

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0306
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 8 DP 6984, 18 Alexander Street COLLAROY NSW 2097 Lot 9 DP 6984, 18 Alexander Street COLLAROY NSW 2097
Proposed Development:	Boundary adjustment, part demolition for alterations and additions to a dwelling house, construction of a detached dwelling house and a Secondary dwelling.
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Simone Victoria Waights
Applicant:	Brendan Andrew Waights
Application Lodged:	29/03/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	10/04/2019 to 24/04/2019
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	4.3 Height of buildings: %
Recommendation:	Refusal
Estimated Cost of Works:	\$ 955,500.00

PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for a boundary adjustment, demolition works and alterations and additions to a dwelling house, construction of a detached dwelling and two (2) secondary dwellings on two (2) lots.

In detail, the proposal involves:

Lot 8

- Alterations and additions to a dwelling to create a 3 level dwelling (garage level, ground floor

level and first floor level)

- Secondary dwelling with undercroft
- Driveway to connect undercroft with garage under house
- Private open space area
- Landscaping

Lot 9

- New detached dwelling-house with rumpus, library, living/ dining, laundry, pantry, kitchen, teenagers wing, teenagers retreat space and 5 bedrooms
- Secondary Dwelling
- Private open space area
- Landscaping

Amended plans were provided to Council on 29 July 2019 to provide a greater landscaped area and a redesign of the built form (to provide greater setbacks). These plans did not require re-notification in accordance with the Warringah DCP.

Further information was also provided in an attempt by the applicant to resolve issues raised by Council's Development Engineer. This additional information was not satisfactory to address the issues raised.

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 - 4.3 Height of buildings
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope

SITE DESCRIPTION

Property Description:	<p>Lot 8 DP 6984 , 18 Alexander Street COLLAROY NSW 2097</p> <p>Lot 9 DP 6984 , 18 Alexander Street COLLAROY NSW 2097</p>
Detailed Site Description:	<p>The subject site consists of two allotments located on the southern side of Alexander Street.</p> <p>The site is regular in shape with a frontage of 24.39m (12.19m and 12.2m) along Alexander Street and an average depth of 47.42m. The site has a surveyed area of 581.3m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house on site.</p> <p>The site slopes from the rear of the site to the front with an approximate crossfall of 5m.</p> <p>The site has various and dense vegetation to the front and rear of the existing dwelling.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a mix in style of dwelling houses.</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:

- DA2015/0816 - Alterations and additions to a dwelling house and construction of front and side fencing was approved by Council on 12/10/2015.

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	None applicable.
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)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&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. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed</p>

Section 4.15 Matters for Consideration'	Comments
	via a condition of consent. Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
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	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah/Manly/Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development, given the lack of information provided in regard to overland flows.
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:
Karen Eileen Rolls	30 Alexander Street COLLAROY NSW 2097
Susannah Lee Barry	12 Alexander Street COLLAROY NSW 2097

Name:	Address:
Andreas Lehr	20 Alexander Street COLLAROY NSW 2097
David William Rolls	30 Alexander Street COLLAROY NSW 2097

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

- Bulk, over-development and not a low density development
- The lots are too small for a primary and secondary dwelling
- Building height; lack of clause 4.6 application requesting to vary development standard
- View loss and request for view sharing analysis
- Building envelope breach
- Reduction of open space and landscaped area; inappropriate calculation of landscaped area
- Removal of trees; lack of labelling trees which would require removal; Insufficient landscape plan; Lack of arborist report
- Lack of parking for secondary dwellings
- Local area is predominantly single dwellings and this development is not compatible with this character
- Lack of adequate setbacks including for landscaping and fire separation
- Drainage issues to 20 Alexander Street; In-ground services (including stormwater) have not been sufficiently addressed
- Query as to whether application is Class 1 or Class 2-9. The referral from the building team states 2-9.
- Proposal is for new dwelling as opposed to alterations and additions
- Floor plans not on the website
- Survey missing
- Overshadowing to neighbouring properties
- Privacy and overlooking
- Request for kink in lot to be adjusted due to incompatibility with the area

