

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0291
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Responsible Officer:	Penny Wood
Land to be developed (Address):	Lot 1 DP 235732, 24 Carlton Street FRESHWATER NSW 2096
Proposed Development:	Alterations and additions to a semi-detached dwelling
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	No
Existing Use Rights:	Yes
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Rashid Mohammed Saleh Jane Margaret Saleh
Applicant:	Rashid Mohammed Saleh Jane Margaret Saleh

Application Lodged:	20/03/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	07/04/2020 to 25/04/2020
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 447,000.00
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PROPOSED DEVELOPMENT IN DETAIL

Alterations and additions to existing semi-detached dwelling. New carport along the northern side of the site utilising an existing crossover with storage underneath and associated landscaping works.

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 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 - B9 Rear Boundary Setbacks
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 1 DP 235732 , 24 Carlton Street FRESHWATER NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Carlton Street.</p> <p>The site is regular in shape with a frontage of 6.285m along Carlton Street and a depth of 37.415m. The site has a surveyed area of 241.9m².</p> <p>The site is located within the R2 Low Density Residential Zone from WLEP 2011 and accommodates a single storey original semi-detached dwelling adjoining 22 Carlton Street to the south. The site currently provides no off-street parking.</p> <p>The site presents a gradual slope from the front (eastern) boundary to the rear (western) boundary).</p> <p>The site provides no planting with the frontyard consisting of a turfed area and the backyard providing a turfed area and access stairs from the dwelling along the southern side of the site.</p> <p>Detailed Description of Adjoining/Surrounding</p>

Development

Adjoining and surrounding development is characterised by a mix of detached and semi-detached dwellings with a number of sites along Carlton Street providing off-street parking within the front setback.

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	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	Warringah Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration'	Comments
control plan	
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. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This 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> <p><u>Clause 143A</u> 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.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 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</p>

Section 4.15 Matters for Consideration'	Comments
	The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
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

- Does the existing use satisfy the definition of "existing use" under the *Environmental Planning and Assessment Act 1979* (the 'Act')?

Section 4.65 of the Act defines an existing use as:

"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and

(b) the use of a building, work or land:

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part 4 of the Act, have the effect of prohibiting that use?

Comment:

The Applicant has provided evidence in the form of an aerial photograph dated 1943 which indicates two (2) semi-detached dwellings located on separate lots known as 22 Carlton Street and 24 Carlton Street. This reveals that the use of the building commenced as a lawful purpose prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

2. Was the use of the land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The use of the land was not lawfully approved by Council given evidence of the development existing in its current form was provided in the form of an aerial photograph dated 1943 which indicates two (2) semi-detached dwellings located on separate lots known as 22 Carlton Street and 24 Carlton Street, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

3. Has the use of the land been carried out within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

The Applicant has provided evidence in the form of an aerial photograph dated 1943 which indicates two (2) semi-detached dwellings located on separate lots known as 22 Carlton Street and 24 Carlton Street, which reveals that the use of the land has existed and has continued in such use since that time, beyond the date on which the provision having the effect of prohibiting the use commenced.

- **What is “the land on which the existing use was carried out” for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”)?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: “if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose”.

Comment:

Having regard to the above case law, it is noted that the whole of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles that should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the NSW Land and Environment Court in this case will have general application in dealing with development applications that rely on existing use rights:

1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its

existing and likely future context is a matter to be considered in all planning assessments.

Comment:

The proposed development is located within an area that allows for buildings with a maximum height of 8.5m under Clause 4.6 of the WLEP 2011, 6.0m rear boundary setback, 6.5m front boundary setback and 0.9m side boundary setbacks under the WDCP 2011. It is understood that these (and all other relevant development standards and controls) do not strictly apply to the development. However, these controls are relevant in establishing the context of this particular locality. Given these controls, it is readily established that the area anticipates low scale residential development. The proposed development is in keeping with the bulk and scale of surrounding development and would result in a development that does not result in any unreasonable impact. The immediate vicinity of the subject site consists of dwellings of a similar height, bulk and scale

Given the above, the proposal is demonstrated to be of consistent bulk and scale to development existing within, and anticipated for, this locality. The proposal demonstrates a suitable relationship between the subject site and adjacent and surrounding sites in relation to existing and future context

2. What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.

Comment:

The proposed development does not include change of use. The proposal does not include demolition of an existing dwelling and includes alterations and additions to the existing dwelling.

