

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/1894
<b>Responsible Officer:</b>	Kye Miles
<b>Land to be developed (Address):</b>	Lot A DP 342493, 13 De Chair Road NARRAWEENA NSW 2099
<b>Proposed Development:</b>	Demolition works and construction of a dwelling house including swimming pool
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Jonathan David McCall Nicky McCall
<b>Applicant:</b>	Amde Construction Pty Ltd
<b>Application Lodged:</b>	12/01/2024
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	18/01/2024 to 01/02/2024
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 4.99%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 1,484,921.00

### PROPOSED DEVELOPMENT IN DETAIL

Development application for demolition works and the construction of a dwelling house and swimming pool. The dwelling comprises:

- Four bedrooms and bathrooms.
- Double garage (attached).
- Kitchen, living and dining.
- Rumpus.
- Service rooms.

- Alfresco.

The proposed pool and associated deck areas are located within the rear setback. In addition, associated landscaping works are proposed across the site.

### **ADDITIONAL INFORMATION**

Following a preliminary assessment of the application, Council issued an RFI to the applicant on 28 February 2024, outlining concerns with the application.

The concerns related to insufficient information regarding building height and privacy.

The applicant lodged additional information and amended plans to address the concerns on 13 March 2024.

The amended plans incorporated the additional details:

- Additional section plans.
- Updated floor plans to include the adjacent dwellings and location of nearby windows dwelling.

In addition, a Clause 4.6 Variation statement was lodged to address a technical height breach.

### **Community Participation Plan**

The additional information did not result in any design changes to the original proposal. Therefore, re-notification was not required in accordance with Northern Beaches Community Participation Plan.

### **ASSESSMENT INTRODUCTION**

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

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

### **SUMMARY OF ASSESSMENT ISSUES**

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings

Warringah Development Control Plan - B1 Wall Heights  
 Warringah Development Control Plan - B3 Side Boundary Envelope  
 Warringah Development Control Plan - B9 Rear Boundary Setbacks  
 Warringah Development Control Plan - D8 Privacy

## SITE DESCRIPTION

<b>Property Description:</b>	Lot A DP 342493 , 13 De Chair Road NARRAWEENA NSW 2099
<b>Detailed Site Description:</b>	<p>13 De Chair Road, Narraweena (the subject site) is located on the southern side of De Chair Road and is located upon land zoned for R2 Low Density Residential.</p> <p>The site is generally rectangular in shape with a street frontage of 18.41m and depths of 38.5m and 40.9m respectively. Overall the site has a surveyed area of 723.7m<sup>2</sup>.</p> <p>Presently the allotment accommodates a part one / part two storey brick dwelling house with a semi-terraced rear yard.</p> <p>Other surrounding developments consist of detached dwelling houses of varying age, size and construction. The site and surrounding sites are generally located within a landscaped setting characterised by medium street trees.</p> <p>Topographically the site declines from north to south by approximately 5.0m via a gradual slope.</p>

Map:



## SITE HISTORY

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.

## 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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 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 29</u> of the EP&amp;A Regulation 2021 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 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation amended plans.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 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 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p>

Section 4.15 Matters for Consideration	Comments
	<u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
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 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 "Submission's" section of 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 application has been publicly exhibited from 18/01/2024 to 01/02/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Paul Bristow	11 De Chair Road NARRAWEENA NSW 2099

The following issues were raised in the submissions:

- **Privacy**
- **Rainwater tank**
- **Common boundary**
- **Asbestos**

The above issues are addressed as follows:

- **Privacy**

The submissions raised concerns that the proposal will result in unacceptable privacy impacts for the surrounding properties.

Comment:

Matters relating to privacy impacts have been discussed in further detail in part 'D8 Privacy' of this report. In summary, the development will not give rise to any adverse privacy impacts to adjoining dwellings.

This matter does not warrant the refusal of this application.

- **Rainwater tank**

The submissions raised concerns with the location of the rainwater tank with the westerns setback.

