



Warringah Council

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Assessment Officer: Ryan Cole
Address / Property Description: Lot 25 in DP 6098, No 9 Ozone Street, Freshwater

Proposal: Demolition of an existing dwelling, and construction of two dwellings on two lots
Development Application No: **DA2008/0786**
Plans Reference: DA:01 to DA:10
Applicant: Michael Ernest Cawthorn
Owner: Michael Ernest Cawthorn
Application Lodged: 29/05/2008
Amended Plans: Request sent 21 July 2008 – no response

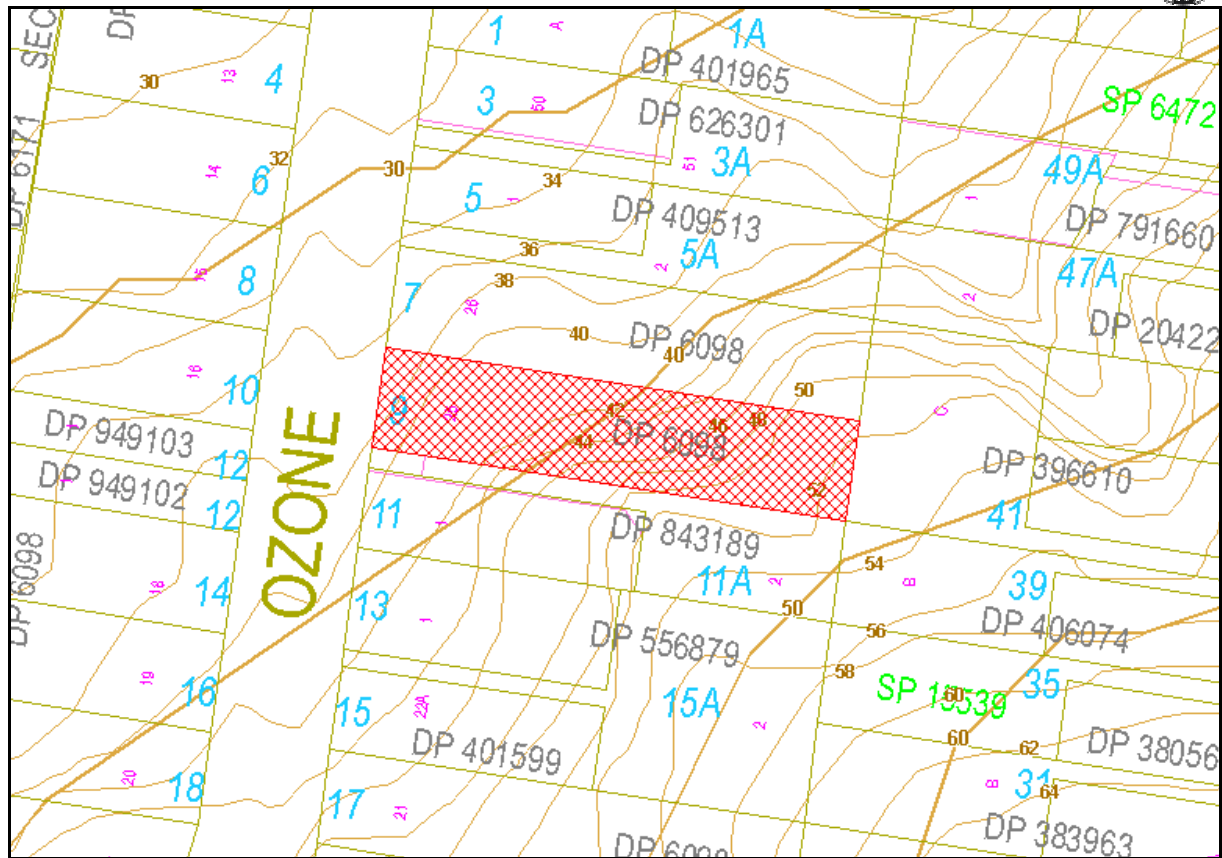
Locality: F5 Curl Curl
Category: Category 1- housing
Clause 20 Variations: YES- Rear Building Setback, Landscaped Open Space
Land and Environment Court Action: NO
Referred to WDAP: NO
Referred to ADP: NO

SUMMARY

Submissions: One (1) submission
Submission Issues: Potential view loss, sunlight access, security fencing, potential damage to neighbouring properties
Assessment Issues: Retaining unique environmental features, failure to provide adequate information to enable an environmental assessment to be completed. Failure to comply with BASIX
Recommendation: REFUSAL
Attachments: NO



LOCALITY PLAN (not to scale)



Subject Site: Lot 25 in DP 6098, No. 9 Ozone Street, Freshwater

Notified Residences: Under the provisions of the Warringah Development Control Plan the subject application has been notified to the adjoining property owners and occupiers. As such, there were 10 notification letters sent.



SITE DESCRIPTION

This application relates to the land which currently has a registered title of Lot 25 in DP 6098, and is commonly known as No. 9 Ozone Street, Freshwater. The land is located on the eastern side of Ozone Street, between Wyadra Avenue and Marlborough Avenue. It is rectangular in shape, with a street frontage of 17.380 metres, a length of between 82.3 metres, and a site area of 1430 square metres.

The land increases about 17 metres towards the southeast and has an average gradient of 1:5 across the land. The land is currently occupied by a residential dwelling towards the west and landscaping towards the east, and a vehicular access from Ozone Street. There are rock outcrops in the front setback area and immediately to the rear of the existing dwelling. The surrounding area is characterised by one and two storey residential dwelling.

RELEVANT BACKGROUND

DA2004/1523- was approved on 12 December 2005. The consent is made for the subdivision of Lot 25, DP 6098, No.9 Ozone Street, Freshwater into two lots. The created Lot 1 is located at the western part of the site with frontage to Ozone Street, with a length of between 46.61 and 46.90 metres and a site area of 812.6 square metres. The created Lot 2 is located at the eastern part of the site accessed via a driveway towards the northern boundary of the site, with a length of between 35.40 and 35.69 metres with a site area of 617.6 square metres. The consent is also made for extending the driveway towards the northern boundary of the site, an additional car space and landscaping on Lot 1, partial demolition of the existing dwelling on Lot 1 and reconstruction of the northern elevation of the dwelling.

Council's records do not indicate any subdivision work or certificate at the subject site. As such, this application if approved would be subject to a Deferred Commencement upon the issue of a subdivision certificate for the two lots created in Consent 2004/1523.

