

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/2566
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Responsible Officer:	Clare Costanzo
Land to be developed (Address):	Lot 1 DP 1199598, 28 Stuart Street COLLAROY NSW 2097
Proposed Development:	Demolition works and construction of a dwelling house and 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:	Juliana Zhuang
Applicant:	Vigor Master Pty Ltd

Application Lodged:	10/01/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	20/01/2022 to 03/02/2022
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 980,000.00
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PROPOSED DEVELOPMENT IN DETAIL

The proposal comprises of the demolition of the existing structures on site and the construction of a single dwelling house with an attached granny flat and garage.

The building consists of four (4) storeys. The lower ground level comprises of the granny flat and the ground, first and second floor comprise of the primary dwelling house.

Lift and internal stair access is available from the garage to all levels.

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 - 5.4 Controls relating to miscellaneous permissible uses
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Local Environmental Plan 2011 - 6.10 Development for the purposes of secondary dwellings in Zones R2 and R3
 Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - C2 Traffic, Access and Safety
 Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 1 DP 1199598 , 28 Stuart Street COLLAROY NSW 2097
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Stuart Street, Collaroy.</p> <p>The site is regular in shape with a frontage of 16.9m along Stuart Street and a depth of 43.75m. The site has a surveyed area of 738.3m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single storey brick and clad building, a double storey clad residential building and a single brick garage. .</p> <p>The site has a significant cross-fall, sloping from the southwest corner of the site towards the northeast corner with across 15m. The site has been identified as being located within Landslip Risk Area E and is subject to one easement.</p>

The site is vegetated with small and medium size trees and vegetation. As a result of the significant slope of the site there are terraced lawn areas.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by similar one and two storey residential dwellings and residential flat buildings along Stuart Street.

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:

- Development Application DA2021/0514 for Demolition works and the construction of a dwelling house and secondary dwelling was withdrawn from Council on the 23 June 2021.

Council advised the applicant following withdrawal of the development application that greater thought should be given to breaking up the buildings bulk and using greater modulation and separation between different elements of the dwelling to avoid one large continuous building mass.

The applicant resubmitted for the demolition works and construction of a dwelling house and secondary dwelling as this subject application. Following preliminary assessment of the application Council requested further amendments to address bulk and scale concerns and additional information requested by Development Engineering and Roads and Assets.

The applicant provided amended information that did not adequately address any of the concerns raised by Council. The applicant was given an additional opportunity to address the concerns in the form of amended plans and additional information. Following review of the amended information

registered on the 24 May 2022 application was referred back to Development Engineering and Roads and Assets. The amended and additional information was not supported by Development Engineering and as such the application can not be supported in this instance.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 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. Additional information was requested in relation to amended architectural plans and civil plans.</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 matter has been addressed via a condition of consent.</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 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 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</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 20/01/2022 to 03/02/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:

Name:	Address:
Mr Luke John Dunkerley	26 Stuart Street COLLAROY NSW 2097

The following issues were raised in the submissions:

- Significant excavation
- Water management
- Waste Management
- Compatibility with streetscape and neighbouring development
- Privacy
- Use of building
- Arborist report

The above issues are addressed as follows:

- **Significant excavation**

The submissions raised concerns that significant excavation is required for the proposed works and the retaining walls required as part of the excavation works.

Comment:

Following preliminary assessment of the application further clarification was sought as to the location of the retaining walls. All retaining walls required to support the excavation works are located wholly within the property boundary. The application was supported by a Geotechnical Assessment Report with specific recommendations, of which would be included as part of the conditions of consent in any case of approval.

The application has also been assessed by Council's Development Engineers in relation to the proposed excavation and no issues were raised. In the case of an approval a dilapidation report condition would be included as part of the development consent.

- **Water management**

The submissions raised concerns that the large quantity of earth being removed, along with the disruption to the stability of the land would result in water management issues during construction.

Comment:

The application has been assessed by Council's Development Engineer who raised no objection to the application in regard to on site water management during construction. In any case of approval of the development application specific conditions would be placed on the development consent to ensure appropriate water management, including sediment and erosion controls.

- **Waste management**

The submissions raised concerns in regard to the removal of the existing Asbestos Cement

Sheeting.

