommended conditions of consent.

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

The application was lodged prior to the commencement of State Environmental Planning Policy (Resilience and Hazards) 2021 and hence the provisions of the previous SEPP No.55 apply.

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 commercial purposes (agriculture) for a significant period of time with no prior land uses. An investigation of the subject site in this regard was undertaken during the assessment of the application for the community title subdivision and no adverse risk of contamination was likely in the context of future residential development. 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 proposed residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

BASIX certificates have been submitted with the application in regard to both of the dual occupancy dwellings (see Certificate Nos.1264370S and 1264367S both dated 1 December 2021).

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

Commitment	Required Target	Proposed
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Water	40	41 (5A and 5B)
Thermal Comfort	Pass	Pass (5A and 5B)
Energy	50	54 (5A) and 55 (5B)

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment: The proposal was referred to Ausgrid who raised no objections.

Pittwater Local Environmental Plan 2014

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 lot sizes for dual occupancies	800m ²	Lot size: 793.2m ²	0.85%	No
Height of Buildings:	10.5m	7.3m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.1B Minimum lot sizes for dual occupancies	No
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes

Clause	Compliance with Requirements
5.21 Flood planning	Yes
6.1 Warriewood Valley Release Area	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Minimum lot sizes for dual occupancies
Requirement:	800m ²
Proposed:	793.2m ²
Percentage variation to requirement:	0.85%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.1B - Minimum lot sizes for dual occupancies development standard, has taken into consideration the recent judgement 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 4.1B - Minimum lot sizes for dual occupancies 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 extent of the variation is less than 1%, making the non-compliance negligible in numerical terms. Further, the built form of the proposed development represents no further non-compliance with any development standard or control. Under these circumstances, expecting full compliance would be both unreasonable and unnecessary.

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 proposed density of 1 dwelling per 396.6m² of site area is not unlike the planned density of 1 dwelling per 400m²;
- the proposed density will be consistent with the density of new dwellings in the 10 Fern Creek Road community subdivision;
- the proposed dual occupancy development is consistent with the LEP and DCP controls and the non-compliance with the site area will not result in any corresponding non-compliances with the proposed built form; and
- the resultant built form is unlikely to result in any obvious physical variation with the desired future character and the future application of the minimum size requirement for dual occupancy development.

The points of argument are considered relevant and worthy of supporting the requested variation to the development standard.

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, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (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).

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 Minimum lot sizes for dual occupancies development standard and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objective of the standard, pursuant to Clause 4.1b - 'Minimum lot sizes for dual occupancies' of the PLEP 2014 are:

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

(a) to achieve planned residential density,

Comment: As stated in the applicants request, the proposed residential density (1 dwelling per 396.6m²) is very close to the planned residential density of 1 dwelling per 400m². This represents a variation of 0.85% with the standard with the variation so minor that it would be unreasonable to assume that any future development could not meet the objection. In this regard, the objection has been met.

(b) to maintain a high level of residential amenity, including adequate provision of private open space.

Comment: The proposed development will meet all relevant development standards and built form controls. In this regard, the objective has been achieved.

Zone objectives

The underlying objectives of the R3 Medium Density Residential zone are:

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

Comment: The proposed attached dual occupancy development will readily meet this objective.

- *To provide a variety of housing types within a medium density residential environment.*

Comment: The proposed dual occupancy development adjoins an approved residential flat building (Lot 21, to the west) and approved dwellings to the north and south. Hence, this objective is achieved.

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

Comment: Not relevant to the proposed development.

- *To ensure that medium density residential environments are characterised by landscaped*

settings that are in harmony with the natural environment of Warringah.

Comment: Sufficient landscaped open space, compliant with the relevant development controls, is provided as part of the proposed development to meet this objective.

- *To ensure that medium density residential environments are of a high visual quality in their presentation to public streets and spaces.*

Comment: The proposed development is consistent with the development controls and represents an adequate contemporary built form that will achieve this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium 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 PS20-002 dated 5 May 2020, 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 Minimum Lot Size for dual occupancies 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 Warriewood Valley Release Area

The subject allotment is located in Sector 901A, of which the applicable standard is not more than 190 dwellings or less than 154 dwellings. The proposed dwelling is located on an approved allotment under consent no N0540/15, which was consistent with this standard at the time of the consent. Whilst this allotment has yet to be legally created, the application will not be inconsistent with this standard.

7.2 Earthworks

The objective of Clause 6.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

In this regard, before granting development consent for earthworks, Council must consider the following matters:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

(b) the effect of the proposed development on the likely future use or redevelopment of the land

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development.

