

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/1691
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<b>Responsible Officer:</b>	Thomas Burns
<b>Land to be developed (Address):</b>	Lot 2316 DP 752038, 4 Southern Cross Way ALLAMBIE HEIGHTS NSW 2100
<b>Proposed Development:</b>	Demolition works of existing dwelling and construction of dwelling house, secondary dwelling and studio
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<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>	Jaczac Nominees Pty Ltd
<b>Applicant:</b>	Anthony James

<b>Application Lodged:</b>	15/03/2021
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	11/05/2021 to 25/05/2021
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	5
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 702,000.00
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### PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for demolition works of existing on site structures and the construction of a three storey dwelling house, including a detached secondary dwelling and studio. A new driveway and tree removal is also proposed.

Key components of the proposed development are as follows:

#### Dwelling House

Lower Ground Floor: FFL - RL79.90 - RL80.73

- Media room, bathroom and storage rooms.
- Hobby room, laundry and rumpus room.
- Rear alfresco.
- Foyer and internal staircase to access the upper floor.

**Ground Floor: FFL - RL82.95 - RL83.70**

- Double garage and entry foyer.
- Kitchen, open living and dining areas.
- Bedroom and bathroom.
- Balcony on the rear elevation.
- Internal staircase to access the upper floor.

**First Floor: FFL - RL85.85 - RL86.45**

- Master bedroom with a WIR and ensuite.
- Three separate bedrooms.
- A separate bathroom and WC.
- Balconies adjoining bedrooms on the front and rear elevations.

**Secondary Dwelling: FFL - RL79.10 - RL79.75**

- Two bedrooms.
- A bathroom/laundry.
- A kitchen and living room.

**Studio: FFL - RL78.85 - RL79.65**

- Open plan area with a toilet and storage.

**ASSESSMENT INTRODUCTION**

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);

- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Local Environmental Plan 2011 - 5.4 Controls relating to miscellaneous permissible uses

Warringah Local Environmental Plan 2011 - 6.2 Earthworks

Warringah Development Control Plan - B1 Wall Heights

Warringah Development Control Plan - D6 Access to Sunlight

Warringah Development Control Plan - D7 Views

Warringah Development Control Plan - D8 Privacy

Warringah Development Control Plan - D9 Building Bulk

Warringah Development Control Plan - E6 Retaining unique environmental features

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 2316 DP 752038 , 4 Southern Cross Way ALLAMBIE HEIGHTS NSW 2100
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the eastern side of Southern Cross Way, Allambie Heights.</p> <p>The site is irregular in shape with a frontage of 21.205m along Southern Cross Way and respective depths of 49.47m and 42.765m along the northern and southern side boundaries. The site has a surveyed area of 927.8sqm.</p> <p>The site is located within the R2 Low Density Residential zone pursuant to the WLEP 2011 and accommodates a single storey dwelling house with a subfloor basement towards the rear. An attached carport structure is located on the southern elevation of the dwelling.</p> <p>The site contains two canopy trees within the front yard and small shrubs within portions of the front and rear yards. The rear yard contains a number of exposed rock outcrops.</p> <p>The site experiences a fall of approximately 9.8m that slopes away from the north-western front corner towards the south-eastern rear corner. This represents an approximate slope of 18.4%.</p> <p><b>Description of Surrounding Environment</b></p> <p>The surrounding built environment is characterised by low density residential development, typically 1-2 storeys in height. A Public Reserve is located directly to the west of the site on the opposite side of Southern Cross Way. The Reserve is identified as Heritage Conservation Area No. C9 'Manly Dam and surrounds', as detailed in Schedule 5 of the</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:

### Pre-lodgement Meeting PLM2020/0043

A pre-lodgement meeting (PLM) was held at Council to discuss the proposed development. The meeting consisted of two representatives from Council and the owner of the site and their draftsperson. It is noted that the proposal, as presented in the PLM, contained numeric non-compliances with the WDCP 2011 rear setback provision, landscaped open space provision and wall height provisions.

The PLM notes concluded the following:

*"You are encouraged to amend the proposed development to have greater consistency with the controls and outcomes of the WDCP 2011, particularly with regard to the rear setback non-compliance, the landscaped open space non-compliance and 7.2m wall height control - building mass and bulk (articulation of the northern wall). Concern is also raised with the possible impacts on views from the northern neighbour, and impacts on rocky outcrops in the rear yard area in the vicinity of the location of the proposed secondary dwelling and studio."*

*Your attention is also drawn to Council's Engineer's comments regarding permitting only one driveway cross over. This may require some redesign in either driveway or garage location to accommodate a shared driveway, if the driveway to the rear was to be maintained. It should be noted that there is no requirement in the relevant planning controls to provide parking for the secondary dwelling."*

*The proposal will therefore require some redesign and refinement in accordance with these notes to receive Council support".*

The proposal, as presented in this Development Application, has removed the second vehicle crossover and resolved the WDCP 2011 rear setback and landscaped open space non-compliances. The primary dwelling remains non-compliant with the WDCP 2011 wall height provision, however the northern elevation provides greater articulation and comprises varied external finishes, which alleviates the building mass and bulk. Overall, Council is satisfied that the proposal has responded to the PLM advice and therefore, is worthy of Council support.

## APPLICATION HISTORY

The application was re-exhibited on two separate occasions as the applicant had failed to provide photographic evidence of the notification sign being displayed.

Following preliminary assessment of the application, which included an examination of the subject site and surrounding environment, Council wrote to the applicant raising concern of the following:

- Inadequate shadow diagrams. Council requested that further shadow diagrams be submitted to represent the impact of the studio structure.
- Potential view impacts. Council requested that height poles be erected to represent the roofline of the proposed secondary dwelling and studio.
- Privacy impacts. Council requested that the eastern (rear elevation) of the outdoor area between the secondary dwelling and studio be affixed with a privacy screen.
- Non-compliant stormwater management system.

The applicant submitted additional plans and documentation to address the above requirements. The additional information was re-exhibited for 14 days consistent with Northern Beaches Council Community Participation Plan.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) –	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent



Section 4.15 Matters for Consideration'	Comments
Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>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. Additional information was requested.</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>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 Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) <b>Social Impact</b> 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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Control Line Consulting, dated 18 June 2021) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 11/05/2021 to 25/05/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mr Christian Malcolm Macquarie Lane-Brown Mrs Shelby Anne Lane-Brown	6 Southern Cross Way ALLAMBIE HEIGHTS NSW 2100
Mr Paul Sacha Giulio Giunti Mrs Rachel Mary Emma Giunti	67 Binalong Avenue ALLAMBIE HEIGHTS NSW 2100
Mrs Eleanor Georgina Watson	1 / 65 Seaview Street BALGOWLAH NSW 2093
Mrs Sara Isabella Bowtell	69 Binalong Avenue ALLAMBIE HEIGHTS NSW 2100
Mrs Alice Scott	2 Southern Cross Way ALLAMBIE HEIGHTS NSW 2100

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

- Solar Access**

Comment:

This matter is discussed in detailed within the section of this report relating to Clause D6 of the WDCP 2011. In summary, the proposal complies with the solar access requirements, given over 50% of adjacent private open space maintains more than 3 hours of sunlight on June 21 (winter solstice).

- View Loss**

Comment:

This matter is discussed in detail within the section of this report relating to Clause D7 of the WDCP 2011. In summary, the view impact is considered to be negligible-minor and therefore, Council is satisfied that the development achieves consistency with the objectives of the control

and the planning principles outlined within the NSW Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*.