PROPOSAL IN DETAIL

This application seeks to demolish the existing dwelling on the site, and to construct two residential dwellings on the two lots created under Development Consent No. 2004/1523 (yet to be activated and registered), in the following manners:

Lot 1

Ground Floor

- West facing alfresco terrace to dining area and veranda to living area,
- North facing deck to ensuite bedroom,
- Garden court in the southern side setback,
- Kitchen, power room, laundry,
- A double garage (with turf covered roof) and entrance located to the rear of the dwelling
- Lift shaft and staircase

First Floor (on a smaller footprint)

- West facing deck to bedroom No.3
- Bedroom, study, bathroom,
- Lift shaft and staircase

Lot 2

Ground Floor

- West facing lower terrace and alfresco terrace to dining area, lower terrace and veranda to living area,
- North facing deck to ensuite bedroom,
- Garden court in the southern side setback,
- Kitchen, power room, laundry,
- Drying court located to the rear of the dwelling on a higher contour
- Lift shaft and staircase

First Floor (on a smaller footprint)

- West facing deck to bedroom No.3
- Bedroom, study, bathroom,
- Lift shaft and staircase

Lower Ground Floor

- Double garage

The proposal also includes the followings:

- Passing bay, extended from the part of the driveway fronting Ozone Street
- Garden wall between Lot 1 and Lot 2

APPLICATION HISTORY

Following a preliminary assessment of the application, a request for additional information was sent to the applicant on 21 July 2008. The details requested included the following:

1. The submitted engineering design for the driveway and drainage relates to a previous subdivision application and does not take into account the proposed demolition of the existing dwelling and construction of 2 new dwellings on the site.
2. The BASIX certificate appears to only relate to the front dwelling and not the rear. No water tanks have been shown on the engineering or architectural plans.
3. The BASIX Landscape requirement on Lot 1 is for 300m² of indigenous/low water use vegetation. This is not illustrated on the plans of the proposed design.
4. The driveway levels on the engineering plan must be compared to the proposed garage levels for the dwellings to ensure access is permissible. Cross sections at regular intervals and adjacent to the garage entry points are to be provided. All retaining structures are to be detailed on the cross sections as necessary.
5. The car stand area on the engineering plans is to be deleted.
6. The survey plan must be amended to suit the new design. The plan must remove all level information and structures, trees etc and include all proposed easements, rights of way, lot dimensions and lot areas including access handle areas.
7. The landscape plan covers only 1 lot, the proposal is for 2 lots
8. The landscape plan and engineering plans shows retention of existing house, the architectural plans show demolition.
9. The landscape plan and engineering plans show construction of parking bays in Lot 1. The architectural; plans show no parking bays in lot 1. Consistency between these plans is required.



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10. The plans are not clear in relation to trees to be retained or removed (E.g. Tree 10 is in the passing bay, Lot 2 contains significant trees to be removed, not marked on plans)
11. Significant rock excavation and tree removal is proposed to accommodate both houses. This does not appear to be adequately identified or addressed in the SEE in relation to General Principles of Development Control, Clause 56 – Retaining Unique Environmental Features on Sites and the DFC in the Locality Statement
12. The OSD design provided on the engineering drawings relate to the subdivision plan and not to the proposed plan. I.e. the OSD proposed is not shown on the architectural plans, which differ to the engineering plans.
13. The proposed 'House 1' does not comply with the minimum 6m rear building setback control. Amended plans demonstrating compliance with all built form controls are to be submitted.

As a direct result of the letter Council advised the applicant that *"If Council has not received this information to its satisfaction within 21 days of the date of this letter, your Application will be determined on the basis of information presently before Council."*

Since the date the applicant submitted a letter dated 6 August 2008 requesting an extension of time, however to date Council has received no further response from the applicant.

As such Pursuant to Clause 50 & 54 of the Environmental Planning and Assessment Regulation 2000 the application is recommended for REFUSAL as the requested information has not been submitted to Council, and therefore Council is unable to provide an assessment of the application to be carried out under Section 79C and other relevant provisions of the Environmental Planning and Assessment Act 1979 and other associated legislation.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979
- b) Environmental Planning and Assessment Regulations 2000
- c) State Environmental Planning Policy No.55- Remediation of Land
- d) State Environmental Planning Policy- Building Sustainability Index (BASIX) 2004
- e) State Environmental Planning Policy- Infrastructure 2007
- f) Warringah Local Environment Plan 2000
- g) Warringah Development Control Plan
- h) S94A Development Contributions Plan

REFERRALS

Development Engineers

Council's Development Engineer has reviewed the proposal and provided the following comments:

"A review of the application has found the following additional information that must be provided by the applicant prior to further assessment.

1. *The submitted engineering design for the driveway and drainage relates to a previous subdivision application and does not take into account the proposed demolition of the existing dwelling and construction of 2 new dwellings on the site.*
2. *The BASIX certificate appears to only relate to the front dwelling and not the rear. No water tanks have been shown on the engineering or architectural plans.*

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3. *The driveway levels on the engineering plan must be compared to the proposed garage levels for the dwellings to ensure access is permissible. Cross sections at regular intervals and adjacent to the garage entry points are to be provided. All retaining structures are to be detailed on the cross sections as necessary.*
4. *The car stand area on the engineering plans is to be deleted.*
5. *The survey plan must be amended to suit the new design. The plan must remove all level information and structures, trees etc and include all proposed easements, rights of way, lot dimensions and lot areas including access handle areas."*

Accordingly, subject to the above, the proposed development fails to satisfy the requirements under Clause 76 Management of Stormwater and the adequacy of car parking under Clause 74 Provision of Carparking, has failed to provide adequate information to determine if the development will result in flooding impacts in the basement or impacts upon Council's Stormwater Infrastructure lines under the General Principles of Development Control (WLEP 2000) and is therefore recommended for refusal on this basis.

Landscape Assessment

Council's Landscape Assessment Officer has reviewed the proposal and provided the following comments:

"I am unable to undertake an assessment of the proposal based on the information provided.

- *The landscape plan covers only 1 lot, the proposal is for 2 lots*
- *The landscape plan and engineering plans shows retention of existing house, the architectural plans show demolition*
- *The landscape plan and engineering plans show construction of parking bays in Lot 1. The architectural; plans show no parking bays in lot 1*
- *The plans are not clear in relation to trees to be retained or removed (E.g. Tree 10 is in the passing bay, Lot 2 contains significant trees to be removed, not marked on plans)*
- *Significant rock excavation and tree removal is proposed to accommodate both houses. This does not appear to be adequately addressed in the SEE in relation to General Principles of Development Control, Clause 56 – Retaining Unique Environmental Features on Sites and the DFC in the Locality Statement*

LOCALITY F5 CURL CURL

DESIRED FUTURE CHARACTER

The exposed natural sandstone rock outcrops throughout the locality will be maintained. Development on prominent hillsides or hilltops must be designed to integrate with the landscape, topography and long distance views of the hill.

- *The proposed building on Lot 2 occupies a different footprint to the approved subdivision plan, causing a greater impact on the site*
- *The OSD design provided on the engineering drawings relate to the subdivision plan and not to the proposed plan. I.e. the OSD proposed is not shown on the architectural plans, which differ to the engineering plans*



- *The Basix certificate relates to Lot 1 only.*
- *The Basix Landscape requirement on Lot 1 is for 300m² of indigenous/low water use vegetation. This is not illustrated on the plans of the proposed design."*

Accordingly, subject to the above, the proposed development fails to satisfy the requirements under Clause 56 Retaining unique environmental features and Clause 58 Protection of Existing Flora as the development has failed to take into consideration distinctive environmental features on the site and nearby lands under the General Principles of Development Control (WLEP 2000) and is therefore recommended for refusal on this basis.

