

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1202
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Responsible Officer:	Renee Ezzy
Land to be developed (Address):	Lot 1 DP 1257701, 9 Lolita Avenue FORESTVILLE NSW 2087
Proposed Development:	Alterations and additions to an existing dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Michael Caleb Boyd Lynnette Boyd
Applicant:	Lynnette Boyd

Application Lodged:	29/10/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	07/01/2020 to 28/01/2020
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	4.3 Height of buildings: 28%
Recommendation:	Approval

Estimated Cost of Works:	\$ 926,700.00
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EXECUTIVE SUMMARY

This report provides an assessment of alterations and additions to an existing dwelling including a carport, second floor addition and tennis court located at No.9 Lolita Avenue, Forestville. Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the subject site.

Public notification of this development resulted in five (5) submissions from adjoining and surrounding properties raising concerns with the proposed height, bulk and scale, privacy and view loss from the development. These concerns have been addressed within this report.

The application has been assessed against the Environmental Planning and Assessment Act 1979

(EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this assessment is detailed within this report.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be approved subject to conditions attached to this report.

PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for alterations and additions to the existing two (2) storey dwelling-house.

Specifically, the works involve the following:

Storage Level (FFL 82.490)

- Create a new storage area (51m²) within the existing subfloor
- Powder Room (6m²)
- Workshop (20m²)
- South-west facing balcony (44m²)

Ground Floor Level (FFL84.810)

- Extend rear deck from 1.3m to 3.3m deep (52m²)
- Increase the length of the north-western 'Rumpus' by 3.6m
- Convert Rumpus to a secondary dwelling
- New internal lift
- Indoor/outdoor fire place on rear south-west facade
- Increase the central 'Rumpus' to the north-east by 3.1m (17m²)
- Increase the 'patio' in front of the kitchen and Rumpus rooms
- New hardstand parking and carport for two (2) vehicles within the front setback

First Floor Level (FFL87.650)

- Reconfigure floor plan to create a central 'family room' (84m²)
- Increase the floor area to the front, north-east by 3.1m
- New Bedroom 1 with walk-in-robe
- Extended Bedroom 2 with walk-in-robe and ensuite

- New atrium void (7m²)

Second Floor Level (FFL87.700)

- New second floor area with kitchenette (84m²)
- Store Room (5m²)
- Powder Room
- South-west facing balcony (29m²)
- North-East (front) facing balcony (6m²)

Other works:

- Resurface tennis court and landscape lower section of site (consent for the use of the court and new resurfacing work)
- Curved Aluminium privacy screen fence to east boundary (height ranges from 1.8 to 4m)

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 - 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 - B5 Side Boundary Setbacks

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 - D7 Views
 Warringah Development Control Plan - D17 Tennis Courts

SITE DESCRIPTION

Property Description:	Lot 1 DP 1257701 , 9 Lolita Avenue FORESTVILLE NSW 2087
Detailed Site Description:	<p>The subject site consists of two (2) allotments located on the southern side of Lolita Avenue, Forestville and adjoins the unmade Fox Road at the rear and Garigal National Park beyond.</p> <p>The site is regular in shape with a frontage of 18.49m along Lolita Avenue and a combined depth of approximately 53.4m. The site has a combined surveyed area of 1158.6m².</p> <p>The site is located within the R2 low density residential zone and accommodates an existing two storey dwelling with a swimming pool and carport within the front setback and half size tennis court at the rear of the dwelling.</p> <p>The site is currently dissected by a rock escarpment that drops approximately 5.75m. The site contains some grass and minor trees at the base of the rock escarpment and more grass on the southern side of the tennis court.</p> <p>Detailed Description of Adjoining/Surrounding Development Adjoining and surrounding development is characterised by a varied range of dwelling houses most presenting 2 to 3 storeys from the rear.</p>

Map:



SITE HISTORY

C278/73 and C1263/66

The last recorded consents include C278/73 and C1263/66. These consents deal with the original dwelling (C1263/66) a brick veneer dwelling with entry and laundry at ground floor level and bedrooms, living and kitchen at first floor level. The consent C278/73 is for alterations and additions for the extension of the ground floor level (previously subfloor, entry and laundry area) to create a new Bedroom 1, 2 and 3 behind a double garage, a Rumpus Room along the southern side of the dwelling within the existing footprint of the dwelling and a south facing deck.

DA2018/1336

Development Application DA2018/1336 for alterations and additions to an existing dwelling including a new third floor level, double garage and tennis court was lodged with Council on 13 August 2018. The application sought substantial non-compliances with the building height development standards and numerous built form controls. The application was withdrawn before it was reported for determination.

DA2019/1202

Development Application DA2019/1202 for alterations and additions to the existing dwelling was rejected.

REV2019/0069

Review of Rejection REV2019/0069 application was lodged and it was deemed that the relevant information was now lodged with Council and that Development Application DA2019/1202 could proceed to assessment.

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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to Bushfire and Aboriginal Heritage (Due Diligence Assessment).</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration'	Comments
	Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land and the proposed development is for a subdivision of bush fire prone land that could lawfully be used for residential or rural residential purposes / a special fire protection purpose under Section 100B of the Rural Fires Act 1997. As such, the proposal is integrated development and requires a bush fire safety authority from the NSW Rural Fire Service.

The application was referred to the NSW RFS as integrated development. The NSW RFS issued a bush fire safety authority, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS as part of the bush fire safety authority, have been included as part of the recommended conditions of consent. It should be noted that the Applicant had originally sought to have a secondary dwelling along the western side of the ground floor. No secondary dwellings are permitted by NSW RFS on land that is located within a Flame Zone. The applicant has subsequently removed reference to the secondary dwelling and a condition of consent will be imposed in relation to this issue.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 07/01/2020 to 28/01/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Ms Kristen Renee McKerihan	11 Lolita Avenue FORESTVILLE NSW 2087
Suzi Nikolovski	8 Lolita Avenue FORESTVILLE NSW 2087
Warwick Marshall Brown Michelle Nicole Cabena	7 Lolita Avenue FORESTVILLE NSW 2087
Mr Tony Nikolovski	8 Lolita Avenue FORESTVILLE NSW 2087
Mr Jeffrey John Thwaites	10 Lolita Avenue FORESTVILLE NSW 2087

The following issues were raised in the submissions:

- Carport
- Windows
- Air conditioner units
- Side stairs
- Tennis court
- Excavation
- Fencing
- Privacy
- Building Height
- View Loss

The matters raised within the submissions are addressed as follows:

- **Carport**
The new proposed carport appears to only be set back from the eastern boundary 450mm, when the building code states that this should be 900mm. As neighbours on this boundary, this directly affects the privacy in our front garden and courtyard area. We ask that the setback be applied.