- **Building Bulk**

Comment:

This matter is discussed in detail within the section of this report relating to Clause B9 of the WDCP 2011. In summary, the proposal is considered to achieve the objectives of the building bulk control and therefore, is acceptable in this regard. It is noted that the proposal complies with all applicable built form controls, excluding the wall height provision.

- **Incorrect Height Measurement**

Comment:

The neighbour stated that the building height should be taken from the excavated level rather than the natural ground level. When calculating the building height from the natural ground level, which is in accordance with the WLEP 2011 building height definition, the maximum building height is 8.49m, thereby compliant with the height of buildings development standard. This is discussed in further detail within the section of this report relating to Clause 4.3 of the WLEP 2011.

- **Privacy**

Comment:

Conditions requiring design amendments to the approved development have been imposed with this consent to mitigate unreasonable privacy impacts. This is discussed in further detail within the section of this report relating to Clause D8 of the WDCP 2011.

- **The Studio will be used for Separate Habitation**

Comment:

The studio is an ancillary function of the dwelling house that is not designed for separate habitation and does not include the provision of cooking facilities. Conditions have been included with this consent to ensure the structure is not used for separate habitation.

- **Inconsistency with R2 Low Density zone Objectives**

Comment:

This matter is discussed in detail within the section of this report relating to the R2 Low Density zone. In summary, the various components of the proposed development are permissible within the zone and the development at large is considered to align with the objectives of the R2 Low Density zone.



- **Incorrect Landscape Open Space Calculations**

Comment:

Council has calculated the landscaped open space to represent 52.5% (487.1sqm) of the site area, which complies with the 40% requirement prescribed within Clause D1 of the WDCP 2011.

- **Wall Height numeric non-compliance for dwelling house**

Comment:

This matter is discussed in detail within the section of this report relating to Clause B1 of the WDCP 2011. In summary, the propose development is considered to achieve the objectives of Clause B1, notwithstanding the wall height non-compliance. Therefore, the wall height numeric non-compliance is supported on merit.

- **Noise Pollution from Air-Conditioning Unit**

Comment:

A condition has been included with this consent to minimise the acoustical impacts of the air-conditioning unit to a reasonable level.

- **Impacts of Excavation**

Comment:

The earthworks have been considered in detail against the objectives and requirements of Clause 6.2 of the WLEP 2011. The extent of the earthworks are not considered to be excessive and are found to be consistent with the provisions of Clause 6.2 of the WLEP 2011.

- **Secondary Dwelling exceeds 60sqm**

Comment:

The total floor area of the secondary dwelling measures at 58.4sqm, which complies with the 60sqm requirement. The studio is not considered to form part of the secondary dwelling, given access to the studio is not provided from the deck that divides the structures.

- **Incorrect Cost of Works**

Comment:

A cost summary report has been prepared by the owner of the development. The owner is a licensed builder. The cost summary report has therefore been prepared in accordance with Council's lodgement requirements.

### Concluding Remarks

The matters raised within the submissions have been appropriately addressed above and alleviated through conditions where necessary. The matters do not warrant refusal of the application.

### REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Landscape Officer	<p>The proposal is for the demolition of existing structures and the construction of a new dwelling, granny flat and studio.</p> <p>The application is assessed by Landscape Referral against Warringah Development Control Plan 2011, including but not limited to the following clauses:</p> <ul style="list-style-type: none"> <li>• D1 Landscaped Open Space and Bushland Setting</li> <li>• E1 Preservation of Trees or Bushland Vegetation</li> <li>• E6 Retaining unique environmental features</li> </ul> <p>A Landscape Plan and a Arboricultural Impact Assessment is provided with the application, and the recommendations of both the plans and reports are supported.</p> <p>Landscape Referral raise no objection to the development proposal subject to the provision of tree protection measures and completion of landscape works as imposed by conditions of consent.</p>
NECC (Bushland and Biodiversity)	<p>Council's biodiversity referrals team have assessed this Development Application for compliance against the following applicable biodiversity related provisions:</p> <ul style="list-style-type: none"> <li>• Warringah DCP cl. E2 Prescribed Vegetation</li> <li>• Warringah DCP cl. E4 Wildlife Corridors</li> <li>• Warringah DCP cl. E6 Retaining Unique Environmental Features</li> </ul> <p>The proposed development requires the removal of one (1) prescribed tree (Tree 1, <i>Corymbia gummifera</i>), all other trees proposed for removal are considered exempt due to species or size.</p> <p>Trees 2, 3, 4, 5, 8 and 9 are to be retained and protected in accordance with Figure 4 of the submitted Arborist Report (Keith Spelman 2020).</p>

Internal Referral Body	Comments
	<p>A Landscape Plan has been produced to accompany the application which includes native species in proposed plantings. The removal of Tree 1 is to be mitigated by the replacement with the same species as that being removed (<i>Corymbia gummifera</i>).</p> <p>Subject to these consent conditions, Council's biodiversity referrals team are satisfied that the development complies with the above listed provisions.</p>
NECC (Development Engineering)	<p>The stormwater plan proposes a pump out system to the kerb. Pump out system to the kerb are not supported.</p> <p>The site falls to the rear and the method stormwater disposal for the site shall be in accordance with Clause 5.5.1.1 of Council's Water Management for Development Policy. Evidence of the satisfaction of all steps must be provided. Where an easement is not viable evidence of refusal of easement is to be provided.</p> <p>Mechanical methods of stormwater disposal such as a pump-out systems is only permitted for sub-surface flows from underground areas, such as basement car parks.</p> <p><b>Additional Information Received on 4/05/2021</b></p> <p>The applicant has submitted a refusal for easement from the rear neighbor. As an easement is not viable other methods of disposal in accordance with Clause 5.5.1.1 of Council's Water Management for Development Policy are to be followed.</p> <p>If an absorption system is proposed, supporting geotechnical information must be submitted. Alternatively if a dispersion system is proposed the design must be in accordance with Appendix 4 including the provision of a adequate OSD system.</p> <p>Mechanical methods of stormwater disposal such as a pump-out systems are not supported.</p> <p><b>Additional Information Received on 2/06/2021</b></p> <p>Amended stormwater plans have been reviewed. No objections to approval subject to conditions as recommended.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<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>
Aboriginal Heritage Office	<p><u>Development Application No. DA2020/1691</u></p> <p><u>Description:</u> Demolition works of existing dwelling and construction of dwelling house, secondary dwelling and studio</p>

External Referral Body	Comments
	<p><u>Address:</u> 4 Southern Cross Way ALLAMBIE HEIGHTS</p> <p>Reference is made to the proposed development at the above area and Aboriginal heritage.</p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

### SEPP 19 - Bushland in Urban Areas

A Public Reserve is located directly to the west of the site on the opposite side of Southern Cross Way. Accordingly, the provisions within this Policy must be considered prior to granting consent.

- (c) *the need to retain any bushland on the land,*
- (d) *the effect of the proposed development on bushland zoned or reserved for public open space purposes and, in particular, on the erosion of soils, the siltation of streams and waterways and the spread of weeds and exotic plants within the bushland, and*
- (e) *any other matters which, in the opinion of the approving or consent authority, are relevant to the protection and preservation of bushland zoned or reserved for public open space purposes.*

Comment:

The works do not require the removal or impact upon bushland located within the Public Reserve located to the west of the site. Furthermore, the site is located downslope of the adjacent bushland and therefore, the works will not result in sediment migration into the nearby bushland. It is noted that sediment and erosion control measures will be in place during construction works.