Comment:

The rainwater tank is a low lying structure and provides a compliant side setback of 1.1 metres. In the absence of any adverse impact it is not considered reasonable to relocate this structure.

This matter does not warrant the refusal of this application.

- **Common boundary**

The submissions raised concerns that the subject site's common boundary shared with No. 11 De Chair Road is shown in a different position from a historical survey.

Comment:

This concern is noted. As such, conditions of consent will require a survey certificate to be completed throughout construction to ensure that the development is carried out in accordance with the approved details.

This matter does not warrant the refusal of this application.

- **Asbestos**

The submissions raised concerns that the existing dwelling contains evidence of asbestos.



Comment:

Suitable conditions have been included to ensure that any asbestos uncovered on the site is disposed in accordance with the relevant regulations.

This matter does not warrant the refusal of this application.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to): D1 Landscaped Open Space and Bushland Setting; E1 Preservation of Trees or Bushland Vegetation; and E2 Prescribed Vegetation.</p> <p>The existing property does not contain any prescribed trees within the site. The existing Brushbox street tree shall be preserved and conditions shall be imposed for protection. A Landscape Plan is submitted and upon review no concerns are raised subject to imposed conditions, to ensure that the landscape objectives of D1 are satisfied, and these include locally native tree planting to the front and rear of the property to reduce the bulk and scale, and substitution of nominated environmental weeds with non invasive species.</p>
NECC (Development Engineering)	<p><b>15/02/2024:</b> Development Application is for demolition and construction of a two storey dwelling with a swimming pool.</p> <p><b>Access:</b> New driveway is proposed and Council's normal low vehicle crossing profile will be suitable.</p> <p><b>Stormwater:</b> Site falls to rear, an onsite stormwater detention (OSD) system is proposed with level spreader. Stormwater plans by Nastasi &amp; Associates, Project No 29056, Drawing No C1 to C6, Issue A, Dated 14/12/2023 are satisfactory.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs 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 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 (Sustainable Buildings) 2022**

A BASIX certificate has been submitted with the application (see Certificate No. 1428451S dated 28 September 2023).

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

#### **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, subject to conditions which have been included in the recommendation of this report.