3. What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Comment:

The proposed development is acceptable in relation to the amenity of the subject site and adjoining sites. The proposed development results in a minor reduction in solar access for the property to the south at 22 Carlton Street. However, the accompanying shadow diagrams prepared by Action Plans demonstrates that the adjacent site retains sunlight access consistent with the requirements of the WDCP 2011. The proposal retains adequate privacy (both acoustic and visual) for the subject site and adjacent sites, in accordance with the requirements of the WDCP 2011. The proposed development results in reasonable view sharing.

4. What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower

amenity than development generally.

Comment:

The development proposes reasonable amenity for the occupants of the dwelling. Given the development proposes alterations and additions to an existing semi-detached dwelling, reasonable amenity is provided by the location of windows along the northern elevation servicing rooms at both ground and first floor.

Conclusion

Existing use rights have been established as detailed above and the proposal is supported based on the continuation of the existing use as a semi-detached dwelling in a built form that is consistent with the Planning Principle.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Site Specific Designs	11 Hill Street WARRIEWOOD NSW 2102
Mr Phillip John Brannigan Colleen Anne Brannigan	26 Carlton Street FRESHWATER NSW 2096
Ms Sheralee Patricia Hogan	C/- Site Specific Designs 11 Hill Street WARRIEWOOD NSW 2102

Three (3) submissions were received from the neighbouring property at 26 Carlton Street. The first submission was received during the notification period. The second submission was received in relation to the certified height poles which were erected along the northern side of the subject site to reflect the height of the development in relation to the potential view loss of the two ground floor windows located along the southern side of 26 Carlton Street which service a kitchen/living area. The third submission received on 15 July 2020 addressed concern in relation to the amended plans which reduced the size of the first floor balcony along the front of the site and the obscure glazing proposed for two (2) windows along the northern elevation of 24 Carlton Street. The following issues were raised in the submissions received by the occupants of 26 Carlton Street and each have been addressed below:

- Privacy
- Front Boundary Setback
- Landscape Open Space
- Building Bulk
- Inadequate details sited on plans
- Side Boundary Envelope
- Existing use of a semi-detached and potential impacts of developing the dwelling
-

The matters raised within the submissions are addressed as follows:

- Privacy

Comment:

Concern has been raised in regard to the level of privacy and potential overlooking towards the windows and private open space of 26 Carlton Street. The development proposes five (5) windows along the northern elevation at first floor level. Four windows service bedrooms with one window servicing an ensuite. Amended plans were received on 29 June 2020 which reduced the length of the first floor balcony off the master bedroom along the eastern elevation of the dwelling. As a result of the amended balcony and in response to the concerns raised by the occupants of 26 Carlton Street, the ensuite was relocated to the northern side of the dwelling creating a new window along the northern wall. The revised plans indicate that the master bedroom window and an ensuite window along the northern elevation are to be obscure glaze. The three bedroom windows along the northern elevation do not propose obscure glaze and given the dwelling is semi-detached it would be unreasonable for these windows to be highlight windows. However given bedroom 4 at the rear of the dwelling provides a window along the western (rear) elevation, a condition is imposed to ensure this window is a highlight window with a minimum sill height of 1.7m. The use of these rooms at first floor are bedrooms which are not considered to be used as frequently as kitchen/living areas and therefore not provide more frequent opportunity for overlooking.

