

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2018/1886
----------------------------	-------------

<b>Responsible Officer:</b>	Nick England
<b>Land to be developed (Address):</b>	Lot 7 DP 238331, 10 Courtley Road BEACON HILL NSW 2100
<b>Proposed Development:</b>	Demolition works and construction of a dwelling house
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	NBLPP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Frederick John Nile
<b>Applicant:</b>	Planning Approvals

<b>Application lodged:</b>	29/11/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	10/05/2019 to 24/05/2019
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	3
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 965,949.00
---------------------------------	---------------

The application has been referred to the Northern Beaches Local Planning Panel (NBLPP) as the applicant is a member of Parliament (New South Wales).

The proposal consists of the demolition of the existing dwelling and the erection of a new dwelling, at No.10 Courtley Road, Beacon Hill.

Two (2) submissions were received during the first notification, raising issues of: privacy; overshadowing; visual impact; soil stability; and land contamination.

Amended plans were received from the applicant in response to correspondence sent to the applicant by Council on 18 February 2019. Council did not support the application for the reasons of: landscaped open space; rear setback; and privacy.

In the second notification period, one (1) submission was received, raising issue with privacy and overshadowing.

The amended plans have now addressed the relevant assessment issues to Council's satisfaction (as detailed in the report), with the exception of the impact of visual privacy. However, a condition of consent is recommended, to make minor amendments to the proposal to ensure this impact is mitigated to a reasonable degree. Approval of the application is therefore recommended.

## **ASSESSMENT INTRODUCTION**

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

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

## **SUMMARY OF ASSESSMENT ISSUES**

Warringah Development Control Plan - B7 Front Boundary Setbacks

Warringah Development Control Plan - B9 Rear Boundary Setbacks

Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

Warringah Development Control Plan - D6 Access to Sunlight

Warringah Development Control Plan - D8 Privacy

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 7 DP 238331 , 10 Courtley Road BEACON HILL NSW 2100
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the southern side of Courtley Road, Beacon Hill.</p> <p>The site is irregular in shape with a surveyed area of 557.4m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house.</p>

The site has a north-easterly aspect with a slight slope towards the frontage.

Adjoining and surrounding development is characterised by dwelling houses with an irregular shaped allotment pattern, adjoining six (6) properties.

Map:



## SITE HISTORY

The application is being referred to NBLPP as the applicant is a Member of the NSW Parliament.

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

## PROPOSED DEVELOPMENT IN DETAIL

The application consists of the demolition of an existing dwelling house and the erection of a new two-storey dwelling house.

Correspondence was forwarded to the applicant on 18 February 2019, outlining Council's reasons for not supporting the application, based on the following matters:

- non-compliance with the minimum landscape open space controls under WDCP 2011;
- non-compliance with the minimum rear setback control under WDCP 2011; and
- adverse impact on the visual privacy of the adjoining dwelling at No.12 Courtley Road.

This correspondence also invited the applicant to provide amended plans, within 14 days of the date of the letter.

Amended plans were received on 16 April 2019. The amendments consisted of:

- deletion of the balcony from the east (side) elevation;
- relocation of Bedroom 1 and 3;
- minor re-arrangement of bathrooms and en-suites;
- new 1<sup>st</sup> floor balcony on east and south elevations;
- roof over rear patio; and
- additional landscaping adjoining the south and west elevations of the site.

## 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	The <i>Warringah Development Control Plan 2011</i> (WDCP) 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&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters are addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;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&amp;A Regulation 2000, permits Council to request additional information and as a result considered the number of days taken in this assessment in light of this clause within the Regulations. Correspondence was forwarded to the applicant on 18 February 2019, outlining Council's reasons for not supporting the application. This correspondence also invited the applicant to provide amended plans, within 14 days of the date of the letter. The applicant has provided amended plans, which were provided on 16 April 2019.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter is addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration'	Comments
	<p>Clauses 93 and/or 94 of the EP&amp;A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter is addressed via a condition of consent.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter is addressed via a condition of consent.</p> <p>Clause 143A of the EP&amp;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.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## 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 3 submission/s from:

Name:	Address:
Mr Ru Jiang Wang	C/- Henry Zhang 24 Barnes Avenue EARLWOOD NSW 2206
Kenneth Bruce Smith	12 Courtley Road BEACON HILL NSW 2100
Dennis Wong & Co Solicitors	PO Box 1552 CHATSWOOD NSW 2067

The application was first notified during the periods of 5 December 2018 and 11 January 2019. Two (2) submissions were received during this notification period.