#### Concluding Remarks

Based on the above assessment, Council is satisfied that the proposed development is consistent with the relevant matters prescribed within SEPP 19.

#### **SEPP 55 - Remediation of Land**

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

#### **SEPP (Affordable Rental Housing) 2009**

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

#### **Division 2: Secondary dwellings**

##### Clause 19: Definition

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

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

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

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

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

##### Comment:

The proposed use is defined under WLEP 2011 as a secondary dwelling, which is consistent with the Standard Instrument definition noted above.

##### Clause 20: Land to which this Division applies:

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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 R2 Low Density Residential zone and, as such, the proposed use is permissible with consent under WLEP 2011.

Clause 21: Development to which this Division applies

Requirement	Comment
This Division applies to development, on land to which this Division applies, for the purposes of a secondary dwelling.	<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 proposed development involves the construction of a dwelling house, secondary dwelling and studio. The studio structure is not designed for separate habitation and is an ancillary function of the dwelling house. The dwelling house and secondary dwelling are detached from one another.
(3) A consent authority must not consent to development to which this Division applies unless:  (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and  (b) the total floor area of the secondary dwelling is no more than 60m <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.	The site is not subject to a Floor Space Ratio development standard.  The total floor area of the secondary dwelling is 58.4sqm, which complies with this SEPP and the WLEP 2011.
(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds:  (a) site area if:  (i) the secondary dwelling is located within, or is	The proposal is not being refused on any of the grounds specified within subclause (4).

attached to, the principal dwelling, or  
(ii) the site area is at least 450 square metres.

(b) parking if no additional parking is to be  
provided on the site.

**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.	<b>Consistent.</b> This application does not propose any subdivision of the existing allotment.

#### Conclusion

The proposed development is consistent with Division 2 of SEPP ARH.

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

A BASIX certificate has been submitted with the application (see Certificate No. 1146626M).

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

Commitment	Required Target	Proposed
<b>Water</b>	40	40
<b>Thermal Comfort</b>	Pass	Pass
<b>Energy</b>	50	61

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

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

##### Ausgrid

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

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

Comment:

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

**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	Dwelling House: 8.49m (RL90.26) Secondary Dwelling: 4.5m (RL83.19) Studio: 4.435m (taken from RL81.375)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

**Zone R2 Low Density Residential**

Concern is raised from neighbouring properties that the proposed development is inconsistent with the objectives of the R2 Low Density Residential zone. It is noted that dwelling houses and secondary dwellings are permissible land uses within the R2 Low Density Residential zone.

The proposed development is considered against the objectives of the zone as follows:

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

Comment:

The proposed dwelling house and secondary dwelling provides for additional housing stock within a low density residential environment. The works generally comply with the WLEP 2011 and WDCP 2011 numeric controls, with the exception of the wall height provision. Nevertheless, the upper floor of the dwelling house provides articulated walls and varied external finishes,

which alleviates the building mass. Overall, the proposed development is considered to be consistent with the desired future character of the locality, given the general level of compliance with applicable controls.

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

Comment:

The proposal provides for residential land uses within a low density residential area.

- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The proposed development complies with the WDCP 2011 landscaped open space provision and therefore, is considered to achieved the desired landscaped character for the area. Furthermore, the additional landscape treatment required by condition will result in an acceptable landscape outcome for the site. Overall, the proposal will be in harmony with the natural environment.

### Concluding Remarks

Having regard to the above assessment, it is concluded that the proposed development is permissible within the zone and consistent with the objectives of the R2 Low Density Residential zone.

### **4.3 Height of buildings**

Concern is raised from neighbouring properties that the proposed development exceeds the 8.5m statutory height limit, as prescribed within Clause 4.3 of the WLEP 2011. The neighbour stated that the maximum building height should be taken from the excavated level on the site.

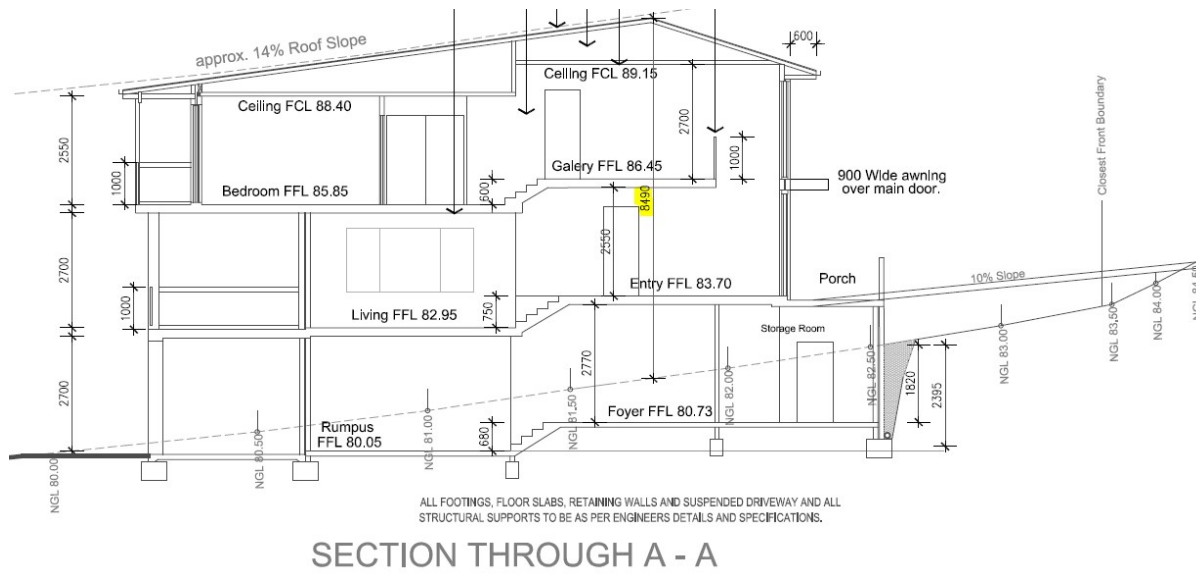
The WLEP 2011 stipulates that building height is the vertical distance from the existing ground level to the highest point of the building. The existing ground level should be taken from the levels of an undisturbed site, rather than an excavated level below the natural ground level.

This notion was raised within the NSW Land and Environment Court judgement *Bettar v Council of the City of Sydney [2014] NSWLEC 1070*, which stated that the basement *"Is the space of a building where the floor level of that space is predominately below existing ground level and where the floor level of the storey immediately above is less than 1m above existing ground level. From this definition, it does not follow that existing ground level becomes the level of the basement floor or the soil beneath the basement following construction of a basement. A basement is, by definition, below ground level and so the level of the basement floor cannot be taken to be existing ground level."*

In calculating the height of the dwelling house relative to the natural ground level, the maximum building height is 8.49m, thereby compliant with Clause 4.3 of the WLEP 2011. Figure 1 depicts the structure in relation to the natural ground level.

**Figure 1:** *Height of the development relative to the natural ground level (measurement highlighted in*

yellow)



#### 5.4 Controls relating to miscellaneous permissible uses

Clause 5.4(9) of the WLEP 2011 limits the total floor area of secondary dwellings to 60sqm. This correlates with the SEPP ARH.

The total floor area of the secondary dwelling is 58.4sqm, which complies with this provision.

