

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2025/0037
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Responsible Officer:	Thomas Burns
Land to be developed (Address):	Lot 13 DP 25368, 41 Ferguson Street FORESTVILLE NSW 2087
Proposed Development:	Demolition works and construction of a dual occupancy including swimming pools
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes, under State Environmental Planning Policy (Housing) 2021
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Applicant:	Mark Makhoul

Application Lodged:	03/02/2025
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Other
Notified:	13/02/2025 to 27/02/2025
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 4.12%
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,936,000.00
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PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the demolition of the existing dwelling house and construction of an attached dual occupancy development that includes two storeys of residential floor space above a basement car parking level. Each dwelling contains four bedrooms. The dual occupancy is a part two / three storey building due to the basement level and slope of the land; however, is predominantly two storeys above ground.

A plunge pool is also proposed for each dwelling. No strata subdivision is proposed under this application.

Vehicular access to Unit 1 is proposed via Ferguson Street, while vehicular access to Unit 2 is

proposed via Ashton Avenue. Pedestrian access to both dwellings is provided via Ferguson Street.

The development will necessitate the removal of several shrubs that do not require Council approval. However, two street trees (pencil pine and brushbox tree) within the Ferguson Street public road reserve are proposed for removal. Shrub planting on the site and the provision of two new street trees are proposed.

Stormwater from the development will be conveyed into the kerb and gutter downslope via on-site detention tanking.

A new 1.5 metre tall fence is proposed along the Ashton Avenue frontage.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Local Environmental Plan 2011 - 1.1 Name of Plan
Warringah Local Environmental Plan 2011 - Zone R2 Low Density Residential
Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - C3 Parking Facilities
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D6 Access to Sunlight
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - D13 Front Fences and Front Walls

SITE DESCRIPTION

Property Description:	Lot 13 DP 25368 , 41 Ferguson Street FORESTVILLE NSW 2087
Detailed Site Description:	<p>The subject site is a corner allotment with frontages to Ferguson Street and Ashton Avenue within the Forestville locality.</p> <p>The site is generally rectangular in shape, with the exception of a 6.51 metre (m) wide splayed corner to both frontages and has a primary frontage of 19.2m to Ferguson Avenue and a secondary frontage of 25.91m to Ashton Avenue. The site has a surveyed area of 714.1 square metres (sqm).</p> <p>The site is located within the R2 Low Density Residential zone pursuant to the Warringah Local Environmental Plan 2011 (WLEP) and accommodates a single storey dwelling house including a detached garage that is accessed via Ashton Avenue. Pedestrian access to the site is provided via both frontages.</p> <p>The site contains small trees along the frontages and deep soil landscaping around the building footprint. Landscaping on the site does not constitute threatened or endangered species.</p> <p>The site experiences a fall of approximately 4.7m that slopes from the southern corner towards the splayed corner between both frontages. A large portion of the fall occurs at the northern corner of the site adjacent to the splayed corner.</p> <p>The site is not burdened by any easements or restrictive covenants.</p> <p>The surrounding built environment is characterised by detached low density residential development (i.e. dwelling houses), typically one or two storeys in height.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed no recent or relevant applications.

CURRENT DEVELOPMENT APPLICATION HISTORY

As part of the assessment process, the assessing officer has undertaken site inspections at the subject site and the south-western adjoining property (2 Ashton Avenue, Forestville).

Following the preliminary assessment of the application, which included these site inspections, Council wrote to the applicant raising concerns with the following aspects of the proposal:

- The proposed stormwater management scheme did not comply with Council's Water Management for Development Policy (WMDP).
- Insufficient information was provided on the section plans to demonstrate that the vehicular access driveways to the basement level had suitable gradients.
- The proposed 2.5m tall fence to Ashton Avenue was excessive in height and incompatible with surrounding front fencing.
- Window W28 would result in adverse privacy impacts to 2 Ashton Avenue as it is a large window serving a habitable window and not sufficiently separated from an existing deck and habitable rooms at 2 Ashton Avenue.

The applicant subsequently amended the development application pursuant to Section 37 of the Environmental Planning and Assessment Regulation 2021 as follows:

- Amended architectural plans were submitted and involved the following amendments:
 - The boundary fencing to Ashton Avenue was reduced in height from 2.5m to 1.5m above the existing ground level at the boundary.
 - Window W28 was amended to include obscure glazing to a height of 1.5m above the finished floor level to mitigate overlooking.
- Amended stormwater plans and a DRAINS model were submitted to demonstrate that the stormwater management scheme complies with Council's WMDP.
- Civil plans that to demonstrate that the driveway levels are appropriate.

ADVERTISING OF THE DEVELOPMENT APPLICATION

The development application was posted on Council's 'Advertised Development' Page between 18 February 2025 - 4 March 2025 to satisfy the requirements of the CPP, given the application constitutes advertised development as it involves development that is prohibited under the WLEP but permissible under the Housing SEPP with a total cost that exceeds \$1 million. As the application was originally notified to neighbouring properties for 14 days, the application was not required to be re-notified to neighbouring properties to satisfy the requirements of the CPP.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p>

Section 4.15 Matters for Consideration	Comments
	<p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended architectural and engineering plans.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 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 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</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 and Environmental Planning Instruments sections in this report.</p> <p>(ii) Social Impact The proposed development will have a positive social impact through providing alternative housing choices within a low density residential area.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 13/02/2025 to 27/02/2025 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Arnaud Jean Alain Philippe	2 Ashton Avenue FORESTVILLE NSW 2087

See the section above dealing with "ADVERTISING OF THE DEVELOPMENT APPLICATION".

One submission by way of objection was received. The following issues were raised in the submission:

- **Privacy Impacts**

The submission raised concerns that the south-west facing windows would result in adverse privacy impacts to 2 Ashton Avenue.

Comment:

This matter is discussed within the section of this report relating to Section D8 'Privacy' of the WDCP. In summary, the development complies with the requirements of this control. Therefore, the privacy impacts are acceptable.

- **Solar Access / Overshadowing**

The submission raised concerns that the development would result in adverse overshadowing of 2 Ashton Avenue.

Comment:

This matter is discussed within the section of this report relating to Section D6 'Access to Sunlight' of the WDCP. In summary, the development complies with the requirements of this control. Therefore, the overshadowing impacts are acceptable. Additionally, the proposed 2.5m tall screen planting along the shared side boundary of 2 Ashton Avenue will not cause adverse overshadowing of the adjacent north-facing decking, given this decking is elevated above the natural ground levels of the subject site.

- **Noise Impacts from Pool Filter Equipment and Air Conditioning Units**

The submission raised concerns that the pool filter equipment and future air conditioning units

would adversely impact upon the amenity of 2 Ashton Avenue.

Comment:

Conditions are recommended to limit the noise emissions of mechanical plant equipment.

- **Outdoor Lighting**

The submission raised concerns that there was insufficient information in relation to outdoor lighting.

Comment:

A condition is recommended to ensure that the development complies with all applicable Australian Standards, including AS 4282 'Control of the obtrusive effects of outdoor lighting'. This will ensure that any outdoor lighting is appropriate.

The concerns raised within the submission have been appropriately addressed above and resolved via recommended conditions of consent where appropriate.

The concerns do not warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application seeks consent for: Demolition works and construction of a dual occupar including swimming pools.</p> <p>The plans indicate removal of several small/exempt trees from the site to accommodate works, which is not objected to subject to suitable re-planting.</p> <p>The Plans indicate one street tree - <i>Cupressus sempervirens</i> 'Stricta' on Ferguson Street to be removed and one <i>Lophostemon conferta</i> (Brushbox) located on Ferguson Street to be retained.</p> <p>The plans indicate a new driveway crossover on Ferguson Street between the tree and existing power pole (Fig. 1 below).</p>



Internal Referral Body	Comments
	<div data-bbox="363 405 1469 1541"><div data-bbox="363 405 533 456">Pencil Pine</div><div data-bbox="1294 405 1469 456">Brushbox Tree</div><div data-bbox="1102 1496 1469 1541">Approximate Driveway Location</div></div> <p data-bbox="325 1585 1469 1653">Additional excavation is proposed from within the property boundary down to a new basement level.</p> <p data-bbox="325 1688 1469 1756">Concern is raised regarding the impacts on the Brushbox Tree from the excavation proposed.</p> <p data-bbox="325 1792 1469 1859">The tree has been pruned away from powerlines and has a significant asymmetrical crown which extends predominately over the road.</p> <p data-bbox="325 1895 1469 1962">The extent of excavation is considered to be likely to destabilise the tree and it is not considered viable for retention under the proposed scheme.</p> <p data-bbox="325 1998 1469 2065">If the proposal is to be approved, it is recommended that the tree is removed and replaced with a suitable replacement species at the cost of the applicant/owner.</p>

Internal Referral Body	Comments
	<p>The Pencil Pine is likewise not able to be retained due to the extent of excavation proposed.</p> <p>Conditions have been provided addressing tree removal and replacement if the proposal is to be approved.</p>
NECC (Development Engineering)	<p>24/03/2025: Development Engineering have no objections to approval subject to conditions as recommended.</p> <p>20/03/2025: OSD volume is short and the provided DRAINS model is wrong. In the provided DRAINS model PSD for whole site is calculated as 15l/sec for the 5 year storm. However in the post developed case the flows from individual units are considered and limited to 15l/sec each, which is not acceptable, reason being the post developed flows both units together will exceed this PSD. As proposal is for two individual OSD's to cater both lots, Consultant engineer to consider PSD for individual units and design OSD volume to suit for each storm event. Amended stormwater plans with updated DRAINS model is required.</p> <p>Provided driveway profiles are not acceptable as with basements Normal Low or Extra Low Vehicle Crossing Profiles will suit for both crossings. Amended driveway profiles are required. Existing Street gutter levels and footpath levels are to be maintained.</p> <p>27/02/2025: Development Application is for demolition of existing structures and construction of an attached dual occupancy with basements.</p> <p>Access Site is corner property with dual frontages. Proposal is for basement parking's and two vehicular crossings. One on Ferguson Street to serve Unit 1 and second on Ashton Avenue to serve Unit 2 Driveway longitudinal section from street gutter to basement parking to be provided with existing and proposed levels, chainage and grades. Driveway profile to be in accordance with Council's standard vehicle crossing profile available on Council website. Street gutter levels to be maintained and driveway width to be 3m. Driveway to be at least 1m away from existing power pole in Ferguson Street.</p> <p>Stormwater Proposal is to connect subsoil discharge from basement to street gutter, which is not permitted. In case of basements, it needs to be connected to either Council pit or pipe. In this case consultant engineer is advised to:</p> <ul style="list-style-type: none"> • amend the design and connect discharge from unit 1 to boundary pit of Unit 2 and final outlet to Council pit in Ashton Avenue. • OSD volume seems to be low, calculations with DRAINS model to be provided.