(f) the likelihood of disturbing relics

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.

Comment: The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

7.10 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

(a) the supply of water,

(b) the supply of electricity,

- (c) the disposal and management of sewage,
(d) stormwater drainage or on-site conservation,
(e) suitable vehicular access.

Comment: Sufficient services infrastructure has been provided to the subject land, consistent with the existing consent for the community title subdivision.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
Front building line	6.5m*	14.4m	N/A	Yes
Rear building line	6m	6m - 6.9m	N/A	Yes
Side building line	2.5m (east)	4m	N/A	Yes
	0.9m (west)	2.1m - 4m	N/A	Yes
Spatial Separation	N/A	N/A	N/A	N/A
Landscaped area	35%**	383m ² / 48%	N/A	Yes

* applies to "all other" development than dwelling houses

** Standard adopted for *All other dwellings on lots 9m to 14m wide*, as lot has average width of 12.95m

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.16 Warriewood Valley Locality	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
C6.1 Integrated Water Cycle Management	Yes	Yes
C6.2 Natural Environment and Landscaping Principles	Yes	Yes
C6.3 Ecologically Sustainable Development, Safety and Social Inclusion	Yes	Yes
C6.5 Utilities, Services and Infrastructure Provision	Yes	Yes
D16.1 Character as viewed from a public place	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D16.2 Dual Occupancy Specific Controls	Yes	Yes
D16.5 Landscaped Area for Newly Created Individual Allotments	Yes	Yes
D16.6 Front building lines	Yes	Yes
D16.7 Side and rear building lines	Yes	Yes
D16.9 Solar access	Yes	Yes
D16.10 Private and Communal Open Space Areas	Yes	Yes
D16.11 Form of construction including retaining walls, terracing and undercroft areas	Yes	Yes
D16.12 Fences	Yes	Yes
D16.13 Building colours and materials	Yes	Yes

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

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;
- Pittwater Local Environment Plan;
- Pittwater 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 Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.1B Minimum Lot Size for dual occupancies 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

DEFERRED COMMENCEMENT APPROVAL

A. Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.1B Minimum Lot Size for dual occupancies 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 a Deferred Commencement Development Consent being subject to a two (2) year time frame for Deferred Commencement Consents detailed within Section 95 of the EP&A Regulation 2000 to DA2021/2632 for Construction of a Dual Occupancy on land at Lot 6 DP 736961, 10 Fern Creek Road, WARRIEWOOD, subject to the conditions printed below:

B. THAT once the matters detailed within the Deferred Commencement Development Consent conditions are satisfactorily addressed then an operational development consent be issued subject to the time frames detailed within Part A of this recommendation.

DEFERRED COMMENCEMENT CONDITIONS

1. Creation of Lot 5

The issue of a Subdivision Certificate to demonstrate that the land subject to the approved dual occupancy dwellings (Lot No.5) has been legally created.

Evidence required to satisfy the deferred commencement condition/s must be submitted to Council within two (2) years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000. This evidence is to be submitted along with a completed 'Deferred Commencement Document Review Form' (available on Council's website) and the application fee, as per Council's Schedule of Fees and Charges.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

2. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA 010 Issue C	25 May 2022	PTI Architecture
DA 020 Issue C	25 May 2022	PTI Architecture
DA 120 Issue C	25 May 2022	PTI Architecture
DA 130 Issue C	25 May 2022	PTI Architecture
DA 140 Issue C	25 May 2022	PTI Architecture
DA 200 Issue C	25 May 2022	PTI Architecture
DA 210 Issue C	25 May 2022	PTI Architecture
DA 300 Issue C	25 May 2022	PTI Architecture
DA 700 Issue C	25 May 2022	PTI Architecture

Engineering Plans		
Drawing No.	Dated	Prepared By
C21187_SW01 Revision B	6 December 2021	Cam Consulting
C21187_SW02 Revision B	6 December 2021	Cam Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report Title / No.	Dated	Prepared By
BASIX Certificate No.1264370S	1 December 2021	Outsource Ideas
BASIX Certificate No.1264367S	1 December 2021	Outsource Ideas
Arboricultural Impact Assessment Report	17 June 2021	Urban Arbor Pty Ltd

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
004 Issue B	23 May 2022	Site Image
005 Issue B	23 May 2022	Site Image
104 Issue B	23 May 2022	Site Image
105 Issue B	23 May 2022	Site Image
304 Issue B	23 May 2022	Site Image
305 Issue B	23 May 2022	Site Image
404 Issue B	23 May 2022	Site Image
405 Issue B	23 May 2022	Site Image
504 Issue B	23 May 2022	Site Image
505 Issue B	23 May 2022	Site Image

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Operational Waste Management Plan (Lot 05A)	December 2021	Waste Audit and Consultancy Services
Operational Waste Management Plan (Lot 05B)	December 2021	Waste Audit and Consultancy Services

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.

