

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/1606
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Responsible Officer:	Sarah McNeilly (external consultant)
Land to be developed (Address):	10 Courtley Road, Beacon Hill
Proposed Development:	Construction of a dwelling house
Zoning:	R2 Low density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Mrs S and Mr F Nile
Applicant:	Jonathan Malota (Allura Homes)

Application Lodged:	16/12/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential – New dwelling
Notified:	11/01/2021 to 25/01/2021
Advertised:	Not advertised
Submissions Received:	2
Clause 4.6 Variation:	No
Recommendation:	Refusal

Estimated Cost of Works:	\$982,000
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EXECUTIVE SUMMARY

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

The proposal consists the construction of a new two storey dwelling with double garage. The site is currently vacant with a previous dwelling having been demolished in 2020.

Two (2) submissions were received during the notification, raising issues of: privacy; overshadowing; visual impact; and unauthorised fill.

Amended plans were received from the applicant on 14 April 2021 in response to issues raised by Councils engineers and landscape officer. Amended driveway grades and stormwater plans were provided.

The site has been the subject of a 2020 [Complying Development Certificate](#) approval for a similar development, which was the subject of unauthorised earthworks (cut and fill) and resulted in a stop work notice being issued by the Principal Certifying Authority on 11 March 2020. Following this a pre-DA meeting was held with Council prior to the current Development Application being lodged.

At the pre-lodgement meeting advice was provided including:

Ensuring the natural ground level on the north-east corner is re-instated to its original level, to reduce privacy impact on the adjoining dwelling at No.10 Courtley Road.

Rectification of ground levels has not been undertaken prior to lodgement of this application with the unauthorised fill and excavation all retained on the site. Additionally, no Building Certificate has been provided for unauthorised fill, excavation and retaining works. Accordingly, the survey provided with the application which provides current altered levels, should not be relied on for assessment.

There are minor variations to setbacks and a small landscaped open space departure. However, the key factors which have led to a recommendation for refusal are privacy and the retention of the unauthorised fill in the north – east corner of the site.

PROPOSED DEVELOPMENT IN DETAIL

The subject development application proposes the construction of a two-storey rendered brick dwelling with a tile roof. The dwelling sits centrally on the lot and consists of:

Ground floor

- Double garage (oversize to provide storage/workbench)
- Entry porch
- Entry foyer
- Living/kitchen (with pantry)/dining
- Media room
- Laundry
- Storage
- Powder room
- Bathroom
- Guest bedroom
- Stair and circulation space
- Covered timber deck on eastern elevation

First floor

- Bedroom 1 with WIR and ensuite and Juliette Balcony
- Bedroom 2
- Bedroom 3
- Balcony (shared by bedroom 2 &3)
- Bedroom 4
- Bathroom
- Separate WC
- Study nook
- Linen cupboard
- Stair and Circulation space

Site Works

- Relocate driveway cross over from lower (east) to higher (west) side of frontage
- Additional fill to provide level building platform (up to 529mm over current fill level)
- Retaining walls in north eastern corner of site and north western corner of site.

A landscape Plan was received in response to issues raised by Council's landscape officer. Amended plans were also received from the applicant on 14 April 2021 in response to issues raised by Council's engineers. Amended driveway grades and stormwater plans were provided. No changes to the dwelling were included in these revisions.

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 – 6.2 Earthworks
 Warringah Development Control Plan – B5 Side Boundary Setbacks
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan – C7 Excavation and Landfill
 Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 7 DP 238331, 10 Courtley Road BEACON HILL NSW 2100
Detailed Site Description:	<p>The development site consists of a single lot with an area of 557m². It is located on the southern side of the street and is irregularly shaped. The lot falls roughly from west to east with the lowest point being the eastern frontage.</p> <p>The site is zoned R2 Low Density Residential and is currently vacant.</p> <p>Surrounding development is low density residential, with the subject lot having six (6) properties sharing a boundary due to the irregular lot shapes in immediate proximity.</p>



