

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2018/0830
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<b>Responsible Officer:</b>	Nick England
<b>Land to be developed (Address):</b>	Lot A DP 345655, 23 Moore Road FRESHWATER NSW 2096
<b>Proposed Development:</b>	Alterations and Additions to existing dual occupancy
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	Yes
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Richard Alfred Roberts
<b>Applicant:</b>	Richard Alfred Roberts

<b>Application lodged:</b>	21/05/2018
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	24/05/2018 to 11/06/2018
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 615,000.00
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### 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 - Zone R2 Low Density Residential

Warringah Development Control Plan - B7 Front Boundary Setbacks

Warringah Development Control Plan - C3 Parking Facilities

Warringah Development Control Plan - D6 Access to Sunlight

## SITE DESCRIPTION

<b>Property Description:</b>	Lot A DP 345655 , 23 Moore Road FRESHWATER NSW 2096
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the corner of Moore Road and Moore Lane.</p> <p>The site is regular in shape with a frontage of 14.225m along Moore Road and a frontage of 30.48m along Moore Lane. The site has a surveyed area of 433.5m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a duplex consisting of 2 dwellings, with Unit 1 located on the ground floor and Unit 2 on the 1<sup>st</sup> floor. A separate garage and laundry is located to the rear, accessed from Moore Lane.</p> <p>The site has a north aspect with a slight slope falling down towards the Moore Road frontage. No significant vegetation exists on the site.</p> <p>Adjoining and surrounding development is characterised by a mixture of residential flat buildings and dwellings.</p>

Map:



## SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

1941: Architectural plans provided in previous application (DA2007/0368) titled "Proposed Duplex Homes" (including garage) dated from 16 June 1941.

1966: Survey plan provided to Council, dated 19 December 1966. This survey plan (and accompanying report) demonstrates the duplex building existing on the site. The survey plan demonstrates that the building is consistent with the previous architectural plans.

DA2007/0368: Application for "Alterations and Additions to an Existing Residential Flat Building" approved by Council on 23 October 2007. On the discussion relating to existing use rights in the report, it is noted that Council has been rating the property as having 2 dwellings since 1962. This consent was not physically commenced and has since lapsed.

## PROPOSED DEVELOPMENT IN DETAIL

The application consists of the alterations and additions to an existing *dual occupancy (attached)*. In detail, the works incorporate:

- Internal alterations to the ground floor (Unit 1) to reconfigure the existing layout, add additional bedroom 2, connect the unit with the existing garage and provide a terrace on the Moore Road frontage; and
- Internal alterations and additions to the 1<sup>st</sup> floor (Unit 2) to reconfigure the existing layout, add 2 bedrooms with a balcony to the rear and provide a balcony on the Moore Road frontage.

In consideration of the application a review of (but not limited) documents as provided by the applicant

in support of the application was taken into account detail provided within Attachment C.

## 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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;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&amp;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&amp;A Regulation 2000, permits Council to request additional information. However, no additional information was requested.</p> <p><u>Clause 92</u> of the EP&amp;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&amp;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&amp;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&amp;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) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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

The subject land contains a brick duplex, which consistent with the definitions of WLEP 2011 is considered a dual occupancy (detached).

Under the current R2 Low Density Residential zone, this land use is prohibited. However consent may granted if it can be established that the proposed development satisfies the existing use rights provisions within Division 4.11 Existing Uses of the EP&A Act 1979.

The applicable requirements of this Division to the proposed development are discussed below:

- **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 meaning:

*"(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 this Division, 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 4.11 of the Act, have the effect of prohibiting that use?

Comment:

The applicant has provided evidence in the form of original architectural plans and historical land surveys which reveals that the use of the land as a dual occupancy (attached) commenced as a lawful purpose in 1941, 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:

No specific record exists of a consent to the original building, however historical documentation demonstrates that the duplex building was likely to have been constructed some time after 1941, with a survey from 1966 demonstrating that this duplex was in existence by this time. Council have been charging rates on the subject land based on 2 dwellings since 1962 and a development consent to alter the existing building was issued by Council in 2007. In this consent, Council determined that existing use rights applied under the then in force Warringah Local Environmental Plan 2000. Based on these circumstances, it can be reasonably assumed that the building was lawfully approved by Council prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

3. Has the use of the building 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:

There is no evidence to prove that the duplex has not been used for any longer than 12 months since the consent took effect on the land. This question is hence satisfactorily addressed.

- **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: “that 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 which 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 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 application complies with all of the relevant numerical development standards and controls, with the exception of the front setback control specified under WDCP 2011. This non-compliance is discussed elsewhere in this report, which in summary finds that the proposed setbacks are consistent with the objectives of this control. It should also be noted that similar multi-dwelling land uses adjoin the site to the east and west. Under the circumstances, the proposed development is predominantly of a character that will be consistent with new permissible development in the zone.