As mentioned, the revised plans have amended the balcony off the master bedroom to be setback 1.0m from the northern wall elevation. Given the close proximity to the raised ground floor windows which service kitchen/living areas of 26 Carlton Street, a 1.6m high privacy screen is to be erected along the northern elevation of the balcony to reduce any potential for overlooking

- Front Boundary Setback

Comment:

Concern is raised in regard to the location of the carport within the front setback. The carport proposes a nil setback to the front boundary. Amended plans were received on the 4 May 2020 at the request of Council's Development Engineer to provide 1.0m clearance from the power pole. As a result the carport was relocated to the northern boundary. This amendment created a favourable outcome providing additional open space to the southern side of the site allowing for a greater area to provide landscaping and in turn reducing the bulk and scale of the development. Nil setbacks for carports are common within the immediate locality.

- Landscape Open Space

Comment:

Concern was raised in regard to the non-compliant level of landscape open space for the site. Given the small size of the site and narrow width (6.285m), it is difficult to achieve a compliant level of landscape open space as per the DCP control - D1 Landscape Open Space and Bushland Setting. The relocation of the carport to the northern boundary assists in creating a larger area which provides sufficient space for deep soil planting. This will assist in softening the built form and will provide a greater sense of openness for the site when viewed from Carlton Street. The level of landscape open space proposed for the site is consistent with surrounding development.

- Inadequate details shown on plans

Comment:

It was raised within the submission that the proposed plans did not indicate dimensions to allow for an accurate assessment of the proposal. Whilst limited dimensions were proposed, a detailed assessment was conducted by Council's Assessment Officer through the use of Council's measuring tool. The survey submitted with the development application has been prepared by a Suitably Qualified Registered Surveyor and is thereby taken to be correct and while some minor discrepancies may exist between the submitted survey and the survey undertaken for 26 Carlton Street, an assessment of the proposal is carried out based on the documentation submitted with the subject application. Any non-compliances have been measured from the submitted plans and addressed accordingly throughout the report.

- Side Boundary Envelope / Building Bulk

Comment:

Concern is raised in regard to the side boundary envelope along the northern elevation of the site. An assessment of the proposal indicates that the non-compliant building envelope is greatest at the rear of the dwelling as a result of the topography of the site. The wall height along the northern elevation measures 5.8m at the front (eastern end) of the dwelling and increasing to 7.2m at the rear of the dwelling. The length of the wall has also been slightly reduced as a result of the balcony being set in 1.0m from the northern wall. It is noted that the wall does provide no relief or articulation, however the dwelling provides a 1.1m setback to the northern side boundary, complies with the prescribed wall height and building height with the building envelope proposing a minor non-compliance of 0.8 at the rear of the dwelling. The narrow width of the site (6.285m) does reduce the useable footprint for a first floor addition. Whereby properties are afforded a wider site, the ability to provide a more articulated design presents itself. To provide a more usable primary living area on the ground floor and bedrooms of a compliant size which provide reasonable amenity on the first floor, the constraints of the site do impact the design. However given the development proposes compliant wall heights, building heights and the northern side setback, the minor non-compliant building envelope is considered reasonable in these circumstances.

- Existing Use Rights / Development of the semi-detached dwelling

Comment:

The objection has raised concern with the scale of the development for a semi-detached dwelling. The development application has provided information establishing existing use rights of the subject semi-detached dwelling. The proposed works have been assessed against the relevant controls and is considered acceptable. This is discussed within the *Existing Use Rights* section within the assessment report. Whilst it is observed that the development of both 22 Carlton Street and 24 Carlton Street will increase the existing bulk and scale of what currently exists at both sites, the development proposes a compliant building height, wall heights, side setbacks for the dwelling and a generous front setback to Carlton Street from the front facade. The dwelling will be compatible with surrounding development and will present as a dwelling that is compatible with the existing streetscape of Carlton Street.

- View Loss

Comment:

As a result of the potential view loss, height poles were requested by Council on 7 May 2020 to assess the impact on existing views obtained from 26 Carlton Street. Height poles were erected on 18 May 2020. A visit to the site indicated that the height poles were not erected in the requested location as stated in the letter sent from Council. This issue was raised with the applicant and the poles were relocated. A second visit to the site was carried out by Council's Assessment Officer on 27 May 2020 to inspect the location of the height poles, which along with a letter from a Registered Surveyor (Total Surveying Solutions) certifying the location of the two (2) height poles. A detailed assessment on views has been carried out in Section D7 Views in the body of the report. The submission has requested design changes for the development.