SITE HISTORY

PLM 2020/0239

Consideration of a two-storey dwelling brick veneer and tile dwelling, with decking and a pool was considered on 15 October 2020. Advice provided by Council officers at the meeting included the following concluding comments:

The proposal is not acceptable and requires redesign prior to submission. The issues identified are:

- *Adverse privacy impact of the swimming pool; ground floor alfresco area and 1st floor balcony to bedroom 1;*
- *Insufficient landscaped open space to meet the requirements and objectives of WDCP 2011 (Rear Setback and Landscaped Open Space), in particular enhancing privacy and mitigating visual impact; and*
- *Ensuring the natural ground level on the north-east corner is re-instated to its original level, to reduce privacy impact on the adjoining dwelling at No.10 Courtley Road.*

Based upon the above comments you are advised to satisfactorily address the matters raised in these notes prior to lodging a development application.

DA2020/0585 – Construction of retaining walls and fencing (4/6/20)
Withdrawn

CDC2020/0112 - Construction of a two-storey dwelling with attached garage and swimming pool
It is understood that the PCA issued a stop work order and following this the application has been abandoned. Certificate issued on 11 February 2020.

CDC2020/0048 – Demolition (31/01/2020)

DA2018/1886 – Demolition works and construction of a dwelling house swimming pool
(29/11/2018)
Approved on 17 July 2019.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the [Community Participation Plan](#). ~~relevant Development Control Plan.~~

As a result of the public exhibition process council is in receipt of two submissions from:

Name:	Address:
Ken Smith	12 Courtley Road, Beacon Hill 2100
Ru Jiang Wang & Feng Ying Zhao	14 Courtley Road, Beacon Hill 2100

The matters raised within the submissions are as follows:

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

Comment: The property at No.14 Courtley Road adjoins the subject site on the eastern (side) boundary, with its area of rear private open space adjoining this boundary. The plans concentrate the bulk of the second storey toward the front of the site which has the benefit for this lot of reducing potential impacts. A bathroom and bedroom first floor window face this site and are not considered to create privacy concerns.

The deck on the eastern elevation of the ground floor is not considered to be a great privacy concern to no 14 as there is ample opportunity for screening and separation as the lot spays out in this location creating greater separation than is available at the front of the lot.

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

Comment: The objectors concerns are considered valid with the combination of unauthorised raised ground levels, location of living areas, raised outdoor space and lack of landscaping all resulting in the new dwelling having views over their pool and outdoor recreation area. These implications could be negated with a varied design which uses the original existing ground level and provides extended setbacks to decks and living areas from the eastern elevation and north eastern corner of the site.

Should the application be approved, conditions of consent could be imposed requiring the deletion of the eastern deck adjoining the dining area, additional landscape screening on the eastern boundary and deletion of retaining walls in the north eastern corner of the site which provides a raised turf yard to the boundary and privacy screening on eastern elevation windows. However, given the fill added since 2018 and the cumulative impacts raising this corner of the dwelling, this objection is considered valid and is included in the reasons of refusal of the application.

- *The proposal will have an adverse solar access impact on the rear yard for the dwelling at No.14 Courtley Road.*

Comment: Solar access implications for no. 14 Courtley Avenue are considered to comply with the DCP. There is no shadowing at 9am or midday in midwinter, with some shadow to the rear yard at 3pm. This demonstrates that 3 hours can be retained in accordance with DCP controls.

- *Inadequate planting is provided to ensure privacy for no 12 Courtley Road.*

Comment: The proposed landscape plan does include the provision of planting in the north east corner of the site where the soil levels are proposed to be substantially further elevated. However, no other planting is included on the eastern boundary. It appears the applicant is relying to a large

extent on planting which is located on the neighbouring lot. Given the elevated nature of the proposed new dwelling, it is necessary that greater planting be provided on the site boundary to ensure that privacy can be maintained, without reliance on the neighbour's planting. Should the application be approved a condition of consent requiring planting to a height of 2-3 along the perimeter of the eastern boundary would be recommended.