The second notification period was between 6 May 2019 and 24 May 2019. One (1) submission was received during this notification period.

The following issues were raised in all of the submissions and each have been summarised and addressed as below:

- *The proposal will have an adverse impact on the privacy of the adjoining dwelling at No.14 Courtley Road.*

Comment: The property at No.14 Courtley Road adjoins the subject site on the eastern (side) boundary, with its area of rear private open space adjoining this boundary. The amended plans have deleted the balcony on the south elevation, however the balcony for the relocated Bedroom 1 on the 1<sup>st</sup> floor will still be located on the east elevation. This balcony has a close proximity to the rear yard (2.3m) and its elevation above the rear yard (at least 5m), is likely to result in an adverse impact on the visual privacy of the property at No.14 Courtley Road. Hence, a condition of consent is recommended, to reduce the length of the balcony and mitigate the impact on the visual and acoustic privacy of the adjoining property at No.14 Courtley Road.

- *The proposal will have an adverse impact on the privacy of the adjoining dwelling at No.12 Courtley Road.*

Comment: The submission received from this property was in relation to the original proposal, with no submission received in regard to the amended plans. The amended plans have now deleted the balcony on the east elevation which was in close proximity to the private open space of the property at No.14 Courtley Road. Based on the amendments, no adverse impact on the visual privacy of the adjoining property at No.12 Courtley Road is likely.

- *The proposal will have an adverse visual impact when viewed from the adjoining dwelling at No.12 Courtley Road.*

Comment: In regard to the built form controls that would apply to the elevation that is visible from No.12 (the east elevation), the proposal is generally compliant, with the exception of the landscaped open space control in WDCP 2011. This non-compliance is significant and would impede the objective of the controls which relates to mitigating the visual impact of new buildings. Therefore, this issue is considered valid and is included in the reasons of refusal of the application.

- *No details are provided of how the impacts of the demolition of the existing house will be managed.*

Comment: In the event that the application is approved, a condition of development consent would apply that would require the proponent to undertake the demolition of the existing house in accordance with the relevant Australian Standard for demolition. This standard would specify all required measures to manage the impact of demolition works.

- *The difference in existing ground levels adjacent the boundaries of No.10 and 12 Courtley Road requires a retaining wall to manage the earthworks for the proposed works.*

Comment: The application provides no detail in regard to any retaining wall adjoining the eastern boundary, hence it cannot be assumed that any structure is proposed. The applicant may choose to exercise their rights to undertake these works as "exempt" development in the future.

- *The proposal will create an unacceptable level of overshadowing to the adjoining properties at No.12 and No.14 Courtley Road.*

Comment: The shadow diagrams lodged with the application demonstrate that the proposal will be able to achieve the minimum solar access requirements to adjoining properties, specified in WDCP 2011. Therefore, this issue does not warrant inclusion in recommended reasons of refusal of the application.

- *The site has a history of land contamination (heating oil disposed of by previous owners) which affects No.12 Courtley Road. This should be rectified during the demolition of the existing house.*

Comment: This matter has been referred to Council's Environmental Investigation Unit for comment. The advice received states that the site is unlikely to be contaminated, as the geo-technical investigation undertaken for the application included borehole testing and contamination would have been evident in these samples. A condition of consent is recommended so that further investigation be undertaken, in the event that the application is approved.

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Contaminated Lands)	<p><b>General Comments</b></p> <p>A search of Council records reveal no evidence of land contamination.</p> <p>The Geo tech report supplied has used two boreholes on site that would have investigated and reported significant land pollution.</p>

Internal Referral Body	Comments
	<p>recommend standard condition</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to condition</p>
NECC (Development Engineering)	Development Engineer has no objection to the application subject to the following conditions of consent.

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.

A submission has been received from an adjoining property owner that claims that the site is contaminated. The source of contamination appears to be along the eastern (side) boundary and relates to heating oil that it is claimed was disposed of by the previous owners of the land.

Comment was sought Council's Environmental Investigation Unit in relation to this issue. It was advised that the site is unlikely to be contaminated, as the geo-technical investigation undertaken for the application included borehole testing and contamination would have been evident in these samples, if present.

A standard condition of consent was recommended, which requires that any new information revealed during demolition or excavation works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal



Certifying Authority. However, this condition of consent is not relevant, given that refusal is recommended.

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.968521S dated 24 October 2018).