Amended plans have addressed the privacy concerns of the master bedroom and ensuite windows which are to be obscure glaze. A 1.6m high privacy screen is to be erected along the northern side of the first floor balcony off the master bedroom.

- Stormwater Disposal from Low Level Property

Comment:

Concern was raised in regard to the compliance with Council's "Warringah Water Management Policy PL 850" in particular the Stormwater Drainage from Low Level Properties Technical Specification. A condition of consent imposed by Council's Development Engineer is imposed to address compliance with this requirement.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	Reference is made to Development Engineering Referral Response dated 6/4/20 and additional information provided by the Applicant. No objections are raised to the proposed development, subject to conditions.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

All, Environmental Planning Instruments (SEPPs, 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. A2839313_07, dated 6 January 2020).

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.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.6m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7.2m	N/A	Yes
B3 Side Boundary Envelope	5m	Max 0.8m high for a length of 10.3m	12.9%	No
B5 Side Boundary Setbacks	N: 0.9m	1.2m (dwelling) 280mm (carport)	N/A 68.9%	Yes No
	S: 0.9m	0.1m (deck) 0.2m (pergola)	89% 78%	No No
B7 Front Boundary Setbacks	6.5m	Nil (carport) 11.4m (dwelling)	100% N/A	No Yes
B9 Rear Boundary Setbacks	6m	4.6m (stairs) 5.1m (deck) 7.0 (dwelling)	23.4% 15% N/A	No No Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (96.76sqm)	22.8% (55.2sqm)	57%	No

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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	No	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

Clause B3 of the WDCP 2011 requires development to be located within the prescribed building envelope. For this particular property, the building envelope is determined by projecting planes at 45 degrees from 5m above the existing ground level at side boundaries. The proposed development results in a numerical non-compliance to this control along the northern elevation, particularly towards the rear of the development as a result of the sloped topography. The non-compliance presents an 16% breach to the control with the non-compliant building envelope measuring a maximum of 0.8m in height for a length of 10.6m.



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:

Given the dwelling is semi-detached, the non-compliant building envelope is subject to the northern elevation. The site slopes gradually towards the rear of the site from Carlton Street with the building envelope non-compliance reflecting this. The northern first floor wall measures 17.6m in length with the non-compliant building envelope measuring 10.6m in length. The greatest breach to the side boundary envelope is concentrated towards the rear of the development at a maximum of 0.8m in height and reducing in height towards the central portion of the northern wall. The development will be located below the 8.5m height control and proposes a 1.1m setback to the northern side boundary. The development also proposes a compliant wall height of 7.2m at the rear of the development which gradually decreases in height to 5.8m at the front of the dwelling. Whilst the proposal will extend past

the rear building line of 26 Carlton Street the development proposed generous side setbacks, a compliant building height, compliant wall height and will not reduce the level of solar access enjoyed by the occupants of 26 Carlton Street. The extent of non-compliance is towards the rear of the dwelling and result of the topography of the land, given the location of the non-compliance the resultant of dwelling will not be of unreasonable bulk and scale.

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

Comment:

The subject dwelling and immediate adjoining dwellings have an east west orientation with the land sloping from the eastern (front) boundary to the western (rear) boundary. The adjoining semi-detached property to the south and 20 Carlton Street will receive some additional overshadowing given the east west orientation of the sites located along this section of Carlton Street. Whilst additional overshadowing is proposed, 50% of the private open space of 22 Carlton Street will receive adequate solar access. No submissions were received in regard to potential overshadowing towards adjoining properties.

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

Comment:

The majority of the works associated with the development are confined to the existing building footprint where the building envelope non-compliance is evident and do not alter the natural topography of the site. It is concluded that the first floor addition is appropriate for the site, given no unreasonable amenity or streetscape impacts will arise as a consequence of the development

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

B5 Side Boundary Setbacks

Description of non-compliance

Clause B5 of the WDCP 2011 requires development to be setback at least 0.9m from side boundaries. The proposed carport presents a 280mm setback from the northern side boundary, which fails to comply with this control.