Internal Referral Body	Comments

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

Housing and Productivity Contribution

Part 2 Development for which contribution is require and determination of contribution, Division 2 Housing and productivity contribution amounts, Clause 7 Base component.

This Clause details the base component amounts that apply to the calculation of the housing and productivity contribution, as set out in the following table:

Region	HPC class of development	Amount	HPC unit
Greater Sydney	Residential subdivision	\$12,000	new dwelling lot
	Residential strata subdivision	\$10,000	new strata dwelling lot
	Non-strata multi-dwelling development	\$10,000	new non-strata dwelling
	Commercial development	\$30	square metre of new GFA
	Industrial development	\$15	square metre of new GFA

Comment:

The proposed development will increase the number of dwellings on the subject site from a single dwelling house to two dwellings that form part of an attached dual occupancy development with strata subdivision. The site is also located within the Greater Sydney region.

As there is one new strata dwelling lot being provided on the site, the contribution payable under the Housing And Productivity Contribution is \$10,000. The requirement to pay this contribution has been included as a condition of consent.

SEPP (Sustainable Buildings) 2022

A BASIX Certificate was lodged with this application and demonstrates that the development will achieve the relevant thermal, energy and water requirements. A condition is recommended to ensure compliance with this BASIX Certificate, which will ensure compliance with State Environmental Planning Policy (Sustainable Buildings) 2022.

SEPP (Housing) 2021

Part 12 Dual occupancies and semi-detached dwellings in Zone R2

Clause 141C of Part 12 of State Environmental Planning Policy (Housing) 2021 (Housing SEPP) provides that development for the purposes of dual occupancies and semi-detached dwellings are permitted with development consent in Zone R2 Low Density Residential on land to which this part applies. This land is as follows:

141B Land to which part applies

- (1) *This part applies to the whole of the State, other than the following land—*
- (a) *bush fire prone land,*
 - (b) *land identified as a coastal vulnerability area or a coastal wetlands and littoral rainforests area within the meaning of [State Environmental Planning Policy \(Resilience and Hazards\) 2021](#), Chapter 2,*
 - (c) *land in a Transport Oriented Development Area under Chapter 5,*
 - (d) *land that comprises a heritage item or on which a heritage item is located,*
 - (e) *the following local government areas—*
 - (i) *Bathurst Regional,*
 - (ii) *City of Blue Mountains,*
 - (iii) *City of Hawkesbury,*
 - (iv) *Wollondilly,*
 - (f) *flood prone land in the Georges River Catchment and Hawkesbury-Nepean Catchment under [State Environmental Planning Policy \(Biodiversity and Conservation\) 2021](#), Chapter 6,*
 - (g) *land in a flood planning area in the following local government areas—*
 - (i) *Armidale Regional,*
 - (ii) *Ballina,*

- (iii) Bellingen,*
- (iv) Byron,*
- (v) City of Cessnock,*
- (vi) Clarence Valley,*
- (vii) City of Coffs Harbour,*
- (viii) Dungog,*
- (ix) Goulburn Mulwaree,*
- (x) Kempsey,*
- (xi) Kyogle,*
- (xii) City of Lismore,*
- (xiii) City of Maitland,*
- (xiv) Nambucca Valley,*
- (xv) City of Newcastle,*
- (xvi) Port Stephens,*
- (xvii) Queanbeyan-Palerang Regional,*
- (xviii) Richmond Valley,*
- (xix) City of Shoalhaven,*
- (xx) Singleton,*
- (xxi) Tweed,*
- (xxii) Upper Hunter Shire,*
- (xxiii) Walcha,*
- (h) land in an ANEF contour or ANEC contour of 20 or greater,*
- (i) land within 200m of a relevant pipeline within the meaning of [State Environmental Planning Policy \(Transport and Infrastructure\) 2021](#), section 2.77.*

Comment:

The development is located within the R2 Low Density Residential zone and does not take place on any of the exclusion areas listed above.

It is noted that this land use is prohibited within the R2 zone per the Land Use Table of the WLEP. Notwithstanding, clause 8(1) of the Housing SEPP provides that, if there is an inconsistency between the Housing SEPP and another environmental planning instrument (such as the WLEP 2011 in this case), the Housing SEPP prevails.

As such, the development is permissible via clause 141C of the Housing SEPP.

The assessment has concluded that the proposed dual occupancy will maintain an appropriate visual relationship with surrounding detached dwelling houses within the visual catchment of the site, given the dual occupancy will generally read as a two storey building above a sub-floor basement, which responds appropriately to the height of surrounding buildings. Additionally, appropriate boundary setbacks with deep soil landscaping that includes tree planting have been provided around the curtilage of the building to provide a landscaping scheme that is commensurate with the established landscaped setting.

The development is consistent with the relevant provisions under the Housing SEPP.

SEPP (Transport and Infrastructure) 2021

Chapter 2 - Infrastructure

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

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

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

With these conditions in place, the development will meet the requirements of State Environmental Planning Policy (Transport and Infrastructure) 2021.

SEPP (Biodiversity and Conservation) 2021

Chapter 2 - Vegetation in non-rural areas

Chapter 2 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 (BC SEPP) applies to the development pursuant to clause 2.3 and aims to protect the biodiversity and amenity values of trees within non-rural areas of the state.

The development will result in the removal of two trees located within the public road reserve. Council's Landscape Officer has not raised any concerns in relation to the removal of these trees, subject to a condition of consent requiring four new native trees to be planted on the site and three new trees to be planted in the road reserve.

The provision of new native planting on the site will enhance the biodiversity and amenity values of the

site, consistent with the aims of Chapter 2.

Chapter 6 - Water Catchments

Chapter 6 of the BC SEPP applies to the development pursuant to clause 6.1 as the site is located within the Sydney Harbour Catchment.

Chapter 6 has been considered and it has been determined that the development would meet the requirements and objectives of Chapter 6, insofar as stormwater will be appropriately managed and disposed off, which will ensure that the development does not result in pollution or adverse stormwater impacts to the Sydney Harbour Catchment.

Conclusion

As demonstrated above, the development is consistent with the relevant requirements under the BC SEPP.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

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

Warringah Local Environmental Plan 2011

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.85m	4.12%	No

Compliance Assessment

Clause	Compliance with Requirements
1.1 Name of Plan	Yes
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)

Clause	Compliance with Requirements
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

1.1 Name of Plan

The assessment finds that the proposed development is consistent with the aims of the WLEP, notwithstanding that dual occupancies are prohibited within the R2 zone under the WLEP and permissible under the Housing SEPP.

An assessment against the aims of the WLEP is provided below as follows:

(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,

Comment:

N/A - the proposal relates to a residential land use.

(a) to create a land use framework for controlling development in Warringah that allows detailed provisions to be made in any development control plan made by the Council,

Comment:

The development is consistent with the aims and objectives of the WLEP and Warringah Development Control Plan 2011 (WDCP).

(b) to recognise the role of Dee Why and Brookvale as the major centres and employment areas for the sub-region,

Comment:

N/A - the development is not located within these localities.

(c) to maintain and enhance the existing amenity and quality of life of the local community by providing for a balance of development that caters for the housing, employment, entertainment, cultural, welfare and recreational needs of residents and visitors,

Comment:

The development provides for appropriate housing that will meet the needs of the residents within the locality and assist in achieving the State Government's housing targets.

(d) in relation to residential development, to—

(i) protect and enhance the residential use and amenity of existing residential environments, and

(ii) promote development that is compatible with neighbouring development in terms of bulk, scale and appearance, and

(iii) increase the availability and variety of dwellings to enable population growth without having adverse effects on the character and amenity of Warringah,

Comment:

The development meets these requirements for the following reasons:

- The proposal has been designed to allow for acceptable levels of internal amenity, while also not resulting in adverse residential amenity impacts on neighbouring properties in terms of visual impacts, noise intrusion, visual privacy, solar access and view sharing.
- The development will largely read as a two storey building above a basement level and will not be of a bulk, scale and appearance that is incompatible with surrounding detached low density residential development within the locality.
- The provision of two dwellings on the site will assist in achieving the State Government's housing targets which have been prepared in response to meeting the demand from population growth.

(e) in relation to non-residential development, to—

(i) ensure that non-residential development does not have an adverse effect on the amenity of residential properties and public places, and

(ii) maintain a diversity of employment, services, cultural and recreational facilities,

Comment:

N/A - the proposal is for residential development.

