

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0019
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Responsible Officer:	Grace Facer
Land to be developed (Address):	Lot 13 DP 11737, 26 The Drive FRESHWATER NSW 2096
Proposed Development:	Alterations and additions to a dwelling house including secondary dwelling.
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Rosemary Ashton David Ashton
Applicant:	Jaclyn Elizabeth Smith

Application Lodged:	19/01/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	25/01/2023 to 08/02/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 990,000.00
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PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of the following works:

Garage Level

- Demolition of front walls, stairs on Council land and excavation
- Construction of a double garage at street level, with storage area and access way to internal lift shaft
- New external stairs and path

Secondary Dwelling above Garage

- Construction of a studio, with adjoining terrace and access to lift shaft

Ground floor

- New front portico
- New external stairs
- Lift shaft
- Landscaping works including removal of an exempt tree and new 4kL rainwater tank

First floor

- Lift shaft
- Alterations to front balcony including full-height sliding doors and glass balustrade

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 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 - D1 Landscaped Open Space and Bushland Setting

SITE DESCRIPTION

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Property Description:	Lot 13 DP 11737 , 26 The Drive FRESHWATER NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the south-western side of The Drive.</p> <p>The site is irregular in shape with a frontage of 16.41m along The Drive and a maximum depth of 33.566m. The site has a surveyed area of 512.3m².</p> <p>The site is located within the R2 Low Density residential zone from WLEP 2011 and accommodates a two storey dwelling house. There is no parking on the site, however a parking bay is located within the road reserve.</p> <p>The site slopes from the north-western boundary downwards to the south-western boundary at an average gradient of approximately 10 degrees.</p> <p>The site contains garden beds, lawn areas, medium to large shrubs and trees. There are no details of any threatened species on the subject site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a mix of detached residential dwelling houses of varying ages and architectural styles. Surrounding properties are largely oriented towards views of Freshwater Beach to the south-east and towards North Curl Curl headland to the north-east.</p>

Map:



SITE HISTORY

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

PLM2021/0326

Pre-lodgement meeting held on 18 November 2021 for a garage and studio

Written advice given to the applicant noted there is no objection to the proposed garage, storage and access corridor to the lift. However, no support is given to the cellar and the studio, forward of the minimum front setback.

PLM2019/0214

Pre-lodgement meeting held on 24 October 2019 for alterations and additions to the dwelling house

BA880/95

Building Application to renovate front of house, build new garages and swimming pool

Approved 20 June 1995

Application History

Following the preliminary assessment of the application and referral to Council's Development Engineer, the applicant was requested to provide a swept path analysis and sight distance analysis (Sight distance in accordance with AS/NZS 2890.1:2004) for the proposed parking facility. Subsequently, the applicant provided the requested information.

The amended plans did not alter the environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p>

Section 4.15 Matters for Consideration	Comments
	<p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to address Clause C2 of the DCP. Subsequently, the applicant provided the requested information.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 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 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 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 69</u> of the EP&A Regulation 2021 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) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 25/01/2023 to 08/02/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant 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	<p>The proposal is supported with regard to landscape issues.</p> <p>The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to):</p> <ul style="list-style-type: none"> • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation <p>Landscape Referral raises concern that the proposed development does not achieve the 40% landscaped open space under the WDCP requirement, and this matter shall be assessed and determined under merit consideration by the Assessing Planning Officer. It is noted the non-compliance is existing and the proposed works will slightly increase landscaped area. It shall also be noted that the WDCP states "<i>Driveways, paved areas, roofed areas, tennis courts, car parking and stormwater structures, decks, etc, and any open space areas with a dimension of less than 2 metres are excluded from the calculation</i>", and "<i>The minimum soil depth of land that can be included as landscaped open space is 1 metre</i>", thus the area to the south-east of the proposed entry stair included in the calculations (drawing Landscaped Open Space A.01.10), cannot be included. Landscape Referral calculates the landscaped area at approximately 34% (albeit</p>