Merit consideration

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

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

Comment:

The development does propose to reduce the landscape open space for the site given the proposed carport within the front setback. However within both the frontyard and backyard, adequate space is provided for deep soil landscape areas. The carport located towards the northern boundary from the originally proposed central position will allow for a garden bed to be

located along the southern side of the site allowing for additional planting to assist in softening the built form.

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

Comment:

Given the narrow width of the site (6.285m), the location of the carport will ensure the southern half of the site when viewed from Carlton Street will remain open and will provide adequate space for landscaping. The carport is an open style structure which will also assist in reducing the bulk and scale of the structure when viewed from Carlton Street.

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

Comment:

Whilst the proposed carport presents a 280mm setback to the southern boundary, the carport is an open structure and is consistent with other carports located along Carlton Street. Opportunity for deep soil planting along the southern side of the carport will assist in minimising the bulk and scale of the dwelling.

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

Comment:

The garage is not a habitable structure and therefore, no unreasonable privacy impacts will arise as a result of its location. Furthermore, the proposed garage will be constructed to a maximum height of 3.2m above the existing ground level. Having regard to the modest height of the structure, it is not anticipated that the proposal will give rise to unreasonable view loss.

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

Comment:

The carport will not impact on existing views retained from 26 Carlton Street.

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

B7 Front Boundary Setbacks

Description of non-compliance

Clause B7 of the WDCP 2011 requires development (excluding driveways, letter boxes, garbage storage areas and fences) to be setback at least 6.5m from front boundaries. The carport proposes a nil setback from the eastern front boundary, which fails to satisfy the prescribed requirement.

Merit consideration:

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

To create a sense of openness.

Comment:

Considering the carport is an open structure with no enclosed walls, the development will not unreasonably detract from a sense of openness within the front yard.

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

Comment:

There are examples of similar parking arrangements constructed within the front setback area prevalent within the locality. In this regard, the proposal will not disrupt the visual pattern of development within the area.

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

Comment:

Having regard to the modest height and scale of the proposal, the proposal is not considered to detract from the visual qualities of the streetscape.

To achieve reasonable view sharing.

Comment:

As noted earlier in this report, the proposal will not give rise to unreasonable view loss.

Having regard to the above assessment, it is concluded that the applicable objectives of the control have been achieved. Therefore, the application is supported on merit.

B9 Rear Boundary Setbacks

Description of non-compliance

This control requires development to be setback 6m from the rear boundary line. The proposed deck and stairs will result in a rear boundary setback of 5.1m and 4.6m respectively. This represents a variation to the control of 15% and 23.4%, respectively. An open pergola structure currently exists within the rear setback presenting a 0.3m setback.

Merit consideration:

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

To ensure opportunities for deep soil landscape areas are maintained.

Comment:

While the proposed deck and stairs will create minor additional hardstand surface on the site, the

retention of turf within the rear yard will continue to ensure opportunities for deep soil landscaped areas are maintained.

To create a sense of openness in rear yards.

Comment:

The proposed deck and stairs is open with no roof. The existing pergola is an open structure also retaining a sense of openness in the rear yard.

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

Comment:

The rear boundary line is represented by a solid fence of approximately 1.8m in height. This application does not involve the removal of the fence as a result of the proposed development. As such, a reasonable level of privacy is afforded to the occupants of the subject site and those of adjoining properties, particular 22 Carlton Street and 49 Wyndora Avenue.

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

Comment:

Given the narrow depth of the backyard, the site is limited to the amount of compliant development permitted. As such, the proposed deck will maintain the existing visual continuity and pattern of buildings, rear gardens and landscape elements within the immediate vicinity.

To provide opportunities to maintain privacy between dwellings.

Comment:

As discussed above, the existing rear boundary fence will continue to provide and maintain privacy between dwellings.