- *Rear Boundary Setback is inadequate to allow for landscaping*

Comment: The rear boundary does provide a non-compliant setback. This is considered reasonable in this instance due to the irregular shape of the lot and the reasonable impacts for neighbours. The landscaped area, including that within the rear boundary is found to be consistent with Council's definition.

- *Excavation and Fill*

Comment: The site has a history of unauthorised excavation and fill being added to the site and this has not been rectified. This matter was raised the pre-lodgement meeting and has not been addressed. It is agreed that is a deficiency with the application and that the survey provided is inaccurate. It is considered that this application cannot be approved as submitted without a Building Certificate which authorises the excavation in the rear western corner of the site of up to 1.93 metres. There has also been the addition of fill in the north eastern corner of up to 1.18 metres. The appropriate measure of levels for the site is agreed to be the survey provided with DA2018/1886 in 2018, which shows pre demolition levels. Therefore, this issue is considered valid and is included in the reasons of refusal of the application.

- *Landscaped Open Space*

Comment: The landscaped area proposed is calculated to be 38% consistent with Council's landscaped area definition. This variation is considered reasonable based on the irregular shaped lot.

- *Front Setback*

Comment: Parts of the development vary the front setback control. However, this is considered a reasonable result for an irregularly shaped lot.

- *Overdevelopment of the site*

Comment: It is considered that the site has potential for a two-storey dwelling. However, the design of the current proposal concentrates the two-storey portion of the development on a filled level close to the street front and in immediate proximity of a lower neighbouring site. By concentrating this portion of bulk it provides an overbearing presence to the lower neighbour.

We note that the previously approved dwelling (DA2018/1886) retained a garage on the eastern corner of the site and accordingly retained the existing driveway crossover in this location. This design, with less alteration to existing ground levels, allowed for a better result which was more considerate of site constraints resulting in a more equitable result. Therefore, this issue is considered valid and is included in the reasons of refusal of the application.

REFERRALS

Internal Referral Body	Comments
Engineering	The proposed impervious area for the development exceeds 40% of the site area and as such on-site stormwater detention (OSD) is required for the proposal in accordance with Council's Simplified

Internal Referral Body	Comments
	<p>Method in the Water Management Policy. The proposed driveway crossing width and grade are unacceptable. The driveway grade is to match the existing ground profile in the road reserve to ensure there are no retaining walls. The width of the crossing is to be a maximum of 4 metres from kerb to the boundary.</p> <p>Development Engineers cannot support the application due to insufficient information to address clauses C2 and C4 of Warringah DCP.</p> <p>Amended Plans received 14/04/2021</p> <p>The amended stormwater plans are satisfactory subject to amendment. The driveway width and grade are also satisfactory.</p> <p>No objection to approval, subject to conditions as recommended.</p> <p>The proposal is therefore supported.</p>
Landscape	<p>This application is for the construction of a residential dwelling on a vacant block of land. The proposed dwelling is to be a two-storeys with accompanying double garage.</p> <p>Councils Landscape Referral section has considered the application against the Warringah Local Environment Plan, and the following Warringah DCP 2011 controls:</p> <ul style="list-style-type: none"> • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation <p>The Statement of Environmental Effects provided with the application notes that a total area of 209.58m² has been provided for landscaping, totalling 37.6% of the site. This is a minor nonconformance to control D1, however as it is an improvement on the previously approved DA which has 32% of the site dedicated to landscape. The Statement of Environmental Effects provided also notes that the proposed dwelling retains the sites natural and landscape setting. It is worth noting in this case, the site is clear and vacant, and therefore no landscape setting is currently present. In addition to this, it is indicated in the Statement of Environmental Effects that landscaping has been provided which is consistent with the sites suburban context. Following previous comments made in relation to this application, a Landscape Plan has since been provided, with proposed works including the in-ground planting of trees, shrubs and grasses.</p> <p>The proposal seeks to removal two street trees at the front of the property in order to construct a new driveway. Upon review, these trees appear to be undesirable species or in poor health, and with the new Landscape Plans provided, compensatory tree planting has been proposed. Previous concerns were also raised regarding minimal information about proposed planting, however the Landscape Plan now addresses these concerns and indicates sufficient planting to help both mitigate the bulk and scale of the built form, whilst also ensuring privacy between neighbours is retained. Concern is raised regarding the proposed use of <i>Rhaphiolepis umbellata</i>, as this has been identified as an environmental weed and an undesirable species, and shall be required to be substituted for a native alternative. The completion of landscape works as proposed on the Landscape Plans, inclusive of this species change, is vital to satisfy control D1 as key</p>