**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 works are an addition to an existing building, which has demonstrated compliance with the requirements and objectives of the relevant DCP. The proposed development is hence consistent with this principle.

**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:

An assessment of the potential impact of the development is undertaken elsewhere in this report. In summary, the proposed development is considered to not have adverse impact on the amenity of the adjoining residents and is consistent with this principle.

#### 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 internal amenity of Unit 1 and 2 will not be adversely effected by the proposed works. The provision of new window openings, additional areas of private open space and additional car parking spaces will all contribute to an improved amenity for the units and the proposed development is hence consistent with this principle.

#### Conclusion

The use has been approved under previous legislation (likely to be the *Local Government Act 1919*) and therefore, is a lawful use. Subsequently, the use can be retained under the current EPI (WLEP 2011). Existing use rights have been established to exist on the site and the proposed development is considered to be consistent with the relevant provisions of Division 4.11 of the EP&A Act 1979.

#### 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 2 submission/s from:

Name:	Address:
Mr John Thorpe	4 Charles Street FRESHWATER NSW 2096
Boston Blyth Fleming Pty Ltd	1 / 9 Narabang Way BELROSE NSW 2085

Two (2) submissions were received during the notification period, however they relate to the same property, No.4 Charles Street.

The following issues were raised in the submission, which are summarised and addressed as follows:

- *The setback of the development from the land's south-western boundary is inadequate and will*



*have an adverse impact on the acoustic and visual privacy of the adjoining land at No.4 Charles Street.*

Comment: The setback of the additions to the rear of the existing additions are considered to be adequate. Based on the requirements of WDCP, the site is considered to be a corner allotment and hence the minimum "side" setback of 0.9m applies to the south-western boundary of the site, with no rear setback applying. The setback of the proposed additions from this boundary are 2m for the ground floor and 3.5m from the 1<sup>st</sup> floor. The south-west elevation has no significant openings which will cause an adverse impact in respect to the privacy of any adjoining residence. Hence, refusal of the application based on this issue is not warranted.

- *The extent of the overshadowing to the rear yard of No.4 Charles Street will be significant and unreasonable.*

Comment: The shadow diagrams provided with the application demonstrate that the extent of the shadow cast by the proposed development will comply with the solar access requirements of Part D6 Access To Sunlight of WDCP 2011.

- *The shadow diagrams provided with the application do not demonstrate the additional level of overshadowing created by the proposed development.*

Comment: The numerical requirements for Part D6 requires that new development ensures a minimum area and period of solar access for the private open space of adjoining properties. Hence, the information provided with any application needs to simply demonstrate that this standard has been achieved. There is no specific requirement in WDCP 2011 to demonstrate the additional area of overshadowing. The plans provided by the applicant demonstrate that the development will comply with the solar access requirements of WDCP 2011.

- *The visual impact of the proposal will be adverse when viewed from the adjoining property at No.4 Charles Street and not consistent with Council's policies on visual bulk.*

Comment: As stated elsewhere in this report, the development has achieved compliance with the majority of the development controls within WDCP 2011. In this regard, the built form of the proposed works are typical to the expected form of new development in the vicinity under Council's policies. In this regard, the visual impact of the proposal is not considered unreasonable.

- *Insufficient detail is provided to demonstrate that the proposed development will comply with the landscaped open space requirements of Council.*

Comment: Sufficient detail has been provided to determine the extent of landscaped open spa

- *Conditions should be applied to the proposed balcony and windows on the south-west and south-east elevations, to minimise privacy impacts on the adjoining property at No.4 Charles Street.*

Comment: The windows on the south-east elevation are minor in size and are not considered to have an adverse impact on the privacy of adjoining dwellings. The balcony on the south-west elevation has minor dimensions, with a depth of less than 2m and oriented towards the Moore

Lane frontage of the site. Under the circumstances, no special conditions are considered necessary to be applied to these aspects of the development.

## MEDIATION

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The plans indicate additional built form over the site and removal of 1 tree. No landscape plan was sighted with the application.</p> <p>In view of the proposed additional built form and to better integrate the building into the streetscape, it is recommended that a minimum of 2 small trees be planted on the Moore Rd frontage of the site. Small trees (4m) are recommended so as to not impede district views but still provide a level privacy to residents, softening the bulk and scale of the building and environmental amenity to the street front.</p> <p>Relevant controls:  <i>B7 Front Boundary Setbacks</i>  <i>D1 Landscaped Open Space and Bushland Setting</i>  <i>D8 Privacy</i>  <i>D9 Building Bulk</i></p> <p>No objections subject to conditions as recommended.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The subject site is outside the adopted Flood Planning Level extent. No flood related development controls applied. Refer to Development Engineering referral for any relevant local stormwater comments and 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>

## 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.



Standard*	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	6.9m	N/A	Yes

\* Note: As the site is subject to existing use rights, the provisions of development standards do not strictly apply.