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 section 5(a) 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

Clause D1 of the WDCP 2011 requires at least 40% (96.76sqm) of the site area to be landscaped open space (LOS). In calculating LOS, the water surface of swimming pools and impervious surfaces which occur naturally such as rock outcrops are included in the calculation, whereas landscaped areas with dimensions less than 2m are excluded from the calculation. The proposed LOS equates to 22.8% (55.2sqm) of the site area, which fails to comply with this control. This represents a 57% variation to the numeric control.

Merit consideration

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

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

Comment:

The proposed area for landscaped open space allows for sufficient planting on the subject site. The area located south of the carport, whilst not included in the LOS calculation will allow for additional planting to enhance the streetscape. The proposed area allocated for landscaped open space is consistent with that of properties located along Carlton Street.

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

Comment:

The subject site does not contain any indigenous vegetation or landscaped features.

- *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 application proposes multiple deep soil areas around the site to allow for a sufficient area to enable the establishment of further planting.

- *To enhance privacy between buildings.*

Comment:

Planting to the rear and northern side of the site, while not relied on for visual privacy may help offset privacy between properties.

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

Comment:

Given the small size of the site compared to the adjoining properties, both the backyard and frontyard of the site would provide appropriate recreational opportunities to sufficiently meet the needs of the occupants.

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

Comment:

The site contains a sufficient amount of space to service functions, including clothes drying.

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

Comment:

The proposal does slightly reduce the existing levels of pervious surface by way of increasing the building footprint towards the front of the site and the new carport. However given the size of the site being under 250sqm, the amount of LOS is considered acceptable and is consistent with the level of LOS on adjoining properties located on larger sites. The capability of infiltration of stormwater is considered acceptable to facilitate water management. A condition has been imposed by Council's Development Engineer to ensure stormwater from the new development shall be disposed of to an existing or approved system in accordance with Council's "Water Management Policy PL 850".

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

D7 Views

Merit consideration

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 occupants of 26 Carlton Street currently enjoy extensive filtered whole land and water views of the Tasman Sea, Queenscliff Head and North Head. A reasonable amount of this view is unobstructed, with portions obscured by existing vegetation. These views have been identified in the images below.



Image 1: Photo taken from kitchen/living area at ground floor of 26 Carlton Street looking south east.



Image 2: Photo taken from the study at first floor of 26 Carlton Street looking south east



Image 3: Photo taken from kitchen/living area at ground floor of 26 Carlton Street looking south east.



Image 4: Photo taken from the first floor balcony of 26 Carlton Street looking south east.

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 occupants obtain their views from multiple locations within the property, predominantly from the ground floor living / dining room and from the study, sitting room and balcony located on the first floor. Height poles were erected at the request of Council to ascertain the level of potential view loss from the ground floor windows of 26 Carlton Street. These views are accessed across the southern side boundary of 26 Carlton Street. It is assessed that any view loss from the first floor of 26 Carlton Street is negligible given the ridgeline of 24 Carlton Street at the highest point of the development at RL39.229 and is below the sill height of the windows located along the southern elevation of 26 Carlton Street at approximately RL39.78.

The proposed alterations and additions will result in the most western window at ground floor of 26 Carlton Street been detrimentally impacted when viewed from a seated or standing position. This window services the living/dining area of the dwelling. The most eastern window at ground floor level will be moderately impacted, given the location of existing vegetation resulting in a filtered land and water view.



Image 5: Image taken of the southern elevation of 26 Carlton Street. Both ground floor windows service the kitchen/living area with the window highlighted being detrimentally impacted by the proposal.

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 proposed alterations and additions to the dwelling house will result in negligible views being impacted from all first floor windows and the balcony of 26 Carlton Street. The view that will be impacted by the development is located at ground floor from the living area across the southern side boundary of 26 Carlton Street. As indicated by the certified height poles erected within the front setback of the subject site, the proposal will completely obstruct the distant water and land views obtained from the most eastern ground floor window at the ground floor of 26 Carlton Street. The views from the most western window along the southern elevation at ground floor will be moderately impacted. 24 Carlton Street has never been developed and as a result maintains the original generous front setback of approximately 15.8m. 26 Carlton Street retains it's existing footprint, however has been more recently developed and given a substantially lesser front setback, obtains distant water and land views towards the south east from all windows (ground and first floor) of the southern elevation. Whilst the views from the ground floor windows will be moderately to severely impacted, the views at first floor from the sitting room, study and balcony will be entirely unaffected. In the context of the site and the provision of views that are obtainable, it is considered that the view loss caused by this development could be described as negligible to moderate.

