

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/0351
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Responsible Officer:	Kye Miles
Land to be developed (Address):	Lot 2 SP 102360, 2 / 4 Waiwera Avenue NORTH MANLY NSW 2100
Proposed Development:	Demolition works and rebuilding and enlarging a dwelling forming part of a dual occupancy development
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	4 Waiwera Avenue Pty Ltd
Applicant:	Melanie Booth

Application Lodged:	04/05/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	11/05/2021 to 25/05/2021
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 293,700.00
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PROPOSED DEVELOPMENT IN DETAIL

The proposal involves alterations and additions to an existing attached dual occupancy. The proposal only involves works to the front occupancy known as 4B Waiwera Avenue. The works comprise;

- Demolition of existing roof and internal ground floor rooms.
- Ground floor alterations to include a kitchen, living areas, laundry and WC.
- First floor addition to include two bedrooms and a bathroom.

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 - Zone R2 Low Density Residential
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B5 Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - C3 Parking Facilities
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 2 SP 102360 , 2 / 4 Waiwera Avenue NORTH MANLY NSW 2100
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Waiwera Avenue.</p> <p>The site is legally known as Lot 2 SP 102360 and commonly referred to as 4A and 4B Waiwera Avenue North Manly. The site is regular in shape with a depth of 41.09m and a site width at the frontage of 15.24m equating to an overall site area of 626sqm. The site is severely constrained by the topography which features a slope of 56% from north east to south west.</p> <p>The site is currently occupied by an approved dual occupancy with two (2) dwellings on site. The site provides four (4) parking spaces at the western side of the existing dwelling at the site frontage. Vehicle and pedestrian access</p>

is from Waiwera Avenue at the site frontage.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by detached one and two storey dwellings of varying styles. The neighbouring site to the east is situated significantly higher than the subject site, and the neighbouring properties to the west significantly lower.

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:

On 3 February 1982 Warringah Shire Council granted development consent 82/47 for alterations to create a dual occupancy.

On 11th February 1988 Warringah Shire Council granted development consent 88/26 for alterations and additions to a dwelling house for dual occupancy purposes.

On 7 July 2009 Development consent DA2009/0737 refused consent for alterations and additions to a dwelling within an attached dual occupancy development, including a first floor addition. Reasons for refusal relate to over-development of the site issues with bulk and scale, setbacks, open space and car parking.

On 13 March 2013, DA2012/1517 was withdrawn for alterations and additions to the existing dual occupancy at 4A and 4B Wairera Avenue North Manly.

On 26 July 2013, DA2013/0542 approved alteration to the existing dual occupancy. This application related to the smaller dwelling at the front of the dual occupancy. It gave approval to an upper level over

that dwelling. The consent appears to have subsequently lapsed without being activated.

On 20 August 2020, DA2020/0545 for strata subdivision of the existing dual occupancy was granted development consent by Council.

On 25 March 2021, DA2020/1630 for alterations and additions to an existing dual occupancy was granted development consent by Council.

On 3 June 2021, Mod2021/0207 for modifying Condition No. 7 (Amendments to Approved Plans) of DA2020/1630 was granted development consent by Council.

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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 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>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</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 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 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</p>

Section 4.15 Matters for Consideration'	Comments
	authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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 Warringah 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

- **Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?**

Section 4.65 of the Act defines an existing use as:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

There is evidence in the form of previous approvals on Council's database, which reveals that the use of the land commenced as a lawful purpose prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011 (see History section of this report).

2. Was the use of the land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The use of the land was lawfully approved as a dual occupancy by Council on 3 February 1982, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

3. Has the use of the land been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

The land has continued to be used as a dual occupancy since the time of approval, which is within one year from the date on which the provision having the effect of prohibiting the use commenced.

- **What is “the land on which the existing use was carried out” for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of

the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The proposal results in non-compliances with the built form controls which would normally be applicable, being landscaped open space, front setback and the side boundary envelope. In addition, there is also a very minor side setback non-compliance caused by the block wall abutting the proposed bin storage area. The proposed first floor addition achieves a compliant building height of 8.2m, while maintaining a reasonable level of articulation through various design elements and sufficient boundary setbacks.