Comment:

The proposed carport seeks to formalise and replace the existing unauthorised carport structure currently on the site. The existing carport provides a nil setback to the boundary with No.11. While the new carport does not provide a 900mm setback, a variation has been considered acceptable in this instance due to the limited available space for parking elsewhere within the site. As the carport retains the location of the existing parking structure, a variation of 450mm is not considered likely to create any new issue with privacy. No objection is raised to the proposed location of the carport.

- **BBQ area**
The current covered BBQ area is shown in the existing roof plan (sheet A109). It is unclear if this is to remain or be removed. While it is not mentioned in the Statement of Environmental

effect report it is present in the proposed roof plan (sheet A111). If it is to be retained we ask that it be made to be compliant with the building code with regards to the boundary offset. The current structure is unsightly from our side and when in use the pitched roof, latticed back funnels smoke directly into our front courtyard.

Comment:

The existing roof structure is not shown as retained on the new plans for the site. This structure is unauthorised and should be removed. Council's Compliance section are aware of the compliance issues on this site and the removal of this structure will be followed up as a compliance action.

- **Windows**

Proposed new side windows W07/W08. We are opposed to the installation of these two windows as they directly overlook our side boundary/outdoor areas and would greatly impact our privacy along this boundary. If approved, we ask that they be fully frosted and non-opening to ensure privacy.

In the document 'Plans - external - amended December 2019', the drawing of the existing east elevation (sheet A114) is inaccurate. It does not show a large window that exists on the south western side of the building. This window looks directly over our rear deck and upstairs bedroom balcony and affords us no privacy. We would be very happy if this window is to be removed, as is suggested in the proposed east elevation drawing (A115), but if it is to remain we would ask that it also be fully frosted and non-opening.

Comment:

W08 appears to be a highlight window to the ensuite of Bedroom 2, noted on sheet A108 as 'new frosted H/L window'. W07 is shown on the Eastern Elevation drawing A115 as a full height window to the walk-in-robe of Bedroom 2. On the 'Proposed First Floor Plan' sheet A108 this window is also noted as a 'new frosted H/L window'. A condition of consent is recommended to ensure that W07 is also a frosted highlight window.

- **Air conditioning units**

The proposed application states that there is to be no change to the existing air conditioning of the property. We have previously notified council of our concerns about the 2 existing air conditioning units along the western side of Number 9 Lolita (Pol2019/00217). At the time we initially contacted council we were notified that council was unable to intervene as the complaint was the subject of a mediation process. Unfortunately this mediation never eventuated. Our specific concerns are that one air conditioning unit is mounted higher than 1.8 m above ground level, is an eyesore from our back entertaining deck and in very close proximity to our upstairs main bedroom. The second large ducted air conditioning unit is positioned on the same eastern wall at ground level and generates noise that can be easily heard from inside our house with the windows and doors closed. We are concerned that if the proposed development were to be approved, this air conditioner would be required to service a now 4 storey dwelling, and likely increase the already unacceptable noise we currently endure.

Comment:

No new air conditioning units are identified on the proposed plans. The height, location and noise from the existing air-conditioning units is a matter for the Compliance section to investigate.

- **Side stairs**

The application proposes that the existing back access stairs and landing are to be demolished and replaced in the existing location. We ask that when these are being replaced, they be offset from the side boundary by the required distance to allow the fencing to be placed on the boundary line. We have been advised by fencing contractors that the position of the existing stairs as they are, would require any boundary fencing to be offset into our property.

Comment:

All works proposed are to be undertaken within the subject site. The location of the boundary fence should be on the surveyed boundary line. A condition of consent has been recommended that a Boundary Identification Survey be undertaken prior to the issue of a Construction Certificate to ensure that all setbacks and works are consistent with the approved plans.

- **Half size tennis court**

The application proposes that the existing half tennis court is to be resurfaced but remain the same size in the same location. We request that it be moved the required offset off the side boundary. The courts current location interferes with boundary fencing, requiring it to be offset into our property. There is no indication that any drainage will be added to the court. Currently during wet weather there is significant run-off into our property.

Comment:

This application seeks to regularise the use of the existing unauthorised tennis court and provide for upgrading works to resurface. The proposed resurfaced half tennis court is to be located fully within the subject site. A survey certificate has been conditioned as part of the consent to ensure that all works occur within the boundaries of the site.

In relation to stormwater, the applicant has submitted a drainage plan which connects the site to a new dispersion trench at the southern end of the site. Council's Development Engineers have reviewed this plan and raise no objection subject to conditions.

- **Excavation of Escarpment**

Excavation of rock for construction of lower ground floor - We are very concerned about the significant amount of excavation proposed for the construction of the lower ground level. Our house is constructed on a suspended slab on piling that sits on the same rock shelf as 9 Lolita Avenue. While acknowledging the geotechnical report, we have real concerns that the amount of excavation required could jeopardise the foundations of our house. Should the excavation be approved we would request that independent seismic monitoring be undertaken to ensure vibration is kept to a safe level and that any damage to our property can be documented.

Comment:

The application is accompanied by a Geotechnical Assessment which addresses the excavation and any risk areas associated with the proposed works. The report states "No hazards were identified that could potentially affect the neighbouring properties." Conditions of consent have been recommended in relation to the rock excavation. Further, the recommendations contained within the Geotechnical report are included as a condition of this assessment.

- **Fencing**

The development application states that the current west side fences will remain unchanged. We are concerned that on the current boundary the retaining wall and fences are dilapidated and are at risk of falling and damaging our property, especially if excavations occur.

Boundary fence between No 7 and No. 9 is a severely cracked retaining wall leaning into No. 7. The fence on top is a bush fence that is deteriorated and has gaps. This fence is also the pool fence. Request an appropriate fence is provided.
Rear fencing to the tennis court is damaged. Request a new tennis court fence be erected within the property of No. 9.
Thatched fence at front to remain - It is a concern to us that brushwood fencing is retained as our properties are zoned Flame Zone.

Comment:

The existing fence between no.7 and no.9 Lolita Avenue is not proposed to be replaced. As this fence serves as a swimming pool barrier and the site is within a Flame Zone, this issue has been referred to Council's Development Compliance section for investigation and inspection.

In relation to the tennis court fence, the existing fencing is considered unacceptable for its purpose and a new fence meeting current tennis court standards is required to be installed. A condition of consent has been recommended in this regard.

- **Privacy Screens**

Height of privacy screens - We would ask that the privacy screens on the balcony be extended to 1.8 - 2m to ensure adequate privacy.
The lower ground level/workshop balcony has no screen.

Comment:

A condition of consent has been recommended increasing the screen height at the Storage Level, Ground Floor Level and Second Floor level balconies.

In relation to the balcony on the Storage/Workshop level, this element currently extends to the western boundary of the site with a height to the top of the handrail 6.4m above existing ground level. The balcony extending to the boundary is not supported given the potential for overlooking in the neighbouring property rear yard. A condition of consent has been imposed deleting the stairs adjacent to the western boundary and stepping the balcony at least 1.5m off the boundary with a privacy screen.