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 development is recognised as having some built form non-compliances. It is however considered that the compliant height, wall heights, front setback and side setbacks to the dwelling and building envelope to the front portion of the dwelling towards Carlton Street results in a development which is designed consistently with the height of surrounding properties and is considerably lower than 26 Carlton Street to the north. The narrow width (6.285m) of the subject site should be considered when assessing the development potential of the site. The subject dwelling is in it's original form and proposes to extend the front portion of the dwelling at ground and first floor by 4.4m which incorporates a 1.4m wide balcony at first floor. Revised plans were received which reduced the length of balcony by 1.0m providing some relief and articulation to the northern elevation. Whilst the development will impact on the views obtained from the ground floor windows (particularly the most western window) it is unreasonable to maintain views across a side boundary from a window located at ground floor located in a central position of the site. The affected widow measures approximately 14.m from the front boundary. It is appreciated that the affected windows service a kitchen/living area, however the development will maintain extensive and uninterrupted views from windows located along the southern elevation and the balcony located at first floor.

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

Comment:

The proposed design ensures that existing views are maintained from the first floor windows and balcony of 26 Carlton Street. The proposal is predominantly compliant particularly within the

front portion of the dwelling adjacent to the southern elevation of 26 Carlton Street. The development maintains an 11.4m front (from the dwelling) setback which is considered generous within the immediate vicinity along Carlton Street. The narrow width of the site limits the development potential for the subject semi, however compliance with the front and side setback controls (for the dwelling) and height controls results in a development that is sensitive to the site constraints and will not result in an overbearing development when viewed from Carlton Street. Given the majority of extensive views towards the Tasman Sea and the extensive views towards Queenscliff Head and North Head over a side boundary are maintained, the application is considered to achieve a reasonable level of view sharing.

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

Comment:

The proposed development will not result in the loss of canopy trees on site and will take priority over any views obtained by the subject site and neighbouring properties.

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

D8 Privacy

Merit Assessment

The development proposes to retain the existing 1.1m setback to the northern boundary. Privacy concerns have been raised from the neighbouring property to the north. Revised plans have proposed obscure glass to the master bedroom and ensuite along the northern elevation. This will mitigate any overlooking towards the living/kitchen area of 26 Carlton Street.

An additional three (3) windows servicing three (3) bedrooms are located along the northern elevation. Given Bedroom 4 has a window along the western elevation and the northern elevation, a condition is imposed to ensure the window located along the northern elevation of Bedroom 4 has a minimum sill height of 1.7m to provide additional privacy for the occupants. Whilst the windows of bedroom 2 and bedroom 3 will potentially allow for overlooking towards the private open space of 26 Carlton Street, it is unreasonable to request these windows to be obscure glazing or highlight windows given the dwelling is semi-detached and there is no opportunity to provide adequate light and outlook to these rooms. These windows will service bedrooms and are therefore not considered as frequently used as kitchen/living rooms which are located at ground floor level.

The development proposes a balcony off the master bedroom fronting Carlton Street. Revised plans have reduced the length of the balcony by 1.0 from the northern wall, creating a 2.0m setback to the northern boundary and a 2.9m setback to the most eastern ground floor window along the southern elevation of 26 Carlton Street. Concern was raised from 26 Carlton Street regarding potential overlooking towards the living room windows located along the southern elevation. The balcony has been designed and sited so as to ensure sufficient spatial separation is afforded between buildings. Whilst this is acknowledged, it is considered necessary to impose additional privacy mechanisms to protect amenity. The elevation of the balcony, in conjunction with its assumed regular use, may result in overlooking opportunities (and may add to the perception of being overlooked) for the directly adjoining properties. In this respect, it is considered necessary to impose a condition of consent requiring privacy screening to a height of 1.6m be implemented along the northern elevation of the balcony. Currently direct lines of sight into the property to the south exist, due to the absence of vegetation or any other

visual buffers. The conditioned privacy screening will therefore deflect viewing from such property to protect privacy for the subject dwelling occupants and those of the adjoining property.