The matters raised within the submissions are addressed as follows:

- Bulk, over-development and not a low density development
Comment:
Amended plans were received which reduced the built form at the eastern elevation and also reduced the size of the built form in the north-eastern corner. This provided a presentation of built form that involved sufficient modulation to complement the low density area. Furthermore, by definition under the Warringah Local Environment Plan (WLEP), a detached dwelling and a secondary dwelling is a low density development.
- The lots are too small for a primary and secondary dwelling
Comment:
The proposed secondary dwellings meet the requirements of the SEPP (Affordable Rental Housing). The proposed detached dwellings are permissible with consent under the WLEP.
- Building height; lack of clause 4.6 application requesting to vary development standard
Comment:
Council accepted a late submission of a Clause 4.6 application requesting to vary the development standard. As discussed in this report, the application was acceptable.

- View loss and request for view sharing analysis
Comment:
 The view loss involves a minor water view being lost toward the rear of the site in a location in which the building complies with the building height. As such, the proposal is reasonable in terms of view loss.

- Building envelope breach
Comment:
 The building envelope breach is acceptable as the proposed development meets the underlying objectives of the control (as discussed in this report).

- Reduction of open space and landscaped area; inappropriate calculation of landscaped area
Comment:
 Amended plans were received which provided a greater amount of landscaped open space (to comply with the control).

- Removal of trees; lack of labelling trees which would require removal; Insufficient landscape plan; Lack of arborist report
Comment:
 Additional information was submitted and Council's Landscape officer has provided comment that the submitted information is sufficient.

- Lack of parking for secondary dwellings
Comment:
 Under the *State Environmental Planning Policy (Affordable Rental Housing) 2009*, a consent authority may not refuse a consent on the grounds that no additional parking is provided on the site.

- Local area is predominantly single dwellings and this development is not compatible with this character
Comment:
 The detached dwellings and secondary dwellings are permissible in the zone under the WLEP. Furthermore, the built form in its current form is considered to be appropriate for the area.

- Lack of adequate setbacks including for landscaping and fire separation
Comment:
 The proposal provided setbacks which comply with the requirements for setbacks under the Warringah Development Control Plan. This is a reasonable outcome.

- Drainage issues to 20 Alexander Street; In-ground services (including stormwater) have not been sufficiently addressed
Comment:
 Council's Engineer cannot support the application with regard to Stormwater and Overland flow. This is a reason for refusal.

- Query as to whether application is Class 1 or Class 2-9. The referral from the building team

states 2-9.

Comment:

The proposal is considered to be a Class 2-9 building, however this is a matter to be further considered at the Construction Stage.

- Proposal is for new dwelling as opposed to alterations and additions

Comment:

The proposal has been assessed with regard to the addition of a new dwelling.

- Floor plans not on the website

Comment:

This is a Council policy with reference to privacy legislation.

- Survey missing

Comment:

This was requested and accepted as additional information.

- Overshadowing to neighbouring properties

Comment:

The amended plans which provided greater modulation at the eastern elevation provided a outcome for sunlight access that is reasonable for the neighbouring property.

- Privacy and overlooking

Comment:

It is considered that the built form and design provides a reasonable outcome for privacy, subject to conditions that could be provided for window design.

- Request for kink in lot to be adjusted due to incompatibility with the area

Comment:

The proposed built form is not considered to be compatible with the area. However, the small kink toward the middle of the site does not contribute to providing an unacceptable built form as setbacks and building envelope do not have to necessarily follow this kink.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	Proposal is capable of compliance with the Building Code of Australia. No objections and no special conditions.
Landscape Officer	<p>The plans provided indicate that a number of trees appear to be required for removal to accommodate the proposal, however no information regarding the trees has been provided.</p> <p>The landscape plan included is not considered satisfactory in view of the extent of the change that would result from the development.</p>