(f) in relation to environmental quality, to—

(i) achieve development outcomes of quality urban design, and

(ii) encourage development that demonstrates efficient and sustainable use of energy and resources, and

(iii) achieve land use relationships that promote the efficient use of infrastructure, and

(iv) ensure that development does not have an adverse effect on streetscapes and vistas, public places, areas visible from navigable waters or the natural environment, and

(v) protect, conserve and manage biodiversity and the natural environment, and

(vi) manage environmental constraints to development including acid sulfate soils, land slip risk, flood and tidal inundation, coastal erosion and biodiversity,

Comment:

The development achieves these requirements for the following reasons:

- The proposed development include varied colours and materials and is highly articulated. The development is considered to be a high quality urban design outcome.

- The BASIX Certificate submitted with this application demonstrates that the development will achieve efficient and sustainable use of energy and resources.
- The development will not unreasonably constrain local infrastructure or significantly increase the demand for local public infrastructure.
- The development will not have an adverse impact on the streetscape or vistas.
- The site is not environmentally constrained by biodiversity constraints, acid sulfate soils, bushfire hazards or flooding constraints. Moreover, the development will not pose significant landslip risks, subject to the recommended conditions of consent.

(g) in relation to environmental heritage, to recognise, protect and conserve items and areas of natural, indigenous and built heritage that contribute to the environmental and cultural heritage of Warringah,

N/A - The site is not located within an area that contains indigenous or non-indigenous heritage.

(h) in relation to community well-being, to—

(i) ensure good management of public assets and promote opportunities for social, cultural and community activities, and

(ii) ensure that the social and economic effects of development are appropriate.

Comment:

The development will not result in adverse social or economic impacts, nor will the development adversely impact upon public assets.

Zone R2 Low Density Residential

While the development is prohibited under the WLEP but permissible under the Housing SEPP, the assessment finds that the proposal is consistent with the objectives of the R2 Low Density Residential zone, as demonstrated below:

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

Comment:

The development provides additional housing on the site and therefore, will provide for the housing needs of the community within a low density residential environment.

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

Comment:

N/A - the development pertains to housing and not other facilities or services permitted in the R2 zone under the WLEP.

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

Comment:

The assessment has concluded that the proposed dual occupancy will maintain an appropriate visual relationship with surrounding detached dwelling houses within the visual catchment of the site, given the dual occupancy will generally read as a two storey building above a sub-floor basement, which responds appropriately to the height of surrounding buildings. Additionally, appropriate boundary setbacks with deep soil landscaping that includes tree planting have been provided around the curtilage of the building to provide a landscaping scheme that is commensurate with the established landscaped setting.

4.6 Exceptions to development standards

Clause 4.3 of the WLEP limits the maximum height of buildings on the subject site to 8.5m above the existing ground level. The majority of the development complies with this requirement; however, a small portion of the eave on the northern corner of the building exceeds the height limit by 0.35m (4.12% variation), resulting in a maximum building height of 8.85m. The extent of the breach occupies a roof area of 2.9sqm.

The extent of non-compliance is depicted in **Figures 1-3** below.