Internal Referral Body	Comments
	<p>including existing non-compliant areas). Should the development application be approved, a minimum of 600mm soil depth for all on slab planters shall be provided, and species selection shall be updated in an Amended Landscape Plan, subject to the imposed conditions.</p> <p>One exotic tree is proposed for removal and no concern is raised as native tree replacement is proposed. Significant excavation is proposed within 5 metres of the street tree, and as such a Project Arborist shall be engaged to supervise work in the tree protection zone. The landscape proposal is generally acceptable and all planting shall be installed as per the requirements outlined in the conditions of consent. <i>Rhaphiolepis indica</i>, <i>Pennisetum alopecuroides</i>, and <i>Nerium oleander</i> shall all be substituted for suitable alternatives as Council deems these species an environmental threat. All natural rock outcrops outside the approved construction footprint shall be retained and protected during works.</p>
NECC (Coast and Catchments)	<p>The subject land has been included on the 'Coastal Environment Area' map under the State Environmental Planning Policy (Resilience & Hazards) 2021. Hence, Clauses 2.10 and 2.12 of State Environmental Planning Policy (Resilience & Hazards) apply for this DA.</p> <p>On internal assessment the application satisfies the requirements under clauses 2.10 and 2.12 of State Environmental Planning Policy (Resilience & Hazards) and is supported without conditions</p>
NECC (Development Engineering)	<p>The applicant needs to provide swept path analysis and sight distance analysis (Sight distance in accordance with AS/NZS 2890.1:2004) for the proposed parking facility.</p> <p>The application cannot be supported due to lack of information to assess clause C2 of the DCP.</p> <p>06/03/2023 Swept path analysis was provided. The Development Engineering supports the application subject to conditions recommended.</p>
Road Reserve	<p>There is no impact on existing road assets therefore no objection to proposal. Development Engineers to ensure all services to be rebated into rock face and covered in stone pitching.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p>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.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs 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 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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1378302S dated 7 March 2023).

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

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Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	51

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

SEPP (Housing) 2021

Part 1 – Secondary Dwellings

Clause 52 – Development may be carried out with consent	
Standard	Compliance/Comment
a) No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land.	Complies. The proposal will result in the principal dwelling and secondary dwelling on the site.
b) The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument.	Complies.
c) The total floor area of the secondary dwelling is: i) no more than 60m ² , or	Complies. Gross floor area of secondary dwelling is 37.1m ²

ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument - the greater floor area.	
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Clause 53 – Non-discretionary development standards	
Standard	Compliance/Comment
a) For a detached secondary dwelling - a minimum site area of 450m ² .	Complies. Site area is 512m ²
b) The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	Complies. Proposal will result in an increase in parking spaces provided on the site.

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

Division 4 Coastal use area

2.11 Development on land within the coastal use area

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

use area unless the consent authority:

- a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - iii) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
- b) is satisfied that:
 - i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposal will not result in any adverse impacts on the coast and will maintain the visual amenity of surrounding properties.

Division 5 General

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

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

Comment:

The proposed development is not anticipated to cause any increased risks of coastal hazards on the subject site or other land.

2.13 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

The application has been referred to Council's Coast and Catchments team who are satisfied the proposal is consistent with coastal management programs.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	6.1m (top of studio from natural ground level at front boundary)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

(0.3m)

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	5.7m (from existing ground level)	-	Yes
B3 Side Boundary Envelope	5m (North)	Within Envelope	-	Yes
	5m (South)	Proposed Lift - Outside Envelope	Vertical Height of 0.9m for length of lift (2m)	No
B5 Side Boundary Setbacks	0.9m (North)	3.7m (Garage Level Stairs)	-	Yes
	0.9m (South)	0.6m (Lift)	33.33% (0.3m)	No
B7 Front Boundary Setbacks	6.5m	Garage: Nil Studio: 1m	Garage: 100% (6.5m)	No

		Ground Floor: 6.1m (Portico)	Studio: 84.61% (5.5m) Ground Floor: 6.15% (0.4m)	
B9 Rear Boundary Setbacks	6m	N/A - proposal is at the front of the existing dwelling	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (204.92m ²)	32.79% (168m ²)	18.01% (36.92m ²)	No