Comment:

In any case of approval of the development application a condition would be included as part of the development consent requiring the removal of any asbestos on site to be done in accordance with the following requirements:

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

- **Compatibility with streetscape and neighbouring development**

The submissions raised concerns that the proposed development is out of character with the existing streetscape and neighbouring dwellings.

Comment:

Stuart Street is characterised by a variety of dwellings and residential flat buildings with varying architectural styles and sizes. There is no distinctive pattern or bulk, scale and appearance of buildings along Stuart Street. Buildings along Stuart Street are reflective of the varying ages and maintain a generous setback to the front boundary.

The proposed dwelling at 28 Stuart Street complies with the front and side boundary setback controls and has been further stepped in as each level increases to reduce the visual bulk when viewed from the streetscape. The works seek to maintain the existing tree within the front boundary and provide for additional planting on site.

Given the existing streetscape consists of a number of residential flat buildings being three to four storeys in height the works should not be directly compared to a single neighbouring property but the streetscape as a whole.

- **Privacy**

The submissions raised concerns that the windows along the eastern elevation will result in direct onlooking into their property.

Comment:

The proposal has been designed to provide privacy mitigation measures to ensure a reasonable level of privacy is maintained. In the case of any approval appropriate privacy mitigation measures would be included as conditions to ensure a high level of privacy is maintained for both the occupants of the subject site and the adjoining sites.

- **Use of building**

The submissions raised concerns that the building could be converted into multiple dwellings in the future.

Comment:

In the case of any approval the land use would be limited to one (1) principal/primary dwelling and one (1) secondary dwelling. A condition would be included as part of the development consent to limit the land use as such.

- **Arborist report**

The submissions raised concerns that there is no Arborist Report provided as part of the development application, with specific reference to a tree along the eastern side boundary.

Comment:

The proposal has been reviewed by Council's Landscape Officer who was supportive of the proposal subject to the recommended conditions of consent requiring tree and vegetation protection during demolition and building works. If the tree is less than 5 metres in height and an exempt species it does not require development consent for removal. If the tree in question requires development consent for removal and it is damaged or removed, the works are subject to further investigation and compliance action.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no concerns with the application subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p><i><u>Note:</u> The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p>
Landscape Officer	<p>The application seeks consent for the demolition of an existing house and the construction of a new dwelling house with a granny flat and a triple garage.</p> <p>Council's Landscape Referral section has considered the application against the Warringah Local Environmental Plan, and the following Warringah DCP 2011 controls:</p> <ul style="list-style-type: none"> I D1 Landscaped Open Space and Bushland Setting I E1 Preservation of Trees or Bushland Vegetation <p>The Landscape Plan prepared by Vigor Master is noted.</p> <p>The landscape plans and architectural plans do not clearly indicate the treatment of</p>

Internal Referral Body	Comments
	<p>the front landscape area with regard to the existing retaining walls located in the front setback.</p> <p>The Landscape Plans indicate a single level front setback with turf and planting, however there is an approximate 2m level difference between the road reserve and the proposed garage floor level, currently addressed by 2 retaining walls.</p> <p>No objections are raised to the retention of the existing structures, however, it may be prudent to seek clarification from the applicant regarding the treatment of the level change and whether a 2m high wall is proposed on the front boundary (as would appear to be required based on the landscape plan), which would appear to require development consent.</p> <p>An existing tree in the front setback is indicated for retention, however it appears to be impacted by the proposed works including widened driveway and location of the garage. The door to the garage (which appears to be the only entrance to the dwelling other than the driveway) is immediately adjacent to the tree. Whilst no objection is raised to retention of the tree, if removal is required, a modification is likely to be required, at which time suitable replacement planting can be conditioned.</p> <p>Recommended conditions including tree protection of trees on and adjoining the site have been included if the application is to be approved.</p>
NECC (Development Engineering)	<p>The proposal is for the construction of a new dwelling. The submitted stormwater plan is satisfactory subject to conditions.</p> <p><u>Access and Road Works</u></p> <p>The road asset team have provided comments regarding the proposed driveway access and road works. The applicant shall provide a suitable design of the road works and driveway access addressing the concerns raised by the road asset team prior to development engineering providing assessment.</p> <p>Amended Plans provided on 31/3/2022</p> <p><u>Access and Road Works</u></p> <p>As per the comments by the road asset team the applicant must amend the design of the driveway and garage to comply with the current standards. All proposed works on the road reserve must be shown clearly on the plan. At least three engineering sections of the the driveway and three cross sections on the road reserve must be provided, including all the changes on the road reserve.</p> <p>The road bitumen levels cannot be amended unless the applicant proposes a design from the existing kerb to the property boundary and concurrence is obtained from the adjacent property.</p> <p>Alternatively the applicant may consider to relocate the driveway and garage subject to amendments on the road reserve and agreement from Council's Road Asset team.</p> <p>Additional information Provided 24/5/2022</p> <p>The Road Asset team have no objections to the amendment of the road reserve. However, Development Engineering have a concern regarding the levels for the proposed driveway. In the amended plans the proposed bitumen level in front of the new driveway has 20%-24% crossfall which does not comply with current standards.</p>