Internal Referral Body	Comments
	<p>objectives of this control include "enable planting to maintain and enhance the streetscape", "enhance privacy between buildings", as well as "to provide for landscape open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building".</p> <p>At this point in time, the proposal is not supported due to insufficient information being provided regarding proposed landscape works and the presence of compensatory planting as a result of street trees removed. A Landscape Plan in accordance with Council's DA Lodgement Requirements is therefore required.</p> <p>The proposal is therefore unsupported.</p> <p>Revised Comments 12 April 2021 Following receipt of a landscape plan, the landscape officer has amended their response to:</p> <p>The landscape component of the proposal is therefore supported subject to the following conditions.</p>

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for a residential development. However, as is discussed in this report, the scale of the elevated north-eastern corner of the site results in excessive scale and privacy implications and is considered unacceptable.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	This assessment found the application to be contrary to the relevant requirements of the Warringah LEP and DCP, due to the unauthorised alterations of the topography of the site. In this regard the development is not considered to be in the public interest.

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

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

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

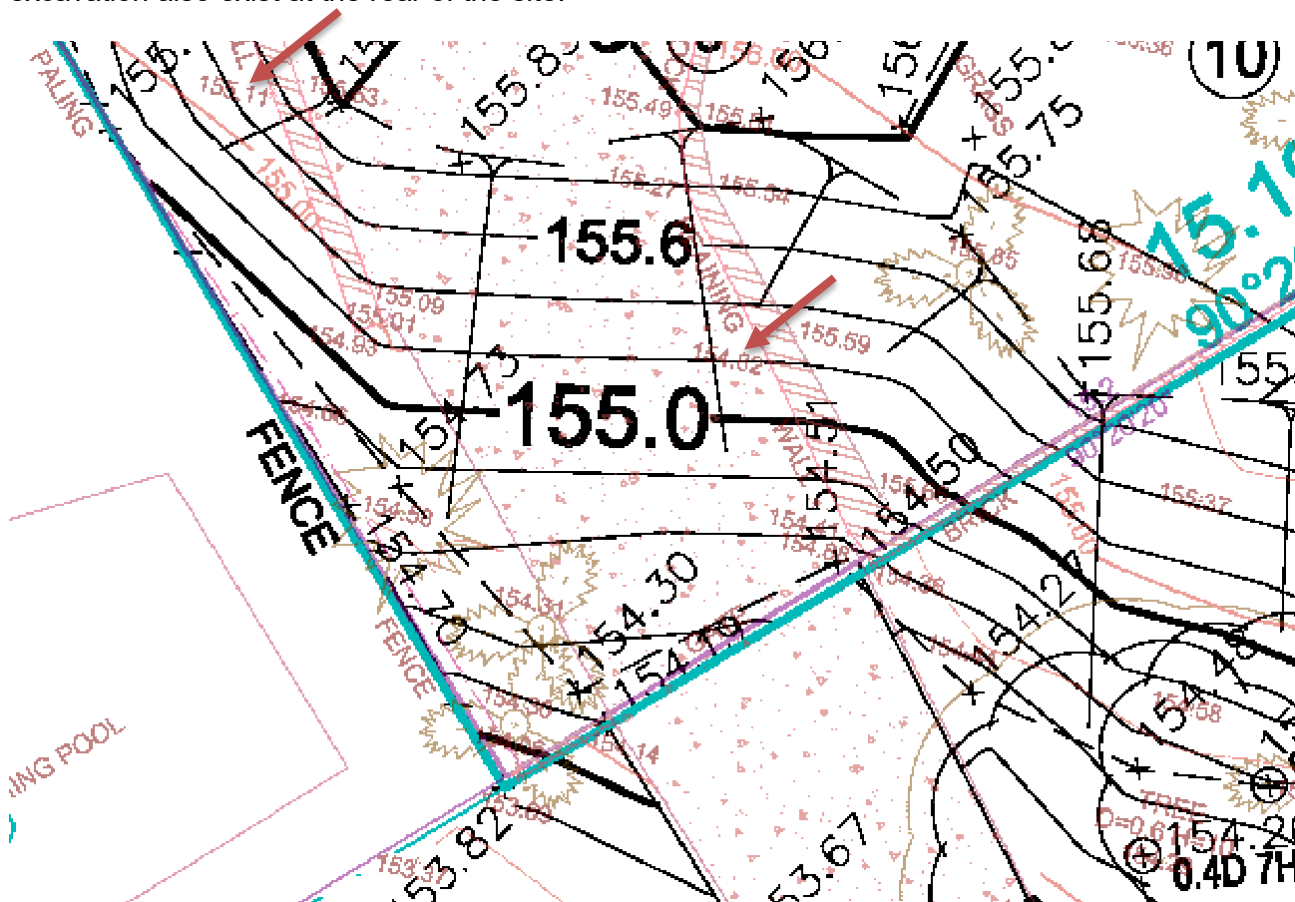
EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