Assessment has been carried out against the objectives of the relevant built form controls that would apply (if existing use rights were not applied), under WDCP 2011, and it is considered that the proposal generally achieves compliance with the objectives, notwithstanding the numerical non-compliances proposed. Overall, the development's bulk and scale is propionate with other dwellings found within the North Manly streetscape, as expressed by the proposed building height and reasonable boundary setbacks.

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

No change of use is proposed.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

Impacts on adjoining land have been assessed throughout this report. The proposal will impact on views and solar access (assessed in detail in the relevant sections of this report). In summary, the proposal is not considered to result in unreasonable impacts in this regard. Conditions are recommended in relation to privacy to modify some of the proposed windows. Subject to these conditions, the proposal will not have unreasonable impacts beyond general expectations for development of the lot.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

Comment:

Internal amenity will be maintained for the subject development. The proposed first floor extension is contained above the existing building's footprint, while providing additional space for a new master bedroom. The proposal will maintain all of the existing private open space areas and will not result in any unreasonable privacy issues, as the new addition is adequately set back from boundaries and below the maximum building height (under WLEP 2011).

Conclusion

The use has been approved under a previous environmental planning instrument and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument.

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 11/05/2021 to 25/05/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

Name:	Address:
Mr Ewan James Saunders	7 Nenagh Street NORTH MANLY NSW 2100
Mr Peter Theodor Jabs	6 Waiwera Avenue NORTH MANLY NSW 2100

The following issues were raised in the submissions and each have been addressed below:

- Views
- Privacy
- Solar access
- Parking
- Overdevelopment

The matters raised within the submissions are addressed as follows:

- **Views**
Concerns were raised with respect to view loss from 6 Waiwera Avenue.

Comment:

This issue is discussed in detail under clause D7 Views in this report. In summary, the proposal

is considered to maintain a reasonable sharing of views. Amendment or refusal of the application is not recommended in this regard.

- **Privacy**

Concerns were raised with regard to privacy by the owners of both 6 Waiwera Avenue and 7 Nenagh Street.

Comment:

This issue is discussed in detail under clause D8 Privacy in this report. In summary, subject to conditions of consent regarding specific windows, the proposal will maintain a reasonable level of privacy. The objections are considered to be reasonably satisfied in this regard.

- **Solar access**

Concerns were raised by the owners of 6 Waiwera Avenue regarding overshadowing.

Comment:

This issue is discussed in detail under clause D6 Access to Sunlight in this report. In summary, the proposal is considered to maintain reasonable access to sunlight, and no conditions or amendments are recommended in this regard.

- **Parking**

Concerns were raised with regard to inadequate parking on site.

Comment:

The application does not propose any alteration to the existing parking situation on site. There is currently a garage and a carport, located behind the front building line, and space on the driveway to park two or more cars. The parking arrangement is considered acceptable given it is an existing situation, and no alterations and additions are proposed in this respect.

- **Overdevelopment**

Concerns were raised regarding overdevelopment of the site, with reference to the height, bulk and scale, and in particular the impacts of the western elevation on the neighbours to the west.

Comment:

The site benefits from existing use rights, and as such the built form controls that would normally apply to the development do not technically apply. They are however used as a guide to inform the merit assessment of the application, and in this regard, the proposed additions breach the side boundary envelope control on the eastern side.

The impacts of these non-compliances and the works as a whole have been assessed throughout this report, in relation to views, solar access, privacy, bulk and scale and all other environmental impacts, and found to be generally reasonable in the circumstances of the site. The eastern wall of the proposed upper level is adequately set back from the eastern side boundary, and allows for a stepping of the development in response to the topography. Overall, the proposal is not considered to be an overdevelopment of the site.