Internal Referral Body	Comments
	<p>The applicant must demonstrate the accessibility of the driveway from the changing of the existing bitumen. The long sections of the driveway must start from the change of the bitumen to the proposed garage to demonstrate accessibility.</p>
NECC (Water Management)	<p>The property is in the catchment for Collaroy Beach for which it is important to maintain a high level of water quality.</p> <p>The proposal substantially increases the impervious surface area on site. The increase in impervious surface area triggers the provision of water quality controls to reduce organic matter and coarse sediments from entering the stormwater system and local waterways. A filtration device (sediment control pit) must be installed to remove organic matter and coarse sediments from stormwater prior to discharge from the land. Sediment and erosion controls must be installed prior to disturbing any soil and maintained for the duration of work.</p> <p>On assessment, the proposal includes these features to achieve the requirements.</p>
Road Reserve	<p>Whilst the proposed development has limited impact on existing road infrastructure, the proposed driveway does not comply with Council's standards and the road works do not make provision for future improvements to the turning head at the cul-de-sac of Stuart Street. The proposed driveway levels will prevent any future modifications to improve the geometry of the turning area.</p> <p>The civil works concept plans for the driveway proposal are noted and are not acceptable and will need to be refined to determine the design FFL of the parking garage.</p> <p>The alignment of the kerb has not been addressed and there is no provision for a driveway layback . As such, the driveway crossing is non-compliant with council's standards. Driveway access to the property using at grade continuation of the road pavement is not accepted.</p> <p>Consideration to be given to realignment of the kerb and layback parallel to the property boundary to widen/straighten the carriageway, and possibly creating a wider carriageway at the end of the road to improve provision for turning vehicles. Plans to show adjustments to existing retaining walls. Driveway design to include layback. Developer to provide concrete footpath connection from existing stairway to eastern footpath to provide pedestrian connectivity.</p> <p>The sandstone block and brick retaining wall on the verge appears to be a private structure considering the form of construction and materials used being similar in part to construction within the property. Any proposed roadworks must give consideration to the condition, location and repair of the retaining wall.</p> <p>The survey shows the encroachment of the front brick boundary wall into the public road reserve on the north east corner. If this wall is demolished as part of the works, it shall be relocated wholly within the property boundary of the property.</p> <p>Development Engineering will require a Road Act application condition following assessment of the concept design.</p> <p>Comments as at 6 May 2022:</p>

Internal Referral Body	Comments
	<p><u>Review of revised Plans (31/03/2022) and Additional Information Report (2022/198255)</u></p> <p>The proposed driveway has been designed to utilise the existing levels resulting in an excessively steep driveway and a less than ideal road environment. There has been no amendment or consideration to improve the geometry of vehicle and pedestrian access. The proposed driveway levels are not in compliance with Council's driveway standards. The driveway design needs to be amended given the intensification of off street parking within the site.</p> <p>The proposal has been reviewed in consultation with Council's Development Engineering Team who will also provide further advice.</p> <p>Comments as at 9 July 2022:</p> <p><u>Review of revised Plans (24/05/2022)</u></p> <p>The proposed concept appears acceptable. Development Engineering Team to provide conditions requiring a Civil Works Application under s139 of the Roads Act 1993 for the adjustments to retaining walls, kerb and gutter and driveway crossing.</p> <p>File References: 2020/290453 2020/290452 2020/293448</p>
Traffic Engineer	<p>The proposed development involved the demolition of the existing house and construction of a new dwelling house with a granny flat and a triple garage.</p> <p>Traffic:</p> <ul style="list-style-type: none"> · Traffic impact is not significant. · By considering the narrow width of street and site constraints, Demolition and Construction Traffic Management Plans are required. <p>Parking:</p> <p>Proposing 3 parking spaces.</p> <p>Parking requirements are satisfied.</p> <p>Access:</p> <ul style="list-style-type: none"> - Existing damaged driveway will be rebuilt and extended to the proposed garage.