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

<b>Commitment</b>	<b>Required Target</b>	<b>Proposed</b>
<b>Water</b>	40	40
<b>Thermal Comfort</b>	Pass	Pass
<b>Energy</b>	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. 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	8.4m	N/A	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
6.4 Development on sloping land	Yes

#### Warringah Development Control Plan

##### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.3m	N/A	Yes
B3 Side Boundary Envelope	4m (east)	No breach	N/A	Yes
	4m (west)	No breach	N/A	Yes
B5 Side Boundary Setbacks	0.9m (east)	0.9 - 2.8m	N/A	Yes
	0.9m (west)	1.1 - 3.2m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	5m	23	No
B9 Rear Boundary Setbacks	6m	0.9 - 11.7m	85	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	177m <sup>2</sup> or 32%	20	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
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	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
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	No	No
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

#### **B7 Front Boundary Setbacks**

##### Description of non-compliance

The garage of the dwelling is located at a distance of 5m from the front boundary of the site. This represents a 23% variation with the 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: An unusual circumstance of the site is the adjoining road reserve in Courtley Road, which has a variable width between the front boundary of the site and the kerb of the roadway, of up to 13 metres. This has the effect of accentuating the building setback from the public domain, in contrast with other adjoining dwellings. Under these circumstances, the 5m front setback is more than adequate to provide an adequate sense of openness.

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

Comment: The section of Courtley Road where the site is located demonstrates a considerable variation in front building setbacks, due to the irregular shaped road reserve and existing allotment pattern. However, the 5m front setback is considered an adequate response to this existing pattern. Hence, the development is consistent with this objective.

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

Comment: For the reasons put forward in the comments on the previous objectives, the proposed 5m setback is an appropriate response to the context of the existing streetscape and will act to protect and retain its visual quality. Hence, the proposal is consistent with this objective.

- *To achieve reasonable view sharing.*

Comment: There will be no adverse loss of any views from adjoining properties as a result of the proposed non-compliance with the front boundary setback control.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP 2011 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 proposed dwelling is setback from the rear (southern) boundary at a distance as close as 0.9m, on the south-west corner of the proposed dwelling.

This represents a variation of up to 85% with the minimum 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: The amended plans have increased the areas of deep soil landscape areas, from 10% as originally proposed, to 32% across the site. Greater areas within the rear setback have been provided. Hence, the proposal achieves this objective.

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

Comment: The site is constrained in regard to its unusual shape and dimensions. The site is shallow on its western boundary, only having a length of 19.8 metres. This makes full compliance with the numerical requirements of WDCP 2011, in particular the setback controls, difficult. The footprint of the house has been designed to provide a varied setback, which at its furthest distance is 11.7 metres from the rear boundary. The average setback of the proposal is

6.3 metres, which is compliant with the minimum rear setback. In this regard, an adequate sense of openness is provided and the development is consistent with this objective.

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

Comment: The dwelling has been designed adequately to minimise privacy impact to adjoining dwellings. The amended plans have increased the area of landscaped open space on the site which promotes greater opportunities for landscaping to mitigate visual impact and overlooking. The development is hence consistent with this objective.

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

Comment: An existing visual continuity and pattern of rear setbacks is difficult to establish given the irregular shaped allotments in the vicinity of the site. The adjoining property at No.6 Kadigal Place has a setback of as close as 2 metres from the adjoining rear boundary. In this context, the proposed rear setback of 0.9m is sufficient to achieve this objective.

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

Comment: Despite the non-compliance with the controls, the windows on the 1<sup>st</sup> floor of the proposed dwelling are not considered to cause any adverse privacy impacts to adjoining properties, based on their size and orientation.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP 2011 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.

## **D1 Landscaped Open Space and Bushland Setting**

### Description of non-compliance

The application provides a total of 177m<sup>2</sup>, or 32% of the site, as landscaped open space.

This represents a 20% variation with the minimum requirement.

### Merit consideration

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

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

Comment: Despite the variation proposed, the non-compliance does not compromise this objective. The circumstances of the site in relation to the adjoining road reserve and allotment pattern is discussed elsewhere in this report. In summary, the provision of landscaping adjoining the northern (front) boundary of the site is adequate to maintain and enhance the streetscape.

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

Comment: The amount of the landscaped open space proposed will generally satisfy the established benchmark for habitat and biodiversity benefits established in this control. Therefore, the application achieves this objective.

- *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: Adequate areas of landscaped open space are provided for this objective to be achieved.

- *To enhance privacy between buildings.*

Comment: A privacy impact on adjoining dwellings is discussed elsewhere in this report. In the context of this impact, the application will achieve this objective, subject to condition.

