

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/1388
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<b>Responsible Officer:</b>	Ashley Warnest
<b>Land to be developed (Address):</b>	Lot 9 DP 20988, 46 The Avenue NEWPORT NSW 2106
<b>Proposed Development:</b>	Alterations and additions to a dwelling house including a secondary dwelling
<b>Zoning:</b>	E4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Tobias James Hutton
<b>Applicant:</b>	Tobias James Hutton

<b>Application Lodged:</b>	03/11/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	13/11/2020 to 27/11/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 134,500.00
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### PROPOSED DEVELOPMENT IN DETAIL

The subject development application seeks consent for alterations and additions to a dwelling including a secondary dwelling. The specifics of the proposal is as follows:

- The lower ground floor is to be expanded to the northwest (i.e. rear) of the site, with the additions and existing garage to be utilised as a secondary dwelling. The secondary dwelling is to contain two bedrooms either side of an open plan living area. An existing bathroom is to be retained and be used exclusively for the secondary dwelling.
- A storage area is to be provided at the front of the lower ground floor for use by residents of the primary dwelling.
- The ground floor of the dwelling is to be expanded. The expansion is proposed to occur on the northwest side of the dwelling above the aforementioned expansion to accommodate the proposed secondary dwelling, and will include a new master bedroom, ensuite bathroom and a

second bedroom. A new partially-covered deck and walkway is to be located to the rear of the existing kitchen, which is to be accessed both from the kitchen and new master bedroom via new sliding doors. The existing layout of the remaining ground floor level is to otherwise remain unchanged.

## 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 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)

Pittwater 21 Development Control Plan - D10.11 Building envelope (excluding Newport Commercial Centre)

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 9 DP 20988 , 46 The Avenue NEWPORT NSW 2106
<b>Detailed Site Description:</b>	<p>The subject site is identified as 46 The Avenue, Newport (Lot 9, DP 20988), and is located on the northern side of The Avenue.</p> <p>The subject site is an irregularly-shaped allotment, with a frontage of 24.995 metres and a depth of 29.29 metres. The site has a surveyed area of 682.9m<sup>2</sup> and is moderately sloped, with an east-to-west (i.e. side-to-side) slope with a fall of approximately 2.7 metres.</p> <p>The site is within an E4 Environmental Living zone sites to</p>

the front and sides of the site are all E4-zoned, while the allotment to the rear is zoned as an RE1 Public Recreation zone. The site is mapped as being affected by class 5 acid sulphate soils and biodiversity considerations (a wildlife corridor). The site does not contain a heritage item, is not within a heritage conservation area and is not in close proximity to a heritage item.

Development on the site contains a two-storey dwelling; other ancillary development includes a large driveway within the southwest corner of the site, an awning on the eastern side of the dwelling and a metal shed within the rear setback..

#### Detailed Description of Adjoining/Surrounding Development

Development on surrounding residential-zoned sites and within the locality more broadly consists of low-density residential development (i.e. dwelling houses and associated structures).

Map:



## **SITE HISTORY**

The land has been used for residential purposes for an extended period of time. No development history was found prior to the lodgement of the subject DA.

## **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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – 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&amp;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&amp;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&amp;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>Clauses 93 and/or 94</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;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&amp;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>
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) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b></p>

Section 4.15 Matters for Consideration'	Comments
	<p>The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (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 13/11/2020 to 27/11/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate stage.</p>
Landscape Officer	The development application is for alterations and additions to an existing dwelling and conversion of existing garage, rumpus room and bathroom into a secondary dwelling.