Internal Referral Body	Comments
	<p>It is recommended that a landscape plan prepared by a suitably qualified landscape consultant and an Arborist's report be provided in accordance with Council's required standards below.</p> <p><u>Landscape Plan and Landscape Design Statement</u></p> <p>A Landscape Plan, prepared by a suitably qualified professional, must be submitted with all development applications, except where there are no external works.</p> <p>A Landscape Plan may not be required for applications of a minor nature or where it is considered that there is a minor impact to the streetscape and to adjoining properties. This will be at the discretion of Council staff.</p> <p>The Landscape Plan must show:</p> <ul style="list-style-type: none"> • calculations of the landscape area (and open space) on the site as per the definition in the relevant DCP. <p>This may be shown on a separate plan for clarity,</p> <ul style="list-style-type: none"> • proposed surface treatments and materials, including but not limited to structures, features, walling, fences, pavements, gardens, lawns, ground stabilisation, drainage, irrigation etc., • existing and proposed ground levels, • outline of proposed buildings, driveways and structures, including swimming pools, pavements, walls and fences, all consistent and co-ordinated with building and services plans, • location, height and materiality of proposed retaining walls and fences, • existing street trees or trees on neighbouring properties that may be impacted by the proposed development, • existing trees and other vegetation to be retained or removed. All trees are to be located, identified and numbered, and shall coincide with the arborist's report. Protection measures for retained vegetation shall be included in the arborist's report, • proposed planting scheme including species selection, location, quantities, mature heights and pot sizes, • rock outcrops and other landscape features, • location of any underground services or basements, • soil depth of planter boxes on-slab, • any irrigation systems, • BASIX landscape commitments where relevant are to be indicated by clearly indicating the area on the landscape plan. <p>A Landscape Design Statement may be required to demonstrate the impact of the proposal on streetscape amenity, how the landscape design integrates with the existing streetscape, the impact of the proposal on the neighbouring properties, and how the landscape design considers and addresses this.</p>

Internal Referral Body	Comments
	<p><u>Arboricultural Impact Assessment Report</u> An Arboricultural Impact Assessment Report, prepared by a qualified AQF5 (or higher) arborist, must be submitted when works are proposed within 5.0m of a tree (excluding trees and species that can be removed without approval under the relevant DCP, irrespective of property boundaries. The report must include:</p> <ul style="list-style-type: none"> • who commissioned the report and why was the report commissioned, • the address of the site containing the trees, • a plan of the site showing the exact location of the trees and the trees numbered to correspond with the text, • the methods or techniques used in the inspections, • the scientific name, common name, height, canopy spread, trunk diameter at breast height, SULE, landscape significance, and form of each tree, • discussion of the data collected, which may include information regarding wounds, cavities, cracks, splits, forking, root zone or diseases, • supporting evidence such a photographs, • a discussion of all options relating to tree retention or removal, including construction techniques to minimise impacts upon root systems, • justification for tree removal, • if required, a tree construction impact statement and recommendations for construction methodology, • may include root mapping, • demonstrate compliance with the relevant Australian Standards. <p>The arborist is to review all architectural and engineering plans, and is to be aware of any and all earthworks proposed on site.</p> <p><u>Assessing officer comment</u> Additional information was submitted and Council's Landscape officer stated that this information was sufficient to support the application.</p>
NECC (Development Engineering)	<p>The proposed application cannot be supported by Development Engineering Team due to not complying with Council requirements and in specific with:</p> <ul style="list-style-type: none"> • Flooding planning for the development in accordance with Council LEP 2011 • Location of the car-park areas in accordance with Warringah DCP- Part E11 Flood Prone Land - 1.2 Perspective Controls (G1)