#### 6.2 Earthworks

The objectives of Clause 6.2 of the WLEP 2011 require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and
- (b) to allow earthworks of a minor nature without requiring separate development consent.

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

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

##### Comment:

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

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

##### Comment:

The earthworks are not considered to be significant and will not preclude the future use or redevelopment of the land.



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

Comment:

The 35m<sup>3</sup> of excavated material will be processed according to the Waste Management Plan for the development. 30m<sup>3</sup> of the excavated material will be disposed of off-site, whilst 5m<sup>3</sup> will be reused as soil. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

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

Comment:

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

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

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

*(f) the likelihood of disturbing relics*

Comment:

The development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

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

Comment:

Sediment and erosion control measures will be implemented on site during construction works, which will minimise sediment migration onto nearby riparian lands.

Concluding Remarks

Having regard to the above assessment, it is concluded that the proposed development is consistent with the objectives and requirements of Clause 6.2 of the WLEP 2011.

## Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m (north)	8.07m	12.08%	No
	7.2m (south)	8.07m	12.08%	No

B3 Side Boundary Envelope	4m then projected at 45 degrees (north)	Within Envelope	-	Yes
	4m then projected at 45 degrees (south)	Within Envelope	-	Yes
B5 Side Boundary Setbacks	0.9m (north)	Dwelling: 4.5m Secondary Dwelling: 2.425m	-	Yes
	0.9m (south)	Dwelling: 2.5m - 4.5m Studio: 1.5m - 2m	-	Yes
B7 Front Boundary Setbacks	6.5m	7m	-	Yes
B9 Rear Boundary Setbacks	6m	6m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (371.12sqm)	52.5% (487.1sqm)	-	Yes

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	Yes
D9 Building Bulk	No	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	No	Yes
E10 Landslip Risk	Yes	Yes

### Detailed Assessment

#### **B1 Wall Heights**

##### Description of non-compliance

Clause B1 of the WDCP 2011 limits the external height of walls to 7.2m above the existing ground level. The maximum external wall height on the northern and southern elevations of the dwelling house is 8.07m above the existing ground level, which represents a 12.08% from the prerequisite. It is noted that the proposed secondary dwelling and studio structures comply with this requirement.

##### Merit consideration:

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

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

##### Comment:

The proposed development complies with the height of buildings development standard and WDCP 2011 envelope, setback and landscaped open space provisions. The roof form of the dwelling house steps down with the topography of the land, which slopes away from the frontage (west) towards the rear (east). The upper floor component incorporates varied wall plans and contrasting external finishes, which visually reduces the building bulk. Whilst the rear component of the dwelling presents as three storeys, the dwelling presents as a two storey structure when viewed from the streetscape, which is consistent with the surrounding built environment. Furthermore, the proposed landscape treatment within the front yard and street verge will provide further visual relief. For these reasons, the visual impacts of the proposal are considered to be reasonable, notwithstanding the wall height numeric non-compliance.

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

##### Comment:

The dwelling house complies with the height of buildings development standard and will remain below the established tree canopy within the locality.

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

Comment:

The development's impact upon existing views from adjoining properties has been considered against the view sharing planning principle established in the NSW Land and Environment Court Case of *Tenacity Consulting v Waringah* [2004] NSWLEC 140. In summary, the view impacts are considered to be minor and therefore, acceptable. This is discussed in further detail within the section of this report relating to Clause D7 of the WDCP 2011.

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

Comment:

The dwelling house provides generous side and rear setbacks, which will minimise the visual impacts of the development. Furthermore, the overshadowing impacts resulting from the proposal comply with the WDCP 2011 solar access provision and therefore, are considered to be equitable. Overall, it is considered that the proposal will have an acceptable impact upon the surrounding built environment, notwithstanding the wall height numeric non-compliance.

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

Comment:

The proposal involves up to 2.4m of excavation below the natural ground level towards the front of the dwelling, which is reduced as the dwelling extends towards the east (downslope). The site excavation works are not considered to be excessive and are found to be consistent with the objectives and requirements set out within Clause 6.2 of the WLEP 2011. Overall, Council is satisfied that the development adequately responds to the site topography.

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

Comment:

As noted above, the proposed dwelling house provides for a roof form that follows the slope of the site, which in turn provides a design that responds to the site topography and minimises amenity impacts upon adjoining properties. Overall, it is considered that the proposal achieves this objective.

## Concluding Remarks

Having regard to the above assessment, it is concluded that the objectives of the control have been achieved. Therefore, the application is supported on merit in this particular circumstance.

## **D6 Access to Sunlight**

Concern has been raised from adjoining properties with regards to the development's impacts upon solar access. It is noted that the most vulnerable property is the southern adjacent site (No. 6).

Clause D6 of the WDCP 2011 sets out the following requirements for solar access:

1. Development should avoid unreasonable overshadowing any public open space.
2. At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.

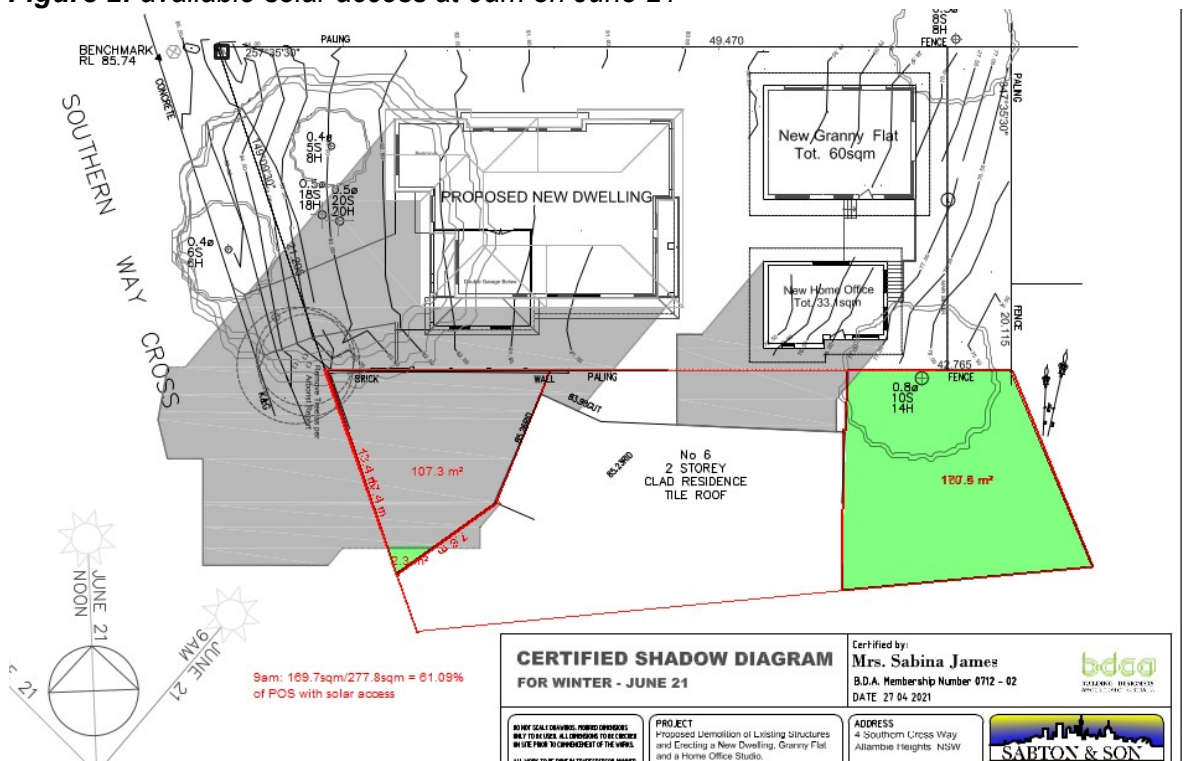
Comment:

The site does not directly adjoin land zoned for public open space and therefore, only requirement '2' of Clause D6 will be applicable for this assessment. Given the east/west orientation of the allotments along Southern Cross Way, the overshadowing impacts will be largely confined to the southern site (No. 6).