#### **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	8.92m	4.99%	No

### Compliance Assessment

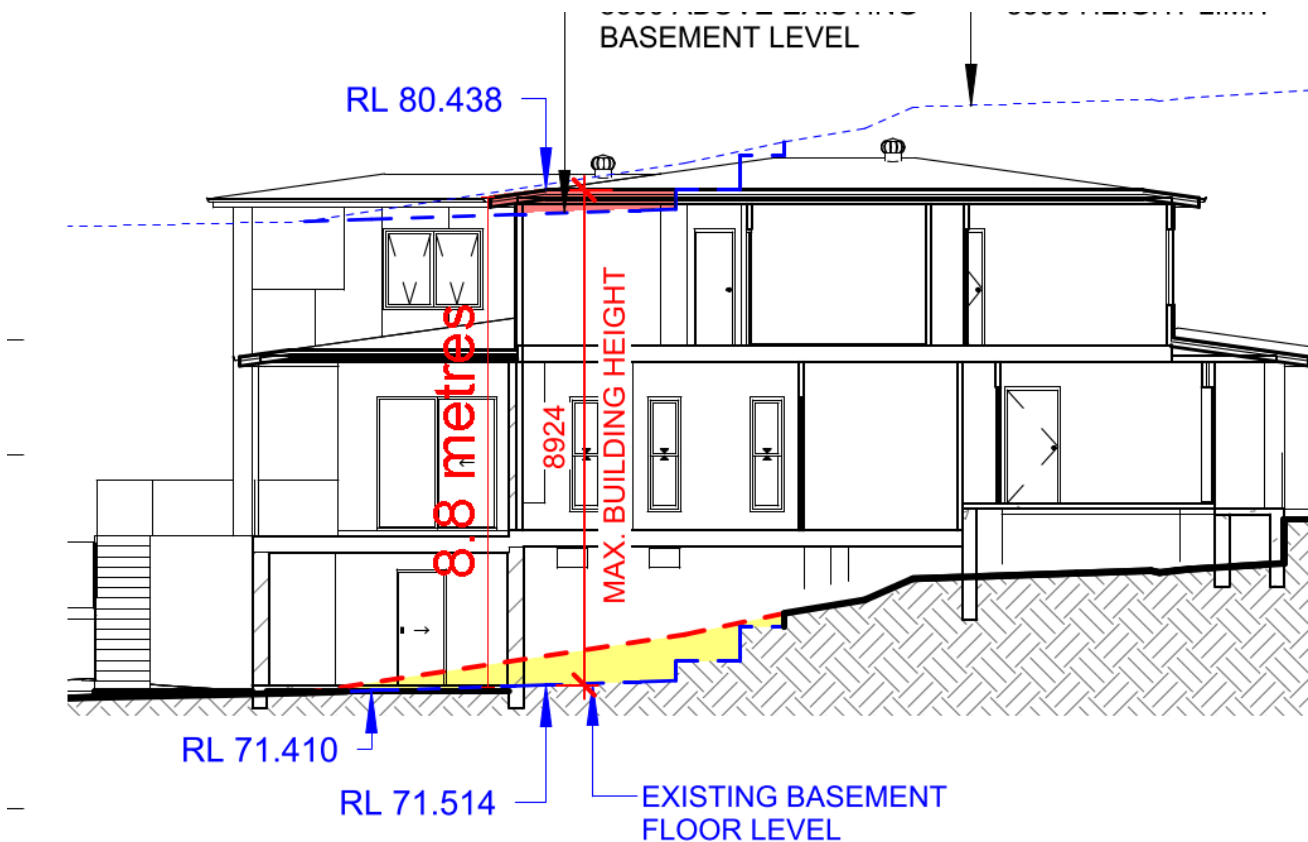
Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

### Detailed Assessment

#### 4.6 Exceptions to development standards

##### Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	8.92m
Percentage variation to requirement:	4.99%



**Figure 1.** Building height non-compliance diagram.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

The Applicant's written request has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written

request under cl 4.6 must be “environmental planning grounds” by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.’

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- *The variation permits a height of development that is commensurate with other residential development in the Narraweena locality. The general locality is characterised predominately by large two storey dwellings which respond to the unique topography of the area. The variation permits a two storey dwelling that is suited to the sloping topography of the site and is not excessively high yet allows a high level of internal and external amenity to future residents.*
- *The proposed dwelling is compatible with surrounding development and will make a positive contribution to the streetscape. The dwelling's visual bulk and architectural scale is consistent with other dwellings on nearby properties & does not visually dominate the street. As viewed from De Chair Road, the proposed dwelling will have a compliant height well under the 8.5m maximum. The proposed dwelling is well articulated through the use of the recessed first floor, flattened roof style, varied setbacks and variation in material selection.*
- *The site is constrained by a moderate slope, from the front boundary to the rear, of approximately 4.42m which contributes to the height exceedance.*
- *The proposed development will provide high quality housing in close proximity to facilities and public open spaces.*
- *The additional height of the development is without amenity impacts, in terms of preserving privacy, overshadowing or disrupting views. The resulting development provides a generous amount of landscaping and deep soil areas which will facilitate an appealing landscape setting.*

The applicant's justification is agreed with. The extent of the non-compliance is limited to the southeast corner of the roof, which largely consists of the eaves. Also, it is acknowledged that the non-compliance is largely consequence of the slope of the land that declines from north to south by

approximately 5.0 metres. In addition, the site has been previously excavated to allow for the existing basement and the proposal is measured at 8.5 metres when taken from the extrapolated natural ground levels. Furthermore, it is also considered that the noncompliance will not give rise to any adverse amenity impacts or result in unreasonable streetscape impacts, particularly as the first floor has been substantially set back from the boundaries.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

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

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

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

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

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

#### Comment:

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

#### Objectives of development standard

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

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

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

#### Comment:

The projections above the 8.5 metre height limit are limited to the southeast corner of the building with a minor area of the 'Master' roof (demonstrated in figure 1 above). As above, this is largely consequence of existing excavation and the proposal would comply if measured from the extrapolated natural ground levels. However, these encroachments are considered to be minor and do not result in unacceptable neighbouring impacts. Overall, the proposed height is considered to be compatible and commensurate with the existing built form and therefore, remains consistent with the height and scale of surrounding and nearby development.