NOTIFICATION & SUBMISSIONS RECEIVED

This application was notified by letter dated 6 June 2008 to ten properties. One submission was received in response to the notification from the following:

Submission Received	Address
M Wheeler	P O BOX 8 FRESHWATER

The submissions have raised the following concerns and each is addressed as follows:

1. The plans do not show floor level, and thereby potential view loss issues.

Comment:

View is addressed in Clause 61 in this report. The land falls towards the northwest and has distant district view downhill. The proposal will interfere the view currently obtained from No.11 Ozone Street that is however not considered unacceptable in accordance with the relevant planning principle. Therefore, the concern is not considered to warrant a refusal of the application.

2. It is unclear if the shadow diagrams refer to mid winter or equinox.

Comment:

Sunlight access is addressed in Clause 62 in this report. The subject site is located on a lower contour than the adjoining properties to the south and does not substantially exceed the adjoining properties. The shadow diagrams prepared for the proposal indicates that the development will not unreasonably reduce sunlight to surrounding properties. Therefore, the concern is not considered to have a determining weight.

3. The security fencing on the site boundary has a negative visual impact and is only appropriate in temporary nature.

Comment:

This application includes no details of permanent fencing on the site boundary. Therefore, no further consideration of this concern is required.

4. Potential damage to the neighbouring properties.

Comment:

The proposal does not abut the site boundaries and is unlikely to impact upon the neighbouring structures. Standard conditions in regards to the negative impact on the



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amenity of the neighbouring properties during construction work are imposed that will adequately address this concern.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act, 1979, are:

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	See discussion on “Draft Environmental Planning Instruments” in this report.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the regulations	<p>The EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. This matter has been address via a condition of consent.</p> <p>Clause 92 of the EPA Regulations 2000 requires the consent authority to consider AS 2601 - 1991: <i>The Demolition of Structures</i>. This matter has been address via a condition of consent.</p> <p>Clause 54 and 109 of the EPA Regulations 2000, Council requested additional information, the applicant has failed to respond to Council's requests and the application is recommended for refusal on this basis.</p>
Section 79C (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) The environmental impacts of the proposed development on the natural and built environment are addressed under the General Principles of Development Control in this report.</p> <p>(ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) 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 79C (1) (c) – the suitability of the site for the development	The site is considered un/suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	In considering the public interest, the consent authority is to take a broad view of all relevant planning matters, looking at the development and seeing whether or not it will achieve the broader planning objectives detailed



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Section 79C 'Matters for Consideration'	Comments
	<p>under relevant legislation, State Planning Policies and Local Planning Controls. In determining whether a development will or will not achieve the broader planning objective, a balance needs to be provided as to a wider public interest eg compliance with planning controls, better urban design, employment generation, more appropriate community access to facilities, increase retail turn over etc against a sectionalised public interest which will look at the immediate effects of the development upon a local community such as construction impacts, a reduction in amenity, potential for increased traffic flows, character of the development against the existing built form surrounding the site etc.</p> <p>In this regard, Council has previously determined through its strategic planning and gazettal of WLEP 2000 that this site is capable of accommodating two (2) dwellings based on housing density, however the detail provided is inadequate, there are issues with vehicle access, and impact on existing environmental features, as such it is considered that the wider public interest would not be served by granting development consent to the application at this stage.</p> <p>When viewing the proposed development from the sectionalised public interest view point, the concerns raised by the residents generally pertain potential loss of amenity increase traffic whilst identifying some of the areas of inconsistencies with the planning controls etc</p> <p>In balancing the wider public interest against the sectionalised public interest, it is considered that the site is not suitable for the proposed development in its current form.</p> <p>Accordingly, the proposal is considered to be inconsistent with the greater and sectionalised public interest.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS

State Environmental Planning Policies

State Environmental Planning Policy No.55- Remediation of Land

The site has been used for residential purposes for a period of time and there is no indication of land contamination. Also, the proposal is consistent with the existing land use of the site. Therefore, no further consideration of this SEPP is required.

State Environmental Planning Policy- Building Sustainability Index (BASIX) 2004

Only one BASIX certificate has been submitted in support of one of the proposed dwellings, the application proposes two dwellings. Which has failed the requirements of Schedule 1 of the SEPP and as such the subject application fails to satisfy the provisions of the SEPP and is recommended for refusal on this basis.

State Environmental Planning Policy- Infrastructure 2007

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This application does not require a referral to the energy supply authority, as the proposed work does not consist of the following:

- the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,
- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or immediately adjacent to an electricity substation, or within 5m of an exposed overhead electricity power line,
- development involving or requiring the placement of power lines underground
- a new swimming pool.

Regional Environment Plans (REPs)

There are no REP's applicable to the assessment of this application.

Local Environment Plans (LEPs)

Warringah Local Environmental Plan 2000

Desired Future Character

The subject site is located in the F5 Curl Curl Locality under Warringah Local Environmental Plan 2000. The Desired Future Character Statement for this locality is as follows:

"The Curl Curl locality will remain characterised by detached style housing in landscaped settings interspersed by existing apartment buildings and a range of complementary and compatible uses. The land containing the existing Bowling Club at Lot 2682 DP 752038 on Abbot Road and the land containing the existing Harbord Bowling Club at Lot 4 DP 601758 on Stirgess Avenue will continue to be used only for recreation facilities.

Future development will maintain the visual pattern and predominant scale of detached housing in the locality. The streets are to be characterised by landscaped front gardens and front building setbacks which are consistent with surrounding development. The exposed natural sandstone rock outcrops throughout the locality will be maintained. Development on prominent hillsides or hilltops must be designed to integrate with the landscape, topography and long distance views of the hill. Unless exemptions are made to the housing density standard in this locality statement, any subdivision of land is to be consistent with the predominant pattern, size and configuration of existing allotments in the locality.

The locality will continue to be served by the existing local retail centres in the areas shown on the map. Future development in these centres will be in accordance with the general principles of development control provided in clause 39."

The proposed development is identified as Category 1 development in this locality, being housing.

Clause 12(3)(a) of WLEP 2000 requires the consent authority to consider Category 1 development against the locality's DFC statement. Notwithstanding Clause 12(3)(a)



only requires the consideration of the DFC statement, the proposed development results in non-compliances with the Landscape Open Space and Rear Building Setback Built Form Controls, as such pursuant to Clause 20(1) a higher test, i.e. a test of consistency against the Locality's DFC is required.

Accordingly, an assessment of consistency of the proposed development against the locality's DFC is provided hereunder:

It is considered that the proposal is consistent with the DFC Statement, for the following reasons:

- The proposal is for two detached style housing on the two lots created in Consent 2004/1523 and is in landscaped settings.
- The two new dwellings are consistent with the visual pattern and scale of the detached housing at the adjoining No.11 and 11A Ozone Street.
- The proposal essentially maintains the existing landscaped front gardens and front building setbacks which are consistent with the adjoining development.
- The proposal is on a hillside. It maintains the existing landscaping at the southwestern part of the site that helps minimise its visual impact, and includes an upper floor of a smaller footprint, such that it will not have a substantial impact on the landscape, topography and long distance views of the hill.

It is considered that the proposal is inconsistent with the DFC Statement, for the following reasons:

- It is considered that the proposal has failed to give due regard to the exposed natural sandstone rock outcrops on the site and onsite vegetation.