#### Compliance Assessment

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

#### Detailed Assessment

### Zone R2 Low Density Residential

Whilst the existing *attached dual occupancy* is prohibited in the zone, the site is considered to enjoy the benefits of existing use rights and is hence permissible with consent.

### Warringah Development Control Plan

#### Built Form Controls

Built Form Control*	Requirement	Proposed	% Variation**	Complies
B1 Wall height	7.2m	6.8m	N/A	Yes
B3 Side Boundary Envelope	5m (east)	No breach	N/A	Yes
	5m (south)	No breach	N/A	Yes
B5 Side Boundary Setbacks	0.9m (east)	2.2 - 6.3m	N/A	Yes
	0.9m (west)	2 - 3.5m	N/A	Yes
B7 Front Boundary Setbacks	6.5m (primary)	4.3m	34	No
	3.5m (secondary)	2m (ground floor)	42	No
B9 Rear Boundary Setbacks	N/A (corner allotment)	N/A	N/A	N/A
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	216.4m <sup>2</sup> or 50%	N/A	Yes

\*Note: As the site is subject to existing use rights, the provisions of development controls do not strictly apply.

\*\*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	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B7 Front Boundary Setbacks	No	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	Yes	Yes
D2 Private Open Space	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
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

#### **B7 Front Boundary Setbacks**

##### Description of non-compliance

The setback of the proposed balconies on the primary Moore Road frontage is 4.3m, which is a 34% variation with the 6.5m minimum.

The setback of the ground floor of the garage is 2m from the secondary Moore Lane frontage. This is a 42% variation with the 3.5m minimum.

##### 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: In regard to Moore Road frontage, the proposed balconies on the north elevation are predicated on the front setback of the adjoining flat buildings on No.25 and 27 Moore Road. The balconies are transparent structures, with the existing facade of the building remaining at its



front setback from the Moore Road boundary. An adequate sense of openness is provided in this regard.

With regard to the Moore Lane frontage, the new garage is based on the existing building setback from this boundary, which is currently 1.5m for both the ground and 1<sup>st</sup> floors. The proposed garage is setback 2m from this frontage, which is slightly further back than the existing building. The 1<sup>st</sup> floor additions above the garage are setback (discounting the balcony) 3.5m from the Moore Road frontage, which is consistent with this setback control.

Under the circumstances, an adequate sense of openness is provided to achieve this objective.

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

Comment: As stated previously, the setbacks proposed are predicated on existing building setbacks, both on the subject land and on adjoining properties. Hence, this objective has been achieved.

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

Comment: The proposed built form has made an adequate response to the context of the surrounding area and hence this objective has been achieved.

- *To achieve reasonable view sharing.*

Comment: There is unlikely to be no view loss as result of the proposed variations to the front setback built form control.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP 2011 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**

The existing provision of car spaces is two (2) spaces, one (1) for each of the two existing dwellings that exist on the site.

The proposed works will provide a total of three (3) spaces on the site. 2 spaces are provided for Unit 1 and one space for Unit 2.

A non-compliance relates to the parking provision for Unit 2, which has a deficiency of 1 car space.

In effect, there is however no change in the provision of parking for Unit 2, which is 1 space. In addition, there will be an increase in the total number of parking spaces on the site.

In summary, there is sufficient on-site parking provided to meet the objectives of the control.

### **D6 Access to Sunlight**

The shadow diagrams provided with the application demonstrate that a significant area of the rear yard

(in excess of 150m<sup>2</sup>) will receive solar access in mid-winter. Further, approximately 95m<sup>2</sup> of the rear yard will be free of shadow in mid-winter. This demonstrates that the proposal will easily be compliant with the requirements of Part D6 Access to Sunlight.

## POLICY CONTROLS

### Northern Beaches Council Contributions Plan 2018

The proposal is subject to the application of Council's Section 7.12 Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Contributions Plan 2018		
Contribution based on a total development cost of \$ 615,000		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 5,843
Section 7.12 Planning and Administration	0.05%	\$ 308
Total	1%	\$ 6,150

## 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 DA2018/0830 for Alterations and Additions to existing dual occupancy on land at Lot A DP 345655, 23 Moore Road, FRESHWATER, 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
1-3 757 17 HD	January, 2018	High Design
2-3 757 17 HD	January, 2018	High Design
3-3 757 17 HD	January, 2018	High Design

Engineering Plans		
Drawing No.	Dated	Prepared By
R-11-266065-1	09/04/2018	Civil & Structural Engineering Design Services Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No.A309905	10 March 2018	Sustainability-Z Pty Ltd
BASIX Certificate No.A309907	10 March 2018	Sustainability-Z Pty Ltd

##### b) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

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. (DACPLB01)

#### 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 (DACPLB09)

### 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) 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.
- (c) 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.
- (d) 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.
- (e) 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.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) 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.
- (j) 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.