Internal Referral Body	Comments
	<p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause E4 zone Environmental Living, and the following Pittwater 21 DCP Controls:</p> <ul style="list-style-type: none"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> <li>• C1.11 Secondary Dwelling and Rural Workers Dwellings</li> <li>• D10 Newport Locality</li> </ul> <p>The site is located in the E4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees. The existing site contains a typical suburban landscape character with gardens and lawn. The requirement from Council's Natural Environment Referral Response - Biodiversity for native tree planting will satisfy the objectives of the E4 zone.</p> <p>Landscape Referral raise no objections, subject to conditions of consent.</p>
NECC (Bushland and Biodiversity)	<p>Council's biodiversity referral body has assessed this development application for compliance against the following biodiversity planning legislation and controls:</p> <ul style="list-style-type: none"> <li>• PLEP cl. 7.6 Biodiversity Protection</li> <li>• P21 DCP cl. B4.6 Wildlife Corridors</li> </ul> <p>Whilst the plans do not identify that any trees will be required to be removed to facilitate the proposed development, there are two (2) trees (identified on the plans) that may be impacted upon by cut and fill in association with the development. It is noted that a landscape plan has been discussed within the Statement of Environmental Effects however no landscape plan has been submitted with the application. Two (2) native trees are to be planted within the property to satisfy the DCP cl. B4.6 which states that Development shall provide wildlife corridors via creation, restoration, and / or regeneration of habitat.</p> <p>Any additional new landscaping associated with the development shall ensure that at least 60% of new planting incorporates native vegetation (as per species listed in Native Plant Species Guide - Pittwater Ward, which is available on Council's website).</p> <p>Subject to these consent conditions, it is considered that the development has been largely designed and sited to avoid any significant adverse environmental impacts. The proposal is therefore considered to be in compliance with the relevant biodiversity planning legislation and controls.</p>
NECC (Development)	No objections to the proposed alterations and additions and

Internal Referral Body	Comments
Engineering)	secondary dwelling subject to conditions.

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

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

### SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

### SEPP (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

## Division 2: Secondary dwellings

### Clause 19: Definition

Development for the purposes of a secondary dwelling includes the following:

- (a) the erection of, or alterations or additions to, a secondary dwelling,
- (b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.

**Note:** The standard instrument defines secondary dwelling as follows:

**"secondary dwelling means a self-contained dwelling that:**

- (a) is established in conjunction with another dwelling (the principal dwelling), and
- (b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and
- (c) is located within, or is attached to, or is separate from, the principal dwelling."

Comment:

The proposed use is defined under PLEP 2014 as a "secondary dwelling" and satisfies the definition.

Clause 20: Land to which this Division applies:

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but <i>only if</i> development for the purposes of a dwelling house is permissible on the land:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone R5 Large Lot Residential.	<b>Consistent.</b> The site is located within the E4 Environmental Living and, as such, the proposed use is permissible with consent under WLEP 2011.

Clause 21: Development to which this Division applies

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

Clause 22: Development may be carried out with consent

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

Requirement	Comment
(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.	The development would result in a principal dwelling and a secondary dwelling located on the subject site. The development is consistent with the requirement.
(3) A consent authority must not consent to development to which this Division applies unless:  (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and  (b) the total floor area of the secondary dwelling is	The total proposed floor area of the secondary dwelling does not exceed more than 60m <sup>2</sup> . The development is consistent with the requirement.



no more than 60m <sup>2</sup> or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.	
<p>(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds:</p> <p>(a) site area if:</p> <p>(i) the secondary dwelling is located within, or is attached to, the principal dwelling, or</p> <p>(ii) the site area is at least 450 square metres.</p> <p>(b) parking if no additional parking is to be provided on the site.</p>	<p>The secondary dwelling is detached from the principal dwelling and the site exceeds 450m<sup>2</sup> (being 682.9m<sup>2</sup>).</p> <p>Two parking spaces are available onsite. Sufficient parking has been provided.</p>

**Note:** A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (4).

#### Clause 24: No subdivision

Requirement	Comment
A consent authority must not consent to a development application that would result in any subdivision of a lot on which development for the purposes of a secondary dwelling has been carried out under this Division.	<p><b>Consistent.</b></p> <p>This application does not propose any subdivision of the existing allotment.</p>

#### Conclusion

The proposal satisfies the assessment criteria and requirements for approval under SEPP ARH.

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

A BASIX certificate has been submitted with the application (see Certificate No. A392141 dated 26/10/2020 and 1147857S dated 26/10/2020).