Internal Referral Body	Comments
NECC (Development Engineering)	<p><u>Council's Stormwater Assets:</u></p> <p>Council's records indicate that the subject property is burdened by a Council stormwater pipeline. However, the existing easement may not be over the pipe line. As outlined in the Development Application Checklist, the applicant shall demonstrate compliance with Council's Water Management Policy Section 6 and Council's Building Over or Adjacent to Constructed Drainage Systems and Easements Technical Specification. This consists of accurately locating, confirming dimensions including depth and plotting Council's stormwater pipelines and associated infrastructure to scale on the DA plans in accordance with Section 8.1 of this Specification. Council has public Planning Maps online with stormwater information as a reference for detailed stormwater investigations, available under the "Stormwater" overlay map (https://services.northernbeaches.nsw.gov.au/icongis/index.html).</p> <p>Compliance shall be demonstrated with Section 6.1.2 of this Specification, regarding the design of footings of any buildings, structures or any retaining walls located adjacent Council's stormwater infrastructure. A concept cross-sectional plan shall be provided.</p> <p><u>Overland Flow:</u></p> <p>The property is shown on Council's best available flood mapping as affected by overland flow flooding. Any future submission shall provide an overland flow flood report to assess the impact of the development with respect to local overland flows. The report shall be prepared by a suitably qualified engineer in accordance with Council's Stormwater Management Policy Section 9.3 and shall include, but not be limited to, an address of the following:</p> <ul style="list-style-type: none"> • The site survey and all levels shall be provided to Australian Height Datum (AHD). • Catchment plan highlighting the full upstream catchment(s). • A detailed analysis for any overland flow paths in both pre-development and post-development conditions, considering the 1% AEP storm. • Consideration is to be given to the capacity of existing Council drainage infrastructure with appropriate blockage factors. • Submission of plans clearly indicating pre-development and post-development flow path extents for the 1% AEP storm. • Any relevant supporting longitudinal and cross-sectional information at appropriate intervals, including at the upstream and downstream property boundaries. • Provision of any stormwater models (DRAINS, HEC-RAS)

Internal Referral Body	Comments
	<p>used in assessment, and relevant supporting input and output information.</p> <ul style="list-style-type: none"> • Demonstration of compliance with flood related development controls, in particular Warringah LEP 2011 Section 6.3 and DCP 2011 Section E11. • Demonstration that there is no adverse impact to adjoining properties and the road reserve in relation to flood level, velocities and extents. • It is considered that the proposed location of the undercroft and secondary dwelling of Lot 9 may impede overland flows and is not supported. <p>The proposed application cannot be supported by Development Engineering due to lack of information to address:</p> <ul style="list-style-type: none"> • Overland flows for the development in accordance with clause C4 Stormwater. • Council's stormwater assets for the development in accordance with clause C6 Building Over or Adjacent to Constructed Council Drainage Easements. <p><u>Comments Based on Additional Information</u></p> <p>The recently submitted information as a response to the Development Engineer's comments has provided a Survey of storm-water pipe location, Amended Garage & Ground Floor Plan DA 121/C and Overland Flow Flood Study Report (prepared by BMB Engineers, dated August 2019) and was reviewed on 12.09.2019. The Applicant has been contacted over the phone and via email. Please refer to the Trim doc 2019/523653 in relation to required further clarification.</p> <p>Based on peer review completed from Council Engineer- Stormwater Investigations, please refer to document in Trim 2019/544967, the Flood extents map supplied does not reflect the true extents using existing ground conditions (dwellings and other structures) as it appears to be based on existing contour levels, only. Prior to any further consideration of the proposal a more detail model should be provided, as the proposal currently submitted has placed the structures and stairs etc. within the 1% EAP storm event and does not comply with Council Policy.</p> <p><u>Further assessment completed on 06.11.2019</u></p> <ul style="list-style-type: none"> • The applicant has been advised on the last meeting, held at the Council Chambers on 25th October 2019, that the proposal shall explore a few options in relation to divert floodwater and not to