- **Building Height**

Non-compliance with height and number of storeys.

Addition of parapet - We are opposed to the addition of the parapet as we feel, what will effectively be a 4 storey house, is not in keeping with the surrounding streetscape. If approved we feel that this will set a precedent for our street and we are strongly opposed to this. The parapet's additional height (indicated to be about 1500mm above the current roof line) will further reduce our ability to create privacy in our back yard/swimming area from the property at Number 9. The increased height also increases the shadowing of the eastern aspect of our backyard at 12pm, which we feel is a significant loss for a south facing garden. At 3pm the shadow drawings also indicate there will be an impact upon our roof on which we have solar panels installed right up to the western edge. We believe the approval of the parapet and exceedance of the height regulations will cause an economic impact on us through the shadowing of our solar panels.

When viewed from our backyard and the public reserve at the rear of the property, the dwelling will be a 4 storey dwelling with 3 open balconies and 1 enclosed balcony. The scale of the dwelling from the rear of our property will be overbearing and there are no other dwellings of this height and scale in the surrounding vicinity.

Comment:

The building height and number of storeys has been addressed within the relevant sections of this report. The development subject to conditions is considered acceptable.

- **View Loss**

View loss of valley from No. 10 Lolita Avenue.

Comment:

View loss was identified from the front of the property at No. 8 Lolita Avenue across the eastern side of the subject site. A full view loss assessment has been provided within this report. The current design has stepped the proposed 'Second Floor Level' back from the eastern boundary by about 5.5m to maintain a view corridor across the top of the roof of the lower level. The proposal is satisfactory in addressing view loss.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p>Supported, subject to conditions Proposed indoor/outdoor fireplace requires installation to Australian Standards.</p> <p>Environmental Health recommend standard conditions for solid fuel heater to be included in Consent.</p>
Landscape Officer	<p>Supported, subject to conditions The plans indicate that works are proposed over the existing rock outcrop at the rear of the site. The design indicates that the rock escarpment will be retained, which is supported. No significant trees are indicated for removal.</p> <p>No objections are raised to approval subject to conditions as recommended.</p>
NECC (Bushland and Biodiversity)	<p>Supported, subject to conditions This application was assessed against Warringah DCP:</p> <ul style="list-style-type: none"> • E2 Prescribed vegetation • E5 Native vegetation • E6 Retaining unique environmental features <p>The proposal is for the alteration and additions to the existing structure. No native trees or vegetation is proposed to be impacted, therefore the proposal complies with biodiversity controls.</p>

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p>Supported, subject to conditions</p> <p>This application has been assessed against coastal considerations of the Pittwater LEP, DCP, Coastal Management Act and Coastal Management SEPP. It has not been included on the Coastal Vulnerability Area Map and the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018. Supported subject to conditions.</p>
NECC (Development Engineering)	<p>Supported, subject to conditions</p> <p>No objections are raised to the proposed development, subject to conditions.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p>
NSW Rural Fire Service – local branch (s4.14 EPAA)	<p>Supported, subject to condition</p> <p>The application was referred to the NSW Rural Fire Service as the site is classified as 'Flame Zone'. Subject to the removal of any secondary dwelling from the plans, the RFS raise no further objection subject to the owner and the development complying with specific conditions of consent.</p>
Aboriginal Heritage Office	<p>Supported, subject to conditions</p> <p>The application was referred to the Aboriginal Heritage Office who requested a Due Diligence Assessment be undertaken for the site. A Due Diligence Assessment was provided by the applicant on 7 April 2020, which, subject to conditions which include no excavation of the land to the south-west of the tennis court (rear of the site) raises no further objections to the proposed development.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.A363660 dated 2 December 2019).

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

The application has been considered with regard to the relevant provisions of State Environmental Planning Policy (Coastal Management) 2018 and Council can be satisfied that the proposal is consistent with the relevant matters prescribed by this policy.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	10.9m	28%	No

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-compliance

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.9m
Percentage variation to requirement:	28%

Assessment of request to vary a Development Standard

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

Clause 4.6 Exceptions to Development Standards

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

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

(2) *Development consent may, subject to this clause, be granted for development even though the*

development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

Clause 4.6 (4)(a)(i) (Justification) Assessment

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

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

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

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

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

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ

provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

"The design has been based around maintaining the view of the Chatswood skyline from the balcony of number 8 Lolita Avenue. The shadow diagrams provided as a part of the development application provide confirmation that solar access complies with the standards and allowing sufficient solar access to the neighbouring properties.

Privacy has been maintained by using privacy screens on both sides of all balconies and high level or frosted window the eastern and western walls which face the neighbouring properties.

The proposed second floor has been moved back to towards the north to reduce the breach in height."

Comment: The proposed works while extensive, are seeking to make the existing dwelling which is in bad repair and dilapidated more suited to modern family living providing extensive space and function to service a wide range of lifestyle choices.

The site is restricted by the large sandstone cliff line that intersects the site and footprint of the existing dwelling. While some consideration has been made to maintain the existing view lines across the site from the opposite side of Lolita Avenue, restricting the new building works to generally within the existing footprint will ensure the maintenance of the natural rock formation and existing pattern of development by not extended substantially further down the site. These reasons are considered

to constitute adequate environmental planning grounds for the proposed works.

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

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

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment

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

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

Comment:

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

Objectives of Development Standard

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

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

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

Comment:

The proposed additions are considered to remain compatible with surrounding development. While the development is not replicating or necessary mimicking the style of the surrounding properties, the overall height when viewed from the street will be commensurate. The finished height of the new 'second floor level' is 1.43m higher than the existing ridge line and does not extend the full width of the house as the existing roof line does.