Accordingly, the development is considered to fail consistency with the DFC statement and therefore is not permitted to be approved.

Built Form Controls for Locality F5 Curl Curl

The following table outlines compliance with the Built Form Controls of the above locality statement:

Built Form Standard	Required	Proposed House 1 (H1)	Proposed House 2 (H2)	Compliance H1 / H2
Maximum Building Height	8.5 metres	7.4 metres	6.2 metres	YES / YES
Maximum Building Height: Natural ground to upper ceiling	7.2 metres	7.0 metres	5.8 metres	YES / YES
Minimum Front Setback	6.5 metres	15 metres to alfresco terrace, 19.8 metres to dwelling	N/A. Battleaxe allotment.	YES / N/A
Landscape Open Space	40% of the site area	29.49% of the site area	39.05% of the site area	NO / NO
Rear Setback	6 metres	0 metres to garage	4.8 metres to drying court, 8 metres to building	NO / NO



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Built Form Standard	Required	Proposed House 1 (H1)	Proposed House 2 (H2)	Compliance H1 / H2
Maximum Side Boundary Envelope	Buildings must be sited within an envelope determined by projecting planes at 45 degrees from a height of 5 metres above natural ground level at the side boundaries.	Complies	Complies	YES / YES
Minimum Side Setbacks	0.9 metres	Northern: 4 metres Southern: 0 metres to garden court, 0.9 metres to dwelling	Northern: 1.5 metres Southern: 2.3 metres to garden court and lift, 3.78 metres to dwelling	YES / YES

Clause 20 Variation

Consent may be granted to proposed development even if the development does not comply with one or more development standards, providing the resulting development is consistent with the general principles of development control, the Desired Future Character of the locality and any relevant State Environmental Planning Policy.

Consideration is given as follows:

Rear Building Setback

The control provides that the minimum rear building setback is 6 metres. The proposed garage at Lot 1 is located 0 metres and the proposed drying court at Lot 2 is located 4.8 metres from the respective rear boundary, and do not comply with the control.

The merit objectives of the rear building setback are to:

- *Create a sense of openness in rear yards*
- *Preserve the amenity of adjacent land*
- *Maintain the visual continuity and pattern of buildings, rear gardens and landscape elements*
- *Provide opportunities to maintain privacy between dwellings*

The non compliances are considered consistent with the merit objectives, for the following reasons:

Garage at Lot 1

- The garage is located at the ground floor space at the rear of the dwelling. However, House 1 includes ample alfresco terrace to the dining area, veranda to living area and garden court in the southern side setback that is considered reasonable private open space for the occupants.
- The garage is located on lower contour than the adjoining Lot 2 to the east, No.11 and 11A Ozone Street to the south, and is 9.5 metres from the northern boundary. It will not have a detrimental impact on the adjacent land in view, privacy and sunlight access.
- The garage is located on lower contour than the adjoining No.11 and 11A Ozone Street, where its roof is at a similar RL to the ground level of the adjoining No.11 and 11A Ozone Street. Also, the garage is associated with a turf roof. As such, the garage



will essentially continue the visual continuity and pattern of buildings, rear gardens and landscaping elements.

- The garage is located on lower contour than the adjoining Lot 2 to the east and will not create privacy issues.

Drying Court at Lot 2

The drying court is a hard paved area in the rear yard. It will essentially allow a sense of openness in the rear yard, and maintain the visual continuity and pattern of buildings, rear gardens and landscape elements. It will not have a detrimental impact on the amenity of the adjacent land in view, privacy and sunlight access.

Landscaped Open Space

The control provides that the minimum area of landscaped open space is 40% of the site area. The proposed Lot 1 and Lot 2 include 29.49% and 39.05% of landscaping respectively and do not comply with the control.

The merit objectives of the landscaped open space control are to:

- *Enable the establishment of appropriate planting to maintain and enhance the streetscape and the desired future character of the locality*
- *Enable the establishment of appropriate planting that is of scale and density commensurate with the building height, bulk and scale*
- *Enhance privacy between dwellings*
- *Accommodate appropriate outdoor recreational needs and suit the anticipated requirements of dwelling occupants*
- *Provide space for service functions including clothes drying*
- *Facilitate water management including on site detention and the infiltration of stormwater*
- *Incorporate the establishment of any plant species nominated in the relevant locality statement*
- *Conserve significant features of the site*

The non compliances are considered consistent with the merit objectives, for the following reasons:

Lot 1

- The proposal will essentially maintain the existing landscaping at the western part of the lot that helps maintain the streetscape of Ozone Street and the Desired Future Character of the locality, and commensurate with the new development.
- The new dwelling is located 4 metres from the northern boundary and on lower contour than the adjoining property to the south, and will not create privacy issues.
- The lot includes turf on the garage roof to help facilitate water management.
- Also, on merit it is noted that a significant portion of the site is given to the constraint of the paved driveway which is necessary to provide access to Lot 2.
- Notwithstanding the above and that there are limited opportunities for outdoor requirements of occupants in the proposed design overall this is considered unacceptable in this case, whilst being constrained by the topography at the front setback area and the garage located at the rear of the dwelling it is not unreasonable to expect a development to be designed to respond to the site constraints whilst still meeting the minimum landscape open space requirements – the size of the dwelling simply needs to be reduced.

Lot 2

- The Lot does not have a street frontage and will not have a substantial visual impact on Ozone Street.
- The non compliance is a marginal 0.95% of the site area that will not have a substantial impact on the proposal in achieving a landscaping setting in consistence with the Desired Future Character and commensurate the new development.
- The Lot is located at on a lower contour than the adjoining property to the south and east, and is setback from the steep and heavily landscaped private open space of the adjoining No.7 Ozone Street, and will not create privacy issues.
- The landscaped open space in the southern side setback and rear setback will accommodate appropriate outdoor recreational needs and suit the anticipated requirements of dwelling occupants, service functions and facilitate water management.

As such on merit the Landscape Open Space Variation is not supported.

In determining whether the proposal qualifies for a variation under Clause 20(1) of WLEP 2000, consideration must be given to the following:

(i) General Principles of Development Control

The proposal is the development fails consistency with Clause 56- Retaining Unique Environmental Features onsite, Clause 58- Protection of Existing Flora, Clause 63 Landscape Open Space & Clause 76- Management of Stormwater of the General Principles of Development Control and accordingly, fails to qualify to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “General Principles of Development Control” in this report for a detailed assessment of consistency).

(ii) Desired Future Character of the Locality

The development fails consistency with the Locality’s Desired Future Character Statement in that it has failed to maintain exposed rock outcrops and accordingly, fails to qualify to be considered for a variation to the development standards, under the provisions of Clause 20(1) (See discussion on “Desired Future Character” in this report for a detailed assessment of consistency).

(iii) Relevant State Environmental Planning Policies

The proposal has been considered inconsistent with the requirements of SEPP BASIX in failing to provide a BASIX certificate for all BASIX affected development onsite. Accordingly the proposal fails to qualify to be considered for a variation to the development standards, under the provisions of Clause 20(1).

Accordingly, whilst on merit the variations maybe supportable in certain areas (only), given the inconsistencies with the General Principles of Development Control, the Desired Future Character Statement and SEPP BASIX, the non-compliances within the proposed application are not permitted under WLEP to be approved. As such the application is recommended for refusal on this basis.