UNAUTHORISED WORKS

CDC2020/0112 for the Construction of a two-storey dwelling with attached garage and swimming pool was commenced in early 2020 and it is understood that the PCA issued a stop work order following unauthorised excavation at the rear of the site and filling on the front of the site in March 2020. These works have not been rectified and a Building Certificate has not been sought to permit the varied ground levels.

See overlay of the 2018 (shown in red) and 2020 (shown in black) surveys below detailing areas of fill in north eastern corner of site. The greatest areas of fill are on the western side of the original driveway at 1.18m and at the top of the original driveway at approximately 600mm. Large areas of excavation also exist at the rear of the site.



BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPS) AND STATE REGIONAL ENVIRONMENTAL PLANS (SREPS)

SEPP 55 - Remediation of Land

Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018.

The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1070491S_02 dated 17 November 2020). The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	42
Thermal Comfort	Pass	Pass
Energy	50	54

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

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?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings	8.5m	8.265m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	N/A
6.2 Earthworks	No
6.4 Development on sloping land	Yes

Detailed Assessment

Clause 4.3 Height of Buildings

It is noted that the height of building has been calculated using the survey's level provided on the original survey of 2018 and not the survey provided with the application. It is also noted that the plans do not provide RLs for all roof ridge components and as the ridge height shown on the plan does not scale it is not possible to get an exact calculation. The 8.265m figure is a best estimate.

6.2 Earthworks

Additional fill is proposed to level and raise the site up to 549mm, in addition to the existing unauthorised fill which provides varying additional fill particularly across the front of the site, of up to 1.12 metres. The LEP requires the consent authority to consider a number of factors including *"the effect of the proposed development on the existing and likely amenity of adjoining properties"*.

In this instance it is not considered that the cumulative addition of fill at the northern eastern frontage of the site results in reasonable impacts for the neighbour at 12 Courtley Avenue. The result of the additional fill is a raised building platform and loss of privacy. Given that there are other opportunities to develop on the site without such impacts, this is considered unreasonable and included as a reason for refusal in the recommendation.

It is also considered that a Building Certificate is required to retain the fill and excavation (of up to 1.92 metres at the rear of the site) which has currently been undertaken on the site to rectify the unauthorised works.