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	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

The control requires buildings to be sited within the building envelope which is determined by projecting planes at 45° from a height above ground level (existing) of 5m at the side boundary. The proposal results in encroachment into the prescribed building envelope requirement along the southern elevation. The building envelope breach relates to only the proposed lift shaft of the development and occurs along a horizontal length of 2m up to a maximum vertical distance of 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 ensure that development does not become visually dominant by virtue of its height and bulk.***

Comment:

Due to the steep topography of land, the dwelling house is sited significantly higher than the streetscape level and the proposed lift shaft is setback 8.5m from the front boundary. As such, the proposal provides sufficient spatial separation between the development and the public domain and is anticipated to have a negligible visual impact on the appearance of streetscape. Given that the lift shaft will be lower than the existing dwelling's roof ridge and is relatively small in scale in comparison to the overall dwelling, the proposal will not result in any unreasonable additional building bulk. Moreover, the location of the proposed lift is considered to be the most suitable for the site when considering the site constraints such as the existing footprint of the dwelling house and the narrow frontage of the lot which provides limited alternative locations for parking facilities.

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

Comment:

The minor envelope breach will not result in any adverse amenity impacts to adjoining or surrounding properties.

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

Comment:

The building envelope breach occurs due to the location of the dwelling house on the subject

site, which is located in close proximity to the southern side boundary. It should also be noted that the existing dwelling is numerically non-compliant with the side boundary envelope control. The proposed lift will facilitate improved pedestrian access to the site from the street level, noting that the existing access arrangement is solely obtained via a steep set of stairs. In this regard, the development responds appropriately to the topography of the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of 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

Under Clause B5 of the DCP, side boundary setback areas are to be landscaped and free of any above or below ground structures, car parking or site facilities other than driveways and fences. The proposed new lift and a portion of the garage and studio present a 0.6m setback to the southern side boundary, which is non-compliant with the 0.9m side setback requirements of the DCP. It is noted that the garage and studio are compliant with the side setback control as the site widens towards the front boundary.

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:

As discussed in detail in Section D1 of this report, the subject site will retain sufficient open space areas that will provide opportunities for deep soil landscaping.

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

Comment:

As the proposed garage and studio will replace an existing rockface and retaining wall, the development is not anticipated to result in unreasonable visual dominance when presenting to the streetscape. The proposed lift will have limited visibility when viewed from the street due to the steep sloping topography of the site and the lift shaft being further setback from the front boundary.

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

Comment:

The minor non-compliance with the side setback control will not result in any significant changes to the existing visual dominance of the built form. The proposed lift shaft and garage and studio have been located on the site in response to the existing dwelling's building footprint and the breach is considered relatively minor in comparison to the overall bulk of the existing dwelling house.

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

Comment:

Adequate spatial separation between buildings will be maintained and proposed landscaping along the side boundaries at the front of the site will provide additional privacy. Existing levels of solar access to adjoining properties will be retained.

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

Comment:

The proposal will not result in the obstruction of views to or from public and private properties as the majority of the proposed works will be excavated into the site or located behind the existing front building line.

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 control requires a minimum setback to the front boundary of 6.5m and stipulates that the front boundary setback area is to be landscaped and generally free of any structures, basements, carparking or site facilities other than driveways, letter boxes, garbage storage areas and fences. The proposed garage presents a nil setback to the front boundary, whilst the studio above is setback 1m. Additionally, the new portico at the dwelling's ground floor level is setback 6.1m from the front boundary. As such, the proposal exhibits variations to the control of between 6.15% (0.4m) - 100% (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 existing front of the site is characterised by excavated rock face and a sandstone retaining wall above. The proposed garage and studio, which will be finished in sandstone cladding, will replace the existing retaining wall and will result in a similar presentation of the built form to the streetscape. Furthermore, the proposed new portico at ground level will not be visible from the street level due to the steep topography of the site. Proposed landscaping above and surrounding the new structures within the front setback area will assist in softening the bulk and scale of the development when viewed from adjoining and surrounding properties.