The Assessment Officer has also identified two areas of private open space on the adjoining site, these areas being a swimming pool area within the front yard and decking and a lawn area within the backyard. The private open space within the front yard is approximately 107.3sqm in area, whilst the private open space within the rear yard is approximately 165.5sqm in area.

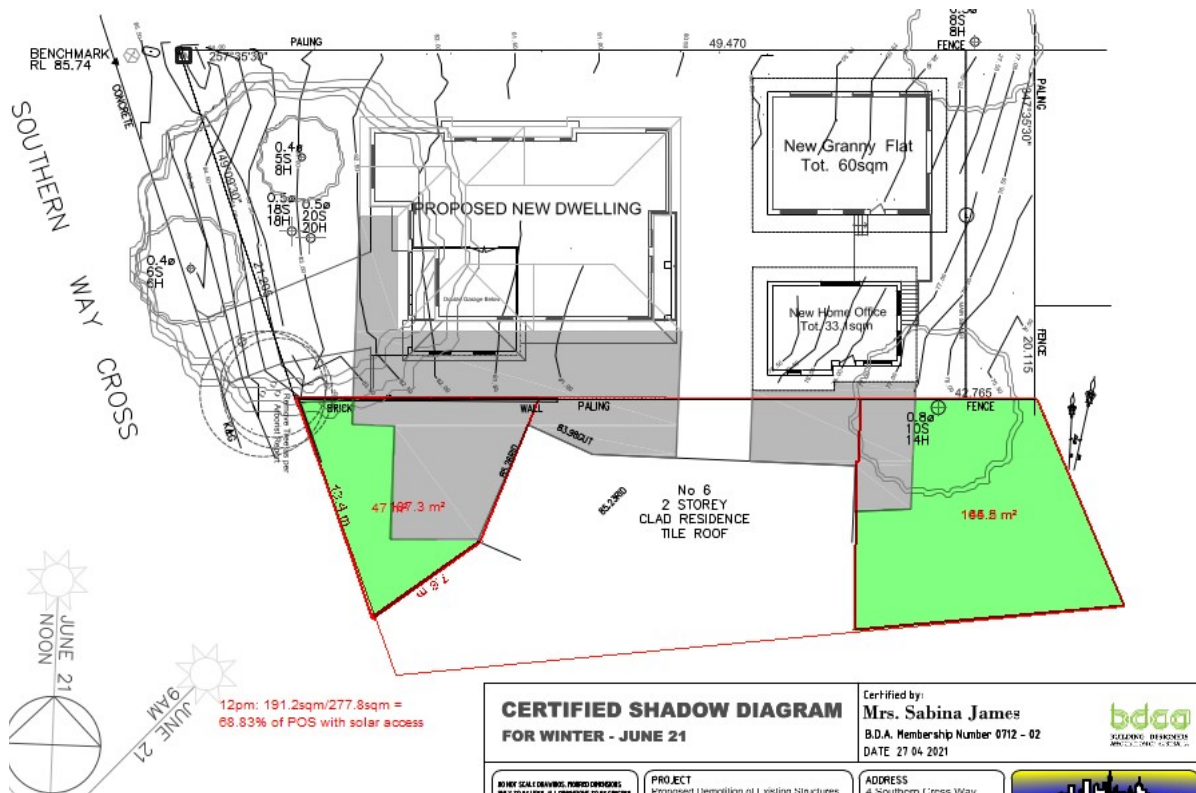
Council's Assessment Officer has utilised available information to extrapolate the outline and configuration of the southern adjacent site (No. 6). The outline of the adjoining private open space has been overlaid on the below shadow diagrams. The areas highlighted in green on the below diagrams represent portions of private open space that receive solar access at 9am, 12pm and 3pm on June 21 (winter solstice).

**Figure 2: available solar access at 9am on June 21**

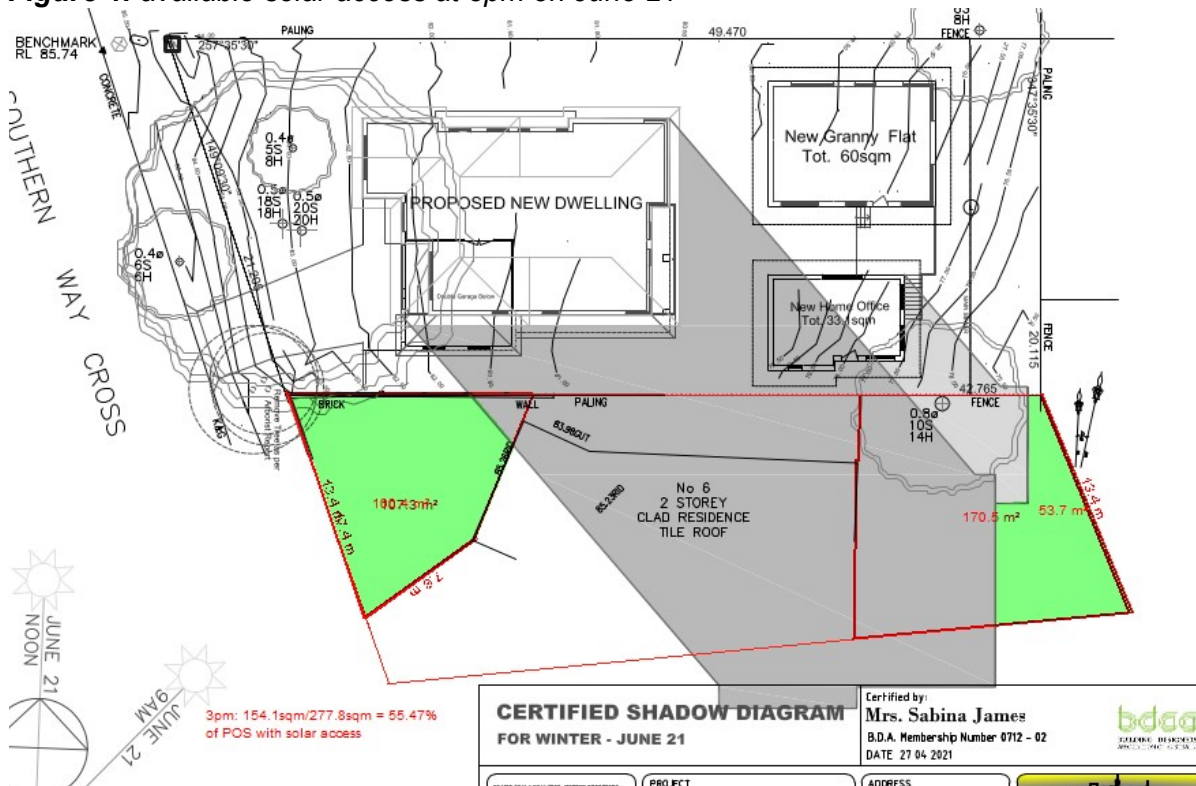


**Figure 3: available solar access at 12pm on June 21**





**Figure 4: available solar access at 3pm on June 21**



As demonstrated in the above shadow analysis, the most impacted period of the day is at 3pm on June 21. However, 55.47% of private open space will still receive sunlight during this time. Therefore, the proposed development maintains full compliance with this control between 9am-3pm on June 21.