Photograph 4 - Site as viewed from Lolita Avenue

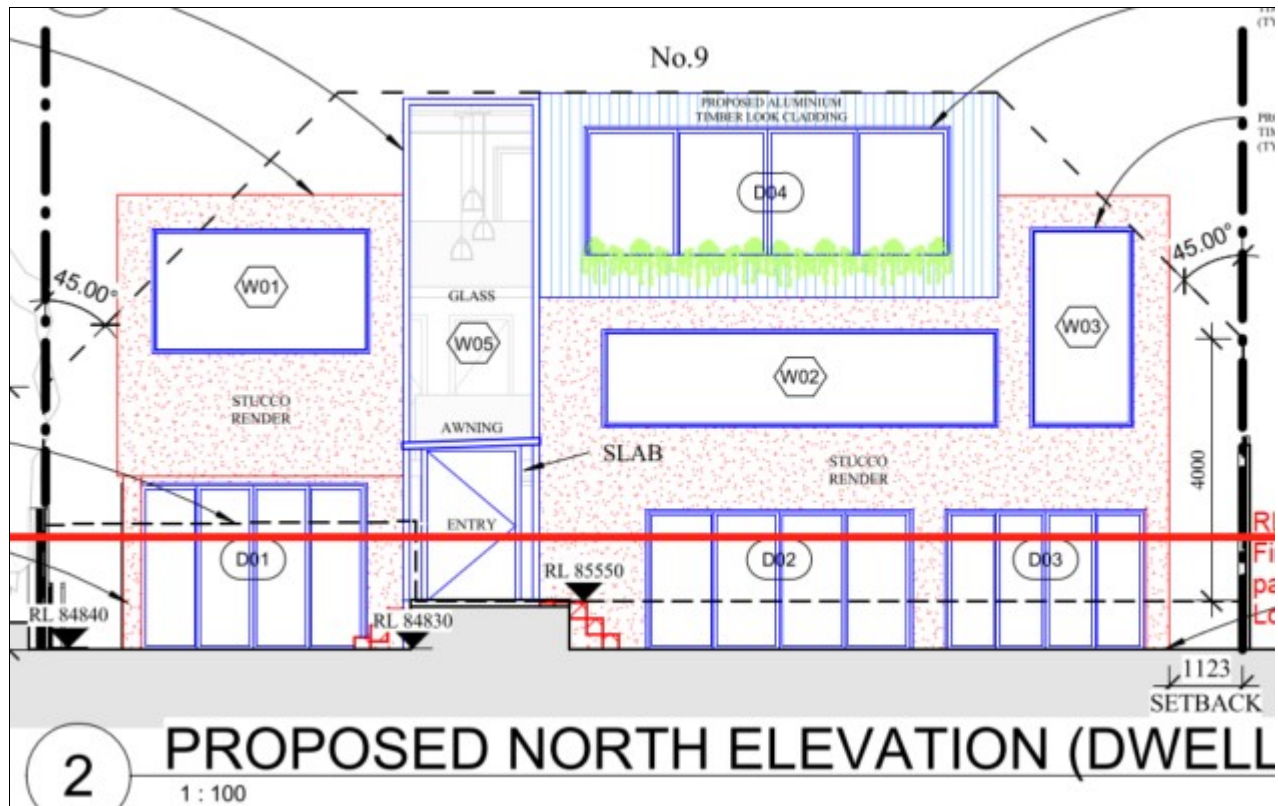


Figure 4 - Elevation of proposed dwelling with finished level of Lolita Avenue shown as red line.

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

Comment:

The Applicant has made a definite design decision to maintain the view corridor across the south-eastern side of the dwelling. The existing ridge in this location is at RL91.87 and the proposed new ridge is at RL91.440. Accordingly, the existing view corridor will be maintained.

In terms of privacy and solar access, these are considered acceptable in terms of the development subject to conditions of consent.

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

Comment:

The development maintains an adequate separation from the adjoining National Park land with the additional land recently purchased and consolidated with the site at the rear. This land does not include any building works except some retaining walls and conditions of consent have been recommended to exclude any excavation of this area.

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

Comment:

The proposed finishes of the development include natural or an aluminium timber look to the walls and soffit. As the site is in a flame zone, the use of natural timber products is greatly limited. The new combination of finishes will provide a minimised visual impact from the limited view points it will be visible from.

Zone Objectives

The underlying objectives of the R2 Low Density Residential zone are:

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The proposed alterations and additions cater for the specific needs of the owner. The site remains a single dwelling house within a low density residential zone and is considered to satisfy this objective.

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

Comment:

The proposal does not impact on any other land uses or services.

It is considered that the development satisfies this objective.

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

Comment:

As the top half of the site adjoining Lolita Avenue is currently developed with minimal landscaping, the rear section of the site recently purchased provides a necessary balance to the development on the site and should be retained as landscaped open space.

It is considered that the development satisfies this objective.

Conclusion

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

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment

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

Planning Circular PS 18-003 dated 21 February 2018, issued by the NSW Department of Planning &

Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

6.4 Development on sloping land

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

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

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by Asset Geo Enviro dated 25 November 2019. This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

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

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

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

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

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	8.64m	20%	No
B3 Side Boundary Envelope	South-East - 4.0m	Up to 5.3m for a length of 14m	N/A	No
	North-West - 4.0m	Up to 2.3m for a length of 12.1m	N/A	No
B5 Side Boundary Setbacks	South-East - 0.9m	Nil to elevated stairs at Storage Level	100% Nil	No Yes

		5.5m to new Second Floor		
	North-West - 0.9m	Nil to Storage Level balcony and elevated stairs 1.1m to dwelling	100% Nil	No Yes
B7 Front Boundary Setbacks	6.5m	Nil to carport and hardstand 5.6m to front entry awning	100% 13.8%	No No
B9 Rear Boundary Setbacks	6.0m	10m tennis court fence 13.6m to tennis court surface	Nil	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	38%	2%	No

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	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	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
D14 Site Facilities	Yes	Yes
D17 Tennis Courts	No	Yes
D20 Safety and Security	Yes	Yes

Figure 1 - Eastern Elevation showing wall heights (source: Architectural Plans by Dellview Designs)

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 wall height in this location is a factor of the steep change in topography directly below the existing structure. The wall element will not be perceived from the street or any waterway or land zoned for public recreation. While it will be visible from the adjoining property to the north-west, the extent of impact from the increased parapet is not considered significant.

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

Comment:

Due to the large change in level between the front of the site and the back of the site (approx. 17.0m or 31%) the tree canopy level between the two extremes are also quite different. The area of the wall height non-compliance occurs through the centre of the site where the natural sandstone cliff bisects the site. Accordingly, the location of the non-compliance is considered reasonable.

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

Comment:

As detailed within this report, the flattened roof line on the south-eastern side of the dwelling will retain the existing view corridor across the site.

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

Comment:

Issues identified in the submissions received have each been addressed within the relevant section of this report. Subject to conditions, the proposal is not considered to result in unnecessary or adverse impact on adjoining and nearby properties.

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

Comment:

The proposed works seek to excavate an area currently within the existing subfloor area in order to provide a compliant head height for the 'storage/workshop' level. Conditions are recommended that further excavation of the sandstone cliff line in front of this area and the lower garden area does not occur. Subject to conditions, the proposed development is

considered satisfactory in terms of this requirement.

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

Comment:

The design provides for a change in roof line from a traditional pitched roof to a flat roof design. No objection is raised to the proposed roof line.

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

B3 Side Boundary Envelope

Description of Non-compliance

The proposed alterations and additions result in new non-compliance with the side boundary envelope on both the north-western and south-eastern building planes.

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 site contains a steep change in topography which occurs in two major sections. The first is between the street and the front of the existing dwelling where there is an approximate 2.0m change in level and then a second one toward the back of the dwelling where there is a natural rock cliff that intersects the site with a steep drop of approximately 5.5m. The areas where the new envelope breach occurs is through the main part of the house where the roof line is changed from a pitched roof to a skillion roof with a parapet.

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

Comment:

Subject to conditions removing the balcony and stair access along the western side of the site at the Storage Room level, the proposed additions are not considered to adversely impact on light, solar access or privacy with the adjoining buildings.

