

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1512
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Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot 13 DP 606591, 140 Ocean Street NARRABEEN NSW 2101
Proposed Development:	Demolition and construction of multi dwelling housing.
Zoning:	Warringah LEP2011 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Trust Mission Strs Of Bless Virgin Mary
Applicant:	John O'Brien Architect

Application Lodged:	20/12/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	18/01/2020 to 01/02/2020
Advertised:	18/01/2020
Submissions Received:	4
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,200,000.00
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EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of Development Application DA2019/1512 for demolition works and construction of multi dwelling housing at 140 Ocean Street, Narrabeen.

The cost of works for this application is greater than 1 million dollars and has received more than three objections. As such, the application is referred to the Development Determination Panel.

Council received four (4) submissions relating to site isolation/consolidation, solar access, privacy, parking, design and bulk and scale from neighbouring properties.

Council wrote to the applicant on 3 March 2020 outlining outstanding issues relating to site

consolidation, stormwater management and access. Following this, the applicant provided additional information to address concerns raised on 26 March 2020.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this assessment is detailed within this report.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be approved subject to conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for the demolition of the existing structures on site and construction of a two storey multi-dwelling housing development.

The proposed building consists of the following:

- Two x 2 bedroom dwelling;
- One x 4 bedroom dwelling;
- 5 off-street car parking spaces and 4 bicycle spaces;
- Front gate;
- Landscaping.

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 - 2.7 Demolition requires consent
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks

- Warringah Development Control Plan - B9 Rear Boundary Setbacks
- Warringah Development Control Plan - C2 Traffic, Access and Safety
- Warringah Development Control Plan - C3 Parking Facilities
- Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
- Warringah Development Control Plan - D6 Access to Sunlight
- Warringah Development Control Plan - D19 Site Consolidation in the R3 and IN1 Zone

SITE DESCRIPTION

Property Description:	Lot 13 DP 606591 , 140 Ocean Street NARRABEEN NSW 2101
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Ocean Street, Narrabeen.</p> <p>The site is regular in shape with a frontage of 15.95m along Ocean Street and a depth of 60.9m. The site has a surveyed area of 957.4m².</p> <p>The site is located within the R3 Medium Density Residential zone and accommodates a dwelling house.</p> <p>The site slopes from east to west, with a fall of approximately 1.6m.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by single and multi dwelling house including residential flat buildings.</p>

Map:



SITE HISTORY

Prelodgement Meeting No. 2019/0087

The applicant attended a meeting with Council on 21 May 2019 to discuss the preliminary concept proposal for the construction of three attached multi-unit dwellings on the subject site.

The primary issues raised in the meeting included parking, built-form non-compliance and landscape treatment to the built form.

The design proposed in this current development application scheme is consistent with that proposed in the prelodgement meeting.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. The provisions of SEPP 65 do not strictly apply, thereby negating the requirement of Clause 50(1A) for a design verification certificate.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to site amalgamation and stormwater management.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent</p>

Section 4.15 Matters for Consideration'	Comments
	<p>authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Lauren Elizabeth McHugh	22 / 134 - 138 Ocean Street NARRABEEN NSW 2101
Mr Stuart William Bennetts Ms Linda Brenda Quy	21 / 134 - 138 Ocean Street NARRABEEN NSW 2101
Mrs Susan Lorraine Green	15 / 134 - 138 Ocean Street NARRABEEN NSW 2101
Tomasy Pty Ltd	1073 Pittwater Road COLLAROY NSW 2097

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

- **Site Isolation**
- **Privacy**
- **Solar Access**
- **Visual Impact/Design**
- **Over development/built form non-compliance**
- **Landscaped area non-compliance**
- **Noise**
- **Boundary wall/fence**
- **Parking**

The matters raised within the submissions are addressed as follows:

- **Site Isolation**

Comment:

The adjoining property to the north (No. 142 Ocean Street) has raised concern in relation to site isolation. The objection argues that the proposal will isolate or sterilise the site (No. 142 Ocean Street, Narrabeen) in regards to future development. The objection notes non-compliance with part *D19 Site Consolidation in the R3 and IN1 Zone* of the Warringah DCP 2011. The objection also raises and addresses the Land and Environment Court Case: *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 (Planning Principle related to Site Isolation). The development application has been assessed against the objectives of part *D19 Site Consolidation in the R3 and IN1 Zone* of the Warringah DCP 2011 within this report. In summary, based on the information provided and having regards to the relevant Land and Environment Court planning principles the application is supported.