It is concluded that the proposed development satisfies the requirements and objectives of this control.

## D7 Views

Council received a total of two (2) submissions from adjoining and nearby properties raising concern of the proposed development's impact upon existing views. The submissions were lodged from the owners/occupants of 2 Southern Cross Way (northern site) and 5 Jennifer Avenue, which is located approximately 40m to the north of the subject site.

Noting that there is a view corridor to the south-east that provides views towards Manly Beach and North Head, Council requested that the applicant erect height poles to represent the roofline of the proposed secondary dwelling and proposed studio. Certification has been provided from a Registered Surveyor to confirm that the poles have been established in accordance with the location and RLs on the plans. It is noted that the western pole within the studio footprint was established 50mm higher than the RL on the nominated plans. Nevertheless, this has not prevented Council from undertaking an accurate assessment.

Following receipt of the Registered Surveyor's certification, Council wrote to the owners/occupants of 2 Southern Cross Way and 5 Jennifer Avenue on 16 June 2021 requesting access to the properties to undertake a view impact assessment. Access was granted from the owners/occupants of 2 Southern Cross Way, which allowed the Assessment Officer to undertake an accurate view impact analysis from this property. However, a response has not been provided from the owners/occupants of 5 Jennifer Avenue. This has prevented Council from undertaking a view impact analysis from this property.

It is important to note that the photos provided within this report from a standing position have been taken from average eye level (i.e. approx. 1.65m above the floor levels).

### Merit consideration

The development is considered against the objectives of this control as follows:

- *To allow for the reasonable sharing of views.*
- *To encourage innovative design solutions to improve the urban environment.*
- *To ensure existing canopy trees have priority over views.*

### Comment:

In determining the extent of potential view loss to 17 Crown Road, the four (4) planning principles outlined within the NSW Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140* are applied to the proposal.

#### **1. Nature of the views affected**

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

### Comment:

The views from No. 2 are distant views towards Manly Beach, North Head and the Manly CBD. The views of Manly Beach do not include the land-water interface, however include the Norfolk Pine trees

located along the foreshore. The views of North Head include views of St Patrick's Estate. The views only contain minimal obstructions of existing vegetation and are generally unobstructed from certain vantage points. Whilst obtained from a distance, being approximately 4km from the Manly foreshore, the view is considered to be highly valuable.

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

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

### Comment:

The views are obtained over the southern side boundary of No. 2. The views are obtained from numerous parts of the property, which consists of the rear yard, a rear deck on the ground floor, a kitchen window on the ground floor (rear elevation) and a balcony on the first floor. The view from the rear yard and kitchen window is only obtained from standing positions, whilst the other available views can be obtained from sitting and standing positions. The views in question are shown in the below figures.

**Figure 5:** backyard standing views



**Figure 6:** ground floor kitchen window standing views





**Figure 7:** ground floor rear deck sitting views



**Figure 8:** ground floor rear deck standing views





**Figure 9:** first floor rear deck standing views



### 3. Extent of impact



*“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.*

Comment:

The roofline of the secondary dwelling will completely obstruct the existing view from the backyard. This is not considered to be unreasonable, given the view is obtained from natural ground level over a side boundary and within an area that is not conducive for higher volumes of pedestrian movement, unlike the rear decks or kitchen window. The only other vantage point that will be impacted by the proposal will be the sitting view from the ground floor rear deck, where a small portion of water will be obstructed. However, North Head will remain unaffected from this sitting view.

Given all other views will be retained, the qualitative extent of the view impact is considered to be negligible-minor.

#### **4. Reasonableness of the proposal that is causing the impact**

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

Comment:

The secondary dwelling that creates the negligible-minor view impact complies with all applicable WLEP 2011 and WDCP 2011 built form provisions. It is noted that the roofline of the secondary dwelling contains a pitch, rather than a flat or skillion roof. Despite this, the provision of a flat roof would not enable the retention of the standing view from the ground level within the backyard. The provision of a flat roof would allow for a small portion of water to be retained, however this is not warranted given the impact from the sitting view is miniscule and will not be discernable following the completion of building works.

Overall, Council is satisfied that the view impact is reasonable and therefore, adequate view sharing is achieved.

#### **Concluding Remarks**

Council is satisfied that the development achieves consistency with the objectives of this control and the planning principles outlined within the NSW Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140*.

#### **D8 Privacy**

### Merit consideration

The development is considered against the underlying objectives of the control as follows:

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

#### Comment:

Concern has been raised from nearby properties with respect to the proposal's impacts upon the visual privacy of surrounding properties. Council's assessment of this matter will address the individual privacy impacts resulting from the proposed dwelling house, secondary dwelling and studio.

### **Dwelling House**

It is noted that a portion of the balcony on the middle floor wraps around the southern side elevation of the dwelling house. The balcony is situated 3.5m from the southern boundary and contains a solid balustrade 1.2m above the finished floor level (FFL). The balcony is directly accessible from a kitchen and living area, which will receive higher volumes of pedestrian movement, when compared to bedrooms or bathroom areas. The 1.2m high solid balustrade will not prevent opportunities for overlooking into windows and open space areas on the southern adjacent site (No. 6) when standing on this balcony or viewing out the proposed living room window w17 towards the south. This particular issue is not considered to be a reasonable outcome, as the balcony and window w17 adjoins a large living room and kitchen area, which are areas the occupants of the principal dwelling house will spend their greatest periods of waking time. This notion is outlined within the NSW Land and Environment Court Case of *Meriton v Sydney City Council [2004] NSWLEC 313*, where Commissioner Roseth SC states that "*overlooking from a living area is more objectionable than overlooking from a bedroom where people tend to spend less waking time*".

To alleviate this issue, a condition has been included with this consent that requires the entire southernmost edge of the middle floor balcony to be affixed with a 1.65m screening device, which can comprise either a solid screen or louvre style construction with 20mm maximum openings. It is noted that this screening device may impact some view lines towards the south from the principal dwelling house. Nevertheless, the primary view corridor is located towards the south-east towards Manly Beach and North Head. In this regard, the occupants of the principal dwelling will be able to access this view when viewing over the rear elevation of the middle floor balcony, including windows and the balcony on the upper floor. Therefore, the condition will ensure a balanced outcome for the amenity of neighbouring properties and the occupants of the subject site.

In regards to the upper floor, it is noted that the rear balcony adjoining the bedrooms is setback approximately 12m from private open space within the rear yard at No. 6 and setback approximately 21m from the rear boundary. The balcony is 7.5sqm in area and adjoins less trafficable areas (bedrooms), when compared to the kitchen and living room downstairs. This factor, combined with the large setbacks from adjacent private open space areas, will ensure that the overlooking impacts are minimal and therefore, acceptable.

An additional condition requiring the principal dwelling window w29 to be amended to include a 1.5m high window sill or obscure glazing to 1.5m, when measured from the finished floor level, has been included to prevent overlooking into the swimming pool area within the front yard at No. 6.