GENERAL PRINCIPLES OF DEVELOPMENT CONTROL



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The following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed development:

General Principles	Applies	Comments	Complies
CL38 Glare & reflections	YES	This Clause provides that development is not to result in overspill or glare from artificial illumination, or sun reflection, and is not to unreasonably diminish the amenity of the locality. Relevant conditions are imposed to address this Clause.	YES subject to condition
CL39 Local retail centres	NO	No Comment	N/A
CL40 Housing for Older People and People with Disabilities	NO	No Comment	N/A
CL41 Brothels	NO	No Comment	N/A
CL42 Construction Sites	YES	This Clause provides that construction site is not to unreasonably impact on the surrounding amenity, pedestrian or road safety, or the natural environment. Relevant conditions are imposed to address this Clause.	YES subject to condition
CL43 Noise	YES	<p>This Clause provides that noise emissions are to be carried out in accordance with Environment Protection Authority guidelines for noise emissions from construction/demolition works and these works must also comply with the provisions of the Protection of the Environment Operations Act 1997. Relevant conditions are imposed to address this Clause.</p> <p>The new dwellings are consistent with the surrounding residential character, and will not result in noise emission, which would unreasonably diminish the amenity of the area and will not result in noise intrusion, which would be unreasonable to surrounding residents. Accordingly, the proposal is considered satisfactory in addressing this Clause.</p>	YES subject to condition
CL44 Pollutants	NO	No Comment	N/A
CL45 Hazardous Uses	NO	No Comment	N/A
CL46 Radiation Emission Levels	NO	No Comment	N/A
CL47 Flood Affected Land	NO	No Comment	N/A
CL48 Potentially Contaminated Land	YES	The site has been used for residential purposes for a period of time and there is no indication of land contamination. Also, the proposal is not in conflict with the existing land use. Therefore, no further consideration of this Clause is required.	YES
CL49 Remediation of Contaminated Land	NO	No Comment	N/A
CL49a Acid Sulfate Soils	NO	No Comment	N/A
CL50 Safety & Security	YES	House 1 is set back and elevated from Ozone Street and is limited in providing casual surveillance. House 2 is	YES



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General Principles	Applies	Comments	Complies
		further setback located to the rear of House 1. However, the proposal is a removal of the existing dwelling on the site and will continue the existing safety and security to the area and is satisfactory in addressing this Clause.	
CL51 Front Fences and Walls	NO	No Comment	N/A
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	NO	No Comment	N/A
CL53 Signs	NO	No Comment	N/A
CL54 Provision and Location of Utility Services	YES	Consent 2004/1523 ensures that the site is serviced with utility services including the provision for the supply of water, gas, telecommunications and electricity and management of sewage and drainage. The consent ensures that the proposal is satisfactory in addressing this Clause.	YES
CL55 Site Consolidation in 'Medium Density Areas'	NO	No Comment	N/A
CL56 Retaining Unique Environmental Features on Site	YES	<p>The site contains remnant bushland vegetation and naturally exposed rock outcrops which are considered to be a significant site constraint.</p> <p>The proposed plans provided building footprints for the construction of a two dwellings and driveway construction predominantly located over the environmental features of the site.</p> <p>The site contains a number of exposed rock outcrops and remnant bushland vegetation which are visible from the street as the site is located on the high side of the road. It is considered however that the removal of the vegetation and rock features which are considered to contribute positively to the visual amenity and environmental value of the subject site, but also significantly contribute to the same of the streetscape. In addition, this results in inconsistencies with the Desired Future Character for the Locality.</p> <p>The assessment above demonstrates that the environmental features identified on the subject site are considered unique, significant and highly valuable to the subject site and streetscape. Further, the indicative building footprint provided, demonstrates a devastating and unreasonable impact to the significant rock outcrops this is further exacerbated by the proposed building footprints which result in a significant non-compliance with Landscape Open Space.</p> <p>Accordingly, it is considered that the proposed development fails to satisfy the intent of this General Principle and is recommended for refusal on this basis.</p>	No
CL57 Development on Sloping Land	YES	The land increases about 17 metres towards the southeast and has an average gradient of 1:5 across the	YES subject to



Warringah Council

General Principles	Applies	Comments	Complies
		<p>land.</p> <p>The proposal complies with the building height control, its upper storeys are located on smaller footprint and there are veranda and deck which are associated with lesser visual bulk wrapped around the ground floor street frontage. As such, the proposal it is not considered excessive in height and bulk.</p> <p>House 1 will be situated on fill which will not exceed more than 1 metre in depth and will not spread beyond the building footprint. The garage of House 2 and the setback area between House 1 and House 2 will be located in excavated space which is not considered unreasonable or excessive to make available functional space. A condition is imposed so that the geotechnical stability of the sloping land to support the development is to be demonstrated.</p> <p>Subject to the condition, the proposal is considered satisfactory in addressing this Clause.</p>	condition
CL58 Protection of Existing Flora	YES	<p>The subject site contains remnant bushland vegetation and is considered to present as a site constraint given the density of the cover.</p> <p>Issues have been raised by Councils' Landscape Officer, stating that a further information and assessment would be required.</p> <p>In this regard Council's Landscape Assessment Officer has reviewed the proposal and provided the following comments:</p> <p><i>"I am unable to undertake an assessment of the proposal based on the information provided.</i></p> <ul style="list-style-type: none"> <i>The landscape plan covers only 1 lot, the proposal is for 2 lots</i> <i>The landscape plan and engineering plans shows retention of existing house, the architectural plans show demolition</i> <i>The landscape plan and engineering plans show construction of parking bays in Lot 1. The architectural; plans show no parking bays in lot 1</i> <i>The plans are not clear in relation to trees to be retained or removed (E.g. Tree 10 is in the passing bay, Lot 2 contains significant trees to be removed, not marked on plans)</i> <i>Significant rock excavation and tree removal is proposed to accommodate both houses. This does not appear to be adequately addressed in the SEE in relation to General Principles of Development Control, Clause 56 – Retaining Unique Environmental Features on Sites and the DFC in the Locality Statement</i> <p>LOCALITY F5 CURL CURL DESIRED FUTURE CHARACTER <i>The exposed natural sandstone rock outcrops throughout the locality will be maintained. Development on prominent hillsides or hilltops must be designed to integrate with the landscape,</i></p>	No