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

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

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

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

power line.

#### Comment

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

#### **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	Complies
Height of Buildings:	8.5m	7.6m	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes

#### **Pittwater 21 Development Control Plan**

#### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	7.8m	N/A	Yes
Rear building line	6.5m	5.2m-6.4m	20%	<b>No</b>
Side building line	2.5m	6.7m	N/A	Yes
	1m	1.5m	N/A	Yes
Building envelope	3.5m	Within envelope	N/A	Yes
	3.5m	Outside envelope	22.2%	<b>No</b>
Landscaped area	60%	66.2%	N/A	Yes

**\*Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for Landscaped area - Divide the proposed area by the numerical requirement then multiply the proposed area by 100

to equal X, then 100 minus X will equal the percentage variation. Example:  $38/40 \times 100 = 95$  then  $100 - 95 = 5\%$  variation)

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.6 Wildlife Corridors	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	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
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.3 Scenic protection - General	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	No	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	Yes	Yes

#### Detailed Assessment

#### **B6.3 Off-Street Vehicle Parking Requirements**

Two parking spaces are currently available on the subject site which is not proposed to be altered as a result of this application. The existing two spaces does not comply with the three car parking space requirement.

Given the proposal comprises a secondary dwelling with one (1) bedroom, one (1) additional on-site parking space would be required in accordance with the requirements of this Control. However, Clause 22 of SEPP (Affordable Rental Housing) 2009 stipulates that a consent authority must not refuse consent to a development for the purpose of a secondary dwelling on the grounds of parking; specifically if no additional parking is proposed to be provided on site. It is acknowledged that there is an inconsistency between the requirements of the SEPP and those prescribed within P21DCP, however in accordance with Clause 8 of SEPP ARH, such Policy prevails to the extent of the inconsistency. In turn, the application is supported in its current form.

### **C1.5 Visual Privacy**

Side-facing living room windows on the ground floor that are to address the western boundary on the ground floor are to be screened and will feature raised sill heights of at least 1.4 metres above the finished floor level. Western-facing windows on the lower-ground floor are at a level that would enable sufficient screening by a 1.8 metre boundary fence, and are therefore unlikely to have adverse privacy impacts.

Further, any side-facing views from the rear deck extensions and new living area doors and windows will be obscured by the proposed additions to the rear of the dwelling.

With regard to the above, the design will satisfy the requirements of this control.

### **D10.8 Side and rear building line (excluding Newport Commercial Centre)**

Side setbacks shall not be discussed further within this report, as no variations are proposed to side setback controls.

The plans propose a minimum 5.18 metre rear setback; the closest distance between the proposed additions and the rear boundary is at the northwest corner of the site; due to the angled rear boundary, the setback progressively increases from this point. The maximum size of the variation is 1.32 metres, or 20.3% to the development control.

Despite the variation, the proposal will have no impact on views from surrounding sites and the public domain. Whilst the variation may slightly increase overshadowing on the site immediately to the west (i.e. 109 Crescent Road) at 9:00am on June 21, due to the north-south orientation of the subject site and surrounding sites the proposed additions will still permit at least three hours of direct solar access to all adjoining sites during the winter solstice.

The noncompliance is also unlikely to adversely affect visual privacy of sites to the rear, as the closest part of the building to the rear boundary will include bedrooms on both levels; there will subsequently be no living areas that will excessively overlook surrounding sites (the setbacks of the proposed deck extension will comply with setback requirements, and with regard to the assessment of Section C1.3 above this area is unlikely to result in adverse privacy outcomes).

As such, the proposal will satisfy objectives related to rear setbacks; the variation is therefore acceptable and supportable on merit.

### **D10.11 Building envelope (excluding Newport Commercial Centre)**

The envelope of the eastern side of the building complies with the envelope control, and therefore will not be discussed further.

The envelope of the new additions on the northwest side of the building will however breach the building envelope; the maximum height of the breach will vary between be 500 and 610mm.