## Secondary Dwelling

Whilst the secondary dwelling structure has a compliant rear setback of 6m, the structure is elevated above downslope properties and the 1m window sill heights on the rear elevation will not be sufficient to prevent downward overlooking into the pool area at 67 Binalong Avenue (eastern adjacent site). The windows adjoin the kitchen and living room of the secondary dwelling, which will receive greater volumes of pedestrian movement when compared to the bedrooms and bathroom/laundry. The proposed landscaping within the rear yard is not sufficient to solely rely on for privacy measures. Therefore, a condition is included with this consent requiring the secondary dwelling windows w4 and w5 to include a 1.5m high window sill or obscure glazing to 1.5m, when measured from the finished floor level. This will alleviate the privacy impacts from these windows.

In regards to the decking located between the secondary dwelling and studio, the rear elevation has been affixed with a 1.65m high privacy screen to prevent overlooking to the downslope eastern properties.

## Studio

The studio is an ancillary function of the dwelling house and is not designed for separate habitation, given there are no cooking facilities to allow for a separate occupancy. Nevertheless, the structure is located 2m from the southern boundary and contains a window (studio window w5) with a 750mm high window sill, which is sited 2.49m above natural ground level due to the slope of the land. The window would allow for direct overlooking into the rear yard at No. 6, which is not a reasonable outcome. A condition is therefore recommended with this consent requiring the studio window w5 to include a 1.5m high window sill or obscure glazing to 1.5m, when measured from the finished floor level.

The proposal, as amended via condition, will ensure a high level of visual and acoustic privacy for occupants and neighbours, which is consistent with the intent of this objective.

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

### Comment:

The proposal, as amended via condition, will result in an appropriate design suitable for the locality.

- *To provide personal and property security for occupants and visitors.*

### Comment:

It is assumed that a sense of person and property security will be maintained.

## Concluding Remarks

Having regard to the above assessment, it is concluded that the objectives of the control will be achieved, subject to conditions.

## D9 Building Bulk

#### Description of non-compliance

Clause B9 of the WDCP 2011 requires side and rear setbacks to progressively increase as the wall height increases. The side and rear setbacks do not progressively increase as the wall height increases, which does not satisfy this requirement.

#### Merit consideration

The development is considered against the underlying objectives of the control as follows:

- *To encourage good design and innovative architecture to improve the urban environment.*

#### Comment:

The proposal, as amended via condition, will result in an appropriate design suitable for the locality.

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

#### Comment:

The proposed development complies with the height of buildings development standard and WDCP 2011 envelope, setback and landscaped open space provisions. The roof form of the dwelling house steps down with the topography of the land, which slopes away from the frontage (west) towards the rear (east). The upper floor component incorporates varied wall plans and contrasting external finishes, which visually reduces the building bulk. Whilst the rear component of the dwelling is three storeys in height, the dwelling presents as a two storey structure when viewed from the streetscape. Furthermore, the proposed landscape treatment within the front yard and street verge will provide further visual relief. For these reasons, the visual impacts of the proposal are considered to be reasonable.

#### Concluding Remarks

Having regard to the above assessment, it is concluded that the objectives of the control will be achieved, subject to conditions.

### **E6 Retaining unique environmental features**

#### Description of non-compliance

The proposal includes the removal of portions of existing rock outcrops within the rear yard, which conflicts with the requirements of this control.

#### Merit consideration

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

- *To conserve those parts of land which distinguish it from its surroundings.*

Comment:

The rock outcrops are not readily visible from the street frontage and do not form a distinct natural feature within the streetscape. Furthermore, it is noted that some components of the rock outcrops will be maintained, with conditions included to this effect to ensure this. In this regard, Council is satisfied that the impacts upon the rock outcrops will be reasonable and not to the detriment of the locality.

Concluding Remarks

Having regard to the above assessment, it is concluded that the applicable objective of the control has been achieved. Therefore, the application is supported 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 \$7,020 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$702,000.

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

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

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

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

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

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2020/1691 for Demolition works of existing dwelling and construction of dwelling house, secondary dwelling and studio on land at Lot 2316 DP 752038, 4 Southern Cross Way, ALLAMBIE HEIGHTS, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

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

#### a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
PRO20.03, Page 1	10/10/2020	Sabton & Son
PRO20.03, Page 2	10/10/2020	Sabton & Son
PRO20.03, Page 3	10/10/2020	Sabton & Son
PRO20.03, Page 4	10/10/2020	Sabton & Son
PRO20.03, Page 5	10/10/2020	Sabton & Son
PRO20.03, Page 6	10/10/2020	Sabton & Son
PRO20.03, Page 7	10/10/2020	Sabton & Son
PRO20.03, Page 8	10/10/2020	Sabton & Son
PRO20.03, Page 9	10/10/2020	Sabton & Son
PRO20.03, Page 1b	10/10/2020	Sabton & Son
PRO20.03, Page 1c	10/10/2020	Sabton & Son
PRO20.03, Page 1d	10/10/2020	Sabton & Son
Schedule of Finishes	not specified	not specified

#### Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By



Bushfire Hazard Assessment Report REF No. 20.03.095	12/04/2020	Control Line Consulting
Arboricultural Impact Assessment Ref. AIA – JACZAC	27/06/2020	Keith Spelman
Geotechnical Investigation Ref. J2819	29/07/2020	White Geotechnical Group
BASIX Certificate No. 1146626M	05/11/2020	Greenworld Architectural Drafting

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
L/D2020-11, Sheet 1	14/10/2020	Dayspring Landscaping

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	15/10/2020	Mr. Jaczak

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	not dated

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

Nothing in this consent shall authorise the use of the structures as detailed on the approved plans for any land use beyond the definition of a dwelling house, secondary dwelling and detached studio.

Warringah Local Environmental Plan 2011 defines a dwelling house and secondary dwelling as follows:

***dwelling house*** means a building containing only one dwelling.

***secondary dwelling*** means a self-contained dwelling that—

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

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 defines a detached studio as follows:

***detached studio*** means a habitable building that is used for purposes ancillary to a dwelling house such as a home office, entertainment area, art studio or guest room and—

- (a) *is established in conjunction with a dwelling house, and*
- (b) *is on the same lot of land as the dwelling house, and*
- (c) *is separate from the dwelling house, and*
- (d) *is not used as a separate dwelling house, and*
- (e) *does not contain any cooking facilities.*

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

**4. Prescribed conditions (Demolition):**

- (a) 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 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
  - (ii) 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.

- (b) 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.

(c) 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.

Reason: Legislative Requirement.

## 5. **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.

#### 6. **General requirements (Demolition):**

(a) Unless authorised by Council:

Demolition and excavation works are restricted to:

- o 8.00 am to 5.00 pm Monday to Friday only.

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

(b) At all times after the submission a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. The consent shall be available for perusal of any Authorised Officer.

(c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(e) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A)

above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy. )

(i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

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

## 7. 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

### 8. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$7,020.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$702,000.00.

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.

#### **9. Security Bond**

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

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

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

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

#### **10. No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

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

Reason: To protect native vegetation.

#### **11. 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 RMS 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.

12. **Certification and Design of Elevated Parking Facility Work**

The Applicant shall submit a Structural Engineers' design and certificate certifying that the elevated parking facility is designed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls.

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

Reason: Safety and Compliance with this consent.

13. **Amendments to the approved plans**

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

Dwelling House

- A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost southern edge of the Middle Floor rear balcony located off the Lounge/Dinning/Kitchen as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.
- Window w29 must be amended to include a 1.5 metre high window sill or obscure glazing to a minimum height of 1.5 metres, when measured from the finished floor level.