General Principles	Applies	Comments	Complies
		<p><i>topography and long distance views of the hill.</i></p> <ul style="list-style-type: none"> <i>The proposed building on Lot 2 occupies a different footprint to the approved subdivision plan, causing a greater impact on the site</i> <i>The OSD design provided on the engineering drawings relate to the subdivision plan and not to the proposed plan. I.e. the OSD proposed is not shown on the architectural plans, which differ to the engineering plans</i> <i>The BASIX certificate relates to Lot 1 only.</i> <i>The BASIX Landscape requirement on Lot 1 is for 300m² of indigenous/low water use vegetation. This is not illustrated on the plans of the proposed design."</i> <p>Accordingly, subject to the above, the proposed development fails to satisfy the requirements under Clause 58 Protection of Existing Flora as the development has failed to take into consideration distinctive environmental features on the site and nearby lands whilst not providing adequate information to provide an environmental assessment and is therefore recommended for refusal on this basis.</p>	
CL59 Koala Habitat Protection	NO	No Comment	N/A
CL60 Watercourses & Aquatic Habitats	NO	No Comment	N/A
CL61 Views	YES	<p>In assessing view loss resulting from this development, the Planning Principles of View Sharing identified by Dr John Roseth, Senior Commissioner of the Land and Environment Court have been adopted to provide a framework for assessment of views in this instance as follows:</p> <p><u>Assessment of views to be affected.</u> The land falls towards the northwest and has distant district views downhill. The view is not considered of any particular significance.</p> <p><u>From what part of the property are the views obtained</u> The view being considered is obtained from the north and west facing windows of the residence at No.11 and 11A Ozone Street. .</p> <p><u>Assessment of the extent of the impact</u> No.11 and 11A Ozone Street are located on higher contours than the subject site approximately RL 46 and RL53 respectively. The proposed House 1 with a building height at RL 49.7 will interfere the view obtained from No.11 Ozone Street, while the proposed House 2 with a building height at RL53.9 will not substantially interfere the view obtained from the eye level at No.11A Ozone Street.</p> <p>In regard to the view loss to No.11 Ozone Street, it is considered that the expectation to retain unobstructed district views obtained across the subject site unreasonable.</p>	YES



Warringah Council

General Principles	Applies	Comments	Complies
		<p><u><i>Reasonableness of the proposal</i></u></p> <p>The proposed House 1 complies with the overall building height, building envelope, and front and side setback controls. The non complying rear setback refers to the single storey garage located at a lower contour than the affected site, while the non complying landscaped open space is not considered to have a material impact on view given that the issue being considered is the proposed second storey which is of a smaller building footprint. Also, the non compliance is considered acceptable and supported on their merits. Accordingly, the extent of impact is considered moderate.</p> <p>In summary, the proposal will not have an unreasonable impact on view and is considered satisfactory in addressing this Clause.</p>	
CL62 Access to sunlight	YES	The proposal will detract sunlight to the adjoining properties to the south. However, the shadow diagrams prepared for the proposal indicates that the 50% of the private open space of the affected properties will continue to receive no less than 2hours of sunlight between 9am and 3pm on June 21. Accordingly, the proposal will not unreasonably reduce sunlight to the adjoining properties and is satisfactory in addressing this Clause.	YES
CL63 Landscaped Open Space	YES	<p>Considerations of this Clause are given to the two respective lots:</p> <p>Lot 1</p> <ul style="list-style-type: none"> The proposal will essentially maintain the existing landscaping at the western part of the lot that helps maintain the streetscape of Ozone Street and the Desired Future Character of the locality, and commensurate with the new development. The new dwelling is located 4 metres from the northern boundary and on lower contour than the adjoining property to the south, and will not create privacy issues. The lot includes turf on the garage roof to help facilitate water management. Also, on merit it is noted that a significant portion of the site is given to the constraint of the paved driveway which is necessary to provide access to Lot 2. Notwithstanding the above and that there are limited opportunities for outdoor requirements of occupants in the proposed design overall this is considered unacceptable in this case, whilst being constrained by the topography at the front setback area and the garage located at the rear of the dwelling it is not unreasonable to expect a development to be designed to respond to the site constraints whilst still meeting the minimum landscape open space requirements – the size of the dwelling simply needs to be reduced. <p>Lot 2</p> <ul style="list-style-type: none"> The Lot does not have a street frontage and will not have a substantial visual impact on Ozone Street. The non compliance is a marginal 0.95% of the 	No



Warringah Council

General Principles	Applies	Comments	Complies
		<p>site area that will not have a substantial impact on the proposal in achieving a landscaping setting in consistence with the Desired Future Character and commensurate the new development.</p> <ul style="list-style-type: none"> The Lot is located at on a lower contour than the adjoining property to the south and east, and is setback from the steep and heavily landscaped private open space of the adjoining No.7 Ozone Street, and will not create privacy issues. The landscaped open space in the southern side setback and rear setback will accommodate appropriate outdoor recreational needs and suit the anticipated requirements of dwelling occupants, service functions and facilitate water management. <p>As such on merit the Landscape Open Space Variation was not supported and the application is not considered to meet the requirements of the General Principle and is recommended for refusal on this basis.</p>	
CL63A Rear Building Setback	YES	<p>Considerations of this Clause are given to the two respective lots:</p> <p>Lot 1</p> <ul style="list-style-type: none"> The garage is located at the ground floor space at the rear of the dwelling. However, House 1 includes ample alfresco terrace to the dining area, veranda to living area and garden court in the southern side setback that is considered reasonable private open space for the occupants. The garage is located on lower contour than the adjoining Lot 2 to the east, No.11 and 11A Ozone Street to the south, and is 9.5 metres from the northern boundary. It will not have a detrimental impact on the adjacent land in view, privacy and sunlight access. The garage is located on lower contour than the adjoining No.11 and 11A Ozone Street, where its roof is at a similar RL to the ground level of the adjoining No.11 and 11A Ozone Street. Also, the garage is associated with a turf roof. As such, the garage will essentially continue the visual continuity and pattern of buildings, rear gardens and landscaping elements. The garage is located on lower contour than the adjoining Lot 2 to the east and will not create privacy issues. <p>Lot 2</p> <p>The drying court and landscaped open space in the rear setback area of Lot 2 will allow a sense of openness in the rear yard, and maintain the visual continuity and pattern of buildings, rear gardens and landscape elements. It will not have a detrimental impact on the amenity of the adjacent land, and will not create privacy issues.</p> <p>In summary, the rear building setbacks are satisfactory in addressing this Clause.</p>	YES
CL64 Private open space	YES	<p>Considerations of this Clause are given to the two respective lots:</p>	No



Warringah Council

General Principles	Applies	Comments	Complies
		<p>Lot 1</p> <ul style="list-style-type: none"> The private open space in the southern setback area is set apart for private use. The space does not comply with the minimum dimensions contained in this Clause. The non compliance is considered unacceptable in this case. The dwelling has failed to provide ample alfresco terrace to the dining area and veranda to the living area. The space is not directly accessible from the living area. However, alfresco terrace to the dining area and veranda to the living area, which are considered appropriate alternatives of private open space in this case, are directly accessible from the living area. The space receives no less than 2 hours of sunlight between 9am and 3pm on 21st June. <p>Lot 2</p> <ul style="list-style-type: none"> The private open space in the southern side setback and rear setback area is set apart for private use. The space complies with the minimum dimensions contained in this Clause. The space is not directly accessible from the living area, which is oriented to the front part of the site. This is not considered unacceptable, considering the configuration is to maximise the outlook to Ozone Street and that the living area has access alfresco terrace, veranda and terrace. The space receives no less than 2 hours of sunlight between 9am and 3pm on 21st June. <p>In summary, the private open spaces are satisfactory in addressing this Clause.</p>	
CL65 Privacy	YES	<p>Considerations of this Clause are given to the two respective houses:</p> <p>House 1 House 1 is located on a lower contour than the adjoining House 2 to the east and No.11 Ozone Street to the south, so that the proposed second storey which exceeds the adjoining property accommodates bedrooms that are lower occupancy rooms and are given with lesser weights in privacy issues.</p> <p>House 1 exceeds the adjoining No.7 Ozone Street to the north where the living area and veranda will have sightline to the window to the loft of No.7 Ozone Street, across the 4 metres wide driveway or with a separation distance of 5 metres. A condition is imposed so that the site boundary includes screen planting to help provide privacy to the affected property.</p> <p>House 2 House 2 is located on a lower contour than the adjoining No.11A Ozone Street to the south, so that the proposed second storey which exceeds the adjoining property accommodates bedrooms that are lower occupancy rooms and are given with lesser weights in privacy issues.</p> <p>House 2 is located on a higher contour than the adjoining</p>	YES subject to condition