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>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Warringah LEP 2011 and Warringah DCP 2011.</p> <p>Coastal Management Act 2016 The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development. The proposed development is in line with the objects, as set out under Clause 3 of the Coastal Management Act 2016.</p> <p>State Environmental Planning Policy (Coastal Management) 2018 The subject land has been included on the 'Coastal Environment Area' under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13 and 15 of the CM SEPP apply for this DA.</p> <p><u>Comment:</u> On internal assessment and as also assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Fearn Studio dated April 2021, the DA satisfies requirements under clauses 13 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Warringah LEP 2011 and Warringah DCP 2011 No other coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Warringah LEP 2011 and Warringah DCP 2011.</p>
NECC (Riparian Lands and Creeks)	<p>The project is outside the riparian/creek corridor and is not triggering specific development controls.</p> <p>From a water quality aspect the Statement of Environmental effect is</p>

Internal Referral Body	Comments
	mentioning that no increase in impervious area is proposed.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, 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. s conditions in the Recommendation of this report.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A410325_02 dated 29 March 2021).

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 provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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:

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 proposal is for alterations and additions to the existing building. The works will not have any significant impacts on any of the matters listed above.

- (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*

- (c) will be managed to minimise that impact, or
if that impact cannot be minimised—the development will be managed to mitigate that impact.

Comment:

The proposal is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1).

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 site is situated well away from the actual coast, and the works are not likely to have any impacts on any coastal hazards.

Warringah Local Environmental Plan 2011

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	Complies
Height of Buildings:	8.5m	8.2m	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

Zone R2 Low Density Residential

Land use definition: WLEP 2011	Permitted or Prohibited
Dual occupancy (attached) - means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.	Prohibited

The proposal is for the alterations and additions to, what is considered as equivalent to an existing *semi-detached dwelling*. Under WLEP 2011, R2 Low Density Residential zones do not permit semi-detached dwelling, thus making the proposed development prohibited.

However, the application relies on existing use rights, as the dual occupancy was approved (Development Consent: 82/47, dated 3 February 1982) prior to WLEP 2011 coming into force. Refer to the detailed discussion under 'Existing Use Rights'. As existing use rights can be established to apply to the land and the development, the proposal is therefore permissible with consent, notwithstanding the prohibition that applies in the zone.

Warringah Development Control Plan

Built Form Controls

Built Form Controls

The Land and Environment Court Planning Principle established in the judgement by Senior Commissioner *Roseth in Fodor Investments v Hornsby Shore Council [2005] NSWLEC 71*, confirms that the provisions of environmental planning instruments (and DCPs) that derogate or detract from the benefit endowed on a site by existing use rights do not apply to the assessment of applications on sites where existing use rights apply.

As a result, zone objectives and planning controls that limit the size of a proposal (i.e. floor space ratio, height setbacks etc) have no effect on any site that enjoys the benefit of existing use rights. This includes qualitative provisions as well as quantitative provisions.

In view of the above, the built form controls contained within the WDCP 2011 compliance table are not relevant to the assessment of the application and are only included as a record to identify how the proposal measures up against the applicable controls that would apply to the site in the absence of existing use rights.

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.7m	-	Yes
B3 Side Boundary Envelope	4m - East	One encroachment between 0.8m - 1.0m for a length of 8.0m	25%	No
	4m - West	No encroachment	-	Yes
B5 Side Boundary Setbacks	0.9m - East	Nil (Block wall) 0.9m (Ground floor) 1.5m (First floor)	100%	No
	0.9m - West	8.2m (Existing)	-	Yes
B7 Front Boundary Setbacks	6.5m	5.8m (First floor balcony/Ground floor dwelling)	10.8%	No
B9 Rear Boundary Setbacks	6m	9.1m (Existing)	-	Yes

D1 Landscaped Open Space (LOS) and Bushland Setting	40%	No additional hard surfaces as existing	-	Yes
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Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	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
E2 Prescribed Vegetation	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

As above, the proposed addition achieves a high level of compliance with Council's building height and setback controls that assists with minimising building bulk. Furthermore, the proposed eastern elevation has been adequately stepped in, which provides visual relief to the concerned elevation.