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

Comment:

The proposed works are extending on the existing structure built on the site. While it would be preferable for the development to step more closely with the topography, in this instance, the protection of the natural cliff line that dissects this site and extends into the adjacent properties is considered a priority over the additional height on the current structure.

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

B5 Side Boundary Setbacks

Description of Non-compliance

The proposed alterations and additions seek a number of non-compliances with the side boundary setback requirements of this control. Along the eastern side of the site, the new works include:

- a double hardstand area with carport setback 500mm from the boundary
- new stair access on the boundary from Ground Floor Level to the the Storage Level

WDCP provides the following savings provisions in relation to ancillary structures:

"Ancillary to a dwelling house:

- *Consent may be granted to allow a single storey outbuilding, carport, pergola or the like that to a minor extent does not comply with the requirements of this clause"*

Accordingly, the elements of the development identified above along the eastern side of the dwelling are supported and a merit assessment provided.

In relation to the new balcony and stair access that is proposed at the Storage Level on the western boundary, these elements are not supported and are conditioned to be deleted.

Merit Consideration

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

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

Comment:

The quantum of the existing site with structures provide almost no suitable area for deep soil landscape areas. The new parcel of land purchased at the rear of the site to the south of the tennis court provides a balance of landscaped area which is severely lacking on the existing site layout. No structures are proposed in this area and no excavation is supported or endorsed by this assessment within that part of the site. A condition of consent has been recommended to ensure that the southern section of the site remains landscaped open space.

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

Comment:

The dwellings including the subject site along this cliff line provide a substantial presentation toward the National Park land adjoining. From Lolita Avenue, the dwellings all present a more

human scale to the street. The proposed development maintains the appearance of a house over many levels from the south and is considered acceptable.

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

Comment:

The proposed development includes balconies and a mixture of facade treatments to consolidate and unify the existing dilapidated structure with the new works. Subject to conditions, the bulk and scale of the building is considered acceptable.

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

Comment:

As detailed, the recommendations in this report include numerous conditions around maintaining privacy and amenity to adjoining properties. In terms of solar access, the additional shadow impact on adjoining properties is considered minor given the orientation of the sites and the steep change of topography on the south facing side of these lots.

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

Comment:

Existing views to Chatswood were identified from the front of the property on the opposite side of Lolita Avenue at No. 8. A detailed view loss analysis is provided under Part D7 Views within this report. The assessment has concluded that the changes to the roof line on the eastern side of the dwelling will ensure the existing sight lines across the property will be sufficiently maintained.

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

B7 Front Boundary Setbacks

Description of Non-compliance

The proposed development works include construction of a new hardstand and carport which is within the front setback. The hardstand extends to the boundary and the carport structure extends between 0.4m to 1.5m from the front boundary.

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:

The site currently contains an unauthorised carport structure in the location of the proposed

carport and includes a 1.8m high brushwood fence along the front boundary.



Photograph 1 - *The subject site from Lolita Avenue*

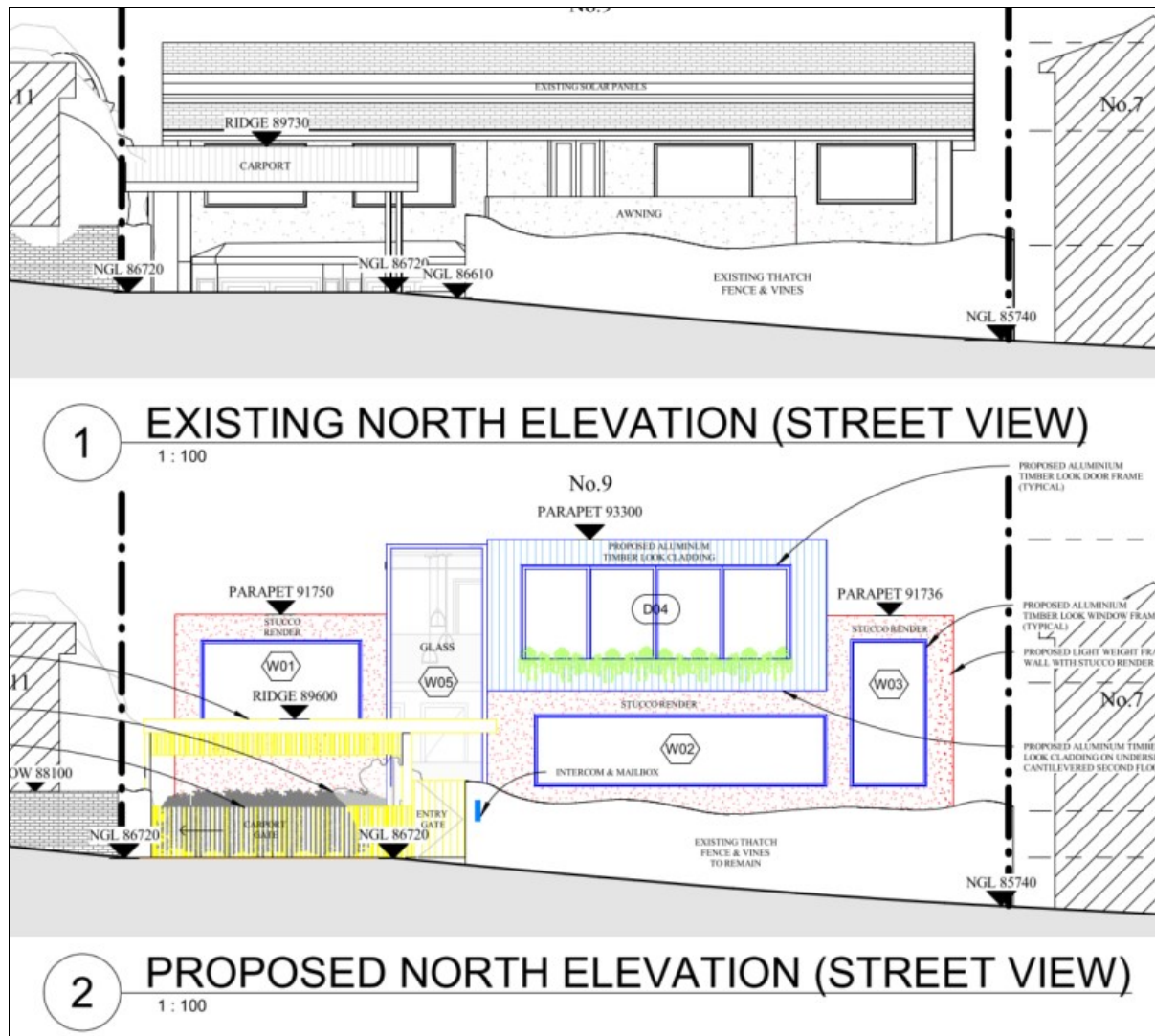


Figure 2 - The existing and proposed frontage of the development

The site is currently developed and the frontage contains a swimming pool and the carport structure. The proposed carport in essentially the same location maintains sight lines through the front of the site to the dwelling and is considered to satisfy this requirement.