Internal Referral Body	Comments
	<p>- Exit/Entry in a forward direction</p> <p>Servicing:</p> <p>Normal domestic waste collection applies. On-street waste collection is deemed acceptable.</p> <p>Conclusion</p> <p>In view of the above, the development proposal can be approved with conditions. The proposal is therefore supported.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable.

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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1197516M dated 15 December 2021).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	62

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

SEPP (Housing) 2021

Part 1 – Secondary Dwellings

Clause 52 – Development may be carried out with consent	
Standard	Compliance/Comment
a) No dwellings, other than the principal dwelling and the secondary dwelling, will be located on the land.	The proposal will result in one principal dwelling and one secondary dwelling on site.
b) The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area permitted for a dwelling house on the land under another environmental planning instrument.	The floor area of the secondary dwelling is greater than that permissible under any environmental planning instrument. The proposal does not comply with this control.
c) The total floor area of the secondary dwelling is: i) no more than 60m ² , or ii) if a greater floor area is permitted for a secondary dwelling on the land under another environmental planning instrument - the greater floor area.	The total floor area of the secondary dwelling is 75m ² which is greater than 60m ² and any floor area permissible under any environmental planning instrument. The proposal does not comply with this control.

Clause 53 – Non-discretionary development standards	
Standard	Compliance/Comment
a) For a detached secondary dwelling - a minimum site area of 450m ² .	N/A - the proposed secondary dwelling is attached.
b) The number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.	The proposal comprises of the construction of a new dwelling with three car parking spots. This is a net increase of two car parking spots.

SEPP (Transport and Infrastructure) 2021

Ausgrid

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

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.

- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.2m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
5.4 Controls relating to miscellaneous permissible uses	No
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes
6.10 Development for the purposes of secondary dwellings in Zones R2 and R3	No

Detailed Assessment

5.4 Controls relating to miscellaneous permissible uses

The proposed secondary dwelling has a total gross floor area of 75m².

Under this control the permissible floor area of the secondary dwelling must not exceed:

- (a) 60m² or;
- (b) 47m² (11% of the total floor area of the principal dwelling).

As a result, the proposal does not comply with the maximum floor space area control and is therefore not permissible.

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

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

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

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

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

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

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

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

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

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

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

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

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

- (f) the likelihood of disturbing relics*

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

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

Comment: The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

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 s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

6.4 Development on sloping land

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval in relation to stormwater, subject to conditions. Therefore, Council is satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

(c) the development will not impact on or affect the existing subsurface flow conditions.

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

6.10 Development for the purposes of secondary dwellings in Zones R2 and R3

The proposal comprises of the construction of a new dwelling and an attached secondary dwelling. The proposed secondary dwelling is 75m².

This clause is only applicable for alterations and additions to an existing dwelling where the secondary dwelling is wholly within the existing approved envelope and footprint of the dwelling. Given this

proposal is for the construction of a new dwelling this clause is not applicable.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	8.3m (east)	13%	No
B3 Side Boundary Envelope	4m (east)	within	N/A	Yes
	4m (west)	not within	N/A	No
B5 Side Boundary Setbacks	0.9m (east)	2m (garage floor) 3.3m (lower ground floor) 3.3m (ground floor) 4.4m (first floor) 4.4m (second floor)	N/A	Yes
	0.9m (west)	2.8m (garage floor) 2.8m (lower ground floor) 2.6m (ground floor) 2.8m (first floor) 3.1m (second floor)	N/A	Yes
B7 Front Boundary Setbacks	6.5m	6.5m	N/A	Yes
B9 Rear Boundary Setbacks	6m	6m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (295.32m ²)	51% (377.8m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The proposed eastern elevation of the building has a wall height of 8.3m, which is a 13% variation to the required control of a maximum of 7.2m. Although the building is stepped in, with an increased side boundary setback at the first and second level, it is still read as one continuous wall when viewed from adjoining sites to the east. As such, a merit assessment has been conducted below.