WARRINGAH DEVELOPMENT CONTROL PLAN

Built Form Controls

Built Form Control	Requirement	Proposed	%Variation	Complies
B1 Wall Height	7.2m	6.4m	N/A	Yes
B2 Side Boundary Envelope	4m (east)	Within envelope	N/A	Yes
	4m (west)	Within envelope	N/A	Yes
B5 Side Boundary Setbacks	0.9m (east)	0.5 – 7.5m	44%	No
	0.9m (west)	1.18m	N/A	Yes
Front Boundary Setbacks	6.5m	4.05m	37.6%	No
B9 Rear Boundary Setbacks	6m	2.383m deck	60.2%	No
		3.809 (ground flr)	35.5%	No
		8.9m (1st floor)	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	38% 215.5m ²	3.3%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
Part B Build Form Controls	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setback	No	Yes
B9 Rear Boundary Setback	No	Yes
Part C Siting Factors	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	No	No
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Part D Design	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	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	No	No
D10 Building colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
Part E The Natural Environment	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

Description of Non-compliance

The side boundary setback varies for the eastern porch adjacent the dining room, providing a 500mm setback.

Merit Consideration

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

- *To provide opportunities for deep soil landscape areas.*

Ample deep soil is provided.

- *To ensure that development does not become visually dominant.*

The setback is imposing due to the elevated topography of the site and is considered unacceptable when viewed from the neighbouring site, 12 Courtley Avenue. Deletion of the deck adjacent the dining room would resolve this issue.

- *To ensure that the scale and bulk of buildings is minimised.*

The bulk of the structure is accentuated due to the proximity to the boundary. Deletion of the deck adjacent the dining room would resolve this issue.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Solar access is achieved.

The development is not supported in its current form. However, deletion of the eastern deck is considered to resolve this issue.

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

B7 Front Boundary Setbacks

Description of Non-compliance

The front boundary setback varies from 4.05 metres at its closest point. The majority of the dwelling frontage sits behind the 6.5 metre line, with variation resulting from the angle of the dwelling and the unusual shape of the lot.

Merit Consideration

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

- *To create a sense of openness.*

The frontage retains ample open area at the frontage. It is noted that this was suggested in the Pre-lodgement meeting with Council.

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

This is achieved with an unusual lot pattern and inconsistent line of dwellings existing in the immediate locality.

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

The setback variation is not to the detriment of the streetscape. Some additional planting and reduction in excess driveway area would assist in ensuring this is enhanced.

- *To achieve reasonable view sharing.*

View Sharing is unaffected.

B9 Rear Boundary Setbacks

Description of Non-compliance

The rear boundary setback varies at the ground level with a reduced setback of 2.383 metres.

Merit Consideration

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

- *To ensure opportunities for deep soil landscape areas are maintained.*

Ample deep soil planting is provided on the site.

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

An open rear yard area is achieved for the site in a more logical location being in the south eastern corner of the site, with the traditional rear boundary, not backing onto a large area of open space in the rear yard of the neighbour no. 6 Kadigal Place, which has its open space area in the north western corner of their site.

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

Ample separation is provided with the proposal an increase on the setback provided by the previous dwelling on the lot.

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

Visual continuity is considered to have been achieved by the propose rear boundary.

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

The rear boundary adequately maintains privacy, particularly given that the first floor is compliance and only the ground floor and deck do not comply.

C7 Excavation and Landfill

Description of Non-compliance

The DCP states that *Excavation and landfill works must not result in any adverse impact on adjoining land*. The proposed development includes fill that has resulted through the commencement of work on CDC2020/0112 in 2020, which was abandoned following a stop work order. There is also the proposal for additional fill as a part of this application. This filling is considered to be to the detriment of the neighbour, 12 Courtley Road with regard to privacy and bulk and scale. The cumulative fill proposed includes:

Eastern corner of dining room – 1.34m

Eastern most corner of deck – 1.314m

Eastern most corner of living room – 1.18m

North eastern corner retained turf (excluding any fencing) - 1.15m

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 any land excavation or fill work will not have an adverse effect upon the visual and natural environment or adjoining and adjacent properties.*

The development fails to achieve this, with he raised levels of the dwelling and prove open space creating an excessive scale in close proximity. Given the opportunity to develop on alternate components of the lot, or to step with eh site, the solution proposed is not considered reasonable.