- **Privacy**

Comment:

Concern was raised by neighbouring properties to the rear in regards to the potential overlooking between the subject site and adjoining properties.

The proposed courtyards to the rear of the dwellings and northern side of the dwelling are located at ground level and do not result in any direct overlooking between the subject property and adjoining dwelling house to the north, as well as the residential flat building to the west. All other windows and outdoor living areas provide adequate physical separation between the subject site and adjoining dwellings.

- **Solar Access**

Comment:

Concern was raised in regards to the loss of sunlight to neighbouring properties to the south

(No. 134-138 Ocean Street, Narrabeen). Particular concern was raised in regards to north facing windows and private open space. The development application has been assessed against the solar access provisions under Part D6 of the Warringah DCP. In summary, the shadow diagrams submitted with the application demonstrate adequate solar access is provided to neighbouring properties through the winter solstice on June 21 between 9:00am and 3:00pm.

- **Visual Impact/Design**

Comment:

Concern is raised in regards to the design of the proposal and the overall resulting visual impacts. Specific concern was raised in regards to the carport to the front of the dwelling house. A detailed assessment of the non compliance under *Part B7 Front boundary setbacks* of the Warringah DCP in this report. In summary, the minor variation to the front setback control is supported. The proposed carport will present as part of the overall building when viewed from the street. Landscaping between the proposed carport and front boundary will further offset and visual impact.

- **Over development/built form non-compliance**

Comment:

Concern is raised in regarding the bulk and scale of the proposed development, stating that the extent of built form non-compliance attributes to an unacceptable built form. Whilst each of the specific areas of non-compliance raised are addressed in detail below, the proposed development is considered to be an appropriate design solution in response to the constrained nature of the site. The bulk and scale of the proposal is not considered to present as overly bulky or out of scale with surrounding properties.

- **Landscape area non-compliance**

Comment:

Concern was raised in regards to the level of landscaping proposed across the site. The development application proposes a significant variation to the numeric control and the proposal has been assessed in detail against *Part D1 Landscaped Open Space and Bushland* of the Warringah DCP in this report. In summary, while non-compliant with the landscaped open space control, the variation proposed under this application is considered consistent with the streetscape and satisfactory on merit.

- **Noise**

Comment:

Concern is raised in regards to the noise impact that would result from the off-street parking on the site. The proposed of-street parking serves all three dwelling proposed on site. While it is accepted there may be a noise impact associated with the off-street parking in terms of cars entering and exiting the site, the resulting impact is acceptable in this residential context and not unreasonable in a R3 Medium Density Residential Zone.

- **Boundary wall/fence**

Comment:

A submission has been received from an adjoining property owner raising concern regarding the southern wall between the subject site and No. 134-138 Ocean Street. The objection suggests a new double brick boundary wall is to be built to ensure safety and acoustic impacts are mitigated. However, no works are proposed to the existing wall/fence along this side of the subject site. As no works are proposed to the existing boundary fence, no concern is raised by Council in this regard. The resultant treatment of the boundary and any necessary fencing will then be a matter to be resolved between the relevant land owners.

- **Parking**

Comment:

Concern is raised in regards to the number of off-street parking spaces provided as part of this proposal. The objector notes six (6) off-street parking spaces are required. Based on *Appendix 1* of the Warringah DCP five (5) car spaces are required for multi-dwelling housing. As such, the proposal is compliant with this control. Car parking calculations are provided within this report under part *C3 Parking Facilities* of the Warringah DCP 2011.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The Landscape Plan submitted with the application is noted and considered satisfactory with regard to the relevant planning controls. No significant landscape features are affected by the proposed works. No objections are raised to approval subject to conditions as recommended.
NECC (Coast and Catchments)	<p>The proposal is supported for approval without conditions. The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>On internal assessment the DA satisfies the requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p>
NECC (Development Engineering)	<p>Reference is made to Development Engineering Referral Response dated 6/2/20 and additional information provided by the Applicant.</p> <p><u>Note to Planner:</u></p> <p>Matters previously raised relating to stormwater have not been adequately addressed by the Applicant.</p> <p>The Applicant's Response states that a letter has been provided to Council to address matters related to the driveway. This document is unable to be located in TRIM and in this regard further assessment is unable to be undertaken at this time.</p> <p><u>Stormwater:</u></p> <p>The proposed Stormwater Concept Plan is unsatisfactory. As previously advised, in accordance with Council's Warringah Stormwater Drainage from Low Level Properties Technical Specification Section 2.3, stormwater disposal shall be via a gravity fed pipeline where properties fall naturally away from the street. This will require an easement to drain water through downstream property.</p> <p>It is noted that the response provided by the Applicant has indicated that discussions regarding the obtaining of an easement have</p>