D9 Building Bulk

Description of non-compliance

Clause D9 of the Warringah Development Control Plan 2011 (WDCP 2011) requires a development to limit large areas of continuous wall plans by varying building setbacks and using appropriate techniques to provide visual relief. The control also requires walls to be articulated to reduce building mass. Given the dwelling is semi detached, the extent of the non-compliance is confined to the northern wall of the development.

Merit consideration

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

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

Comment:

The proposal provides for a two (2) storey semi-detached dwelling house, which is compatible to the scale of surrounding residential developments within the locality. Furthermore, the proposal remains within the statutory height limit and complies with the WDCP 2011 requirements for setbacks, wall height. Moreover, the proposal has been appropriately designed to minimise overshadowing impacts upon adjoining properties. Additional privacy measures have been imposed to reduce the level of overlooking towards adjoining properties. In this regard, it is considered that the proposal satisfies this objective.

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

Comment:

The proposal incorporates a 1.1m side setback to the northern boundary. Whilst the wall is continuous along the northern boundary, the development proposes a compliant wall height for the entirety of the northern elevation. It should be noted that given the sites narrow width (6.285m) along with a 1.1m side setback, the development potential is limited given the existing footprint of the dwelling and as such the proposed design ensures there are no unreasonable visual impacts upon the streetscape. In this regard it is considered that the proposal satisfies this objective.

Having regard to the above assessment, it is concluded that the application satisfies the objectives of this control. Therefore, the proposal is supported on merit.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly effect 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 \$4,470 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$447,000.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, 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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2020/0291 for Alterations and additions to a semi-detached dwelling on land at Lot 1 DP 235732, 24 Carlton Street, FRESHWATER, subject to the conditions printed below:

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
DA02	29 June 2020	Action Plans
DA04	29 June 2020	Action Plans
DA05	29 June 2020	Action Plans
DA07	29 June 2020	Action Plans
DA08	29 June 2020	Action Plans
DA09	29 June 2020	Action Plans
DA10	29 June 2020	Action Plans
DA11	29 June 2020	Action Plans
DA12	29 June 2020	Action Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A289313_07	06 January 2020	Action Plans
Preliminary Geotechnical Assessment	August 2017	Jack Hodgson Consultants Pty Ltd

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:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Northern Beaches Waste Management Plan	-	Rashid Saleh

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. **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.

3. 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) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 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.

4. Highlight Window

Window W07 servicing bedroom 4 at first floor is to have a minimum sill height of 1.7m above the Finished Floor Level.

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$4,470.00 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 \$447,000.00.

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 \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security 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, 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. 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.

9. Structural Adequacy and Excavation Work

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- (a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- (b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

10. **Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

11. **Compliance with Standards**

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

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

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

12. **Privacy Screen**

A 1.65 metre privacy screen (measured from finished floor level) is to be erected for the entire length of the outermost northern edge of the balcony located off the master bedroom as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

Reason: In order to maintain privacy to the adjoining / nearby property. (DACPLC06)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

13. **Public Liability Insurance - Works on Public Land**

Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of, and approved works within Council's road reserve or public land, as approved in this consent. The Policy is to note, and provide protection for Northern Beaches Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public land.

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. **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.

15. Removing, Handling and Disposing of Asbestos

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

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

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

16. Demolition Works - Asbestos

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

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

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

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

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

17. Vehicle Crossings

The Applicant is to construct one vehicle crossing 3.2 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/3 NL and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

OCCUPATION CERTIFICATE

18. **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.

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

Signed



Penny Wood, Planner

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



Anna Williams, Manager Development Assessments