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

Comment:

The streetscape within Lolita Avenue provides a variety of dwelling styles and sizes with a number of dwellings containing solid fence structures. The proposed development does not seek to change the existing front fence structure. The carport and low height gate, are located within the front setback due to constraints created by the location of the existing dwelling resulting in no other location to place on-site parking. The inclusion of the carport and hardstand in this location is not considered to offend this requirement of the control.

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

Comment:

The proposed works seek to provide a substantive upgrade to the existing dwelling and facilities

on this site. The proposed works are considered satisfactory in terms of enhancing the quality of this streetscape.

- *To achieve reasonable view sharing.*

Comment:

View loss has been raised as an issue by the neighbouring property on the opposite side of Lollita Avenue at No.8. A view loss analysis has been provided under Part D7 and has been assessed as satisfactory.

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

C3 Parking Facilities

Merit Consideration

The proposed development seeks consent for double hardstand and carport located within the front setback of the site. The development is considered against the underlying Objectives of the Control as follows:

- *To provide adequate off street carparking.*

Comment:

The development provides for two (2) parking spaces within the site which is considered to satisfy the numerical requirements for this site.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

The proposed parking facility is to be located adjacent to the front boundary of the site. While the structure and hardstand do not comply with the front setback requirement to locate parking structures behind the front setback, the site is constrained by the location of the existing dwelling and swimming pool. Accordingly, the proposed location which is generally where the current unauthorised parking is located is considered acceptable.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

The development does not seek a fully enclosed garage structure in this location, instead an open style carport with low level gates to ensure that sight lines into the site are maintained and the structure is not dominating the frontage.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning

and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of Non-compliance

The owners of this property have recently acquired from Crown Lands a portion of land between the southern boundary of the site and Fox Road (an unmade road reserve/fire trail). This portion of land is approximately 183m² which has been consolidated with No.9 Lolita Avenue to provide a new total site area of 976.5m². Accordingly, the 40% requirement for landscaped open space is 390.6m². As the site contains extensive coverage by the existing dwelling footprint, swimming pool and tennis court, the only areas which can technically be included are the swimming pool, rear landscaping area 1 and rear landscaping area 2. In total the site provides 372.3m² (38%) calculable landscaping, a deficit of 18.3m².

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 front of the site addressing Lolita Avenue is established with an existing swimming pool, 1.8m high thatched fence and carport. The development seeks to formalise the parking area to provide approved hardstand and carport. The design also includes a low height gate to the carport which will allow sight lines through to the front of the dwelling.

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

Comment:

The site is currently devoid of any landscaping of value. The addition of land at the rear of the site adjacent to the National Park interface is considered to provide the site with some severely lacking soft landscaped open space area. In addition, the site is intersected by a rock cliff line that also extends into both adjoining sites. This rock cliff is to be retained.

- *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 recently acquired land at the rear of the site will provide a decent space for the inclusion of new plantings that could offer some relief to the appearance of the southern facade.

- *To enhance privacy between buildings.*

Comment:

While the proposed works include new balcony areas to the northern and southern facades, the

balconies include 1.65m high privacy screens at both the eastern and western ends. In addition, all new windows are highlight windows or contain frosted/translucent glazing to ensure no overlooking or perceived privacy impacts from window openings.

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

Comment:

The development seeks to include a tennis court in addition to the existing swimming pool and new area of soft landscaping to the south. These spaces are considered to offer extensive options for recreational activities on the site.

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

Comment:

The site currently contains a clothes line attached to the western side of the dwelling accessed from the existing laundry. The new parking configuration incorporates space to accommodate the relevant domestic waste bins.

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

Comment:

The site drains to the rear where a new dispersion trench is proposed with a 2.5m setback from the rear boundary. Council's Development Engineers have reviewed the proposed stormwater drainage and raised no objections subject to conditions.

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

D7 Views

Merit Consideration

A submission was received which raises view loss as an issue. The development is considered against the underlying Objectives of the Control as follows:

- *To allow for the reasonable sharing of views.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, are applied to the proposal.

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North

Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

The views currently available are partially obstructed views of the Chatswood CBD.



Photograph 2 - *The current Chatswood CBD view from the front stairs of No. 8 Lolita Avenue*



Photograph 3 - The current Chatswood CBD view from the front verandah of No. 8 Lolita Avenue

2. What part of the affected property are the views obtained

“The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic”.

Comment to Principle 2:

The views from this dwelling are available from the front of the dwelling, primarily when standing on the front verandah and to a lesser extent from inside the entry to the lounge and dining room of the dwelling.

3. Extent of impact

“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is

20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.

Comment to Principle 3:

The view is available across the eastern side of the dwelling ridge line essentially in a section aligning with the carport. The proposed additions realign the roof profile providing a parapet with a finished level of RL91.750 for a length of 4.3m. The existing ridge line is at RL91.87. The new works which change the height of the roof line are setback 5.5m from the eastern boundary. Accordingly, the existing views will remain available across the new parapet roof line and the extent of view loss is considered **negligible**.

4. Reasonableness of the proposal that is causing the impact

“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

Comment to Principle 4:

The proposal is not considered to create any adverse impact in terms of view loss as a result of the proposed roof line on the eastern side of the dwelling.

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

Comment:

The proposed additions incorporate articulated profiles to provide relief to the new works and reduce potential impacts on surrounding dwellings. The development is therefore considered to improve the existing urban environment.

- *To ensure existing canopy trees have priority over views.*

Comment:

The proposed works do not require the removal of any canopy trees.

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

D17 Tennis Courts

Merit Consideration

The site currently contains an unauthorised tennis court which is in a poor state of repair, has insufficient fencing and has unauthorised artificial illumination. The proposed development seeks consent for a tennis court (resurfaced) in the same position as the existing one. Due to the orientation and proportions of the site, the tennis court cannot comply with the requirement to provide a 1.5m setback from the side boundaries. The plans indicate a 0.7m setback to the west and an approximate

0.1m setback to the east where the tennis court aligns with the neighbouring cabana.