- (k) 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. (DACPLB10)

## FEES / CHARGES / CONTRIBUTIONS

### 4. Policy Controls

Northern Beaches Council Contributions Plan 2018

The proposal is subject to the application of Council's Section 7.12 Development Contributions Plan.

The following monetary contributions are applicable:

Northern Beaches Council Contributions Plan 2018	
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Contribution based on a total development cost of \$ 615,000.00		
Contributions	Levy Rate	Payable
Total Section 7.12 Levy	0.95%	\$ 5,842.50
Section 7.12 Planning and Administration	0.05%	\$ 307.50
Total	1%	\$ 6,150.00

The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index). Please ensure that you provide details of this Consent when paying contributions so that they can be easily recalculated.

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 Northern Beaches Council Contributions Plan 2018.

## 5. **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 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](http://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**

## 6. **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. (DACPLC02)

**7. Sewer / Water Quickcheck**

The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to works commencing to determine whether the development will affect any Sydney Water asset's sewer and water mains, stormwater drains and/or easement, and if further requirements need to be met. Plans will be appropriately stamped.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- Quick Check agents details - see Building Developing and Plumbing then Quick Check; and
- Guidelines for Building Over/Adjacent to Sydney Water Assets - see Building Developing and Plumbing then Building and Renovating.
- Or telephone 13 20 92.

Reason: To ensure compliance with the statutory requirements of Sydney Water. (DACPLC12)

**8. 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

**9. 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 50mm 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 50mm 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. (DACLAD01)

## CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

### 10. **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. (DACLA03)

### 11. **Removal of All Temporary Structures/Material and Construction Rubbish (crown land only)**

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 Council.

Reason: To ensure bushland management. (DACPLE01)

### 12. **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.

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

### 13. **Required Planting**

Trees shall be planted in accordance with the following schedule:

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Minimum No. of Trees Required.	Species	Location	Minimum Pot Size
2	Trees capable of attaining a minimum height of 4 metres at maturity	Front landscape setback	200mm

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To maintain environmental amenity. (DACLAF01)

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

**Signed**



**Nick England, Planner**


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




**Steven Findlay, Manager Development Assessments**
































**ATTACHMENT A**



Notification Plan	Title	Date
 2018/307868	Plan - Notification	22/05/2018

**ATTACHMENT B**

Notification Document	Title	Date
 2018/311833	Notification Map	23/05/2018

## ATTACHMENT C

Reference Number	Document	Date
 2018/307866	Plans - Survey	10/10/2017
 2018/307884	Plans - Internal	14/05/2018
 2018/307876	Report - Geotechnical	14/05/2018
 2018/307872	Report - BASIX Certificate 1	14/05/2018
 2018/307874	Report - BASIX Certificate 2	14/05/2018
 2018/307871	Report - Statement of Environmental Effects	14/05/2018
 2018/307862	Cost Summary Report Quote	14/05/2018
 DA2018/0830	23 Moore Road FRESHWATER NSW 2096 - Development Application - Alterations and Additions	21/05/2018
 2018/305932	DA Acknowledgement Letter - Richard Alfred Roberts	21/05/2018
 2018/305933	invoice for ram applications - Richard Alfred Roberts	21/05/2018
 2018/307860	Development Application Form	22/05/2018
 2018/307861	Applicant Details	22/05/2018
 2018/307868	Plan - Notification	22/05/2018
 2018/307879	Plans - Certification of Shadow Diagrams with Plans	22/05/2018
 2018/307882	Plans - Stormwater	22/05/2018
 2018/307885	Plans - Master Set	22/05/2018
 2018/307883	Plans - External	22/05/2018
 2018/311802	ARP Notification Map	23/05/2018
 2018/311817	DA Acknowledgement Letter (not integrated) - Richard Alfred Roberts	23/05/2018
 2018/311833	Notification Map	23/05/2018
 2018/311842	Notification Letter - 62	23/05/2018
 2018/339451	Online Submission - Thorpe	04/06/2018
 2018/354667	Referral - Ausgrid - 23 Moore Road Freshwater	12/06/2018
 2018/362786	Landscape Referral Response	15/06/2018
 2018/372439	Natural Environment Referral Response - Flood	19/06/2018
 2018/429412	Submission - Boston Blyth Fleming Pty Ltd	06/07/2018
 2018/441514	Working Plans	11/07/2018
 2018/442862	Site Photos	11/07/2018
 2018/447517	Submission Acknowledgement Letter - Boston Blyth Fleming Pty Ltd - SA2018/429412	13/07/2018

 2018/516814	E-mail - Site visit to 4 Charles Street - John King	14/08/2018
 2018/525321	Photos 4 Charles Avenue	17/08/2018