General Principles	Applies	Comments	Complies
		<p>House 1 to the west and No.7 Ozone Street to the north. It has a separation distance of 10metres from House 1 and abuts the part of the private open space of No.7 Ozone Street that is steep and landscaped and is not considered a principal part of the space, and will not create unreasonable privacy issues.</p> <p>In summary, subject to condition, the proposal will not result in unreasonable privacy issues and is satisfactory in addressing this Clause.</p>	
CL66 Building bulk	YES	<p>Considerations of this Clause are given to the followings:</p> <ul style="list-style-type: none"> The two dwellings complies with the side boundary setback provision The two dwellings include variations of building materials and will not result in large areas of continuous wall planes Lot 1 includes landscaping opportunities at the front building setback area to help reduce the visual impact of the new building on Ozone Avenue. Lot 2 includes landscaping opportunities at the southern side and rear building setback to help reduce the visual impact on the surrounding spaces, while its visual impact on Ozone Avenue is help screened by House 1. <p>In summary, the proposal will not result in visually prominent or dominating the surrounding space and is satisfactory in addressing this Clause.</p>	YES
CL67 Roofs	YES	The proposed roof form will complement the local skyline and is satisfactory in addressing this Clause.	YES
CL68 Conservation of Energy and Water	YES	Only one BASIX certificate has been submitted in support of one of the proposed dwellings, the application proposes two dwellings. Which has failed the requirements of Schedule 1 of the SEPP. In this regard, the subject application fails to satisfy the provisions of the SEPP and is recommended for refusal on this basis.	No
CL69 Accessibility – Public and Semi-Public Buildings	NO	No Comment	N/A
CL70 Site facilities	YES	The site contains adequate space for general waste and recycling storage and open air clothes drying facilities which will be suitably screened from the street, and is satisfactory in addressing this Clause.	YES
CL71 Parking facilities (visual impact)	YES	<ul style="list-style-type: none"> The parking facilities are located to the rear of House 1. The garages are integrated into the two houses respectively. A driveway will provide access to the two garages. The garages will not interfere the view from front windows. <p>As such, the parking facilities will not dominate the street frontage and is satisfactory in addressing this Clause.</p>	YES
CL72 Traffic access & safety	YES	<ul style="list-style-type: none"> The site is located on a local road network. 	No

General Principles	Applies	Comments	Complies
		<p>Accordingly, the traffic using this part of Ozone Street would be generally low volumes of local traffic.</p> <ul style="list-style-type: none"> Other than the increased traffic movements during the temporary construction period for site infrastructure, the proposed works will not negatively impact the existing traffic access and safety. The scope of the proposed works includes the construction of a new vehicle crossing, providing one vehicle crossing servicing the three proposed lots. <p>Notwithstanding the above Councils' Development Engineers raised objections to the proposed works as follows:</p> <p><i>"A review of the application has found the following additional information that must be provided by the applicant prior to further assessment.</i></p> <ol style="list-style-type: none"> <i>The submitted engineering design for the driveway and drainage relates to a previous subdivision application and does not take into account the proposed demolition of the existing dwelling and construction of 2 new dwellings on the site.</i> <i>The BASIX certificate appears to only relate to the front dwelling and not the rear. No water tanks have been shown on the engineering or architectural plans.</i> <i>The driveway levels on the engineering plan must be compared to the proposed garage levels for the dwellings to ensure access is permissible. Cross sections at regular intervals and adjacent to the garage entry points are to be provided. All retaining structures are to be detailed on the cross sections as necessary.</i> <i>The car stand area on the engineering plans is to be deleted.</i> <i>The survey plan must be amended to suit the new design. The plan must remove all level information and structures, trees etc and include all proposed easements, rights of way, lot dimensions and lot areas including access handle areas."</i> <p>Accordingly, given the areas of concern with driveway gradients and locations of car stand areas it is considered that traffic hazards (such as ample access requirements to the site) have not been met and the proposal is considered to fail to satisfy the intent of this General Principle.</p>	
CL73 On-site Loading and Unloading	NO	No Comment	N/A
CL74 Provision of Carparking	YES	<p>Whilst the two houses consist of two carparking spaces respectively and comply with the minimum provision contained in Schedule 17. Accordingly, the proposal is considered satisfactory in addressing this Clause.</p> <p>Notwithstanding, Council's Development Engineers have reviewed the proposal and advised that the proposed stormwater management system is not acceptable as follows:</p>	No

General Principles	Applies	Comments	Complies
		<p>“</p> <p><i>“A review of the application has found the following additional information that must be provided by the applicant prior to further assessment.</i></p> <ol style="list-style-type: none"> <i>1. The submitted engineering design for the driveway and drainage relates to a previous subdivision application and does not take into account the proposed demolition of the existing dwelling and construction of 2 new dwellings on the site.</i> <i>...</i> <i>3. The driveway levels on the engineering plan must be compared to the proposed garage levels for the dwellings to ensure access is permissible. Cross sections at regular intervals and adjacent to the garage entry points are to be provided. All retaining structures are to be detailed on the cross sections as necessary.</i> <i>4. The car stand area on the engineering plans is to be deleted.</i> <i>5. The survey plan must be amended to suit the new design. The plan must remove all level information and structures, trees etc and include all proposed easements, rights of way, lot dimensions and lot areas including access handle areas.”</i> <p>A request for additional information was provided to the applicant as follows:</p> <ol style="list-style-type: none"> <i>1. The submitted engineering design for the driveway and drainage relates to a previous subdivision application and does not take into account the proposed demolition of the existing dwelling and construction of 2 new dwellings on the site.</i> <i>2. ...</i> <i>3. ...</i> <i>4. The driveway levels on the engineering plan must be compared to the proposed garage levels for the dwellings to ensure access is permissible. Cross sections at regular intervals and adjacent to the garage entry points are to be provided. All retaining structures are to be detailed on the cross sections as necessary.</i> <i>5. The car stand area on the engineering plans is to be deleted.</i> <i>6. The survey plan must be amended to suit the new design. The plan must remove all level information and structures, trees etc and include all proposed easements, rights of way, lot dimensions and lot areas including access handle areas.</i> <i>7. ...</i> <i>8. ...</i> <i>9. The landscape plan and engineering plans show construction of parking bays in Lot 1. The architectural; plans show no parking bays in lot 1. Consistency between these plans is required.</i> <i>10. ...</i> 	