In addition, No. 6 Waiwera Avenue's ground floor living areas are set back approximately 7.1m from the proposed first floor addition and is not directly orientated towards the works.

Given the above factors, the development is not visually dominant by virtue of its height and bulk.

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

Comment:

The proposal has adequately considered the neighbouring amenity, through designing a relatively modest first floor addition that provides compliant setbacks and sits below the maximum building height.

The proposed first floor addition will be set back sufficiently from adjoining buildings, while containing no eastern facing windows. It is acknowledged that the proposal includes a first floor balcony that partially encroaches the side boundary envelope, however, the balcony is 3.2sqm, which can only accommodate limited occupancy. In addition, the proposed balcony will be orientated towards the street and will share No. 6 Waiwera Avenue's established front building line. As such, a reasonable level of privacy will be maintained between buildings.

Furthermore, the submitted shadow diagrams demonstrates compliance with WDCP's access to sunlight control, with at least 50% of the adjoining properties private open space areas receiving a minimum of 3 hours of sunlight between 9am and 3pm on June 21.

Overall, it is considered that the proposal ensures adequate light, solar access and privacy by providing reasonable spatial separation between buildings.

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

Comment:

The development appropriately responds to the topography of the site and the proportions of the host dwelling.

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

B5 Side Boundary Setbacks

Description of non-compliance

The proposal relies on existing use rights, therefore WDCP2011 controls do not apply. However, this control have been used to determine the proposal's merits.

The proposed block wall abuts the eastern side boundary on a nil setback. The minimum requirement of this control is 0.9m.

Merit consideration

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

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

Comment:

The proposal will be constructed above existing built upon surfaces and will not eliminate any existing deep soil landscaped areas.

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

Comment:

The proposed block wall will have a maximum height of 1.8m and will be substantially set back from the front boundary. The proposed side setback non-compliance will not result in any adverse visual impacts from surrounding private and public spaces, as it will be reasonably screened by the existing garage at No. 6 Waiwera Avenue.

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

Comment:

The proposed block wall will not create any unreasonable bulk.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

The proposed side setback non-compliance will not result in any adverse amenity impacts, given the nature of the encroachment.

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

Comment:

The proposal will not result in the loss of views.

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

B7 Front Boundary Setbacks

Description of non-compliance

The proposal relies on existing use rights, therefore WDCP2011 controls do not apply. However, this control has been used to determine the proposal's merits.

The proposed first floor balcony and ground floor will be set back 5.8m from the front boundary. This control requires a minimum front setback of 6.5m.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The proposal will be constructed over existing built upon surfaces and will not require the removal of any landscaping. Furthermore, the proposed balcony demonstrates openness within its design and is an effective element that breaks down the built form. Overall, the proposal will not unreasonably detract the sense of openness experienced on the site.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

The proposed non-compliance represents a relatively minor encroachment within the front setback, which is consistent with other dwellings similarly sited along Waiwera Avenue, namely; Nos: 5, 6, 7, and 9 Waiwera Avenue.

Notwithstanding the proposal relying upon existing use rights for a dual occupancy, a reasonable level of compatibility between the pattern of buildings is achieved, as the works have been effectively designed to maintain the low-density residential character of the streetscape. Furthermore, the existing landscape elements will remain unaltered by this proposal.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

As above, the proposal will achieve a reasonable level of openness, while remaining compatible within the streetscape. Additionally, the works will not become overbearing upon the streetscape as the existing planting and retaining wall within the road reserve will reasonably screen the built form.

- *To achieve reasonable view sharing.*

Comment:

The proposal will achieve reasonable view sharing irrespective of the front setback non-

compliance.

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

C3 Parking Facilities

The proposal does not alter the existing parking arrangement on site. There are currently two covered spaces on site, including one where the carport roof encroaches over the western side boundary. There is space to parking two more cars in front of the carport and garage, and generally behind the front building line.