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

Comment:

The proposed garage and studio above is consistent with existing parking facilities and

structures which encroach into the front setback area along The Drive and Seddon Hill Road. It is noted that No.24 The Drive, which adjoins the subject site directly to the south, exhibits a garage and pool to the front boundary. Due to the significant difference in levels between the street and front of the site, the construction of a driveway with compliant gradients is impractical and the garage's nil setback is considered appropriate to meet the occupants' off-street parking requirements. Furthermore, the open nature of the new entrance portico will be complimentary to the existing dwelling house and is not anticipated to be visually dominant within the landscaped frontage.

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

Comment:

As above, the design and materials proposed for the structures within the front setback will enhance the visual quality of the streetscape. The provision of off-street parking for the occupants of the dwelling and removal of the existing on-street parking space along The Drive is considered to make a positive contribution to the appearance of the street.

- ***To achieve reasonable view sharing.***

Comment:

The proposed development will be sited below the height of the existing building and will not result in any unreasonable impacts on view sharing.

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.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

Clause D1 of the DCP requires a minimum landscaped open space on the subject site of 40% or 204.92m² in this instance. The proposal results in a landscaped open space of 32.79% (168m²), presenting a variation of 18.01% (36.92m²) to the requirements of the control. As the control defines landscaped open space as areas with a minimum 2m dimension, an additional 47.4m² of landscaped area on the site has been omitted from the LOS calculation. If these areas were to be included in the LOS calculation, the site would demonstrate a compliant LOS of 42.05% (215.4m²).

It should be noted that the non-compliant landscaped open space on the site is existing and the proposed works will result in a slight increase in landscaped areas.

Merit consideration

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

- ***To enable planting to maintain and enhance the streetscape.***

Comment:

The application is accompanied by a Landscape Plan which will enhance the front yard and

improve the dwelling's presentation to the streetscape. Furthermore, the proposed Landscape Plan has been reviewed by Council's Landscape Officer and, subject to conditions of consent, will enable appropriate planting to mitigate the bulk and scale of the building within a landscaped setting.

- ***To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.***

Comment:

The proposal will not adversely impact existing vegetation on the site, noting that a comprehensive Landscape Plan has been provided to rehabilitate landscaped areas of the site to be excavated. Moreover, the natural rock outcrops on the site outside the construction footprint will be retained and protected during works.

- ***To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.***

Comment:

Sufficient landscaped open space areas will be retained on the site that will allow for the maintenance and establishment of a variety of shrubs and trees. An existing paved area at the front of the dwelling house will be replaced by a garden bed, which is considered to be an improvement to the existing landscaped environment.

- ***To enhance privacy between buildings.***

Comment:

Proposed planting along the front and side boundaries will provide adequate privacy screening between the dwelling, adjoining neighbours and the public domain.

- ***To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.***

Comment:

The numerical non-compliance to the required landscaped open space area of the site will not detrimentally impact the site's ability to provide opportunities for outdoor recreation to meet the needs of current and future occupants. The site will retain the existing pool and outdoor private open space in the rear yard.

- ***To provide space for service functions, including clothes drying.***

Comment:

The proposal retains sufficient space for service functions on the site such as clothes drying in the rear yard which will be unaltered as a result of this development application.

- ***To facilitate water management, including on-site detention and infiltration of stormwater.***

Comment:

The site has adequate permeable surfaces to ensure that water management and the natural infiltration of stormwater into the ground will continue to occur. Council's Development Engineer has also reviewed the application in relation to stormwater and found that the proposal is not

likely to result in any adverse impacts or effects on the existing subsurface flow conditions.

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.

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 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$9,900 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$990,000.