The development satisfies this objective.

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

Comment:

The proposal will not result in the loss of views.

The applicant has submitted shadow diagrams and detailed analysis of the overshadowing impact of the development and Council are satisfied that the adjoining site's will receive solar access to living room windows and private open space in accordance with the Warringah DCP.

The projections above to the height limit only relate to a portion of the roof form, which are not considered to give rise to any adverse privacy impacts.

The development satisfies this objective.

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

Comment:

The proposed works will not involve the removal of any significant vegetation and the application has been amended to maintain suitable deep soil areas across the site. Therefore, the proposed development will not detract the scenic quality of Warringah's coastal and bush environments.

The development satisfies this objective.

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

Comment:

The proposal has been appropriately sited and articulated to minimise the visual impact when viewed from public places.

The development satisfies this objective.

## **Zone objectives**

### **The underlying objectives of the R2 Low Density Residential zone:**

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

Comment:

The development will continue to provide for the housing needs of the community within a low density residential environment.

It is considered that the development satisfies this objective.



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

Comment:

This is not applicable to the proposed development.

It is considered that the development satisfies this objective.

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

Comment:

The proposed development maintains sufficient landscaped area within the rear setback area to compliment the landscaped setting locality and is consistent with the objective.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

Planning Circular PS20-002 dated 5 May 2020 issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

**Warringah Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	8.7m	20.8%	No
B3 Side Boundary Envelope	4m - East	Within envelope	N/A	Yes
	4m - West	Outside envelope	N/A	No
B5 Side Boundary Setbacks	0.9m - East	2.1m (Ground) 4.7m (First)	N/A	Yes

	0.9m - West	2.0m (Ground) 3.2m (First)	N/A	Yes
B7 Front Boundary Setbacks	6.5m	6.5m (Garage)	N/A	Yes
B9 Rear Boundary Setbacks	6m	4.7m	21.7%	<b>No</b>
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	42.1% (304.5m <sup>2</sup> )	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	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	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
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 DCP requires a maximum wall height of 7.2 metres. The proposed development has a maximum wall height of 8.6 metres at its highest point, which relates to an internal wall centrally located within the building. In addition, eastern and western external wall planes partially exceeds the 7.2 metre requirement.

### Merit consideration:

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

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

#### Comment:

The non-compliance with the wall height control relates to the eastern and western wall planes and is most pronounced toward the rear of the first floor. As the non-compliant elements are located at the rear of the building, the proposal will not have a discernible impact upon the streetscape. Overall, the proposed height is considered to be compatible and commensurate with the existing detached development within the locality and will not give rise to any unacceptable visual impacts.

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

#### Comment:

The proposed development is located beneath the existing tree canopy level within the locality. In addition, the proposal does not involve any changes to significant landscaping across the site.

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

#### Comment:

The proposal will achieve reasonable view sharing.

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

#### Comment:

The proposal achieves acceptable building separation with generous side boundary setbacks. In addition, the portions of the development that exceed the maximum wall height do not contain any intrusive windows nor do they create unacceptable privacy or overshadowing impacts. Further, the proposal's low roof pitch minimises overshadowing impacts to adjacent living rooms and private open space on the winter solstice (June 21). Overall, the proposed non-compliance is largely as consequence from the site being previously excavated for the existing basement, and would comply if measured from extrapolated natural ground levels. Notwithstanding, the proposal has been suitably designed to minimise the impact of

development on adjoining and nearby properties.

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

Comment:

The bulk of excavation is centrally located - away from the site boundaries - and is supported by a Preliminary Geotechnical Assessment Report. In addition, the proposed dwelling provides suitable spatial separation from the site boundaries to generally allow the retention of natural ground levels along the boundaries, while responding appropriately to the steeply sloping topography.