ASHTON

DP 25368
708.2m BY DP
714.1m BY CALCULATION

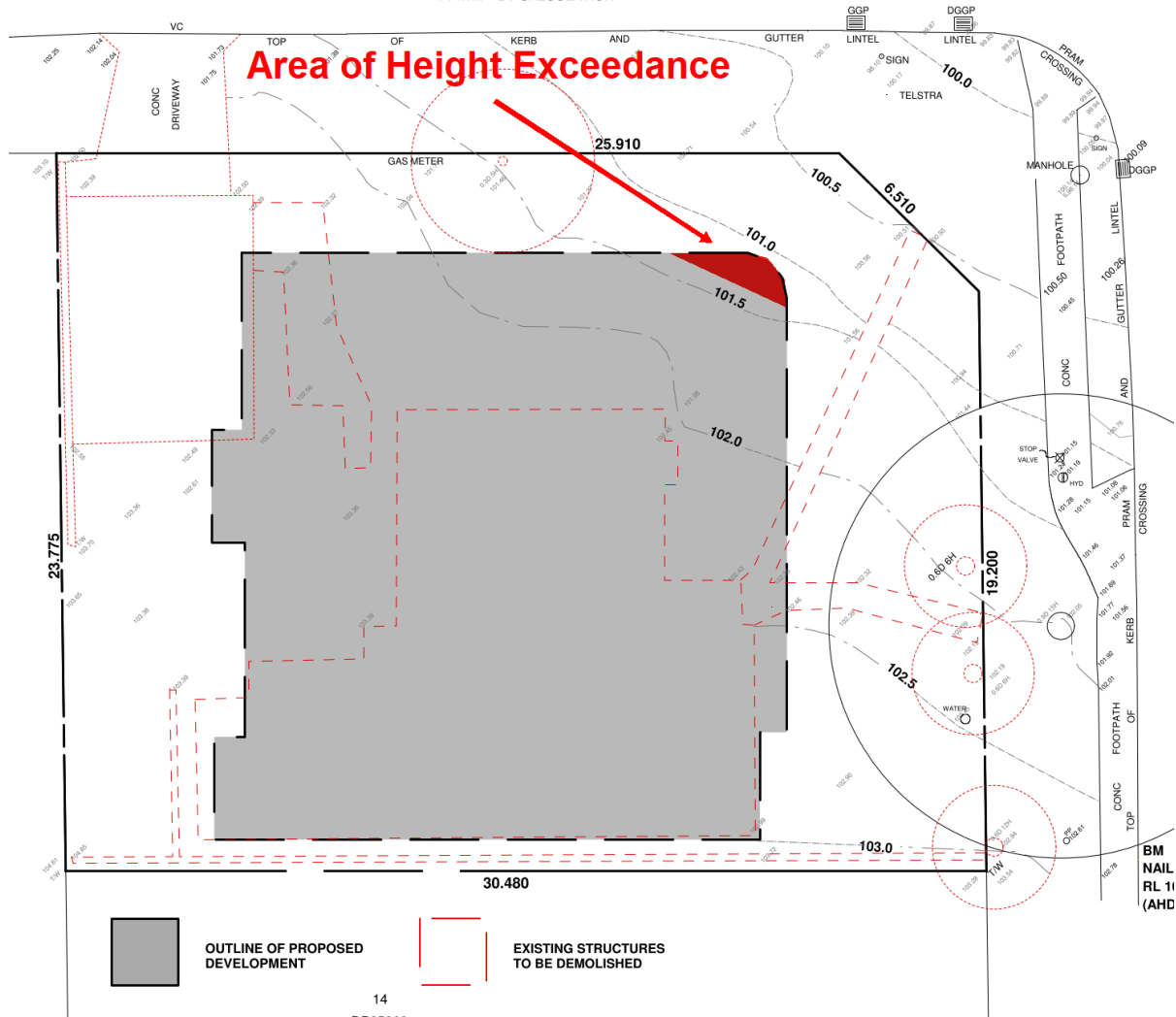
AVENUE

Figure 1 - diagram showing height exceedance on the site plan

Area of Height Exceedance

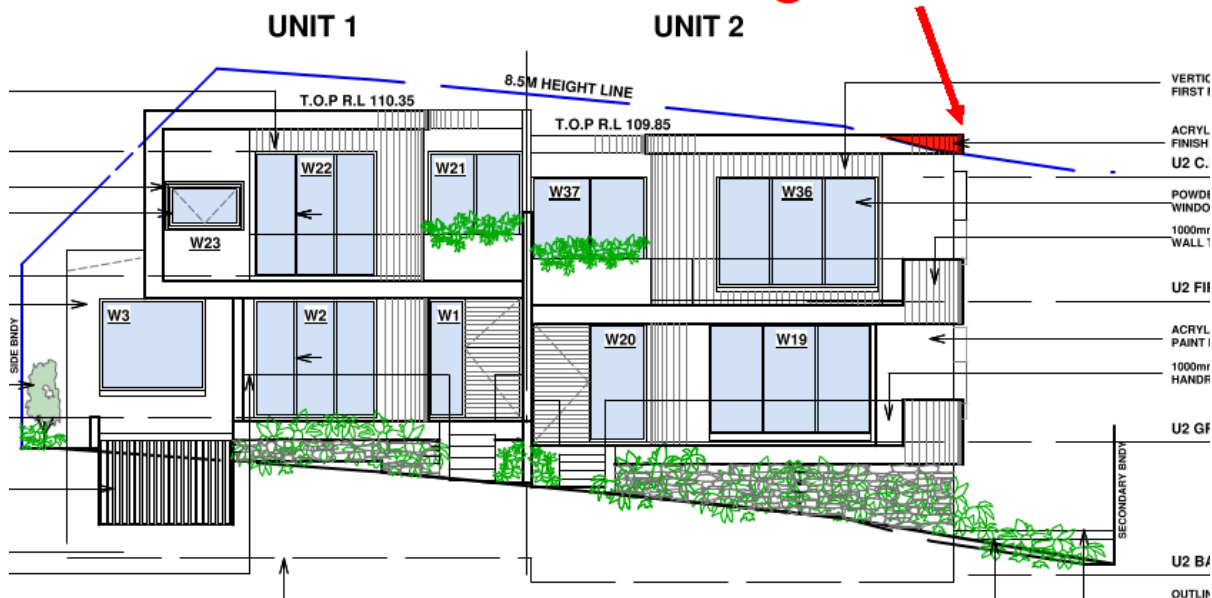


Figure 2 - diagram showing height exceedance when observed from Ferguson Avenue

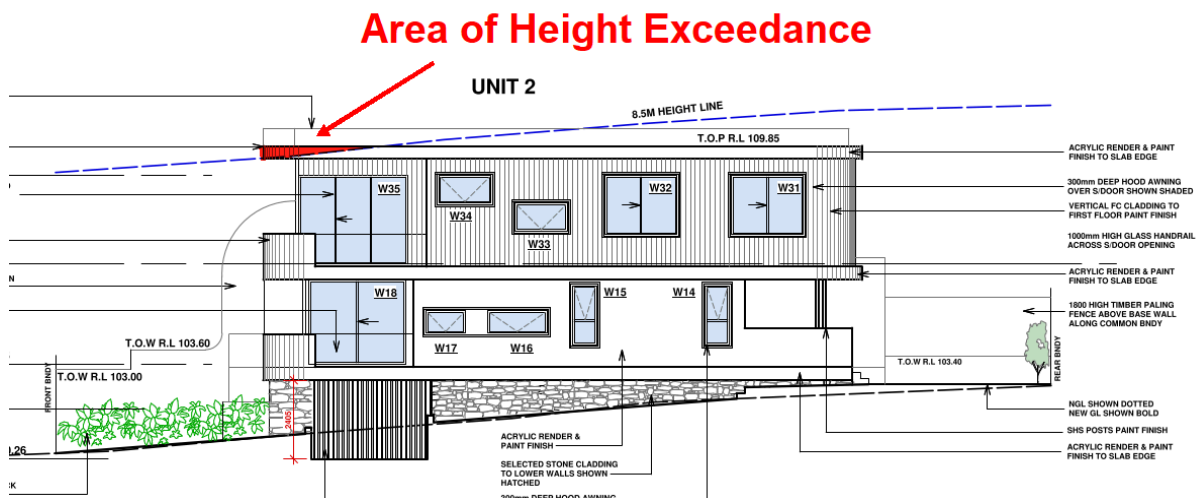


Figure 3 - diagram showing height exceedance when observed from Ashton Avenue

With reference to Section 35B of the Environmental Planning and Assessment Regulation 2021, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the WLEP 2011 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

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

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

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the Environmental Planning and Assessment Act 1979 (EP&A Act).

Subclause (2) of this clause provides that:

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

Comment:

Clause 4.3 is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

Is Compliance with the Development Standard Unreasonable or Unnecessary?

(3) Development consent must not be granted to development that contravenes a development

standard unless the consent authority is satisfied the applicant has demonstrated that—

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

Comment:

As outlined within the matter of *Wehbe v Pittwater Council [2007] NSWLEC 827*, it was established that in order to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, an applicant must demonstrate either of the following:

- the objectives of the development standard are achieved notwithstanding non-compliance with the standard; or
- the underlying objective or purpose of the standard is not relevant to the development; or
- the underlying objective or purpose would be defeated or thwarted if compliance was required; or
- the standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard; or
- the zoning of land was unreasonable or inappropriate, such that the standards for that zoning are also unreasonable or unnecessary.

The applicant's written request seeks to satisfy this requirement by demonstrating that the objectives of the development standard (i.e. Clause 4.3) are achieved, notwithstanding the non-compliance. The applicant's justification can be summarised as follows:

- The development will be compatible with the height and scale of surrounding and nearby development, given the development will generally read as a two storey building which is commensurate with the scale of modern contemporary two storey dwellings in the locality.
- The non-compliance is located on the northern side of the building adjacent to the street corner junction and therefore, the height breach will not cause any adverse residential amenity impacts to neighbouring properties in terms of view loss, privacy or overshadowing.
- The development is a high-quality design that is well articulated and includes planter boxes on the façade and therefore, the development will not detract from the scenic quality of the area, notwithstanding the height breach.

The assessing officer concurs with the justification provided by the applicant and considers that the objectives of Clause 4.3 are achieved, notwithstanding the non-compliance. An assessment against the objectives of Clause 4.3 of the WLEP is provided below.

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

Comment:

The established streetscape character is defined by one or two storey dwelling houses integrated within a landscaped setting. The development will be compatible with the height and scale of these surrounding dwelling houses, noting that the dual occupancy will largely read as a two storey building when observed from Ferguson Avenue and Ashton Avenue (refer to **Figure 4**), given the basement car parking area is largely subterranean with only a small portion being slightly above ground to render the

building a part two / three storey building in accordance with the WLEP.

The development also includes sufficient deep soil landscaped setbacks to the primary and secondary frontages, which will include canopy tree planting as required by the recommended conditions of consent. This landscaped scheme will be commensurate with the established landscaped setting of the locale.

The non-compliance is derived from the slope of the land and is confined to a corner of the building eave. This element of the building does not add any significant building size, height or bulk that would render the development incompatible with the height and scale of surrounding development.



Figure 4 - photomontage depicting the development when observed from the corner of Ferguson Avenue and Ashton Avenue (source: applicant's plans)

For these reasons, the development will achieve this objective.

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

Comment:

A site inspection has been carried out at the subject site and the south-western adjoining property (2 Ashton Avenue). The site visit has revealed that the non-compliant portion of the building, being the northern eave, will not result in any adverse residential amenity impacts in terms view sharing, visual impact, privacy or solar access. As such, this objective is achieved.

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

Comment:

The development is a high-quality design that steps down with the slope of the land (i.e. the roof

above Unit 2 is lower than Unit 1) and incorporates sufficient façade articulation, varied building materials and suitable deep soil and on-slab landscaping. These design features will ensure that the development will not have an adverse impact on the scenic quality of the locality, notwithstanding the minor height breach.

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

Comment:

As discussed above, the development will not have an adverse visual impact when viewed from the public domain. The development will appear compatible with the height and scale of surrounding development, notwithstanding the height breach.

Are there Sufficient Environmental Planning Grounds to Vary the Development Standard?

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

Comment:

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

'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. *The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'*

The Clause 4.6 Request argues, in part:

- *"The variation permits a height of development that is commensurate with other two storey residential development in the Forestville locality. The general locality is characterised by a number of large two storey dwellings which respond to the unique topography of the area. The variation permits a dual-occupancy development that is suited to the sloping topography of the site and is not excessively high yet allows a high level of internal and external amenity to future residents.*
- *The proposed resultant dwelling (Unit 2) is compatible with surrounding development and will make a positive contribution to the streetscape. The dwelling's (Unit 2) visual bulk and architectural scale is consistent with other dwellings on nearby properties & does not visually dominate the street. As viewed from Ferguson Street, the 350mm of non-compliant height will be largely be (sic) undiscernible for the proposed dwelling (Unit 2). The proposed dwelling is well articulated through the use of the recessed first floor, compliant front setbacks, flattened roof style, landscaping elements and variation in material selection.*
- *The site contains a moderate cross-fall slope which contributes to the height exceedance. Despite this, effort has been made to ensure that the majority of the proposal complies with the 8.5m maximum. It is just an isolated point encroachment where just the Unit 2 balcony roof exceeds the 8.5m maximum height limit.*

- *The additional height of the development will not result in significant amenity impacts to adjoining properties, in terms of visual and acoustic privacy, overshadowing or disrupting views. The resulting development provides a generous amount of landscaping and deep soil areas which can facilitate tree plantings and provides an appealing landscaped setting.*
- *The proposed development will provide high quality housing in close proximity to facilities and public open spaces".*

Assessing Officer Comment:

The assessing officer concurs with the environmental planning grounds advanced by the applicant.

In particular, the assessment finds that the height breach is very minor numerically and it does not add any significant height, bulk and scale to the development or result in adverse residential amenity impacts. In this regard, the minor breach and lack of impact constitutes an environmental planning ground, as it promotes good design and amenity of the built environment, consistent with objective (g) of the EP&A Act.

Additionally, the assessment finds that the non-compliance is a consequence of the slope of the land that slopes away to the northern corner of the site. The development has appropriately responded to the slope through stepping the roof form of Unit 2 down in height to respond to the sloping topography and minimise the height breach.

Overall, it is considered that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EP&A Act.

Public Interest:

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EP&A Act.

Conclusion:

As demonstrated above, the proposed development satisfies the relevant considerations under Clause 4.6 of the WLEP. Therefore, the contravention to Clause 4.3 of the WLEP is supported in this instance.

6.2 Earthworks

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

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

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

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

Comment:

The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality, noting that the Geotechnical Assessment (GA) submitted with this application has concluded that there was no evidence of significant soil creep, tension cracks or landslip instability were identified across the site and that the development would result in acceptable geotechnical risk to property and life, subject to the recommendations within the GA being adhered to during construction works.

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

Comment:

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

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

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality and that the excavated soil is appropriately classified in accordance with the EPA's guidelines prior to being managed off-site.

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

Comment:

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

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

Comment:

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

(f) the likelihood of disturbing relics

Comment:

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

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

Comment:

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

Having regard to the above assessment, it is concluded that the proposed development is consistent with the requirements of Clause 6.2 of the WLEP.

6.4 Development on sloping land

The site is located within Area B on the WLEP Landslip Risk Map. Therefore, Clause 6.4 of the WLEP is applicable.

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

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

Comment:

As discussed earlier within this report, the GA concluded that the development will not result in unacceptable geotechnical risk in relation to property or life. Conditions are recommended to mitigate geotechnical risk.

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

Comment:

Council's Development Engineer has reviewed the proposed stormwater management scheme and not raised any concerns. In this regard, this requirement is achieved.