The DCP allows for exemptions to sites exceeding the maximum wall height on sites with slopes greater than 20%. The slope falls across the property at an average angle of 20 degrees and has a slope of approximately 30% and therefore this exemption is applicable to the site should the application not exceed the 8.5m height development standard, designed and located to minimise bulk and scale and has a minimal visual impact when viewed from the downslope sides of the land.

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:

Following amendments to the original proposal the applicant has provided varying setbacks and a variety of colours and finishes along each elevation to increase articulation. The visual impact of the dwelling is reduced as a result of the generous side boundary setbacks and articulation and as such is not considered to be an unreasonable outcome.

The setback of each level has been significantly increased as each level increases to minimise the visual impact downslope of the site.

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

Comment:

The development is not below the existing tree canopy when viewed from the streetscape as a result of the steep sloping topography of the site.

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

Comment:

The proposal has been stepped to address the topography of the site and as such is it will continue to maintain reasonable view sharing.

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

Comment:

The development is not considered to have any unreasonable impacts on the adjoining or nearby properties.

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

Comment:

The proposal requires a significant amount of excavation of the natural landform. The excavation of the site allows for significant bulk and scale of the site.

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

Comment:

The proposal comprises of a flat roof to keep the building below the 8.5m maximum building height. As such, there is not sufficient scope for innovative roof pitch and variation in roof design however the proposed roof form minimises bulk and scale when viewed from the streetscape and surrounding sites.

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

B3 Side Boundary Envelope

Description of non-compliance

The proposal encroaches into the side boundary envelope along the western elevation.

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 proposed first floor addition is not considered to be visually dominating when viewed from the streetscape and surrounding dwellings. Appropriate articulation has been provided to mitigate any perceived bulk.

Sufficient spatial separation has been provided through generous setbacks to allow for future plantings and vegetation. In addition the applicant has provided planter boxes to increase articulation when viewed from the streetscape.

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

Comment:

The minor non compliance is not expected to result in any unreasonable light, solar access or privacy impacts. Adequate spatial separation between buildings has been provided via generous side boundary setbacks.

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

Comment:

The development appropriately responds to the topography of the site.

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

C2 Traffic, Access and Safety

Development Engineering have a concern regarding the levels for the proposed driveway. In the amended plans the proposed bitumen level in front of the new driveway has 20%-24% crossfall which does not comply with current standards and Council is not satisfied that cars will be able to access the on site car parking.

D9 Building Bulk

Following preliminary assessment of the application, Council requested amendments to better address the objectives of this control. The applicant provided amended plans increasing front and side setbacks, reducing the size of balconies, increased variety of colours, materials and finishes and planter boxes incorporated into the overall design.

Stuart Street is currently characterised by large amount of three and four storey residential flat buildings with generous front boundary setbacks. The dwelling has been stepped with the topography of the site to reduce the bulk when viewed from Stuart Street and is considered to be a reasonable outcome for the site. It is important to note that any two storey building on the subject site with no excavation would result in a bulky structure that would most likely exceed development standards and built form controls given the steep sloping topography.

The increased articulation and modulation of the proposed dwelling will result in a good design outcome to minimise the visual impact of development when viewed from adjoining properties and streets.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

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

A monetary contribution of \$9,800 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$980,000.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, 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
- Consistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Inconsistent 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 DA2021/2566 for the Demolition works and construction of a dwelling house and secondary dwelling on land at Lot 1 DP 1199598, 28 Stuart Street, COLLAROY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and Assessment Act 1979
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of State Environmental Planning Policy (Housing) 2021.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of 5.4 Controls relating to miscellaneous permissible uses of the Warringah Local Environmental Plan 2011.
4. 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 C2 Traffic, Access and Safety of the Warringah Development Control Plan.

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

Signed



Clare Costanzo, Planner

The application is determined on 20/07/2022, under the delegated authority of:



Phil Lane, Acting Development Assessment Manager