D1 Landscaped Open Space and Bushland Setting

The proposal relies on existing use rights, therefore WDCP2011 controls do not apply. However, this control have been used to determine the proposal's merits.

The site is required to provide a landscaped open space area equivalent to 40% of the total site area pursuant to Part D1 of the WDCP 2011.

The existing development on the site does not achieve this requisite ratio, and the development sought under this development application does not amended the existing landscaped ratio on the site.

As the built form is to be site wholly atop of the existing building footprint, it is not considered that any existing landscaping on the site would be detrimentally impacted by the works. Therefore, given the magnitude of works sought in this application, it is not warranted to require an increase in the existing provision of landscaped open space.

D6 Access to Sunlight

Concerns has been raised that the proposal will unreasonably overshadow the neighbours at No. 6 Waiwera Avenue that have their primary private open space located at the front of their dwelling, adjacent to the side boundary with the subject site. This area is self shaded at 9am, will not be impacted until after midday.

Given the site is on a north / south orientation, it does not overshadow neighbours for more than 3 hours between 9am and 3pm, though they are both partially self shaded at different times during the day.

Merit consideration

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

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

Comment:

The proposed eastern elevation achieves reasonable compliance with the relevant built form controls that would apply if the site did not rely upon existing use rights.

The location of the concerned private open space at 6 Waiwera is highly vulnerable to overshadowing, being located entirely within the western side setback area and generally at the southern ends of the buildings on both its own site, and the subject site.

The proposed upper level addition is relatively modest and has been sited appropriately to minimise shadowing impacts. In addition, there is further private open space available in the rear yard area of 6 Waiwera, although the current landscaping on site and dwelling orientation does not make it the primary location for private open space. Given these considerations, the proposal is considered to maintain reasonable access to sunlight.

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

Comment:

The proposal is sufficiently innovative given a reasonable level of solar access is maintained to neighbours.

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

Comment:

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

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

Comment:

The site is on a north / south orientation, and will have limited impacts on the roofs of neighbours.

- *To minimise the need for artificial lighting.*

Comment:

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

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

D7 Views

Concerns were raised by the neighbours to the east at number 6 Waiwera Avenue, regarding view loss.

Merit consideration

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

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

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

The views affected are district views of trees, houses and a public reserve, which are generally significantly obscured by existing canopy trees in the foreground. They are not considered highly valuable views in the context of these principles.



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

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

Comment to Principle 2:

The views impacted by the proposal are directly across the side boundaries, from both sitting and standing positions. The views are from the main living areas, kitchen and bedrooms.

3. Extent of impact

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

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

Comment to Principle 3:

The views will be partially impacted, with the most significant impacts occurring to the primary living area, including front deck and private open space area. Given the value of the views and that they are directly across the side boundaries, the view loss is considered minor to moderate in the context of these principles.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The part of the development that causes the view loss is the eastern elevation of the proposed new upper level. This part of the building generally complies with the relevant built form controls, including overall height, wall height, and front, side and rear setbacks. There are non-compliant elements located on the eastern elevation (side boundary envelope), however, these do not impact on the views. The eastern neighbour is a single level dwelling, and due to the topography is generally on the same level as any new upper level at the subject site will be located. As such, changing the roof design to a flat roof would not maintain more of the view. Given the high level of compliance with the controls on the eastern side of the proposal, it is not considered reasonable to require redesign of the development, considering the nature of the view loss as discussed above. The proposal is considered to maintain a reasonable sharing of views, taking into account the considerations discussed above.

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

Comment:

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

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

Comment:

No canopy trees are to be removed to obtain views.