Despite the variation, the proposal will have no impact on views from surrounding sites and the public domain. Whilst the variation may slightly increase overshadowing on the site immediately to the west (i.e. 109 Crescent Road) at 9:00am on June 21, due to the north-south orientation of the subject site and surrounding sites the proposed additions will still permit at least three hours of direct solar access to all adjoining sites during the winter solstice.

The noncompliance will also have no impact on visual privacy, given that the breach occurs above the proposed windows on the western elevation. Further, the maximum point of the envelope breach is located significantly (i.e. three metres) behind the front building line and the maximum height of the breach will be substantially (i.e. 1.5 metres) below the existing ridgeline of the dwelling. As such, the noncompliant western side additions will present to the public domain as an element that both steps back and down from the front building line and maximum building heights respectively.

As such, the proposal will satisfy objectives related to the building envelope; the variation is therefore acceptable and supportable on merit.

## **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 \$ 673 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 134,500.

## **CONCLUSION**

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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

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 DA2020/1388 for Alterations and additions to a dwelling house including a secondary dwelling on land at Lot 9 DP 20988, 46 The Avenue, NEWPORT, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

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

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

##### a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Demolition Plan (Drawing No. 02, Version 5.2)	26/10/2020	Blackadder Designs
Lower Ground Floor Plan (Drawing No. 03, Version 5.2)	26/10/2020	Blackadder Designs
Upper Ground Floor Plan (Drawing No. 04, Version 5.2)	26/10/2020	Blackadder Designs
Roof Plan (Drawing No. 05, Version 5.2)	26/10/2020	Blackadder Designs
South and North Elevation Plan (Drawing No. 06, Version 5.2)	26/10/2020	Blackadder Designs
East and West Elevation Plan (Drawing No. 07, Version 5.2)	26/10/2020	Blackadder Designs
Site & Site Analysis Plan (Drawing No. 08, Version 5.2)	26/10/2020	Blackadder Designs

Excavation Plan (Drawing No. 10, Version 5.2)	26/10/2020	Blackadder Designs
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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 (Drawing No. 11, Version 5.2)	26/10/2020	Blackadder Designs

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

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

## 2. Prescribed Conditions

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

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

If arrangements for doing the residential building work are changed while the work is in

progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

### 3. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

commence.

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$672.50 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 \$134,500.00.

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

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

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

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

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

## **5. Security Bond**

A bond (determined from cost of works) of \$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](http://www.northernbeaches.nsw.gov.au)).

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

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

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



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

- a) Construction plans are to be amended to include laundry facilities within the secondary dwelling for the exclusive use of residents within that dwelling.

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.

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

The existing building is proposed to be converted to a secondary dwelling will result in a change of classification to a Class 2 building and will be required to be upgraded to comply with Parts C, D, E & F (specifically sound transmission ratings) of the Building Code of Australia.

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

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

**8. 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.

**9. External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

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

**10. Road Reserve**

The applicant shall ensure the public footways and roadways adjacent to the site are maintained in a safe condition at all times during the course of the work.

Reason: Public safety.

**11. 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.

12. **Tree and vegetation protection**

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

- i) all trees and vegetation within the site, 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), vi) and vii) 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.

The Certifying Authority must ensure that:

c) 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.

**13. Wildlife Protection and Rehabilitation**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

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

**14. Stormwater Disposal**

The new stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person.

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

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

**15. Planting Areas of Native Vegetation**

Two (2) native trees selected from Native Plant Species Guide - Pittwater Ward (available on Council's website) are to be planted within the property to satisfy cl. B4.6 of the P21DCP which states that Development shall provide wildlife corridors via creation, restoration, and / or regeneration of habitat.

The applicant is to provide written and photographic certification of compliance to the Principal

Certifying Authority prior to issue of any Occupation Certificate.

Reason: To protect and maintain native vegetation and wildlife habitat.

16. **No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified on the NSW WeedWise website) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

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

**Signed**



**Ashley Warnest, Planner**

The application is determined on 21/01/2021, under the delegated authority of:



**Matthew Edmonds, Manager Development Assessments**