Internal Referral Body	Comments
	<p>increase the flood level in the surrounding properties, including the possibility to relocate the carport, with the second story granny flat, away from the overland flow path.</p> <p>The recently submitted Overland Flow Flood Study Report (prepared by BMB Engineers, dated November 2019) has been reviewed by Stormwater Team and Development Engineering Team. Both team's representatives came to a unanimous conclusion that the report is not acceptable based on the following:</p> <ol style="list-style-type: none"> 1. The report has shown on Figure 13 - Comparison of Flood Extent in Pre and Post Development Condition that the Post-Development is larger than the Pre-Development flood extent, although, the statement in the report provided under the paragraph 5.5 contradict this by saying that Figure 13 shows a slight reduction in the flood extent in the Post-Development scenario. 2. In Figure 16 - Flood Extent map for Existing Condition in 1% AEP Storm with Retaining Wall Extension is shown that the development property is not going to be affected with overland flood. However, the result of that wall extension shows that there is about a 60 mm increase in the flood level at the neighbouring property. This increase in flood level at the adjacent property is not acceptable as Council has advised the Applicant and the appointed consultant, at the last meeting, that no adverse impact on the neighbouring property is acceptable. 3. Also, it is important to indicate that based on Warringah Local Environmental Plan 2011 Part 6-Clause 6.3 Flooding planning: Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development incorporates appropriate measures to manage risk to life from flood, and not adversely affect flood behavior resulting in increases in the potential flood affectation of other development or properties. 4. The carport area below the habitable building, is still within the flow path and it is not acceptable, as per Northern Beaches Council – Warringah DCP – Part E - The Natural Environment/ E11 Flood Prone Land and 1.2 Perspective Controls: G1 – Open car park areas and carports shall not be located within the flood-way. <p>Based on the above-mentioned issues, the proposed application cannot be supported by the Development Engineering and Stormwater Team due to not complying with Council's LEP 2011 and Warringah DCP.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	Refer to Development Engineering referral for commentary regarding the overland flow path and Council stormwater asset in the subject site.

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Affordable Rental Housing) 2009

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

Division 2: Secondary dwellings

Clause 19: Definition

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

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

Note: The standard instrument defines secondary dwelling as follows:

"secondary dwelling means a self-contained dwelling that:

- (a) is established in conjunction with another dwelling (the principal dwelling), and*

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

Comment:

The proposed use is defined under WLEP 2011 as R2 Low Density Residential.

Clause 20: Land to which this Division applies:

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but <i>only if</i> development for the purposes of a dwelling house is permissible on the land:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone R5 Large Lot Residential.	Consistent. The site is located within the R2 Low Density Residential and, as such, the proposed use (on each lot) 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.	Consistent. The development involves the construction of a secondary dwelling (on each lot), 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.	Complies. The development results in a principal dwelling and secondary dwelling on each lot.
(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 ² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning	Complies. The proposed floor area for each secondary dwelling is 60sqm.

instrument, that greater floor area.	
(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 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.	Consent is not being refused on these grounds.

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.	Consistent. This application does not propose any subdivision of the existing allotment (although it does include boundary re-alignment).

Conclusion

The proposed Secondary Dwellings comply with the requirements of the SEPP.

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

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	8.8m	N/A	No, see comments.

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
5.4 Controls relating to miscellaneous permissible uses	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	8.8m
Percentage variation to requirement:	3.5%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the judgements contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61, and RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

(1) The objectives of this clause are as follows:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

Clause 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- (c) to promote the orderly and economic use and development of land,
- (d) to promote the delivery and maintenance of affordable housing,
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

The applicants written request argues, in part:

The proposal responds appropriately to the topography of the land, would be an improvement on the existing situation, and would not result in any material impact.

It is agreed that the overall presentation of bulk and the impact on solar access is appropriate. As such, it is agreed that there is not an unreasonable or "material" impact.

In this regard, the applicant's written request has not satisfied cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of buildings’ of the WLEP 2011 are:

(1) The objectives of this clause are as follows:

a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,

Comment:

The subject site is in a streetscape that involves a mixture of 1, 2 and 3 storey development. The proposed development involves a 2 and 3 storey building at the front of the site and 2-3 storey dwellings to the rear of the site (with a basement included). This is compatible with the height and scale of surrounding development.