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 2021;
- 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 DA2023/0019 for Alterations and additions to a dwelling house including secondary dwelling. on land at Lot 13 DP 11737, 26 The Drive, FRESHWATER, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan - Drawing No.DA_001	Jan 2023	Jaclyn Smith Architectural Design
Existing Ground Floor - Drawing No.DA_002	Jan 2023	Jaclyn Smith Architectural Design
Demolition Plan - Drawing No.DA_003	Jan 2023	Jaclyn Smith Architectural Design
Garage Plan - Drawing No.DA_100	Jan 2023	Jaclyn Smith Architectural Design
Studio Plan - Drawing No.DA_101	Jan 2023	Jaclyn Smith Architectural Design
Ground Floor Plan - Drawing No.DA_102	Jan 2023	Jaclyn Smith Architectural Design
First Floor Plan - Drawing No.DA_103	Jan 2023	Jaclyn Smith Architectural Design
Roof Plan - Drawing No.DA_104	Jan 2023	Jaclyn Smith Architectural Design
Proposed East Elevation - Drawing No.DA_200	Jan 2023	Jaclyn Smith Architectural Design
Existing East Elevation - Drawing No.DA_201	Jan 2023	Jaclyn Smith Architectural Design
North and South Elevations - Drawing No.A.02.3	Jan 2023	Jaclyn Smith Architectural Design
Building Section - Drawing No.DA_301	Jan 2023	Jaclyn Smith Architectural Design
Section 1 and Section 2 - Drawing No.DA_300	Jan 2023	Jaclyn Smith Architectural Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Report	3 June 2019	Ascent Geotechnical Consulting
BASIX Certificate No.1378302S	7 March 2023	Jaclyn Smith

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Concept Plan - Drawing No.Sht-1	21 October 2022	Jaclyn Smith Architectural Design
Concept Planting Plan - Drawing No.Sht-2	21 October 2022	Jaclyn Smith Architectural Design

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	5 September 2022	Jaclyn Smith Architectural Design

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	Ausgrid Referral Response	7 February 2023

(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 Certifier 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 Certifier 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 Certifier 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 an 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 Section 7.12 Contributions Plan 2022

A monetary contribution of \$9,900.00 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 (as amended).

The monetary contribution is based on a development cost of \$990,000.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

6. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security 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 Certifier 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. **Amended Landscape Plan**

An Amended Landscape Plan shall be issued to the Certifier prior to the issue of a Construction Certificate to include the following details:

- i) substitute all *Rhaphiolepis indica*, *Pennisetum alopecuroides*, and *Nerium oleander* for suitable alternatives,
- ii) replace the *Rhaphiolepis indica*, and *Pennisetum alopecuroides* in the on slab planter above

the secondary dwelling, with a species capable of attaining a mature height of at least 1 metre.

Certification shall be provided to the Certifier that these amendments have been documented.

Reason: Landscape amenity.

8. **On Slab Landscape Works**

Details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed method of waterproofing and drainage to all planters over slab, over which soil and planting is being provided.

Landscape treatment details shall be submitted to the Certifier prior to the issue of the Construction Certificate indicating the proposed soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.

The following minimum soil depths are required to support landscaping as proposed:

i) 600mm.

Design certification shall be submitted to the Certifier by a qualified Structural Engineer, that the planters are designed structurally to support the 'wet' weight of landscaping (soil, materials and established planting).

Reason: To ensure appropriate soil depth for planting and secure waterproofing and drainage is installed.

9. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the proposed development to kerb at The Drive.

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

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

10. **Traffic Management and Control**

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Construction Certificate. The Traffic Management Plan shall be prepared to TfNSW standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

11. **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 Certifier 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 Certifier 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.

12. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of a Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

13. **Fire separation of garage top dwellings**

Where parts of a Class 1a dwelling are located above a Class 10a private garage that is not associated with the Class 1a dwelling, fire separation works is required to comply with Part 3.7.4 of the Building Code of Australia –'Fire separation of garage top dwellings'. 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.