Internal Referral Body	Comments
	<p>commenced with downstream property owners. No evidence has been provided demonstrating owners consent for the creation of an easement.</p> <p>Insufficient information has been provided with regard to the proposed Stormwater Concept plan. No proposed levels have been shown on the stormwater plans for a detailed assessment to be undertaken. Any stormwater design, including for the inter-allotment drainage line, shall demonstrate compliance with design requirements of Council's policy and previously provided Development Engineering advice, including the submission of calculations, models and long-sections.</p> <p><u>Driveway:</u></p> <p>Further assessment required upon receipt of the additional information as noted above.</p> <p>The proposed application cannot be supported by Development Engineering due to lack of information to address:</p> <ul style="list-style-type: none"> • Vehicle access for the development in accordance with clause C2 Traffic, Access and Safety. • Stormwater drainage for the development in accordance with clause C4 Stormwater. <p>Dated 18/06/2020,</p> <p>The revised Stormwater management plan and traffic report for the development is acceptable. No Development Engineering objection subject to conditions.</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1057073M dated 18 November 2019).

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

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

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

SEPP (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. Standard condition recommended.

SEPP (Coastal Management) 2018

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

The proposal is unlikely to have an adverse impact on any of the above.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
- (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The proposal design and siting will avoid any adverse impacts on the biophysical, hydrological, ecological and/or coastal environment.

14 Development on land within the coastal use area

- (1)
- (a) *has considered whether the proposed development is likely to cause an adverse impact on the following:*
 - (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to*

- foreshores,
- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
- (b) is satisfied that:
- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposal is not likely to have adverse impact on the surrounding coastal environment.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

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

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

Comment:

The development is unlikely to cause increased risk of coastal hazards on the subject site or other land.

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:	8.50m	7.20m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes

Clause	Compliance with Requirements
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes

Detailed Assessment

2.7 Demolition requires consent

The survey notes the garage to be a fibro garage. As such, conditions have been imposed to ensure demolition works are carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B2 Number of storeys	2	2	-	Yes
B3 Side Boundary Envelope	4m (North)	Within Envelope	-	Yes
	4m (South)	Within Envelope	-	Yes
B5 Side Boundary Setbacks	4.5m (North)	1.8m (Courtyard) 4.5m (Dwelling Wall)	60%	No
	4.5m (South)	4.5m	-	Yes
B7 Front Boundary Setbacks	6.5m	6m (Carport) 11.8m (Dwelling)	7.7%	No
B9 Rear Boundary Setbacks	6m	2.4m (Courtyard) 6.54m (Dwelling)	60%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	50% (478.6sqm)	31.19% (298.6sqm)	37.6%	No

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B2 Number of Storeys	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D19 Site Consolidation in the R3 and IN1 Zone	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

Description of non-compliance

Clause B5 of the WDCP 2011 stipulates that development is to be setback at least 4.5m from side boundaries. The proposed courtyard on the northern side of the development is setback 1.8m, non-compliant with the numeric control. represents a 60% variation to the numeric control.

Merit consideration

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

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

Comment:

A discussion on the provision of landscaping can be found in this report under Part D1 which concludes that the landscaped solution proposed is acceptable.

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

Comment:

The development is not found to be of a scale or architecture that is unreasonably visually dominant. The area of non-compliance is located at ground level and is not of an unseasonable bulk and scale. Given these factors it is not considered that the courtyard will be visually dominant when viewed from the public domain. Further, the structure will not be visually dominant when viewed from both the properties to the north and south.

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

Comment:

The bulk of the development is considered to be acceptable within the R3 Medium Density Residential zone given the size of the allotment and the opportunities present for additional landscaping. The proposed development is consistent with the 8.5m Height of Building development standard, the primary control of bulk and scale. No further design changes are warranted to further minimise the bulk and scale of the development.