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

Comment: Despite the non-compliance, sufficient area is provided to achieve this objective.

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

Comment: Despite the non-compliance, sufficient area is provided to achieve this objective.

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

Comment: Despite the non-compliance, sufficient area is provided to achieve this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP 2011 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**

The proposed development will cast shadow over the following adjoining properties:

- No.12 Courtley Road;
- No.14 Courtley Road;
- No.6 Kadigal Place; and
- No.7 Kadigal Place.

The shadow diagrams provided by the applicant demonstrate that the extent of the shadow cast by the proposed development over these affected properties will satisfy the solar access requirements of WDCP 2011.

Specifically, the development needs to achieve Requirement 2 of Part D6, which states:

*At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of*

*sunlight between 9am and 3pm on June 21.*

The reference to the "required area of private open space" means the minimum 60m<sup>2</sup> specified for dwelling houses in Part D2 of WDCP 2011. In effect, Part D6 requires that all new development must provide the private open space of adjoining dwellings with at least 30m<sup>2</sup> of solar access in midwinter.

An analysis of the shadow diagrams provided with the application demonstrates that the extent of the shadow cast by the proposed development will permit the private open space of adjoining properties to receive this minimum provision of solar access.

## **D8 Privacy**

The balcony for Bedroom 1 on the 1<sup>st</sup> floor of the proposed dwelling will have an adverse impact on the privacy of the adjoining dwelling at No.14 Courtley Road, which adjoins the eastern (side) boundary of the site. The balcony is located on both the southern and eastern elevation of the proposed dwelling, primarily orientated to the southern (rear) boundary.

The proximity of this balcony to the rear private open space of this property (approximately 2.3m from the boundary) and its elevation above this area (at least 5m), will result in an adverse visual privacy impact. The impact is from the eastern elevation of the balcony and not the southern elevation, as this is located at an appropriate distance to ensure no adverse impact on adjoining properties.

Under these circumstances, the application fails Requirement 3 of Part D8, which states:

*The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.*

In turn, this fails the following Objective of Part D8, which is:

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

However, given that the balcony in effect "wraps" around to the east elevation and is primarily orientated to the southern rear boundary, it is recommended that a condition of consent be applied to ensure the impact is minimised to an acceptable level. This will entail reducing the length of the balcony by 2.2 metres from its eastern edge, to achieve a setback that is consistent with the rest of the east elevation on the 1st floor.

## **POLICY CONTROLS**

### **Northern Beaches Council Contributions Plan 2018**

The proposal is subject to the application of Council's Section 7.12 Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Contributions Plan 2018		
Contribution based on a total development cost of \$ 965,949		
<b>Contributions</b>	<b>Levy Rate</b>	<b>Payable</b>
Total Section 7.12 Levy	0.95%	\$ 9,177
Section 7.12 Planning and Administration	0.05%	\$ 483

Total	1%	\$ 9,659
-------	----	----------

## 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

The site is constrained by three significant factors: a relatively small size; an unusual shape; and an adjoining allotment pattern that is irregular and contains buildings in close proximity to the proposed dwelling. In particular, the shallow depth of the allotment makes compliance with the front and rear setback difficult whilst also achieving a reasonable building footprint for a new dwelling.

The applicant has amended the proposal since lodgement, to both reduce the non-compliances with WDCP 2011 and mitigate the amenity impacts to adjoining properties that adjoin the eastern boundary (Nos.12 and 14 Courtley Road). Whilst the impact to No.12 is now acceptable, the impact to No.14 Courtley Road is not acceptable in regard to visual privacy. Hence, a condition of consent is recommended to delete part of the balcony adjoining Bedroom 1.

The amended proposal has now demonstrated adequate compliance with the objectives of WDCP 2011 and approval is recommended.

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



## RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council as the consent authority grant Development Consent to DA2018/1886 for Demolition works and construction of a dwelling house on land at Lot 7 DP 238331, 10 Courtley Road, BEACON HILL, subject to the conditions printed below:

### DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
01 Revision L	25 March 2019	Charleston Homes
01A Revision L	25 March 2019	Charleston Homes
01B Revision L	25 March 2019	Charleston Homes
01C Revision L	25 March 2019	Charleston Homes
01H Revision L	25 March 2019	Charleston Homes
02 Revision L	25 March 2019	Charleston Homes
02A Revision L	25 March 2019	Charleston Homes
03 Revision L	25 March 2019	Charleston Homes
04 Revision L	25 March 2019	Charleston Homes
04 Revision L	25 March 2019	Charleston Homes
06A Revision L	25 March 2019	Charleston Homes