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

Comment:

The GA stated that groundwater was not encountered during on-site testing. As such, the development will not impact the existing subsurface flow conditions.

As demonstrated above, the development satisfies the requirements of Clause 6.4 of the WLEP.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7.91m	9.86%	No
B3 Side Boundary Envelope	4m / 45 degrees (south-east)	Outside Envelope	4.29%	No
	4m / 45 degrees (south-west)	Within Envelope	-	Yes
B5 Side Boundary Setbacks	0.9m (south-east)	1m	-	Yes
	0.9m (south-east)	5m	-	Yes

B7 Front Boundary Setbacks	Primary Frontage (Ferguson Avenue) 6.5m	6.35m - 7.5m	up to 2.31%	No
	Secondary Frontage (Ashton Avenue): 3.5m	3.5m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (285.64sqm)	37.42% (267.2sqm)	6.46%	No

Note: As the site is a corner allotment, there is not applicable rear boundary.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	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	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D13 Front Fences and Front Walls	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

Section B1 of the WDCP requires development to have a maximum wall height of 7.2m, when measured from the underside of the ceiling on the uppermost floor to the existing ground level.

The development is largely compliant with this requirement; however, the northern front corner of the building within Unit 2 exceeds the 7.2m control, proposing a maximum wall height of 7.91m.

Merit consideration:

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

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

Comment:

The established streetscape character is defined by one or two storey dwelling houses integrated within a landscaped setting. The development will be compatible with the height and scale of these surrounding dwelling houses, noting that the dual occupancy will largely read as a two storey building when observed from Ferguson Avenue and Ashton Avenue, given the basement car parking area is largely subterranean with only a small portion being slightly above ground to render the building a part two / three storey building in accordance with the WLEP.

The development also includes sufficient deep soil landscaped setbacks to the primary and secondary frontages, which will include canopy tree planting as required by the recommended conditions of consent. This landscaped scheme will be commensurate with the established landscaped setting of the locale.

The non-compliance is derived from the slope of the land and is confined to a corner of the building within Unit 2. This element of the building does not add any significant building size, height or bulk that would render the development incompatible with the height and scale of surrounding development. It is also noted that the elements of the building that are orientated towards private properties comply with the 7.2m control.

For these reasons, the assessment finds that the development will not have an adverse visual impact when viewed from adjoining properties and the public domain.

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

Comment:

The building will be beneath the established tree canopy.

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

Comment:

The development will not obstruct any significant view corridors.

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

Comment:

The areas of the building that exceed the 7.2m control are not orientated towards the adjoining private properties, but rather the public roads. As such, the exceeding elements will not result in adverse impacts on adjoining properties in terms of visual impact, view sharing or solar access.

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

Comment:

The overall height of the building steps down to the north with the slope of the land (i.e. Unit 2 is lower than Unit 1). The extent of excavation proposed to facilitate the basement car parking area is also found to be acceptable.

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

Comment:

The roof design is appropriate.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the objectives of this control. Therefore, flexibility is afforded to the numerical requirements of the control, consistent with Section 4.15(3A)(b) of the EP&A Act.

B3 Side Boundary Envelope

Description of non-compliance

Section B3 of the WDCP requires development to remain within a side building envelope that is determined by projecting 45 degree plans from a height of 4m above the existing ground level at side boundaries.

The development is largely compliant with this control; however, there is a small area of the building on the south-eastern elevation encroaches outside of the side building envelope requirement (see **Figures 5-6**).

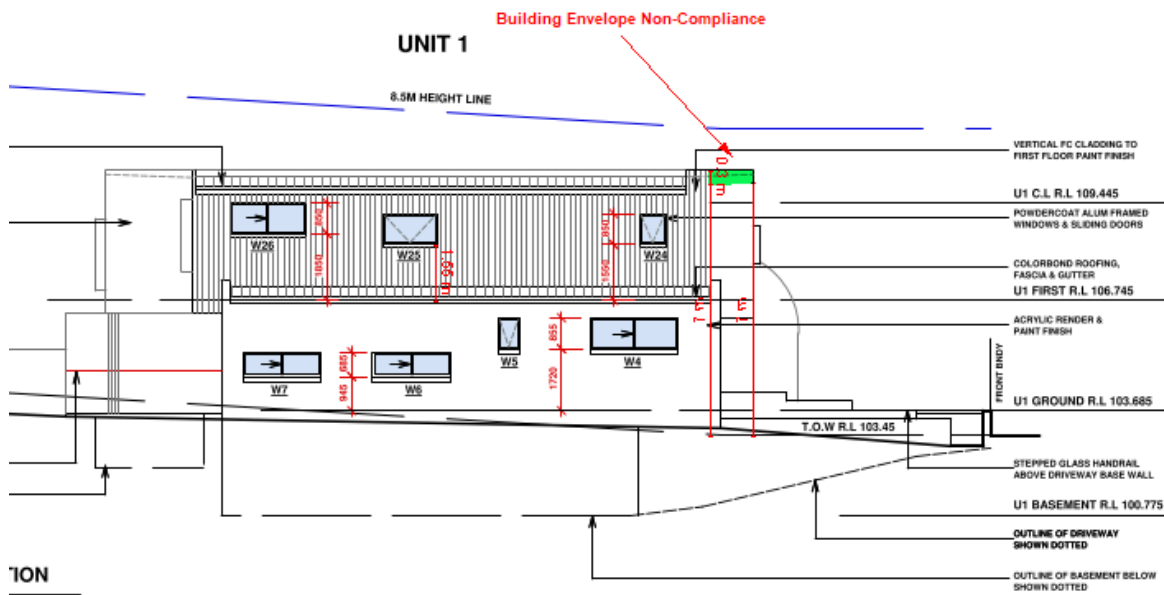


Figure 5 - side building envelope non-compliance (shaded in green)

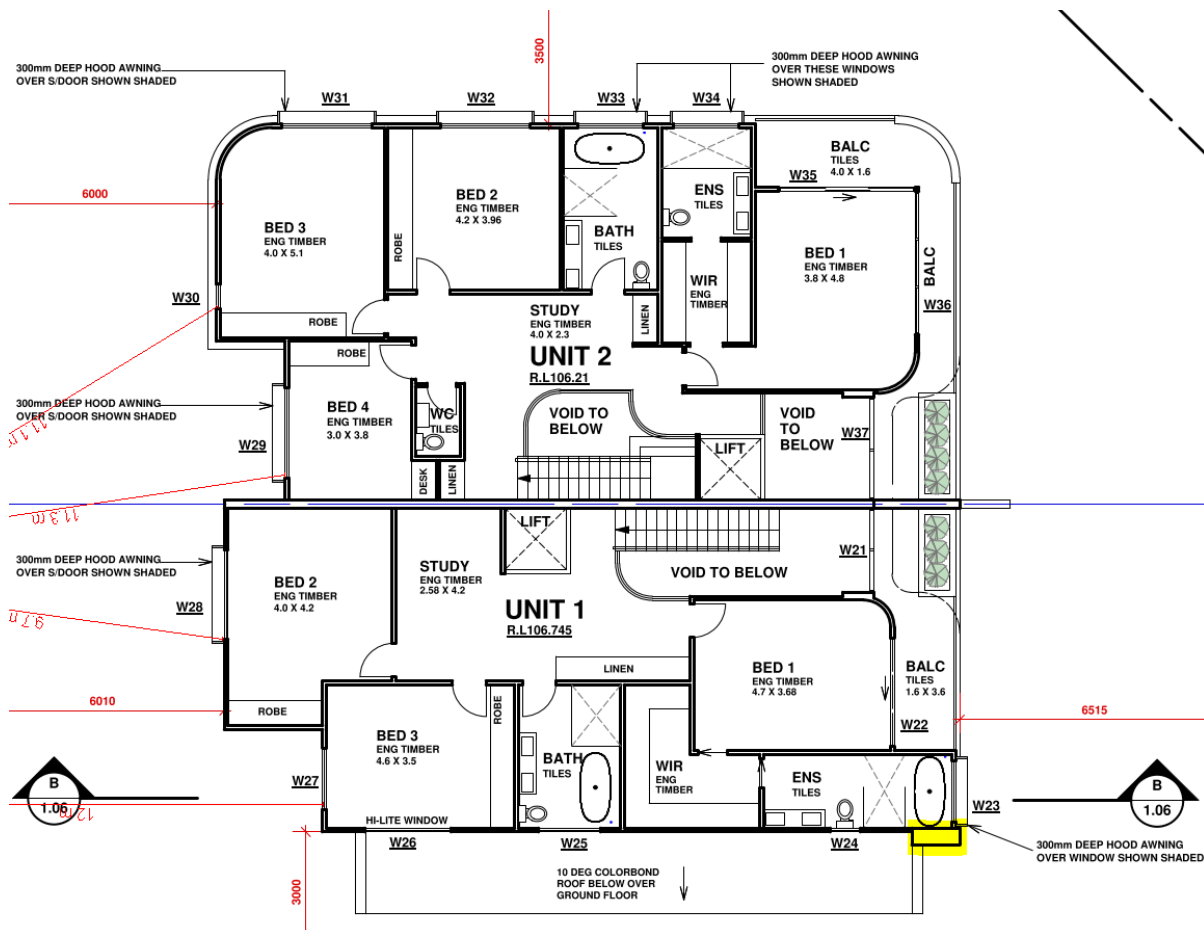


Figure 6 - side building envelope non-compliance on the floor plan (shaded in yellow)

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying

objectives of the control as follows:

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

Comment:

The first floor component that exceeds the envelope control is stepped in significantly from the ground floor to offset the bulk of the south-eastern façade. The non-compliance is very minor in numerical terms and a fully compliant development in this regard would not have a materially different impact in terms of the bulk and scale of the building. As demonstrated earlier within this report, the height, bulk and scale of the proposed dual occupancy will not be incompatible with surrounding development. For these reasons, this objective is achieved.