Warringah Council

General Principles	Applies	Comments	Complies
		<p>11. ... 12. ... 13. ...”</p> <p>The additional information has not been received for the application. Given the substantial outstanding issues that are yet to be addressed by the applicant the application in its current form is not satisfactory in addressing this Clause in that “adequate off-street carparking” has not been provided and the issue has been included in the reasons for refusal.</p>	
CL75 Design of Carparking Areas	YES	The two double garages comply with the minimum dimensions contained in this Clause.	YES
CL76 Management of Stormwater	YES	<p>Council’s Development Engineers have reviewed the proposal and advised that the proposed stormwater management system is not acceptable as follows:</p> <p><i>“A review of the application has found the following additional information that must be provided by the applicant prior to further assessment.</i></p> <p><i>1.The submitted engineering design for the driveway and drainage relates to a previous subdivision application and does not take into account the proposed demolition of the existing dwelling and construction of 2 new dwellings on the site.</i></p> <p><i>2.The Basix certificate appears to only relate to the front dwelling and not the rear. No water tanks have been shown on the engineering or architectural plans.</i></p> <p><i>...”</i></p> <p>In addition Council’s Landscape Officer has reviewed the proposal and advised that the proposed stormwater management system is not acceptable as follows:</p> <p>The OSD design provided on the engineering drawings relate to the subdivision plan and not to the proposed plan. I.e. the OSD proposed is not shown on the architectural plans, which differ to the engineering plans.</p> <p>A request for additional information was provided to the applicant as follows:</p> <ol style="list-style-type: none"> 1. The submitted engineering design for the driveway and drainage relates to a previous subdivision application and does not take into account the proposed demolition of the existing dwelling and construction of 2 new dwellings on the site. 2. The BASIX certificate appears to only relate to the front dwelling and not the rear. No water tanks have been shown on the engineering or architectural plans. 3. The BASIX Landscape requirement on Lot 1 is for 300m² of indigenous/low water use vegetation. This is not illustrated on the plans of the proposed design. <p>...</p>	NO



Warringah Council

General Principles	Applies	Comments	Complies
		<p>12. The OSD design provided on the engineering drawings relate to the subdivision plan and not to the proposed plan. I.e. the OSD proposed is not shown on the architectural plans, which differ to the engineering plans.</p> <p>...</p> <p>The additional information has not been received for the application. Given the substantial outstanding issues that are yet to be addressed by the applicant the application in its current form is not satisfactory in addressing this Clause and the issue has been included in the reasons for refusal.</p>	
CL77 Landfill	YES	<p>House 1 will be situated on landfill. The elevated will not have adverse impacts on the amenity of the adjoining and surrounding properties, in views, privacy and sunlight access. The fill does not exceed beyond the building footprint.</p> <p>Conditions are imposed to ensure that only uncontaminated fill is to be used, that the landfill is not to create siltation or pollution of waterways and drainage lines, or airborne pollution, and that the geotechnical stability of the work is to be demonstrated prior to construction work.</p> <p>Subject to the conditions, the landfill will not have adverse impact upon the visual and natural environment or adjoining and surrounding properties, and is satisfactory in addressing this Clause.</p>	YES
CL78 Erosion & Sedimentation	YES	<p>This Clause provides that development is to be sited and designed and related construction work carried out, so as to minimise the potential for soil erosion. Relevant conditions in regards to the management of erosion and sedimentation for the duration of works on the site addresses this Clause.</p>	YES subject to condition
CL79 Heritage Control	NO	No Comment	N/A
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	NO	No Comment	N/A
CL81 Notice to Heritage Council	NO	No Comment	N/A
CL82 Development in the Vicinity of Heritage Items	NO	No Comment	N/A
CL83 Development of Known or Potential Archaeological Sites	NO	No Comment	N/A

SCHEDULES



Schedule 8 - Site analysis

This application includes no site analysis. However, the plans prepared for the proposal have demonstrated, adjacent buildings and uses, geography of the site, separations distances, access, previous building footprint. As such, it is considered that the proposal is satisfactory in addressing the requirement of this Schedule.

Schedule 17 - Carparking Provision

	Required	Proposed House 1	Proposed House 2	Compliance
Detached style dwelling	2	2	2	YES/YES

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan 2006

Warringah Section 94A Development Contribution Plan 2006 is applicable to this proposal, as the value of work is greater than \$100,000.

Warringah Section 94A Development Contributions Plan			
Contribution based on total development cost of		\$	800,000.00
Contribution - all parts Warringah	Levy Rate	Contribution Payable	Council Code
Total S94A Levy	0.95%	\$7,600	6923
S94A Planning and Administration	0.05%	\$400	6924
Total	1.0%	\$8,000	

Relevant conditions are imposed in this regard.

MEDIATION

Mediation was not requested for this development application.

CONCLUSION

The site has been inspected and the application assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979, Warringah Local Environmental Plan 2000 and the relevant codes and policies of Council.

The proposal is consistent with the Desired Future Character of the locality. It does not comply with the rear building setback and landscaping controls and has fail consistently with the merit considerations of the landscape control and numerous General Principles, which cannot be supported in addition to failing to provide adequate detail for a full environmental assessment to be undertaken.

The proposal is partially situated on existing rock outcrops on the site that its site design and is considered to have failed to give due regard to environmental features. Also, the proposal is inconsistent with a number of the general principles of development control. Accordingly, the proposal is recommended for refusal.



RECOMMENDATION (APPROVAL)

- A. That the Development Application DA2008/0786 for demolition of an existing dwelling and construction of two dwellings at Lot 25, DP 6098, 9 Ozone Street Freshwater be refused development consent for the reasons detailed as follows:
- 1) Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979, the proposal is not consistent in that *"The exposed natural sandstone rock outcrops throughout the locality will be maintained."* The proposed development fails to achieve this requirement with the Desired Future Character which requires consistency pursuant to Clause 20(2) under Warringah Local Environmental Plan 2000.
 - 2) Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979, the proposal is not consistent with the Landscape Open Space and Rear Building Setback Built Form Controls under Warringah Local Environmental Plan 2000.
 - 3) Pursuant to Section 79C(1)(a) & 79C(1)(c) of the Environmental Planning and Assessment Act 1979 and that the proposal has not provided sufficient information and failed to provide information pursuant to Clause 50 & 54 of the Environmental Planning and Assessment Regulation 2000, in addressing the following Clauses and result in inconsistencies with the General Principles of Development Control of the Warringah Local Environmental 2000:
 - Clause 56- Retaining Unique Environmental Features onsite
 - Clause 58- Protection of Existing Flora
 - Clause 63- Landscape Open Space
 - Clause 68- Conservation of energy and water
 - Clause 72- Traffic Access and safety
 - Clause 74- provision of car parking
 - Clause 76- Management of Stormwater
 - 4) Pursuant to Section 79C(1)(a) of the Environmental Planning and Assessment Act 1979, the proposal is not satisfactory in addressing State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 for the provisions of a BASIX Certificate to each proposed dwelling onsite.

Ryan Cole

Signed

Date

Team Leader, Development Assessment (Assessment Officer)

Ailsa Prendergast

Signed

Date



Warringah Council

Team Leader, Development Assessment