The proposal complies with this objective.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment:

The proposal involves modulation which sufficiently complements the varied form of buildings in the zone so as to provide a sufficient visual presentation. Furthermore, the proposal involves sufficient physical separation from neighbouring dwelling and a reasonable building height to ensure a lack of unreasonable amenity impact.

The proposal **complies** with the objective.

c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

Comment:

The minor breach in building height would not result in inappropriate diminishment of scenic quality for Warringah's coastal and bus environments.

The proposal complies with this objective.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,

Comment:

The overall visual bulk of the development, including integration of landscaping and modulation of the built form, results in a visual outcome that is reasonable for the surroundings.

The proposal **complies** with this objective.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The proposal involves detached dwellings and secondary dwellings that contribute to the housing needs of the community.

It is considered that the development **satisfies** this objective.

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

Comment:

Not applicable.

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

Comment:

The compliant landscaped area and sufficient building modulation provides a situation in which the development relates positively to the landscaped setting.

It is considered that the development **satisfies** this objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be inconsistent with the objectives of the R2 Low Density Residential zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	8.4m	N/A	No (see comments)
B3 Side Boundary Envelope	4.0m	Outside	N/A	No (see comments)
	4.0m	Outside	N/A	No (see comments)
B5 Side Boundary Setbacks	0.9m	0.9m	N/A	Yes
	0.9m	0.9m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	6.5m	N/A	Yes
B9 Rear Boundary Setbacks	6.0m	7.0m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	Lot 8: 40% Lot 9: 45%	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	No	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	Yes	No
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C1 Subdivision	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	No	No
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
Easements		
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	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The proposal involves a wall height of up to 8.4m. This does not comply with the control (7.2m).

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 proposal involves modulation which sufficiently complements the varied form of buildings in the locality so as to provide a sufficient visual presentation. Furthermore, the proposal involves sufficient physical separation from neighbouring dwelling and a reasonable building height to ensure a lack of unreasonable amenity impact.

The proposal **complies** with this objective.

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

Comment:

The proposal is generally below the surrounding tree canopy level.

The proposal **complies** with this objective.

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

Comment:

A minor distant view corridor exists through the rear of the property toward the ocean. As the non-compliant wall height does not contribute to loss of this view, the view sharing in relation to this control is reasonable.

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

Comment:

The proposal involves sufficient physical separation from neighbouring dwelling and a reasonable building height to ensure a lack of unreasonable amenity impact.

The proposal **complies** with this objective.

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

Comment:

The proposal responds appropriately to the sites topography and does not involve unreasonable excavation. This includes some excavation to allow for car parking but no no excessive excavation for further habitable space.

The proposal **complies** with this objective.

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

Comment:

The proposal provides a roof design that presents appropriately and complements the existing character of the street.

The proposal **complies** with this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

B3 Side Boundary Envelope

Description of non-compliance

The top level of each detached dwelling does not comply with the control for side boundary envelope.

Merit consideration

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

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

Comment:

The side boundary envelope non-compliance will not result in a building that would be visually dominant in the area by virtue of bulk and height. In particular, the modulation of the built form and the sufficient integration of landscaping ensures that the development would not be visually dominant.

The proposal **complies** with this objective.

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

Comment:

The proposal provides adequate physical separation as to minimise amenity impact. In particular, the height and bulk of the building at the eastern elevation has been reduced from the original proposal so that it would not be overbearing for the neighbouring property.

The proposal **complies** with this objective.

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

Comment:

The proposal involves minor excavation and generally responds positively to the topography of the site.

The proposal **complies** with the objective.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly 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.

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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2019/0306 for the Boundary adjustment, part demolition for alterations and additions to a dwelling house, construction of a detached dwelling house and a Secondary dwelling. on land at Lot 8 DP 6984, 18 Alexander Street, COLLAROY, Lot 9 DP 6984, 18 Alexander Street, COLLAROY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C4 Stormwater of the Warringah Development Control Plan.
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C6 Building Over or Adjacent to Constructed Council Drainage Easements of the Warringah Development Control Plan.

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

Signed



Thomas Prosser, Planner

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



Steven Findlay, Manager Development Assessments