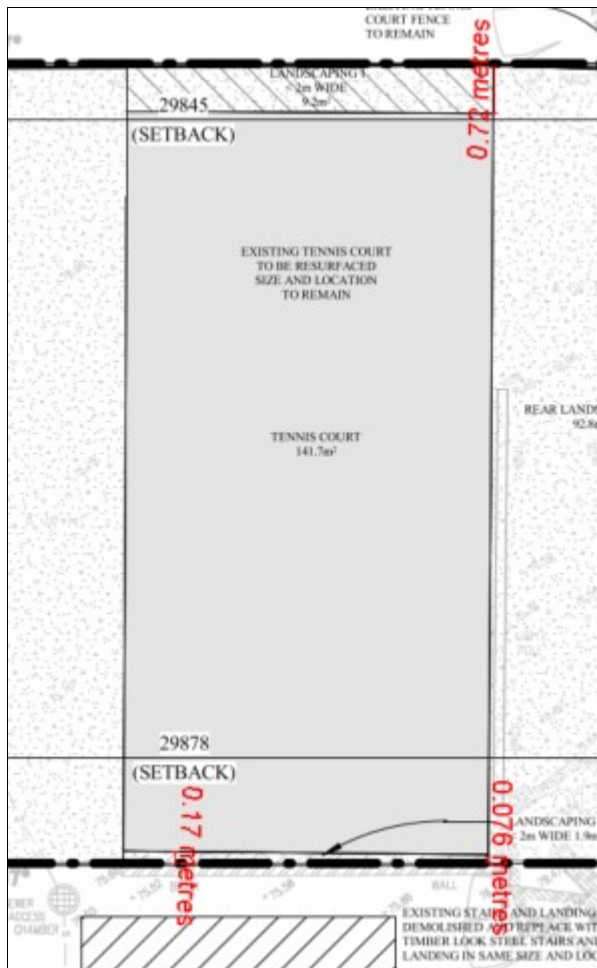


Figure 3 - Excerpt from Proposed Site Plan (source: Architectural Plans by Dellview Designs)

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

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

Comment:

The development seeks to improve the level of finish of the existing rear yard and dilapidated tennis court surface. Subject to conditions around fencing, improved landscaping and no artificial lighting of the area, the proposed tennis court may be considered acceptable in terms of the objectives of this requirement.

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

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 2019

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

A monetary contribution of \$9,267 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$926,700.

The site is the subject of numerous complaints in relation to unauthorised building works. Council's Compliance team are still investigating the issues raised. These matters will be dealt with under a separate process independent of this assessment.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and

b) There are sufficient environmental planning grounds to justify the contravention.

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

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

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

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

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the EP&A Act, 1979, the provisions of relevant EPIs, including SEPP 55, SEPP Infrastructure, WLEP 2011, the relevant codes and policies of Council, and the relevant provisions of the WDCP 2011.

The application was referred to internal departments and external authorities. No issues have been identified within these referrals that cannot be addressed through relevant conditions of consent.

The development attracted 5 individual submissions. The submissions raised numerous concerns with regards to the building height, privacy and other concerns relating to impacts on the neighbouring properties. The issues raised in the submissions have been addressed in the "Public Notification Section" of this report.

Based on the assessment contained in this report, the proposed development subject to conditions addressing some of the issues raised is considered on balance, acceptable and it is recommended that the Development Determination Panel approve the application.

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

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

Accordingly Council as the consent authority grant Development Consent to DA2019/1202 for Alterations and additions to an existing dwelling house on land at Lot 1 DP 1257701, 9 Lolita Avenue,

FORESTVILLE, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A102 - Proposed Site Plan - Rev E	01.04.2020	Dellview Design Pty Ltd
A104 - Proposed Storage Plan - Rec C	28.11.2019	Dellview Design Pty Ltd
A106 - Proposed Ground Floor Plan - Rev E	01.04.2020	Dellview Design Pty Ltd
A108 - Proposed First Floor Plan - Rev C	28.11.2019	Dellview Design Pty Ltd
A110 - Proposed Second Floor - Rev C	28.11.2019	Dellview Design Pty Ltd
A111 - Proposed Roof Plan - Rev C	28.11.2019	Dellview Design Pty Ltd
A112 - Existing and Proposed North Elevation (Street View) - Rev C	28.11.2019	Dellview Design Pty Ltd
A113 - Existing and Proposed North Elevation (Dwelling) - Rev C	28.11.2019	Dellview Design Pty Ltd
A115 - Proposed East Elevation - Rev C	28.11.2019	Dellview Design Pty Ltd
A117 - Proposed South Elevation - Rev C	28.11.2019	Dellview Design Pty Ltd
A119 - Proposed West Elevation - Rev C	28.11.2019	Dellview Design Pty Ltd
A121 - Proposed Long Section 2 - Rev C	28.11.2019	Dellview Design Pty Ltd
A123 - Proposed Long Section 3 - Rev C	28.11.2019	Dellview Design Pty Ltd
A124 - Proposed Short Section 1 - Rev C	28.11.2019	Dellview Design Pty Ltd
A125 - Proposed Short Section 2 - Rev C	28.11.2019	Dellview Design Pty Ltd
A126 - Proposed Short Section 3 - Rev C	28.11.2019	Dellview Design Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Aboriginal Archaeological Due Dilligence Assessment	7 April 2020	Dominic Steele Consulting Archaeology
BASIX Certificate No. A363660	2 December 2019	Dellview Design Pty Ltd
5860-G1 Preliminary Geotechnical Assessment	25 November 2019	Asset Geo Enviro
Bushfire Risk Assessment and Updated	13 December	Bushfire Planning

Assessment	2016 (original) 6 August 2018 (update) 13 December 2019 (current)	Services
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b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

c) The development is to be undertaken generally in accordance with the following:

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

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
Rural Fire Service	Referral RFS - 9 Lolita Avenue Forestville	21 April 2020

(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. **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 Certifying Authority 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 Certifying Authority 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 Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

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

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

Reason: Legislative requirement.

4. **General Requirements**

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether

the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% 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.
- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall

notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) 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 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$9,267.00 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 2019. The monetary contribution is based on a development cost of \$926,700.00.

The monetary contribution is to be paid prior to the issue of the first Construction Certificate or Subdivision Certificate whichever occurs first, or prior to the issue of the Subdivision Certificate where no Construction Certificate is required. If the monetary contribution (total or in part) remains unpaid after the financial quarter that the development consent is issued, the amount unpaid (whether it be the full cash contribution or part thereof) will be adjusted on a quarterly basis in accordance with the applicable Consumer Price Index. If this situation applies, the cash contribution payable for this development will be the total unpaid monetary contribution as adjusted.

The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

6. Security Bond

A bond (determined from cost of works) of \$2,000 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 Certifying Authority 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.

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

7. Stormwater Disposal from Low Level Property

The applicant is to demonstrate how stormwater from the new development within this consent shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's "Warringah Water Management Policy PL 850" in particular the Stormwater Drainage from Low Level Properties Technical Specification. Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Northern Beaches Council's "Warringah Water Management Policy PL 850" are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

8. Amendments to the approved plans

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

- The proposed balcony to the Storage Level is to be reduced and set back from the

eastern boundary by at least 1.5m. The stairs adjacent to the western boundary connecting with the balcony is to be removed, retaining only the landing into the internal Storage area.

- A privacy screen measuring at least 1.65m from the finished level of the balcony shall be provided at the eastern end of the modified balcony setback.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

9. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

10. **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 Certifying Authority prior to the issue of the Construction Certificate.

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

11. **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 Certifying Authority 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.