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

Comment:

Sufficient scope has been provided to enable the innovative roof form.

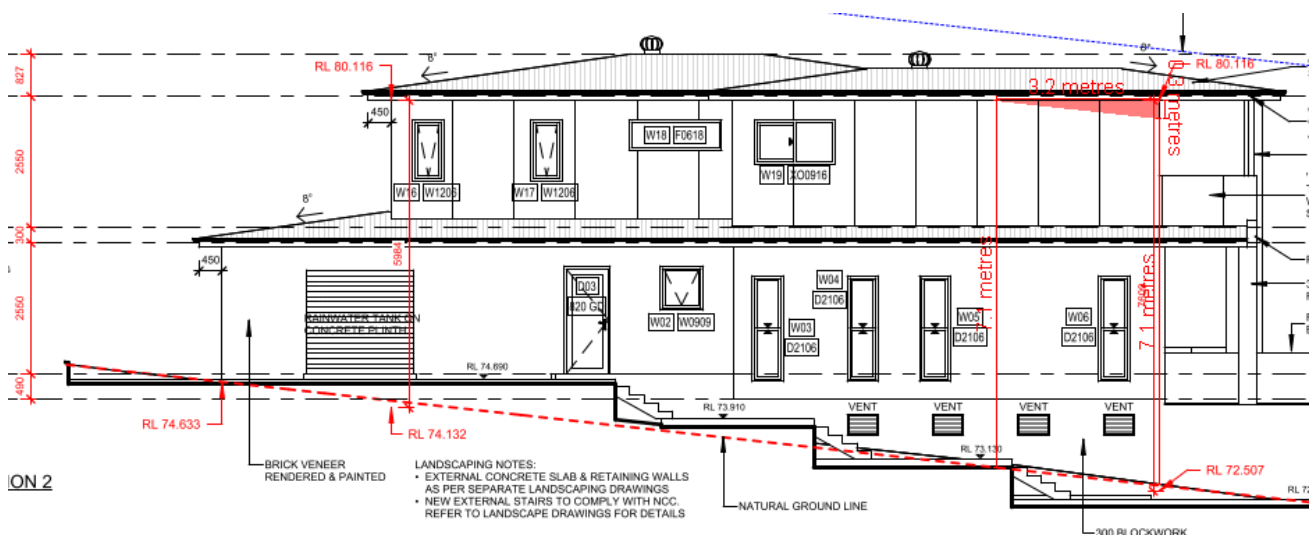
Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported,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

### B3 Side Boundary Envelope

#### Description of non-compliance

WDCP requires buildings to be sited within a building envelope determined by projecting planes at 45 degrees from 4.0 metres above ground level (existing) at the side boundaries. The proposed dwelling encroaches the prescribed envelope on both side boundaries.

The proposal has one encroachment on the western elevation up to 0.3 metres in height for a length of 3.2 metres. This represents a maximum variation of 7.5%.



**Figure 2. Extent of western side boundary envelope non-compliance.**

### 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 proposal is appropriately articulated and incorporates materials that complement the existing built form and the surrounding environment. The proposal's height is proportionate to existing buildings, preventing any overwhelming visual impact. Additionally, the dwelling's size and massing are well-balanced, preserving the overall aesthetic and character of the area. Overall, the building, by virtue of its height and scale, remains consistent with the desired character of the locality.

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

#### Comment:

The spatial separation proposed between buildings is considered appropriate within the low density setting. In addition, the variation sought to the side boundary envelope do not contain any intrusive windows. Furthermore, the submitted shadow diagrams demonstrates compliance with WDCP's access to sunlight control. Overall, it is considered that the proposal ensures adequate light, solar access and privacy by providing reasonable spatial separation between buildings.

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

#### Comment:

The building makes appropriate level changes where required and is considered to respond 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 WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **B9 Rear Boundary Setbacks**

### Description of non-compliance

The proposed swimming pool deck provides a minimum rear setback of 4.7 metres. The control requires a minimum rear setback 6.0 metres.