3. **Prescribed Conditions**

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the

following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are

breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or

adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Security Bond

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

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

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

6. **Warriewood 7.11 contributions (COW less than \$10 million)**

Before the issue of a construction certificate or subdivision certificate (whichever occurs first), the applicant must pay a total development contribution to Council of \$71,548 in accordance with the Warriewood Valley Development Contributions Plan (as amended).

The monetary contribution payable will be adjusted at the time the payment is made, in accordance with the provisions of the Warriewood Valley Development Contributions Plan (as amended).

The Applicant may negotiate with Council for the direct provision of other facilities and services, and/or the dedication of land (other than land identified above) in lieu of the monetary contribution above (or any portion of that monetary contribution) or the deferral of payments through a Material Public Benefit Agreement between Council and the Applicant in accordance with the Warriewood Valley Development Contributions Plan (as amended). The agreement for Material Public Benefit between the Applicant and Council must be finalised, formally signed and in place prior to the payment of the monetary contribution.

A copy of the development contributions plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website.

Reason: To provide for contributions in accordance with the Contribution Plan that enables the provision of local infrastructure and services commensurate with the increased demand resulting from development in the Warriewood Valley Release Area.

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

7. **Erosion and Sediment Control Plan**

An Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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

Reason: Protection of the receiving environment.

8. **Detailed Design of Stormwater Treatment Measures - Major**

A certificate from a Civil Engineer, stating that the stormwater treatment measures have been designed in accordance with the drainage layout plan (CAMconsulting rev B 06/12/2021) and Council's Water Management for Development Policy.

The certificate shall be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: Protection of the receiving environment.

9. **On-site Stormwater 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 WATER MANAGEMENT POLICY FOR DEVELOPMENT, and generally in accordance with the concept drainage plans prepared by Can Consulting, drawing number C21187-SW01 B, dated 6/12/21. 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 (NER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. The clean out pipe is to be extended to the rain garden top water level to ensure any overflow is directed to the adjacent easement inlet pit.
- ii. 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.

10. **Compliance with Standards**

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

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

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

11. **Sydney Water "Tap In"**

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. Protection of Existing Street Trees

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the street trees fronting the development site within the road reserve shall be protected in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

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

Reason: Street tree protection.

13. Tree and Vegetation Protection

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

- i) all trees and vegetation within the site not approved for removal (ie. tree numbers 12, 24, and 25 - Sydney Blue Gums are to be retained), excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

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

and iii) remain in place for the duration of the construction works.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment, as listed in the following sections:

- i) section 10 Recommendations
- ii) section 11 Tree Protection Requirements including tree protection fencing to trees 12, 24 and 25
- iii) section 12 Construction Hold Points

The Certifying Authority must ensure that:

- d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.
- e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and vegetation protection.

14. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: Protection of the receiving environment.

15. **Substitution of Stormwater Treatment Measures**

The substitution of an "equivalent" device for the stormwater treatment measure approved under the Development Consent must be submitted to the Principal Certifying Authority for approval prior to installation.

Reason: To ensure stormwater is appropriately managed and in accordance with the Water Management for Development Policy.

16. **Survey Certificate**

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

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

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

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

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

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

17. **Waste Management During Development**

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

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

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

18. **Fire Safety**

The proposal is required to be constructed in accordance with Part 3.7 of the National Construction Code (BCA) 2019.

Reason: To ensure complaint Fire Separation between occupancies.

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

19. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plans for Lot 5A and Lot 5B, and inclusive of the following conditions:

- i) the planting scheme shall include a minimum of 70% endemic vegetation, with all canopy trees to be endemic, whilst smaller trees may be exotic,
- ii) environmental weeds are not permitted to be planted and shall be removed from the proposed plant schedule and these include Cupaniopsis, Rhipiolepis and Pennisetum species listed in the development application document,
- iii) exempt species are not permitted to be planted and shall be removed from the proposed plant schedule and these include Cupaniopsis, Fraxinus and Howea species listed in the development application document,
- iv) canopy tree endemic planting shall be selected from: Angophora costata, Angophora floribunda, Backhousia myrtifolia, Eleocarpus reticulatus, Eucalyptus robusta, Hymenosporum flavum, Syzygium leuhmannii, Syzygium smithii, Tristaniopsis laurina, and Tristaniopsis 'luscious', as nominated in the development application document,
- v) all canopy tree planting is to be located a minimum of 5 metres, and smaller trees at least 3 metres from existing and proposed dwellings,
- vi) each tree is to be located at least 1.5 metres from adjoining common residential side boundaries,
- vii) all other landscape works shall be in accordance with the approved Landscape Plans,
- viii) fencing is not permitted forward of the front building line. Boundaries between public and private land shall be delineated by vegetation, such as low hedges, garden beds or the like.