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

Comment:

As noted above, the proposed development adjoins similar size and scale development to neighbouring properties. The areas of non-compliance will not give rise to unreasonable privacy impacts to adjoining properties. Furthermore, the non-compliant components of the development will not result in an unreasonable level of overshadowing to the adjoining property to the south.

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

Comment:

The proposed development will not compromise views from to and from public and private properties including neighbouring properties.

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

B7 Front Boundary Setbacks

Description of non-compliance

The control requires development to be setback 6.5m from the front boundary. The proposed carport is setback 6m, non-compliant with the numeric control. This represents a 7.7% variation to the numeric control.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The proposed carport occupies a small portion of the front setback area and ensures compliance with the parking requirements on site. In turn, the carport will not be visually imposing within the streetscape and will encourage a sense of openness. The variation sought to the front setback requirement is not found to detract from a sense of openness given that the proposed carport is of an open design.

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

Comment:

The proposed development is consistent with the established front setback along Ocean Street. Other surrounding allotments to the north and south have structures similarly within the front boundary line, and thereby the pattern of buildings is maintained.

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

Comment:

The encroaching elements are minor structures and are generally appropriate to the ground level, with landscape spaces adjacent. Landscape planting includes a mix of deep soil grassed areas, small to medium shrubs and small trees appropriate to the coastal environment. In this regard, the landscaping proposed will ensure the development does not have an adverse impact on the visual quality of Ocean Street.

- *To achieve reasonable view sharing.*

Comment:

The proposed carport will not compromise views to and from private and public properties.

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

B9 Rear Boundary Setbacks

Description of non-compliance

The control requires a rear setback of 6.0m. The proposed rear courtyard is setback 2.4m, non-compliant with the numeric control. This represents a 60% variation to the numeric control.

Merit consideration:

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

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment:

Despite the shortfall in landscaped open space, the proposal allow for adequate opportunities for deep soil landscape areas across the site.

- *To create a sense of openness in rear yards.*

Comment:

The non-complaint components of the proposal pertaining to the rear setback control occupy only a minor aspect of the rear setback area. In this regard, the proposed development is not considered to detract from a sense of openness within the rear yard.

- *To preserve the amenity of adjacent land, particularly relating to privacy between buildings.*

Comment:

No unreasonable privacy impacts are anticipated to arise as a result of the proposed development. The proposed courtyard is sufficiently setback from the rear boundary so as not to encourage any unreasonable overlooking impacts between properties.

- *To maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements.*

Comment:

Due to the irregularity of the allotment dimensions within the locality, there is not an established rear building line prevalent across nearby properties. This assessment concludes that the location of the proposal in relation to the rear boundary is acceptable, given no unreasonable amenity impacts will be associated with the development. Furthermore, the proposal does not necessitate the removal of important trees or significant landscape features within the rear yard.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

As noted above, the proposal will not give rise to unreasonable privacy impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent

with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

C2 Traffic, Access and Safety

The proposed development has been reviewed in detail by Council's Development Engineer who raises no objections to the proposed development, subject to conditions.

C3 Parking Facilities

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Multi dwelling House	One x 2-bedroom dwelling (1.2)	1.2	5	Nil
		1.2		
	One x 2-bedroom dwelling (1.2)	1.5		
	One x 4 - bedroom dwelling (1.5)	1		
	Visitor - 1 space			
Total		4.9 (5)	5	Complies

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

Clause D1 of the WDCP 2011 stipulates that development is to provide at least 50% (478.6sqm) of the site area as landscaped open space. In calculating landscaped open space landscaped areas with dimensions less than 2m are excluded from the calculation. The application proposes 31.19% (298.6sqm) of the site area as landscaped open space, non-compliant with the numeric control. This represents a 37.6% variation to the numeric control.

Merit consideration

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

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

Comment:

Adequate landscaping is proposed to both the rear, side and front of the site to complement the desired character of the street and the overall Narrabeen locality.

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

Comment:

There are no threatened species, significant topographical features of vegetation identified on site.

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

Comment:

Sufficient area of deep soil are maintained to both the front and rear of the dwelling house to enable the establishment of low lying shrubs, medium high shrubs and canopy trees.

- *To enhance privacy between buildings.*

Comment:

Existing screen planting to the rear of the site, while not relied on for visual privacy may help offset privacy between properties.