12. **Sill Height of W07 and W08 on the First Floor Eastern Elevation**

The sill height for windows W07 and W08 on the eastern elevation adjoining the ensuite and walk-in-robe of Bedroom 2 at First Floor Level must have a sill height of at least 1.6m measured from the finished floor level. These windows must also contain translucent glazing. Details

demonstrating compliance shall be provided to the Certifying Authority prior to the issue of a Construction Certificate.

Reason: To ensure adequate privacy is maintained between dwellings.

13. Waste Management Plan

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. No Access Through Adjoining Park/Reserves

Access to the site through an adjoining park/reserve is prohibited without the written approval of the Council.

Reason: To ensure protection of council parks/reserves.

15. Pre-Construction Dilapidation Report

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Properties: No.7 and No.11 Lolita Avenue, 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 Certifying Authority 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 Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

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 Certifying Authority prior to the commencement of any works on site.

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

16. Tree protection

(a) Existing trees which must be retained

i) All trees not indicated for removal on the approved plans, unless exempt

under relevant planning instruments or legislation

ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.

17. Installation and Maintenance of Sediment and Erosion Control

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

Reason: To protect the surrounding environment from the effects of sedimentation and erosion from the site

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

18. 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.

19. Removing, Handling and Disposing of Asbestos

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

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

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

20. **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 each 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. At the completion of all site works including the vehicle hardstand and tennis court surface.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

21. **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 Certifying Authority.

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

22. **Trees Condition**

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees.

23. **Protection of rock and sites of significance**

- a) All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.

b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

24. **Pollution Control**

All stockpiles, materials, waste and slurry associated with works (including excavated material) is to be contained at source within the construction area and enclosed in waterproof covering and/or sediment and erosion control while not in use. All waste/debris is to be removed off site and disposed of as frequently as required in accordance to local regulations.

Reason: To protect the surrounding environment, and ensure that pollutants and building associated waste do not leave the construction site.

25. **Pollution Control**

Any excess materials such as cleaning paintbrushes, lacquers, and any water from cleaning tools must not enter the stormwater network and/or receiving waterways.

Reason: To ensure that building associated chemicals and pollutants don't enter the surrounding environment.

26. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection. (DACAHE01)

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

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Council's Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

28. **No Excavation of Exposed Rock Cliff Line or Lower Garden**

No excavation is to be undertaken that affects the rock cliff line visible at the rear of the dwelling or within the lower garden area to the south of the tennis court. All excavation work on the site is to be undertaken in accordance with the recommendations contained within the Preliminary Geotechnical Assessment prepared by AssetGeoEnviro dated 25 November 2019.

Reason: To ensure the protection of existing rock formations and ensure the safety and stability of the site.

29. **Noise and Vibration**

The construction of the development and preparation of the site, including operation of vehicles, must be conducted so as to avoid unreasonable noise or vibration and not cause interference to adjoining or nearby occupations.

Reason: To ensure the amenity of the surrounding area for residents

30. **Site Management Sign**

A clearly legible Site Management Sign is to be erected and maintained throughout the course of the works. The sign is to be centrally located on the main street frontage of the site and is to clearly state in legible lettering the following:

- The builder's name, builder's telephone contact number both during work hours and after hours
- That no works are to be carried out in Council's Road Reserve without prior application and approval of a Road Opening Permit from Council.
- That a Road Opening Permit issued by Council must be obtained for any road openings or excavation within Council's Road Reserve associated with development of the site, including stormwater drainage, water, sewer, electricity, gas and communication connections.
- During the course of the road opening works the Road Opening Permit must be visibly displayed at the site.
- That no skip bins or materials are to be stored on Council's Road Reserve.
- That the contact number for Northern Beaches Council for permits is 1300 434 434.

Reason: To ensure that contractors on site are aware of council permits that need to be obtained and contact for the builder/foreman.

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE**

31. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

32. **Post-Construction Dilapidation Report**

Post-Construction Dilapidation Reports, 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 reports 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 Certifying Authority prior to the issuing of any Occupation Certificate.

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

33. Installation of solid/fuel burning heaters

Installation work must be carried out by an appropriately experienced and qualified person and in accordance with the relevant provisions of AS2918:2001 – Domestic Solid Fuel Burning Appliances – Installation

Reason: To ensure the installation is completed in a legislatively compliant manner.

34. Certification of solid fuel burning heaters

A certificate from an appropriately qualified person indicating the system is compliant with all relevant legislation, Building Code of Australia, Australian Standards, Specifications and manufacturer requirements is to be submitted to Council prior to the operation of the solid fuel heater.

Reason: To ensure the system operates in a legislatively compliant manner.

35. 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 Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure bushland management. (DACPLF01)

36. Waste Management Confirmation

Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority 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.

37. Tennis Court Fencing

Chain Wire Fencing to a minimum height of 3m must be installed along both the eastern and western boundaries adjoining the tennis court and extend for a further 2.5m either side of the surfaced court area. Fencing should be black to reduce the visual impact on adjoining properties outlook.

Reason: To ensure adequate fencing is installed to reduce any impact on the adjoining properties.

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

38. Undesirable Trees

Leighton Green Cypress Cupressocyparis leylandii or any of its cultivars, must not be planted on the site for the life of the development. In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views, and loss of plant diversity.

39. **Environmental and priority weed control (PLEP)**

Condition: All weeds are to be removed and controlled in accordance with the Biodiversity Conservation Act 2016.

Reason: Preservation of environmental amenity.

40. **Maintenance of solid fuel heaters**

The owner/occupier shall ensure servicing of the heater is maintained according to the manufacturer's specifications.

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

41. **Operation of solid fuel burning heaters**

You are requested to take all practicable measures to prevent the likelihood of causing smoke and/or odour nuisances. Such measures should include:

- Using dry seasoned hardwood
- Storing wood in a dry well ventilated place
- Having a hot and well oxygenated fire
- Ensuring that the chimney flue is clean
- Checking the chimney at different stages of the fire to see if there is any smoke

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

42. **Control of Weeds**

Prior to the completion of works, all priority weeds (as listed under the Biosecurity Act 2015) are to be removed/controlled within the subject site using an appropriately registered control method. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>). All environmental weeds are to be removed and controlled. Refer to Council website http://www.pittwater.nsw.gov.au/environment/noxious_weeds

Reason: Weed management.

43. **No Planting Environmental Weeds**

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

44. **Dead or Injured Wildlife**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

45. **Domestic Animals Exclusion**

For the life of the development, cats are to be kept in a cat run and/or inside the dwelling such

that they are prevented from entering wildlife habitat areas at all times including the adjoining National Park. Dogs are to be kept in an enclosed area such that they cannot enter areas of bushland, unrestrained, on surrounding properties.

Reason: Wildlife protection

46. **No Artificial Tennis Court Lighting**

No artificial lighting is permitted to be installed to the tennis court.

Reason: To ensure the amenity of adjoining properties is maintained.