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

Reason: Environmental amenity.

20. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Certifying Authority, assessing the health and impact on all existing trees required to be retained, including the following information:

- i) compliance to any Arborist recommendations for tree protection generally and during 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: Tree and vegetation protection.

21. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant the approved Construction Certificate Plans and Councils water management policy for development and certified by the design engineer. 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.

22. **Certification for the Installation of Stormwater Treatment Measures**

A certificate from a Civil Engineer, who has membership to Engineers Australia and the National Engineers Register must be provided, stating that the stormwater treatment measures have been installed in accordance with the drainage layout plan prepared by CAMconsulting (rev B 06/12/2021). The certificate must confirm that stormwater treatment measures are completed, online, in good condition and are not impacted by sediment. Vegetated measures must exhibit an 80 percent survival rate of plantings.

The certificate shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

23. **Positive Covenant, Restriction as to User and Registration of Encumbrances for Stormwater Treatment Measures**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the stormwater treatment measures in accordance with the standard requirements of Council, the manufacturer and as required by the Stormwater Treatment Measures Operation and Maintenance Plan.

A restriction as to user shall be created on the title over the stormwater treatment measures, restricting any alteration to the measures.

The terms of the positive covenant and restriction as to user are to be prepared to Council's standard requirements (available from Council) at the applicant's expense and endorsed by the Northern Beaches Council's delegate prior to lodgement with the Department of Lands.

Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user is to be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate.

Reason: To identify encumbrances on land, ensure ongoing maintenance, and ensure modification to the stormwater treatment measures is not carried out without Council's approval.

24. Stormwater Treatment Measures Operation and Maintenance Plan

An Operation and Maintenance Plan is to be prepared to ensure the proposed stormwater treatment measures remain effective.

The Plan must be attached to the Positive Covenant (and the community or strata management statement if applicable) and contain the following:

1. Detail on the stormwater treatment measures:

- a) Work as executed drawings
- b) Intent of the stormwater treatment measures including modelled pollutant removal rates
- c) Site detail showing catchment for each device
- d) Vegetation species list associated with each type of vegetated stormwater treatment measure
- e) Impervious area restrictions to maintain the water balance for the site
- f) Funding arrangements for the maintenance of all stormwater treatment measures
- g) Identification of maintenance and management responsibilities
- h) Maintenance and emergency contact information

2. Maintenance schedule and procedure - establishment period of one year following commissioning of the stormwater treatment measure:

- a) Activity description, and duration and frequency of visits

Additionally for vegetated devices:

- b) Monitoring and assessment to achieve an 80 percent survival rate for plantings
- c) Management of weeds, pests and erosion, with weed and sediment cover limited to a maximum of 5 percent of the total area of the stormwater treatment measure

3. Maintenance schedule and procedure - ongoing

- a) Activity description, and duration and frequency of visits
- b) Routine maintenance requirements
- c) Work Health and Safety requirements
- d) Waste management and disposal
- e) Traffic control (if required)
- f) Renewal, decommissioning and replacement timelines and activities of all stormwater treatment measures (please note that a DA may be required if an alternative stormwater treatment measure is proposed)
- g) Requirements for inspection and maintenance records, noting that these records are required to be maintained and made available to Council upon request.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

25. Works as Executed Drawings - Stormwater Treatment Measures

Works as Executed Drawings for the stormwater treatment measures must be prepared in

accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

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

26. **Landscape Maintenance**

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

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent. All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

27. **Maintenance of Stormwater Treatment Measures - Major**

Stormwater treatment measures must be maintained at all times in accordance with the Stormwater Treatment Measure Operation and Maintenance Plan, manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Vegetated stormwater treatment measures must maintain an 80 percent survival rate of plantings and limit weed cover to no more than 10 percent of the total area of the stormwater treatment measure.

Where replacement cartridges or other necessary components for the system become unavailable, an alternative system is required to be retrofitted into the development to achieve an equivalent pollutant reduction outcome. Evidence supporting the replacement must be retained on site and made available to Council as required.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

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

Signed



Nick England, Planner

The application is determined on 24/06/2022, under the delegated authority of:



Phil Lane, Acting Development Assessment Manager