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

Comment:

The south-eastern elevation of the building, where the encroachment occurs, has employed highlight windows to mitigate overlooking into the adjoining property to the south-east.

A review of the shadow diagrams has also revealed that the adjoining properties will receive the required 3 hours of sunlight to private open space, consistent with the WDCP solar access provision.

Overall, the assessment finds that this objective is achieved.

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

Comment:

The topography of the site falls towards the north. The overall height of the building steps down to the north and west, consistent with the natural topography.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the objectives of this control. Therefore, flexibility is afforded to the numerical requirements of the control, consistent with Section 4.15(3A)(b) of the EP&A Act.

B7 Front Boundary Setbacks

Description of non-compliance

Section B7 of the WDCP requires development to be setback at least 6.5m from the front boundary. Unit 1 complies with this requirement; however, the front porch for Unit 2 encroaches partially into the front setback area, providing a minimum front setback of 6.39m to the Ferguson Avenue boundary. The non-compliance is created from the irregular angle of the front boundary. The setback across this entire front boundary ranges from 6.39m - 7.5m.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

While partially elevated above the ground level, the front porch is an open structure that will not preclude a sense of openness within the front setback area. The front setback area will also remain predominantly occupied by deep soil landscaping, which will ensure that a reasonable sense of openness is maintained within the primary frontage of the site.

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

Comment:

As noted above, the non-compliance is caused by the irregularity in the front boundary. While partially non-compliant, other components of the building are setback 1m greater than the minimum 6.5m requirement. On balance, the development will maintain an appropriate visual relationship with the front setbacks of adjoining buildings.

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

Comment:

The development is a high quality design that will not detract from the visual quality of the streetscape. The proposed setback is considered acceptable in this instance for the reasons outlined above.

- *To achieve reasonable view sharing.*

Comment:

The front setback encroachment does not give rise to adverse view impacts.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the objectives of this control. Therefore, flexibility is afforded to the numerical requirements of the control, consistent with Section 4.15(3A)(b) of the EP&A Act.

C3 Parking Facilities

The WDCP requires two car parking spaces per dwelling within a dual occupancy development. The proposed development includes two car parking spaces for each dwelling within the basement level, thereby compliant with the WDCP. A turn-table plate is provided within each garage to enable vehicles to enter and exit the site in a forward manner.

Council's Development Engineer has also assessed the application with respect to vehicular access and is satisfied that the proposed driveway levels are appropriate and will enable vehicles to access the basement garage level from the street.

As the site is a corner allotment, separate vehicle crossings are provided on both frontages to service Units 1 and 2. This arrangement is considered appropriate for a corner allotment.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

Section D1 of the WDCP requires at least 40% (285.64sqm) of the site area to comprise of landscaped open space (LOS). In calculating LOS, the following is taken into consideration:

- a) Driveways, paved areas, roofed areas, tennis courts, car parking and stormwater structures, decks, etc, and any open space areas with a dimension of less than 2 metres are excluded from the calculation;*
- b) The water surface of swimming pools and impervious surfaces which occur naturally such as rock outcrops are included in the calculation;*
- c) Landscaped open space must be at ground level (finished); and*
- d) The minimum soil depth of land that can be included as landscaped open space is 1 metre.*

The development proposes 37.42% (267.2sqm) of the site area as LOS, which does not meet the numerical requirements of the control.

It is noted that if the landscaped areas on the site with dimensions less than 2m x 2m or a soil depth less than 1m were included in the LOS calculations, then 44.28% (315.9sqm) of the site would comprise of LOS, which would be compliant with the control.

Merit consideration

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

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

Comment:

The development provides large areas of deep soil landscaping around the curtilage of the building. These areas of deep soil landscaping will include hedging and canopy tree planting (as required by the recommended conditions of consent), which will provide an appropriate landscaping scheme that will maintain the natural amenity of the streetscape.

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

Comment:

While some vegetation removal is proposed, Council's Landscape Officer is satisfied that the impacts will be appropriately offset through the provision of new replacement native canopy

trees. With these conditions in place, the development will enhance native vegetation on the site.

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

Comment:

The assessment has found that the areas of LOS on the site are of sufficient proportions, which can accommodate for the establishment of canopy trees to mitigate the height, bulk and scale of the proposed buildings on the site.

- *To enhance privacy between buildings.*

Comment:

The development has been appropriately designed to mitigate privacy impacts on adjoining properties. The proposed screen planting around the boundaries will also assist in maintaining privacy between buildings.

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

Comment:

The proposed decking, LOS and swimming pool areas will provide appropriate outdoor recreational opportunities to meet the needs of the future occupants.

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

Comment:

The areas of LOS are sufficient to service functions, including clothes drying.

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

Comment:

Council's Development Engineer is satisfied that the stormwater management scheme complies with Council's Water Management for Development Policy and that the development will not result in adverse off-site impacts due to stormwater discharge. The areas of LOS will also assist in water infiltration onsite.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the objectives of this control. Therefore, flexibility is afforded to the numerical requirements of the control, consistent with Section 4.15(3A)(b) of the EP&A Act.

D6 Access to Sunlight

Section D6 of the WDCP requires as follows:

- 1. Development should avoid unreasonable overshadowing any public open space.*
- 2. At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.*

Due to the orientation of the existing subdivision pattern, a large extent of the overshadowing will be confined to 2 Ashton Avenue (south-western adjoining property). Notwithstanding, a review of the shadow diagrams has revealed that the principal private open space (decking on rear elevation) will obtain at least 3 hours of sunlight to more than 50% of the area, consistent with this control.

D8 Privacy

Section D8 of the WDCP requires as follows:

- 1. Building layout should be designed to optimise privacy for occupants of the development and occupants of adjoining properties.*
- 2. Orientate living areas, habitable rooms and windows to private open space areas or to the street to limit overlooking.*
- 3. The effective location of doors, windows and balconies to avoid overlooking is preferred to the use of screening devices, high sills or obscured glass.*
- 4. The windows of one dwelling are to be located so they do not provide direct or close views (ie from less than 9 metres away) into the windows of other dwellings.*
- 5. Planter boxes, louvre screens, pergolas, balcony design and the like are to be used to screen a minimum of 50% of the principal private open space of a lower apartment from overlooking from an upper apartment.*

The development is consistent with the requirements of this control for the following reasons:

- All windows are setback over 9m from balconies and habitable rooms on adjoining properties, with the exception of Window W28 on the south-western elevation of Unit 1. However, this window has included obscure glazing to a height of 1.5m above the finished floor level of the window to mitigate downward overlooking into the decking at 2 Ashton Avenue.
- The ground floor patios and pool areas on the south-western elevation are sited in close proximity to ground level and setback 5m from the shared side boundary with 2 Ashton Avenue (i.e. more than 5 times the required side setback of 900mm) to mitigate adverse acoustical and visual privacy impacts to 2 Ashton Avenue. Furthermore, conditions are recommended to mitigate noise impacts from the pool filter boxes.
- Highlight windows are provided on the south-eastern elevation of the building to mitigate overlooking into 39 Ferguson Avenue.

- The elevated balconies are orientated towards the public road reserve and roadway, thereby mitigating adverse amenity impacts to the immediate adjoining residential properties, being 39 Ferguson Avenue and 2 Ashton Avenue.

D9 Building Bulk

Section D9 of the WDCP requires as follows:

- 1. Side and rear setbacks are to be progressively increased as wall height increases.*
- 2. Large areas of continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief.*
- 3. On sloping land, the height and bulk of development (particularly on the downhill side) is to be minimised, and the need for cut and fill reduced by designs which minimise the building footprint and allow the building mass to step down the slope. In particular:
The amount of fill is not to exceed one metre in depth.
Fill is not to spread beyond the footprint of the building.
Excavation of the landform is to be minimised.*
- 4. Building height and scale needs to relate to topography and site conditions.*
- 5. Orientate development to address the street.*
- 6. Use colour, materials and surface treatment to reduce building bulk.*
- 7. Landscape plantings are to be provided to reduce the visual bulk of new building and works.*
- 8. Articulate walls to reduce building mass.*

The development is consistent with the requirements of this control for the following reasons:

- The development is highly articulated to reduce building mass.
- The overall height of the building steps down in height with the slope of the land (i.e. Unit 2 is lower than Unit 1).
- Both units are orientated towards both frontages to address the street.
- The development incorporates varied colours and materials to reduce building bulk.
- Suitable deep soil landscaped areas are provided around the curtilage of the building.

D13 Front Fences and Front Walls

Section D13 of the WDCP requires as follows:

- 1. Fences, including side fences, located within the street setback area are to be compatible with the existing streetscape character.*
- 2. Where a solid fence is required it is to be articulated to provide visual interest and set back to allow for landscaping to soften and screen the appearance of the fence.*
- 3. Fences located within the front building setback area are to complement the existing streetscape character.*
- 4. Fences are to be constructed to allow casual surveillance, except where there is excessive noise.*
- 5. Gates are not to encroach over the property boundary when opening or closing.*

6. Fences should complement the architectural period of the building.

The proposed fence along the Ashton Avenue frontage is 1.5m above the existing ground level. The height of the fence is compatible with surrounding front boundary fencing within the locality. The timber batten construction will also provide for visual interest, while the screen planting in front and behind the fence will soften it.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2024

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2024.