Notwithstanding, exempt development, swimming pools and outbuildings may encroach within the 6.0 metre rear setback. However, they must not exceed 50% of the total rear setback area.





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

Comment:

As above, the proposal represents a minor encroachment within the rear setback with the majority of areas being open and landscaped, which allows for a reasonable sense of openness within the rear yard.

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

Comment:

Adequate deep soil landscaping is proposed along the rear boundary, which will allow for suitable opportunities for the establishment of planting that is of a size and scale to screen the development from adjoining properties. In addition, the works are reasonably set back from adjoining buildings, which mitigates any unacceptable visual and aural privacy impacts. Therefore, the proposal has been designed appropriately to preserve neighbourhood amenity.

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

Comment:

The proposal will not disrupt or compromise the existing visual continuity and pattern of buildings, rear gardens or landscape elements due to its minor encroachment within the rear setback.

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

Comment:

As above the proposal has been adequately designed and sited to maintain privacy between dwellings.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **D8 Privacy**

Concerns have been raised regarding the proposal, particularly its potential for unacceptable privacy impacts. Specifically, there is apprehension regarding the west-facing windows of 'Bed 3.'

Furthermore, the assessment of this application identifies that the proposed first-floor balcony and elevated ground floor alfresco area lead to overlooking.

The assessment below outlines the nature and impacts of the proposal.

### Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

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

Comment:

The concerned windows are located in a bedroom, an area with low pedestrian traffic. It is expected that any overlooking from these windows will be infrequent and reasonable. Moreover, the proposal maintains a minimum setback of 4.3 metres from the northern boundary and approximately 16.5 metres from nearby windows, providing substantial spatial separation to mitigate potential privacy concerns.

On the ground floor, there is a large "Alfresco" deck directly accessible from the kitchen and living areas, as well as a first-floor balcony accessible by a secondary living space. These areas will experience higher pedestrian traffic and pose greater privacy risks. The ground floor deck has a minimum western setback of 2.0 metres and lacks screen planting, potentially allowing for objectionable overlooking when considering the elevation difference with the neighbouring rear yard. To address this, a condition is proposed to require the installation of a privacy screen along the entire length of the terrace's western elevation.

Similarly, the first-floor balcony is set back 3.3 metres from the western boundary and approximately 4.6 metres from the ground floor deck of the neighbouring property. The difference in elevation between these areas indicates potential privacy concerns, necessitating the installation of a privacy screen along the entire length of the balcony's western elevation.

All other windows and openings are considered to be acceptable and will not result in unreasonable impacts to the privacy of adjacent properties. Properties are not recommended to incorporate additional privacy treatment.

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

Comment:

As above, the proposal as conditioned will achieve an innovative design solution, which improves the urban environment.

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

Comment:

The proposal will not impact upon personal and property security.

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

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly 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 \$14,849 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,484,921.

## **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 2021;
- 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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

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

## RECOMMENDATION

That Northern Beaches Council as the consent authority permits a contravention of clause 4.3 Height of Building development standard pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2023/1894 for Demolition works and construction of a dwelling house including swimming pool on land at Lot A DP 342493, 13 De Chair Road, NARRAWEENA, subject to the conditions printed below:

## Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

## GENERAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A03	J	Site Plan	G.J Gardner	11 March 2024
A05	J	Ground Floor Plan	G.J Gardner	11 March 2024
A06	J	First Floor Plan	G.J Gardner	11 March 2024
A07	J	Elevations	G.J Gardner	11 March 2024
A08	J	Elevations	G.J Gardner	11 March 2024
A09	J	Sections	G.J Gardner	11 March 2024
A10	J	Demolition Plan	G.J Gardner	11 March 2024
A14	J	Driveway Details	G.J Gardner	11 March 2024

A17	G	Waste Management	G.J Gardner	14 December 2023
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Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	1428451S	Chapman Environmental Services	28 September 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	24 January 2024