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

Comment:

The rear yard would provide appropriate recreational opportunities to sufficiently meet the needs of the occupants.

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

Comment:

The site contains a sufficient amount of space for service functions, including clothes drying.

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

Comment:

The proposal would allow for suitable drainage, subject to conditions imposed by Council's Development Engineers.

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

D6 Access to Sunlight

Merit consideration

Clause D6 of the WDCP 2011 stipulates that at least 50% of the required area of private open space for

the subject site and adjoining properties are to received at least three (3) hours of sunlight between 9am and 3pm on June 21 (Winter Solstice). Concern was raised within a submission of the bulk and scale of the proposed development and the resulting overshadowing to adjoining properties that may arise. Accordingly, the application is assessed against the requirements of the Control as follows:

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

Comment:

Three submissions in regards to solar access have been received by the apartments (Nos. 15, 21 and 22) in the two storey residential flat building to the south (No. 134- 138 Ocean Street). The apartments are located at ground floor level on the northern side of the building and currently enjoy sunlight from the north, east and west during 9am and 3pm during the day. Given the existing situation in regards to solar access, the apartments are highly vulnerable to being overshadowed by any development on the subject site. The private open space of these properties are also vulnerable to self shadowing throughout 9am to 3pm during the winter solstice by virtue of siting and fencing.

The shadow diagrams submitted with the application indicate that the private open space of the ground floor north facing apartments of No. 134- 138 Ocean Street will be impacted by the development. The existing situation means that any first floor element on the subject site would result in a non-compliance with Part D6 of the Warringah Development Control Plan. This is contributed to by the orientation of the private open space of No. 134- 138 Ocean Street and the siting of the existing development on the subject site. Despite the lack of sunlight to the private open space areas of these apartments throughout the winter solstice, the opportunity for light to penetrate the living rooms throughout the winter solstice, provides a situation in which there is adequate sunlight to these units. It is also noted that the shadow diagrams indicate that between the hours of 12 midday and 3pm on June 21 the private open space area of the adjoining dwellings will retain solar access to these private open space areas.

As described above the north facing ground floor apartments of No. 134- 138 Ocean Street are considered to be highly vulnerable to overshadowing given their aspect, design and location of private open space areas and the constraints of the subject site that burden any substantial development. The vulnerability of the ground floor apartments to overshadowing extends to the extent that even a building that goes beyond full compliance with side boundary setbacks (4.5m) would result in overshadowing of the private open space areas of the adjoining north facing units.

For the reasons outlined above it is considered that a reasonable level of access to sunlight is provided to the adjoining properties private open space areas and the private open space areas of the proposed dwellings.

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

Comment:

The proposal is considered to be generally acceptable in the context of the site and surrounding development, and will provide a development that will be a improvement to the urban environment. The design is considered to be sufficiently innovative, and will not have unreasonable impacts on the solar access of neighbours, as discussed above.

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

Comment:

As detailed above, the proposal will have no unreasonable impact on the penetration of mid winter sunlight into high use indoor areas of the southern neighbour..

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

Comment:

The main indoor living areas of the proposal are orientated to the west and north and will be warmed by the sun in the morning in mid winter. The development is considered to adequately promote passive solar design and the use of solar energy.

- *To minimise the need for artificial lighting.*

Comment:

Windows provided along the north, east and southern side of the development will allow for sunlight to penetrate living areas, mitigating the need for artificial lighting.

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

D19 Site Consolidation in the R3 and IN1 Zone

Merit consideration

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

- *To encourage lot consolidation to allow efficient use of land.*

Comment:

The objective of this clause is to encourage lot consolidation to ensure the orderly and efficient use of land, in line with the objectives of the Environmental Planning and Assessment Act 1979. The subject site and the adjoining property to the North (No. 142 Ocean Street, Narrabeen) remain undeveloped with regard to neighbouring development along the western side Ocean Street. The two allotments could, and ideally should, be amalgamated to facilitate the desirable use of the land.

In assessing this application reference is made to the planning principal within *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 when considering amalgamation of sites and isolation of sites through redevelopment. This is provided below:

"The general questions to be answered when dealing with amalgamation of sites or when a site is to be isolated through redevelopment are:

- *Firstly, is amalgamation of the sites feasible?*
- *Secondly, can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?*

18 The principles to be applied in determining the answer to the first question are set out by Brown C in *Melissa Grech v Auburn Council* [2004] NSWLEC 40. The Commissioner said:

Firstly, where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements then negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of the development application.

Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property.

Thirdly, the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application. The amount of weight will depend on the level of negotiation, whether any offers are deemed reasonable or unreasonable, any relevant planning requirements and the provisions of s 79C of the Environmental Planning and Assessment Act 1979."

Comment:

The principles set out by Brown. c in the Land and Environment Court Case *Melissa Grech v Auburn Council* [2004] NSWLEC 40 require that the developer of a property must make reasonable and genuine attempts to purchase adjoining land that could become isolated by this development. In this case, the circumstance sees the owner of the subject site not wanting to amalgamate with the adjoining property to the north. While a formal offer has not offered up to Council by the applicant or objector, it has been noted by both the owner and adjoining northern property that an attempt by the owner of No. 142 to amalgamate the site has been unsuccessful. The applicant has made it clear in their application that the owners of the subject site (Missionary Sisters) have no interest in further developing the site, beyond that of a 'boutique' multi dwelling development.

"19 In the decision *Cornerstone Property Group Pty Ltd v Warringah Council* [2004] NSWLEC 189, I extended the principles of Brown C to deal with the second question and stated that:

The key principle is whether both sites can achieve a development that is consistent with the planning controls. If variations to the planning controls would be required, such as non compliance with a minimum allotment size, will both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity.

To assist in this assessment, an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the

subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road.

The subject application may need to be amended, such as by a further setback than the minimum in the planning controls, or the development potential of both sites reduced to enable reasonable development of the isolated site to occur while maintaining the amenity of both developments".

Comment:

Given that an agreement in regards to the amalgamation of the two sites has failed, the NSWLEC decision of *Cornerstone Property Group v Warringah Council* [2004] NSWLEC 189 requires that it be demonstrated can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible. The applicant has submitted concept plans of No. 142 which propose a envelope in response to Council requesting further information with regard to this matter.

The concept drawings provide a building envelope for similar size multi-dwelling development on No. 142 to what is being proposed under this application. It is worth noting that No. 142 is of similar size and shape as the subject site being a rectangular site with a site area of 929sqm (subject site area 957.4sqm). Given the subject proposal will allow for suitable development without any unreasonable amenity impacts or streetscape impacts, it can be concluded that a development of a similar scale can be achieved on site consistent with the aims and objectives of the R3 Medium Density Zone.

As such, it can be determined that amalgamation is not feasible in this instance and a suitable development yield can be achieved for No. 142 Ocean Street as an isolated site.

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

Comment:

The applicant has sought to demonstrate that a smaller multi dwelling development can still be carried out in a manner that is a good outcome for the site and surrounding land. The applicant has demonstrated some innovative measures to address the numerous non-compliances with the built form controls. This includes design measures to minimise or address issues of privacy, setback encroachments, overshadowing, landscaped areas and building bulk. The applicant has demonstrated that the adjoining property to the north fronting Ocean Street will still be able to be redeveloped for medium density use.

- *To avoid lot sterilization.*

Comment:

Both the subject site and No. 142 Ocean Street are of similar in size and scale . The subject site is capable of being developed in a reasonable manner as evident by the assessment of this application, and the architectural plans accompanying the proposal include a schematic of how No. 142 could be developed in a similar manner. Failure to consolidate with No. 142 Ocean Street does not prevent that land from being developed in a similar manner for medium density use as per the subject site. This has been illustrated in the concept plans, prepared by John

O'Brien (Architect).

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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 \$12,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,200,000.

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

Conclusions on the Assessment of the Application

The proposal construction of a multi dwelling housing development that will not cause an unreasonable impact on surroundings development.

On balance, the proposal should be approved as the proposed development does not isolate neighbouring development and multi dwelling housing is an adequate use of the site. Furthermore, the proposed design and conditions imposed will assist in maintaining neighbourhood amenity.

Therefore, the application is recommended for approval.