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

D8 Privacy

Concerns have been raised by neighbours to both the east and west regarding privacy impacts. To the east, number 6 Waiwera Avenue is situated higher than the subject site. The proposed new upper level does not contain any east facing windows, however, an open sided balcony is proposed on the southern elevation of the first floor. The proposed balcony will be accessed from a bedroom, which is not considered to be a highly used part of the dwelling when applying the planning principal of *Meriton v Sydney City Council* [2004] NSWLEC 313 where overlooking from a living area is more objectionable than from a bedroom where people tend to spend less time. In addition, the balcony is small in size at 3.2sqm, and can not accommodate numerous occupants. Further, the proposed balcony will be orientated towards the street and will share the adjoining patio's established front building line at No. 6 Waiwera Avenue. As such, a reasonable level of privacy will be maintained between buildings.

To the west, the neighbouring site at No. 7 Nenagh Street is situated significantly lower than the subject site. Concerns have been raised by No. 7 Nenagh Street regarding overlooking from the windows on the eastern elevation. The proposal include three upper level bedroom and bathroom windows (W5, W6 and W7), and three ground floor living area windows (W1, W2 and W3) facing west. Notwithstanding, the concerned windows will be set back 8.2m from the western side boundary and there is notable difference in levels between the subject site and the property to the west, which indicates that views will be naturally obtained over No. 7 Nenagh Street. However, translucent glazing is conditioned for the upper level bathroom window, to minimise any privacy impacts between the separate occupancies within the subject site.

Subject to these conditions, privacy will be reasonable maintained.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$2,937 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$293,700.

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

THAT Council as the consent authority grant Development Consent to DA2021/0351 for Demolition works and rebuilding and enlarging a dwelling forming part of a dual occupancy development on land at Lot 2 SP 102360, 2 / 4 Waiwera Avenue, NORTH MANLY, 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
0502 - Rev A: Demolition plan	04 March 2021	Fearns Studio
1100 - Rev A: Ground floor plan	04 March 2021	Fearns Studio
1101 - Rev A: First floor plan	04 March 2021	Fearns Studio
1102 - Rev A: Roof plan	04 March 2021	Fearns Studio
2100 - Rev A: Western elevation	04 March 2021	Fearns Studio
2101 - Rev A: Eastern elevation	04 March 2021	Fearns Studio
2102 - Rev A: Southern elevation	04 March 2021	Fearns Studio
2103 - Rev A: Northern elevation	04 March 2021	Fearns Studio
3100 - Rev A: Section B	04 March 2021	Fearns Studio

3101 - Rev A: Section C	04 March 2021	Fearns Studio

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report	16 April 2021	Ascent Geotechnical Consulting

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:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	Not dated	Melanie Booth

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
Ausgrid	Response Ausgrid Referral	10 May 2021

(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 departments, authorities or bodies.

3. **Prescribed Conditions**

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

a telephone number on which that person may be contacted outside working hours, and

- (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

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

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

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

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

Reason: Legislative requirement.

4. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$2,937.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$293,700.00.

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

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

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

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 \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

7. Stormwater Drainage Disposal

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical

Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifying Authority prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifying Authority prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

8. **Amendments to the approved plans**

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

- W6 is to be made opaque glazing.

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. **Fire Separation - Separating walls**

A separating wall between Class 1 buildings, or a wall that separates a Class 1 building from a Class 10a building which is not associated with the Class 1 building is required to comply with Part 3.7.3.2 of the Building Code of Australia – 'Separating Walls'. 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. **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:

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. Removing, Handling and Disposing of Asbestos

Any asbestos material arising from the demolition process shall be removed and disposed of in accordance with the following requirements:

- Work Health and Safety Act;
- Work Health and Safety Regulation;
- Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)];
- Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002 (1998);
- Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005; and
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

Reason: For the protection of the environment and human health.

13. Survey Certificate

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

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

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

14. Installation and Maintenance of Sediment Control

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

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

15. Waste Management During Development

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

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

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

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

16. **Stormwater Drainage Disposal Certification**

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Certifying Authority prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

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

Reason: To ensure satisfactory management of stormwater.

17. **Waste Management Confirmation**

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

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

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

Signed



Kye Miles, Planner

The application is determined on 15/07/2021, under the delegated authority of:



Catriona Shirley, Acting Development Assessment Manager