A monetary contribution of \$19,360 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,936,000.

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 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

Council is satisfied that the Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2025/0037 for Demolition works and construction of a dual occupancy including swimming pools on land at Lot 13 DP 25368, 41 Ferguson Street, FORESTVILLE, subject to the conditions printed below:

Terms and Reasons for Conditions

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

GENERAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA0.01	A	Site Analysis Plan	Building Design & Technology Pty Ltd	4 December 2024
DA0.02	A	Demolition Plan	Building Design & Technology Pty Ltd	4 December 2024

DA1.01	B	Lower Ground Floor Plan	Building Design & Technology Pty Ltd	4 March 2025
DA1.02	B	Ground Floor Plan	Building Design & Technology Pty Ltd	4 March 2025
DA1.03	A	First Floor Plan	Building Design & Technology Pty Ltd	4 December 2024
DA1.04	A	Roof Plan	Building Design & Technology Pty Ltd	4 December 2024
DA1.05	B	Elevations 1	Building Design & Technology Pty Ltd	4 March 2025
DA1.06	B	Sections AA/BB, Colour Schedule & Fence Elevations	Building Design & Technology Pty Ltd	4 March 2025

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	1776049M	Taylor Smith Consulting	4 December 2024
Geotechnical Assessment	AG 24481	AscentGeo	11 December 2024
Landscape Plans Drawings C1 - C6	Revision A	Contour Landscape Architecture	15 January 2025
Civil Engineering Plans Drawings CV01 - CV03	Revision 1	Cane Consulting	7 March 2025
Stormwater Management Plans Drawings SW00 - SW05	Revision 2	Cane Consulting	10 March 2025
Waste Management Plan	-	Building Design & Technology Pty Ltd	12 December 2024

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

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

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

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	N/A

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

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

3. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dual occupancy (attached), which is defined as follows:

- ***dual occupancy (attached)*** means 2 dwellings on one lot of land that are attached to each other, but does not include a secondary dwelling.

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

Reason: To ensure compliance with the terms of this consent.

4. **Prescribed Conditions**

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

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

- A. the name of the owner-builder, and
- B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

Reason: Legislative requirement.

5. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Construction certificate plans are to be in accordance with all finished levels identified on approved plans. Notes attached to plans indicating tolerances to levels are not approved.
- (c) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (d) At all times after the submission of the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times

until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the

development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (m) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (n) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (o) Should any construction cranes be utilised on site, they are to be fitted with bird deterrents along the counterweight to discourage raptor (bird) nesting activity. Deterrents are to remain in place until cranes are dismantled. Selection of deterrent methods is to be undertaken in accordance with the recommendations of a suitably qualified ecologist.
- (p) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2018
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
 - (4) Swimming pools and spas must be registered with the Division of Local Government.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community.

6. **No Consent for Subdivision**

No consent is granted for the subdivision of land, including Strata Subdivision.

Reason: The applicant has not sought consent for the subdivision of land.

FEES / CHARGES / CONTRIBUTIONS

7. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2024

A monetary contribution of \$19,360.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$1,936,000.00.

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

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

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

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

8. Security Bond

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

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

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

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at www.northernbeaches.nsw.gov.au).

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

9. Housing and productivity contribution - Development consents

1. The housing and productivity contribution (HPC) set out in the table below, but as adjusted in accordance with condition 2, is required to be made:

Contribution Type	Amount
Housing and Productivity Contribution	\$ 10,000

2. The amount payable at the time of payment is the amount shown in condition 1 as the total housing and productivity contribution adjusted by multiplying it by:

highest PPI number

consent PPI number

where—

highest PPI number is the highest PPI number for a quarter following the June quarter 2023 and up to and including the 2nd last quarter before the quarter in which the payment is made.

consent PPI number is the PPI number last used to adjust HPC rates when consent was granted.

June quarter 2023 and PPI have the meanings given in clause 22 (4) of the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.

If the amount adjusted in accordance with this condition is less than the amount at the time consent is granted, the higher amount must be paid instead.

3. The HPC must be paid before the issue first construction certificate in relation to the development, or before the commencement of any work authorised by this consent (if no construction certificate is required). However, if development is any of the kinds set out in the table below, the total housing and productivity contribution must be paid as set out in the table:

Development	Time by which HPC must be paid
Development consisting only of residential subdivision within the meaning of the HPC Order	Before the issue of the first subdivision certificate
High-density residential development within the meaning of the HPC Order for which no construction certificate is required	Before the issue of the first strata certificate
Development that consists only of residential strata subdivision (within the meaning of the HPC Order) or only of residential strata subdivision and a change of use of an existing building	Before the issue of the first strata certificate
Manufactured home estate for which no construction certificate is required	Manufactured home estate for which no construction certificate is required

4. The HPC must be paid using the NSW planning portal (<https://pp.planningportal.nsw.gov.au/>).
5. If the Minister administering the Environmental Planning and Assessment Act 1979 agrees, the HPC (apart from any transport project component) may be made, instead of as a monetary contribution, in the following ways:
 - a) the dedication or provision of land for the purpose of regional infrastructure in the region in which the development will be carried out,
 - b) the carrying out of works for the purpose of regional infrastructure in the region in which the HPC development will be carried out.

If the HPC is made partly as a monetary contribution, the amount of the part payable is the amount of the part adjusted in accordance with condition 2 at the time of payment.
6. Despite condition 1, a housing and productivity contribution is not required to be made to the extent that a planning agreement excludes the application of Subdivision 4 of Division 7.1 of the Environmental Planning and Assessment Act 1979 to the development, or the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023 exempts the development from the contribution. The amount of the contribution may also be reduced under the order, including if payment is made before 1 July 2025.

Reason: Statutory requirement.

10. **Construction, Excavation and Associated Works Security Bond(s)**

The applicant is to lodge a bond with Council for the following:

Drainage Works

As security against any damage to Council pit in Ashton Avenue or failure to complete the construction of stormwater drainage works required as part of this consent a bond of \$2000.00.

Reason: Protection of Council's infrastructure.

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

11. **On-Site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of an on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Cane Consulting, Project No 24216, drawing number SW00, SW01, SW03, SW04 & SW05, Rev 2, Dated 10.03.2025. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

12. Vehicle Crossings Application

The Applicant is to submit two applications with Council for each driveway for driveway levels. Applicant to construct both vehicle crossings 3m metres wide one in Ashton Street and second in Ferguson Avenue. Both crossings to be in accordance with Northern Beaches Council Standard Normal Vehicle Crossing Profile and in accordance with Section 138 of the Roads Act 1993.

Note,

- Driveways are to be in plain concrete only.
- Reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge.
- Driveway in Ferguson street to be at least 1m away from existing power pole.

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

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

Reason: To facilitate suitable vehicular access to private property.

13. Stormwater Drainage Application

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include Civil Engineering plans for the design of the connection to council pit in Ashton Avenue which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at www.northernbeaches.nsw.gov.au > Council Forms > Stormwater Drainage Application Form.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

14. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifier prior to the issue of the Construction Certificate.

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

15. External Finishes to Roof

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.43 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a reflective finish is not permitted.

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

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

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

16. Sydney Water "Tap In"

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

Please refer to the website www.sydneywater.com.au for:

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

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

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

17. Construction Traffic Management Plan

A Construction Traffic Management Plan (CTMP) and report shall be prepared by a Transport for NSW accredited person and submitted to Council via an application for a Permit to Implement Traffic Control. The application form can be accessed via <https://www.northernbeaches.nsw.gov.au/council/forms>. Approval of the permit application by the Northern Beaches Council Traffic Team is required prior to issue of any Construction Certificate.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase.
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
- Make provision for all construction materials to be stored on site, at all times.
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- Where access is required across private property not in the direct ownership of the proponent, such as a private road/driveway, community title road or right of way, the CTMP is to include:
 - Evidence of the legal right and terms to use the access route or provide owners consent from the owners/strata/community association.

- Demonstrate that direct access from a public space/road is not viable for each stage of works.
- An assessment to be carried out of the physical constraints of the Right of Carriageway to determine the maximum size of vehicle that may access the site via the Right of Carriageway during construction.
- Unless owner/strata/community associations consent is obtained, vehicles are not to exceed 24 tonnes or 7.5 metres in length (an assessment must be undertaken that the surface is capable of supporting up to 24 tonnes, otherwise the weight limit should be reduced in the CTMP). If consent is obtained, a copy must be included in the CTMP.
- No construction vehicles, materials or plant are to be located or parked in the private road/driveway, community title road or right of way.
- How any disruption to other users of the private road/driveway, community title road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.
- If trees are located within or overhang the access route, a tree protection plan prepared by an Arborist with minimum AQF Level 5 in arboriculture demonstrating how any trees within the Right of Carriageway will be protected from damage by construction vehicles. Should any tree protection measures be required on private land in accordance with AS4970-2009 Protection of trees on development sites, owner's consent must be obtained.
- A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private road/driveway/right of way, and any other adjacent private property assets (including trees) or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.
- A requirement for Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, to be submitted after the completion of works and prior to the Occupation certificate. The report must:
 - Compare the post-construction report with the pre-construction report,
 - Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,
 - Should any damage have occurred, identify remediation actions taken.
 - Be submitted to Council with the Occupation Certificate.
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.
- Make provision for parking onsite. All Staff and Contractors are to use any basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.

- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
- Specify that the public roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.
- Proposed protection for Council and adjoining properties.
- The location and operation of any on site crane.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

A copy of the approved CTMP must be kept on-site at all times while work is being carried out.