It is considered that all processes and assessments have been satisfactorily addressed and that proposed development constitutes the proper and orderly planning for the site or the locality. 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 DA2019/1512 for Demolition and construction of multi dwelling housing. on land at Lot 13 DP 606591, 140 Ocean Street, NARRABEEN, 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
DA004/ Revision B	19 December 2020	John O'Brien
DA005/ Revision B	19 December 2020	John O'Brien
DA009/ Revision B	19 December 2020	John O'Brien
DA101/ Revision A	3 December 2020	John O'Brien
DA102/ Revision B	19 December 2020	John O'Brien
DA103/ Revision B	19 December 2020	John O'Brien
DA105/ Revision C	4 March 2020	John O'Brien
DA106/ Revision B	19 December 2020	John O'Brien
DA110/ Revision B	19 December 2020	John O'Brien
DA200/ Revision B	19 December 2020	John O'Brien

Reports / Documentation – All recommendations and requirements contained within:

Report No. / Page No. / Section No.	Dated	Prepared By
NatHERS and BASIX Assessment	18 November 2019	Efficient Living
Traffic Report	18 March 2020	Anne Coutts
Geotechnical Assessment	3 April 2020	Crozier Geotechnical Consultants

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

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Landscape Plan	8 September 2020	John O'Brien

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	N/A	Mecone

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Response Ausgrid Referral	N/A

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

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. **Approved Land Use**

Nothing in this consent shall authorise the use of site as detailed on the approved plans for any land use of the site beyond the definition of a **multi dwelling housing**

A multi dwelling housing is defined as:

"multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building."

Warringah Local Environment Plan 2011 (as amended) Dictionary.

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**

- (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.

5. **General Requirements**

- (a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no

hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner

that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

6. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$12,000.00 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 \$1,200,000.00.

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

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.

7. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security 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, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

8. **Construction, Excavation and Associated Works Security Bond (Road works)**

The applicant is to lodge a bond with Council of \$5000.00 as security against any damage or failure to complete the construction of footpath and vehicular crossing works as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

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

9. **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.

10. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

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

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention and absorption drainage system in accordance with Northern Beaches Council's WARRINGAH WATER MANAGEMENT POLICY PL850, and generally in accordance with the concept drainage plans prepared by Civil & Structural Engineering Design Services Pty. Ltd., drawing number M-11-267490A, dated 13/09/2019 and Report Dated 13 March 2020. 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.

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.

12. **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 and footpath 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:

- A standard vehicular crossing 3.0 metres wide.
- Reconstruction of concrete footpath, 1.5 metres wide along the full frontage to the site.
- Detail designs plans with levels and specification.

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.

13. **Vehicle Driveway and parking**

The Applicant is to ensure driveway gradients, parking and passing bays within the private property are design in accordance with the Traffic report prepared by INROAD:GROUP dated 18 March 2020.

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

Reason: To ensure suitable vehicular access to private property.

14. **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.

15. **External Finishes to Roof**

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

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

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

16. **Sydney Water "Tap In"**

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

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

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

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

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

17. **Boundary Fencing**

No approval is given for any works to boundary fencing. No consent has been provided by the owners of the common boundary.

Reason: To ensure compliance with the Dividing Fences Act 1991.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. **Pre-Construction Dilapidation Report**

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

Properties:

142 Ocean Street, Narrabeen

134-138 Ocean Street, Narrabeen

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

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

Note: This documentation is for record keeping purposes and may be used by an applicant or

affected property owner to assist in any action required to resolve any civil dispute over damage arising from the works.

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

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

19. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

20. **Tree protection**

(a) Existing trees which must be retained

- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
- ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

21. **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.

22. **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:

- o 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.

23. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

24. **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.

25. **Protection of sites of significance**

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

Reason: Preservation of significant environmental features.

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

26. **Landscape completion certification**

a) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the approved landscape plan and inclusive of any conditions of consent.

b) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been established and maintained in accordance with the approved landscape plan.

Reason: To ensure that the landscape treatments are installed to provide landscape amenity.

27. **Post-Construction Dilapidation Report**

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

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

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

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

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

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

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures 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 for on-site storm water detention as to user 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 disposal system is maintained to an appropriate operational standard.

29. **Certification of Civil Works and Works as Executed Data on Council Land**

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Section 138 Roads Act approval. Works as Executed data certified by a registered surveyor in relation to boundaries, shall be submitted to Council for approval. Copy of an approval from Council is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

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

30. **Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)**

The units within the development are to be numbered in accordance with the Australia Post Address Guidelines (https://auspost.com.au/content/dam/auspost_corp/media/documents/Appendix-01.pdf).

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Interim/Final Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

31. **Sydney Water**

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

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

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

32. **Landscape maintenance**

- i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.
- ii) 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.

Reason: To maintain local environmental amenity.