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

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

## 3. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

#### 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) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the following is required:
  - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% 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.
  - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
  - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

- (k) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

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

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2018
    - (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 Section 7.12 Contributions Plan 2022

A monetary contribution of \$14,849.21 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$1,484,921.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

### **6. Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

## **BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

### **7. On-Site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for

Development Policy, and generally in accordance with the concept drainage plans prepared by Nastasi & Associates, Project No 29056, Drawing No C1 to C6, Issue A, Dated 14/12/2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. Level spreader to be designed as per Appendix 4 of Council's Water Management for Development Policy.
- ii. Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

#### 8. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Normal Low Standard vehicle Crossing Profile and in accordance with Section 138 of the Roads Act 1993.

Note,

- driveways are to be in plain concrete only.
- All redundant laybacks along frontage of site in De Chair Road are to be reinstated to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

A Council approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

#### 9. **Amendments to the approved plans**

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

- **Ground floor alfresco** - A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western edge of the deck located off the ground floor living and kitchen as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.
- **First floor balcony** - 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost western edge of the balcony located off the first floor rumpus as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

**10. Installation and Maintenance of Sediment Control**

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To ensure no substance other than rainwater enters the stormwater system and waterways.

**11. 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 Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

**12. External Finishes to Roof**

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.46 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a metallic steel or reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

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

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

**13. 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 Certifier 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.

## DURING BUILDING WORK

### 14. Protection of Existing Street Trees

All existing street trees in the vicinity of the works shall be retained during all construction stages, and the Brushbox street tree fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for the street tree fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

All street trees within the road verge are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Reason: Street tree protection.

### 15. Tree and Vegetation Protection

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation located on adjoining properties,
- ii) all trees and vegetation within the road reserve.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites,
- ii) the following arboricultural requirements shall be adhered to unless authorised by an Arborist with minimum AQF level 5 qualifications: existing ground levels shall be maintained within the tree protection zone of trees to be retained; removal of existing tree roots at or >25mm (Ø) diameter is not permitted; no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained; and structures are to bridge tree roots at or >25mm (Ø) diameter,
- iii) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- iv) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
- v) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:



c) The arboricultural works listed in a) and b) are undertaken as complaint to AS4970-2009 Protection of trees on development sites.

Reason: Tree and vegetation protection.

**16. Road Reserve**

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

Reason: Public safety.

**17. Removing, Handling and Disposing of Asbestos**

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

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

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

**18. Demolition Works - Asbestos**

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

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

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

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

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

**19. Survey Certificate**

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

(a) Commencement of perimeter walls columns and or other structural elements to ensure the

wall or structure, to boundary setbacks are in accordance with the approved details.

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

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

Details demonstrating compliance are to be submitted to the Principal Certifier.

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

## **20. Waste Management During Development**

The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.

Details demonstrating compliance must be submitted to the Principal Certifier.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

# **BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**

## **21. Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plans, and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plans, unless otherwise imposed by conditions,
- c) one locally native trees to the front setback and one locally native tree to the rear setback (ie. two in total) shall be planted as selected from Northern Beaches Council's Native Plant Species Guide - Curl Curl Ward, or Council's Tree Guide; to achieve at least 6.0 metres height at maturity; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
- d) all tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size;
- e) the nominated Rhipiolepis species shall not be planted and shall be replaced with a non self-seeding species of similar size and form,
- f) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

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

Reason: Environmental amenity.

## **22. Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by an Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health

and impact on the existing Brushbox street tree required to be retained, including the following information:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Street tree protection

**23. Reinstatement of Kerb**

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

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

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

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

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

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

**25. House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Proper identification of buildings.

**26. Waste Management Confirmation**

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition

and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.

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

### 27. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plans and any conditions of consent.

The approved landscape area shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity

### 28. **Swimming Pool/Spa Motor Noise**

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

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

**Signed**



**Kye Miles, Planner**

The application is determined on 08/04/2024, under the delegated authority of:



**Steven Findlay, Manager Development Assessments**