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
C1 Issue D	30 October 2018	ACOR Consultants Pty Ltd
C2 Issue D	30 October 2018	ACOR Consultants Pty Ltd
C3 Issue D	30 October 2018	ACOR Consultants Pty Ltd
C4 Issue D	30 October 2018	ACOR Consultants Pty Ltd

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report Title / No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate No.968521S_02	15 April 2019	Planning Approvals

Geotechnical Investigation No.22184/0072D	September 2018	STS GeoEnvironmental
Aboricultural Impact Assessment	18 September 2018	arboreport

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:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
L - 01	22 March 2019	ecodesign

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	21 November 2018	Planning Approvals

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.

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

- The balcony off "Bed 1" is to be reduced in size, by reducing the length of the balcony by 2.2m. This is to be achieved by increasing the setback of the balcony from the southern boundary adjoining No.14 Courtley Road and to ensure the balcony is consistent with the setback of the south elevation of the 1<sup>st</sup> floor.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

3. **Prescribed Conditions (Crown Land Only)**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

Reason: Legislative Requirement (DACPLB09)

4. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) 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.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) 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.

- (k) 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

### 5. Policy Controls

Northern Beaches Council Contributions Plan 2018

The proposal is subject to the application of Council's Section 7.12 Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Contributions Plan 2018		
Contribution based on a total development cost of \$ 965,949.00		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$

		9,176.52
Section 7.12 Planning and Administration	0.05%	\$ 482.97
Total	1%	\$ 9,659.49

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

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 Northern Beaches Council Contributions Plan 2018.

## 6. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security 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](http://www.northernbeaches.nsw.gov.au)).

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

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

### 7. **On-site Stormwater Detention**

An On-site Stormwater Detention system must be designed and constructed in accordance with Northern Beaches Council's current WARRINGAH WATER MANAGEMENT POLICY PL850 and generally in accordance with the concept drainage plans prepared by Acor Consultants, drawing number CC180513, dated 30/10/2018.

Detailed drainage plans are to be prepared by a qualified experienced practicing Civil Engineer. The drainage plans must address the following:

- i) underground storage system must be constructed from reinforce concrete, prefabricated units or proprietary systems provide ease of maintenance and ensure for safety for the proprietor.

Detailed drainage plans, including engineering certification confirming the above requirements have been satisfied and complying with Council's requirements, are to be submitted to the Principal Certifying Authority for approval prior to the issue of the Construction Certificate. Reason: To ensure appropriate provision for the disposal of storm water and storm water management arising from the development.

8. **Vehicle Crossings Application**

A Driveway Levels and Formwork Inspections Application shall be made with Council subject to the payment of the fee in accordance with Council's Fees and Charges. The fee includes all Council inspections relating to the driveway construction and must be paid.

Approval of the application by Council is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

9.

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

- The balcony off "Bed 1" is to be reduced in size, by reducing the length of the balcony by 2.2m. This is to be achieved by increasing the setback of the balcony from the southern boundary adjoining No.14 Courtley Road and to ensure the balcony is consistent with the setback of the south elevation of the 1<sup>st</sup> floor.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the construction certificate.

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

10. **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.

11. **Sydney Water "Tap In"**

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

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

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

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

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

12. **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.

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

13. **Road Reserve**

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

Reason: Public Safety.

14. **Vehicle Crossings**

The provision of one vehicle crossing 4.5 metres wide at kerb and 5.5 metres wide at boundary in accordance with Northern Beaches Council Drawing No A4-3330/6 MH and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

15. **Requirement to Notify about New Contamination Evidence**

Any new information revealed during demolition or excavation works that has the potential to alter previous conclusions about site contamination or hazardous materials shall be immediately notified to the Council and the Principal Certifying Authority.

Reason: To protect human health and the environment.

(DACHPEDW5)

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

16. **Authorisation of Legal Documentation Required for Onsite Detention**

The original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To create encumbrances on the land.

17. **Registration of Encumbrances for On-site Stormwater Detention**

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 any interim / final Occupation Certificate.

Reason: To identify encumbrances on land.

18. **On-Site Stormwater Detention Compliance Certification**

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council.

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 stormwater disposal is constructed to Council's satisfaction. (DACENF10)

19. **Positive Covenant and Restriction as to User for On-site Stormwater Detention**

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant 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 NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction.

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 the on-site detention and/or pump system is maintained to an appropriate operational standard.