14. **Laundry Facilities (Class 1)**

Laundry facilities are required to be provided to incorporate clothes washing facilities, comprising of at least one washtub and space in the same room for a washing machine and is required to comply with Part 3.8.3 of the Building Code of Australia –‘Facilities’. A kitchen sink or washbasin must not be counted as a laundry washtub. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

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

15. **Submission Roads Act Application for Civil Works in the Public Road**

The Applicant is to submit an application for approval for infrastructure works on Council's roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include four (4) copies of Civil Engineering plans for the design of vehicle crossing which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

1. Details of excavation
2. Services relocation plan
3. Profile of the proposed driveway
4. Tree protection detail
5. Sediment control plan
6. Stormwater disposal with details of outlet and small kerb to be built for outlet pipe.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifier prior to the issue of the Construction Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

16. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

17. Vehicle Crossings Application

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

18. 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 Certifier prior to the issue of the Construction Certificate.

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

19. External Finishes to Roof

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

Details demonstrating compliance are to be submitted to the Certifier 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.

20. Waste Management Plan

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

21. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites.

a) The Project Arborist shall be in attendance and supervise all works in the tree protection zone of trees to be retained, and in particular:

i) installation and maintenance of tree protection measures, and construction hold points, as determined by the Project Arborist,

ii) works in the tree protection zone of all trees to be retained, including but not limited to

excavation, construction of retaining walls, and general landscaping.

b) Existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist.

c) All tree protection measures specified 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 Project Arborist shall provide certification to the Principal Certifier that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

d) Note:

- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
- ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

22. **Tree Removal Within the Property**

This consent approves the removal of the following tree within the property (as shown on the Survey Plan):

- i) *Euphorbia tirucalli* - adjacent to the south-eastern boundary,
- ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Reason: To enable authorised development works.

23. **Pre-Construction Dilapidation Report**

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

- No.24 The Drive, Freshwater
- No.28 The Drive, Freshwater

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

24. Protection of Rock and Sites of Significance

All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

25. Protection of Existing Street Trees

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

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

No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Street tree protection.

26. 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 the Project 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 the Project Arborist,
- 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 the Project Arborist on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with the Project Arborist including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, the Project Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Project Arborist to the Principal Certifier,
- 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) 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, and should additional pruning be required an application to Council's Tree Services shall be submitted for approval or otherwise.

The Principal Certifier 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.

Reason: Tree and vegetation protection.

27. **Condition of Trees**

During the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from the Project Arborist during the works. In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Project Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

28. **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.

29. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

30. **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 Certifier when the external structure of the building is complete.

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

31. **Civil Works Supervision**

The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifier and/or Roads Authority.

Reason: To ensure compliance of civil works with Council's specification for engineering works.

32. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

33. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 6.3 metres wide in accordance with Northern Beaches Council Drawing Normal (N) profile and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Certifier.

Reason: To facilitate suitable vehicular access to private property.

34. 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 Certifier.

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**

35. Landscape Completion

Landscaping is to be implemented in accordance with the approved Concept Plan - Planting Plan (drawing Sht-2 by Unknown dated 21/10/22), and inclusive of the amended Landscape Plan conditions, plus the following conditions:

- i) all tree planting shall be a minimum planting size of 75 litres or as otherwise scheduled if greater in size, and shall meet the requirements of Natspec - Specifying Trees,
- ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 2.5 metres from buildings, and at least 1 metre from common boundaries, and located either within garden bed or within a prepared bed within lawn,
- iii) mass planting shall be installed at minimum 1 plant per metre square for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at least 4 plants per metre square for grasses/groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- iv) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces.

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

Reason: Environmental amenity.

36. Condition of Retained Vegetation - Project Arborist

Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained, including the following information:

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

Reason: Tree protection.

37. Stormwater Disposal

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

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

38. **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 Principal Certifier 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 authority 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 Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure satisfactory management of stormwater.

39. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To maintain proper records in relation to the proposed development.

40. **Geotechnical Certification Prior to Occupation Certificate**

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

41. **Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier 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.

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

42. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Amended Landscape Plan and any conditions of consent.

A maintenance activity schedule for on-going maintenance of planters on slab shall be incorporated to monitor and replenish soil levels as a result of soil shrinkage over time.

The approved landscape area shall in perpetuity remain as planting under the development consent.

All weeds are to be managed in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

43. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

Signed



Grace Facer, Planner

The application is determined on 14/03/2023, under the delegated authority of:



Rodney Piggott, Manager Development Assessments