Secondary Dwelling

- Windows w4 and w5 (eastern elevation) must be amended to include a 1.5 metre high window sill or obscure glazing to a minimum height of 1.5 metres, when measured from the finished floor level.

Detached Studio

- Window w5 (southern elevation) must be amended to include a 1.5 metre high window sill or obscure glazing to a minimum height of 1.5 metres, when measured from the finished floor level.

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.

14. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Australiawide Consulting Services Pty, drawing number SW02, SW03, dated 21/05/2021. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has

membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. The grated drain/ level spreader to be laid parallel to the contours and located minimum 3m from the rear and side boundaries.
- ii. The transpiration bed to be deleted.
- iii. The flows through the level spreader to be controlled in accordance with Appendix 4 of Council's Water Management for Development Policy

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

**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 vehicular crossing, suspended driveway and any retaining walls in the road reserve 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. A vehicular crossing 4 metres wide should be constructed in accordance with Council's standard drawing A4/3330/3 NL.
2. Structural details for the suspended driveway. The section of the driveway in the road reserve is to have fill and batter to match existing levels in the road reserve. Retaining structures supporting the driveway are to be within the property.
3. Structural details for any retaining walls supporting the driveway.
4. Safety barriers and sight distances are to be in accordance with AS/NZS 2890.1:2004.
5. Details of any retaining walls supporting the road reserve.
6. A services plan indicating all services in the road reserve. Where any services are to be adjusted as a result of the works, approval from the relevant service authority is to be provided with the application.
7. Structural Engineer's certification of the design of all retaining walls, elevated driveway and safety barriers.

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 Certifying Authority 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. Structural Adequacy and Excavation Work**

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

**17. 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.

**18. External Finishes to Roof**

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

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

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

**19. Sydney Water "Tap In"**

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

## **CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

**20. Tree Removal Within the Property**

Proposed tree removal within the property consists of Exempt Species only: tree 6 Grevillea - exempt by height, tree 7 Avocado - exempt by species, and tree 8 Oleander - exempt by

species. These are identified in Table 1: Tree Assessment & Impacts Evaluation of the Arboricultural Impact Assessment.

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal.

Reason: to enable authorised building works.

21. **Tree Removal Within the Road Reserve**

This consent approves the removal of the following tree with poor structure and form and impacted by the proposed driveway within the road reserve (as recommended in the Arboricultural Impact Assessment and identified in Table 1: Tree Assessment & Impacts Evaluation):

- tree 1 - Eucalyptus globulus (Flooded Gum), subject to street tree replacement within the verge

Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services Section prior to removal.

Reason: Public liability.

22. **Dead or Injured Wildlife**

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 protect native wildlife.

23. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

## 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 Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should 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 trees fronting the development site shall be protected by tree protection fencing in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings and in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

As a minimum, the tree protection fencing for the Brushbox street tree fronting the development site shall consist of standard 2.4m panel length to four sides as identified for installation prior to commencement of works as shown in the Demolition Plan, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture.

All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

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 not approved for removal, 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.

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

i) section 6.0, section 7.0, section 8.0, and section 9.0 Conclusion & Recommendations.

Additionally, tree protection fencing installed prior to demolition works shall be erected to the alignment as shown on the Demolition Plan.

The Certifying Authority must ensure that:

d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.

e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

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

Reason: Tree and Vegetation Protection.

## 27. **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.

## 28. **Removing, Handling and Disposing of Asbestos**

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

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

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

## 29. **Survey Certificate**

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

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

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

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

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

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

**30. 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.

**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 Certifying Authority and/or Roads Authority.

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

**32. Notification of Inspections (infrastructure works to be handed over to Council)**

Council's Development Engineer is to be given 48 hours notice when the works reach the following stages:

- (a) Prior to pouring driveway slab
- (b) Prior to pouring of kerb and gutter
- (c) Prior to pouring of footings for retaining walls

NOTE: Any inspections carried out by Council do not imply Council approval or acceptance of the work, and do not relieve the developer/applicant from the requirement to provide an engineer's certification.

Reason: To ensure new Council infrastructure is constructed in accordance with Auspec 1 Council's design and specification standards.

**33. 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.

**34. Vehicle Crossings**

The Applicant is to construct one vehicle crossing 4 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ 3NL 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 Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

**35. Aboriginal Heritage**

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

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

Reason: Aboriginal Heritage Protection.

**36. Geotechnical Inspections and Certification**

A suitably qualified geotechnical engineer/geologist must undertake the following inspections:

- During the excavation process, the geotechnical consultant is to inspect the cut face in 1.5 metre intervals as it is lowered to ensure ground materials are as expected and that additional support is not required.
- All footings are to be inspected and approved by the geotechnical consultant while the excavation equipment is still onsite and before steel reinforcing is placed or concrete is poured.

Documented evidence must be provided to the Certifying Authority.

Reason: To ensure geotechnical risk is mitigated appropriately.

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

**37. Street Tree Planting**

Street trees shall be planted in accordance with the following:

- One (1) *Syzygium leuhmannii* located between the existing power pole and the existing Brushbox street tree.

All street trees shall be a minimum planting size of 75 litres, and shall meet the requirements of

#### Natspec - Specifying Trees.

All street 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 including a four post and top and mid rail timber tree guard and watered until established and shall be generally be centralised within the road verge.

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

Reason: To maintain environmental amenity.

#### 38. **Landscape Completion**

Landscaping is to be implemented in accordance with the approved Landscape Plan.

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

Reason: Environmental amenity.

#### 39. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans and these conditions of consent.

Details demonstrating compliance are to be prepared by the landscape architect and provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

#### 40. **Replacement of Canopy Trees**

At least 1 locally native canopy tree is to be planted on site to replace protected trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with species found within the nearby reserve. A suitable replacement would be the same as that being removed (*Corymbia gummifera*).

Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To establish appropriate native landscaping.

#### 41. **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.

42. **Reinstatement of Kerb**

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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

Reason: To facilitate the preservation of on street parking spaces.

43. **Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures**

The Applicant shall lodge a Legal Documents Authorisation Application with Council. The application is to include the original 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 by a Registered Surveyor) and Hydraulic Engineers' certification for the completed on-site stormwater detention system works. A guide to the process can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/guide-submitting-ldaa-nov19.pdf>

The form for the application can be found on Council's website using the following link.

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/pdf-forms/legal-documents-authorisation-on-site-stormwater-detention-systems/4023-legal-documents-authorisation-oct19.pdf>

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

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

Reason: To ensure the on-site stormwater detention system is maintained to an appropriate operational standard and not altered.

44. **Certification Elevated Parking Facility Work**

The Applicant shall submit a Structural Engineers' certificate certifying that the elevated parking facility was constructed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls.



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

Reason: Compliance with this consent.

45. **Retaining wall**

The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate.

Reason: Public and Private Safety

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

46. **Landscape Maintenance**

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

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

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

47. **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.

48. **Detached Studio not to be used for Separate Occupancy**

The approved detached studio is not permitted to be used, or adapted to be used, for separate occupancy.

Reason: To ensure consistency with the terms of this consent and the zoning requirements for the site.

49. **Noise**

All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

Reason: To ensure an appropriate level of residential amenity.

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

**Signed**



**Thomas Burns, Planner**

The application is determined on 06/07/2021, under the delegated authority of:



**Catriona Shirley, Acting Development Assessment Manager**