The development is to be undertaken in accordance with the Construction Traffic Management Plan approved by Northern Beaches Council Traffic Team.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

18. Tree Removal Within the Road Reserve

This consent approves the removal of existing trees within the road reserve as listed below:

- i) 1 x *Cupressus* sp. (Pencil Pine) and 1 x *Lophostemon conferta* (Brushbox) located in the Ferguson Street road reserve forward of the property.
- ii) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor. Details of currently approved tree contractors can be obtained from Northern Beaches Council’s Trees Services business unit prior to removal.

Reason: Public liability.

19. Pre-Construction Dilapidation Report

A dilapidation report, including photographic surveys, of the following adjoining property must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The report must detail the physical condition of those properties listed below within 10 metres of the excavation perimeter, both internally and externally, including walls, ceilings, roof, structural members and other similar items. The report must be prepared for the following property:

- 39 Ferguson Street, Forestville.

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

20. Sediment and Erosion Controls

For developments that include more than 2500sqm of disturbance:

A Soil and Water Management plan (SWMP), in accordance with section 2.3 of the Blue Book, must be prepared and certified by a suitably qualified professional.

For sites larger than 250sqm and less than 2500sqm of disturbance:

An Erosion and Sediment Control Plan (ESCP) must be prepared by a suitably qualified person in accordance with the following considerations and documents:

- Sites that have slopes exceeding 20% (measured in any direction across the site), and/or where works are within the high-water mark or adjacent to a waterway or watercourses are considered environmentally sensitive areas. These sites require a site-specific ESCP which must be prepared and certified by a suitably qualified professional,
- The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate – Volume 1, 4th Edition (2004)' (the Blue Book), and
- The 'Guidelines for Erosion and Sediment Control on Building Sites' (Department of Planning, Housing and Infrastructure).

The ESCP must include the following as a minimum:

- Site Boundaries and contours,
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application),
- Location of site access, proposed roads and other impervious areas (e.g. parking area and site facilities),
- Existing and proposed drainage patterns with stormwater discharge points,
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected,
- North point and scale,
- Type of erosion control measures to divert and slow run-off around and within the site.

Environmentally sensitive areas (i.e. Sites that have slopes exceeding 20% and/or where works are within the high-water mark or adjacent to a waterway or watercourses) must also consider:

- Identify and mark any environmentally sensitive areas on and immediately next to the site and how you will protect these, including any appropriate buffer zones (for example, marking them out as 'no-go' areas),
- Details on vegetation you will clear, as well as areas of vegetation you will keep (mark no go areas),
- Detail on soil information and location(s) of problem soil types, especially dispersive soils and potential or actual acid sulfate soils,
- Location of any natural waterways that could receive run-off and how these will be protected these from run-off.

For sites smaller than 250sqm or where the disturbance is less than 50sqm:

Run-off and erosion controls must be implemented to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by:

- Diverting uncontaminated run-off around cleared or disturbed areas, and
- Erecting a silt fence and providing any other necessary sediment control measures that will prevent debris escaping into drainage systems, waterways or adjoining properties, and
- Preventing the tracking of sediment by vehicles onto roads, and
- Stockpiling top soil, excavated materials, construction and landscaping supplies and debris within the lot.
- Identifying any environmentally sensitive areas on and immediately next to the site, and demonstrating how these will be protected (for example, by designation as no-go areas).

Details demonstrating compliance with the relevant requirements above are to be submitted to the Certifier, and the measures implemented, prior to the commencement of works.

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

DURING BUILDING WORK

21. Tree and Vegetation Protection

- a) Existing trees and vegetation shall be retained and protected, including:
 - i) all trees within the site not indicated for removal on the approved Plans,
 - ii) all trees and vegetation located on adjoining properties,
 - iii) all trees and vegetation within the road reserve not approved for removal.
- b) Tree protection shall be undertaken as follows:
 - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites,
 - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
 - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
 - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
 - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
 - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
 - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
 - ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
 - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
 - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

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

Reason: Tree and vegetation protection.

22. **Road Reserve**

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

Reason: Public safety.

23. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

24. **Demolition Works - Asbestos**

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

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

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

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

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

25. **Survey Certificate**

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

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

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

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

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

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

26. Maintenance of Sediment and Erosion Controls

Erosion and sediment controls must be adequately maintained and monitored at all times, particularly surrounding periods of rain, and shall remain in proper operation until all development activities have been completed and the site is in a state where no substance other than rainwater can enter the stormwater system and waterways.

All sediment control measures must be maintained at, or above, their design capacity.

Where more than 2500 square metres of land are disturbed or if the site has a slope of more than 20%, a self-auditing program must be developed for the site. A site inspection using a log book or inspection test plan (ITP) must be undertaken by the site supervisor:

- at least each week
- immediately before site closure
- immediately following rainfall events that cause runoff.

Details demonstrating compliance must be provided to the Certifier during demolition and building works.

Reason: Protection of the receiving environment and to ensure no substance other than rainwater enters the stormwater system and waterways.

27. Waste Management During Development

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

28. Cut and Fill

While building work is being carried out, the Principal Certifier must be satisfied that all soil removed from or imported to the site is managed in accordance with the following requirements:

(a) All excavated material removed from the site must be classified in accordance with the EPA's Waste Classification Guidelines before it is disposed of at an approved waste management facility and the classification and the volume of material removed must be reported to the principal certifier.

(b) All fill material imported to the site must be Virgin Excavated Natural Material as defined in Schedule 1 of the Protection of the Environment Operations Act 1997 or a material identified as being subject to a resource recovery exemption by the NSW EPA.

Reason: To ensure soil removed from the site is appropriately disposed of and soil imported to the site is safe for future occupants.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

29. Required Tree Planting

Trees shall be planted in accordance with the following:

- a) 4 x locally native trees shall be planted within the property to achieve at least 5 metres height at maturity, and in accordance with the following:
 - i) tree planting shall be a minimum pre-ordered planting size of 75 litres; may be selected from Northern Beaches Council's Native Plant Species Guide - Frenchs Forest Ward
<<https://www.northernbeaches.nsw.gov.au/environment/native-plants/native-planting-guide/frenchs-forest-ward>>, meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and located either within garden bed or within a prepared bed within lawn,
 - ii) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- b) Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To maintain environmental amenity.

30. Street Tree Planting

Street tree planting shall be installed in accordance with the following: 1 x *Tristanopsis laurina* 'Luscious' located in the Ferguson Street road reserve forward of the property and 2 x *Eucalyptus haemastoma* located in the Ashton Avenue road reserve forward of the property.

- a) All street trees shall be a minimum pre-ordered planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees. All street trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, including a four post and top and mid rail timber tree guard, and watered until established, and shall be generally located at least 2.0 metres from driveways, and shall generally be centralised within the road verge.
- b) Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To maintain environmental and streetscape amenity.

31. Landscape Completion

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

- a) landscape works (other than required street tree planting) are to be contained within the legal property boundaries,
- b) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,
- c) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable

zone,

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

Reason: Environmental amenity.

32. **Post-Construction Dilapidation Report**

A Post-Construction Dilapidation Report, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the report must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

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

Reason: To maintain proper records in relation to the proposed development.

33. **Geotechnical Certification Prior to Occupation Certificate**

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

34. **Reinstatement of Kerb**

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

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

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

35. **Positive Covenant for the Maintenance of Stormwater Pump-out Facilities**

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

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance of the pump-out facility on the property being developed. Northern Beaches Council shall be nominated in the instrument as the only party authorised to release, vary or modify the instrument. Northern Beaches Council's delegate shall sign these documents prior to the submission to the NSW Land Registry Services.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To ensure adequate provision is made for the stormwater pump out system to be maintained to an appropriate operational standard.

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

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

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

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

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

37. Removal of All Temporary Structures/Material and Construction Rubbish

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

38. Unit Numbering for Multi Unit Developments (Residential, Commercial and Industrial)

The units within the development are to be numbered in accordance with NSW Address Policy and User Manual.

In this regard, the numbering is to be as per the Unit Numbering for Multi Unit Development Table available on Council's website Unit Numbering for Multi-Unit Developments Form

External directional signage is to be erected on site at driveway entry points and on buildings and is to reflect the numbering in the table provided. Unit numbering signage is also required on stairway access doors and lobby entry doors.

It is essential that all signage throughout the complex is clear to assist emergency service providers in locating a destination within the development with ease and speed, in the event of an emergency.

Details are to be submitted with any Occupation Certificate or Strata Subdivision Certificate certifying that the numbering has been implemented in accordance with this condition and the Unit Numbering for Multi Unit Development Table.

Reason: To ensure consistent numbering for emergency services access.

39. Waste Management Confirmation

Prior to the issue of an Occupation Certificate, evidence / documentation must be submitted to the Principal Certifier that all waste material from the development site arising from demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

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

40. Swimming Pool Requirements

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifier, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating 'YOUNG CHILDREN SHOULD BE ACTIVELY SUPERVISED WHEN USING THIS POOL' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

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

Reason: To protect human life.

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

41. Geotechnical Recommendations

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

42. Noise - Mechanical Plant

All plant equipment (including the swimming pool motor) must be installed and operated at times so as not to cause 'offensive noise'. It must be demonstrated that the noise level will not exceed 5dBA above background noise when measured from the nearest property boundary, as defined by the Protection of the Environments Operation Act 1997.

Reason: To ensure compliance with legislation and to protect the acoustic amenity of neighbouring properties.

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

Signed



Thomas Burns, Principal Planner

The application is determined on 26/03/2025, under the delegated authority of:



Steven Findlay, Manager Development Assessments