- *To require that excavation and landfill does not create airborne pollution.*

This can be achieved.

- *To preserve the integrity of the physical environment.*

The site is currently vacant. However, it is considered that the raising of the front of the site will create an artificial and raised topography which is not consistent with the land.

- *To maintain and enhance visual and scenic quality.*

The raised levels are not to the benefit of enhancing visual and scenic quality.

As such, non-compliance with the fill requirements prescribed by this control is considered to warrant the refusal of the subject application.

D1 Landscaped Open Space and Bushland Setting

Description of Non-compliance

The landscaped area proposed is 215.5m² or 38%. This is a variation of 3.3 %

Merit Consideration

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

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

There is excessive driveway area provided with the street frontage with the driveway concrete extension in front of the entry porch. The area not in front of the garage could be removed and a smaller entry path provided to allow for additional planting in this area. This could be resolved as a condition of consent.

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

The site is vacant but a landscape plan is proposed which is considered satisfactory by Council's landscape officer.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

This is achieved.

- *To enhance privacy between buildings.*

This is achieved, with the exception of the deck on the eastern elevation, which could be deleted with a condition of consent.

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

This is achieved.

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

This is achieved.

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

This is achieved.

D8 Privacy

Description of Non-compliance

Privacy is not satisfactorily retained for 12 Courtley Road, the neighbour to the east with their key private open space area, terrace pool all overlooked. The key issues are:

1. raised ground levels,

2. location of living areas,
3. Upper level windows overlooking
4. Raised turf levels
5. Lack of landscaping

The implications could be negated with conditions of consent requiring:

1. the deletion of the eastern deck adjoining the dining area,
2. Additional landscape screening on the eastern boundary and
3. Deletion of retaining walls in the north eastern corner of the site which provides a raised turf yard to the boundary and
4. Privacy screening on eastern elevation windows.

However, the cumulative impacts of the existing and proposed fill in the north-eastern corner of the site raising this corner of the dwelling cannot be resolved through condition. The implication of the fill is considered below.

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

This is not achieved with the elevation of the site resulting in enhanced loss of privacy. Retaining existing levels or an alternate siting of the dwelling would allow for this to be achieved.

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

This has not been achieved.

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

The site is adequately secure, with passive surveillance of the street enhanced.

As such, non-compliance with the privacy requirements prescribed by this control is considered to warrant the refusal of the subject application.

D9 Building Bulk

Description of Non-compliance

The DCP states that fill is not to exceed 1 metre. The cumulative fill on the site does exceed 1 metre as detailed above.

Merit Consideration

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

- *To encourage good design and innovative architecture to improve the urban environment.*

This is not achieved, with the dwelling footprint not stepping the fall of the land.

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

This is not achieved, with the impact of the proposed site and dwelling when viewed from 12 Courtley Road considered excessive.

As such, non-compliance with the building bulk prescribed by this control is considered to warrant the refusal of the subject application.

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.

7.12 CONTRIBUTIONS

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$9820 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$982,000.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

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

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2020/1606 for the construction of a dwelling house on land Lot 7 DP 238331, 10 Courtley Road BEACON HILL, for the reasons outlined as follows:

1. The works proposed within the north eastern corner of the site and are inconsistent with the requirements and objectives of Warringah Local Environment Plan 2011 – 6.2 Earthworks
2. The application would result in unreasonable impacts with regard to Warringah Development Control Plan – B5 Side Boundary Setbacks.
3. The application would result in unreasonable impacts with regard to Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting.
4. The application would result in unreasonable impacts with regard to Warringah Development Control Plan – C7 Excavation and Landfill.
5. The application would result in unreasonable impacts with regard to Warringah Development Control Plan - D8 Privacy



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