

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0018
<b>Responsible Officer:</b>	Kent Bull
<b>Land to be developed (Address):</b>	Lot 7 DP 242144, 8 Holloway Place CURL CURL NSW 2096
<b>Proposed Development:</b>	Alterations and additions to a dwelling house
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Peter James Walsh Catherine Emma Walsh
<b>Applicant:</b>	Peter James Walsh Catherine Emma Walsh
<b>Application Lodged:</b>	15/01/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	30/01/2020 to 13/02/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 275,000.00

### PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the alterations and additions to a dwelling house. In particular, the works include:

#### Ground Floor

- The existing office internal walls will be removed for an open plan dining area; and
- The existing bathroom, WC, WIR and 2 bedrooms on eastern side will be reconfigured to provide bedroom, ensuite, WC, powder room and stairs to first floor will be removed to create a new bathroom, ensuite and power room.

## First Floor

- Master bedroom with walk in robe, ensuite and balcony facing west
- Bedroom with robe, ensuite and balcony facing west; and
- Linen cupboard.

Additions to existing garage (sometimes referred to as a 'Carport' on submitted plans):

- External stairs to a new home office containing a bathroom and kitchenette above the existing garage.

## 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 - D1 Landscaped Open Space and Bushland Setting

Warringah Development Control Plan - D6 Access to Sunlight

Warringah Development Control Plan - D7 Views

Warringah Development Control Plan - D8 Privacy

Warringah Development Control Plan - D9 Building Bulk

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 7 DP 242144 , 8 Holloway Place CURL CURL NSW 2096
<b>Detailed Site Description:</b>	The subject site consists of one (1) battle-axe allotment located on the eastern side of Holloway Place.

The site is irregular in shape with a frontage of 3.35m along Holloway Place (for the purposes of an access handle) and a depth of 64.78m. The site has a surveyed area of 1081.27m<sup>2</sup>.

Vehicular and pedestrian access is gained via the Holloway Place frontage.

The site is located within the R2 Low Density Residential zone and accommodates a single storey dwelling located centrally on site, a swimming pool and spa to the rear of the and with a garage located near the southern side boundary.

The site is generally flat, sloping slightly from the the Holloway Place frontage to the rear eastern boundary.

The site contains a modified landscaped setting, with vegetation generally consisting of a lawn turfed area, palms and hedging.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by low-density detached residential dwellings of varying architectural styles within a landscaped setting.

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:

10 June 2015

Development Application No. DA2015/0361 for alterations and additions to a dwelling house was granted development consent by Council.

## APPLICATION HISTORY

29 January 2020

Photo evidence of the notification sign in place provided to Council.

25 February 2020

Site inspection undertaken by the Development Assessment Officer. The property owners, and the property owner's planning consultant was present at the time of the inspection.

17 March 2020

Neighbour site inspection undertaken at No. 23 Bennett Street, Curl Curl. One (1) property owner present at the time of the inspection.

31 March 2020

Revised architectural plans included amended solar access diagrams submitted and accepted by Council.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – 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)	Division 8A 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.

Section 4.15 Matters for Consideration'	Comments
	<p>Clause 50(1A) 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>Clauses 54 and 109 of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was submitted on 31 March 2020 in relation to solar access diagrams and a revision to plans incorporating privacy measures to the proposed home office.</p> <p>Clause 92 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>Clauses 93 and/or 94 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>Clause 98 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>Clause 98 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> <p>Clause 143A of the EP&amp;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) <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 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	The site is considered suitable for the proposed development.



Section 4.15 Matters for Consideration'	Comments
of the site for the development	
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject 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:

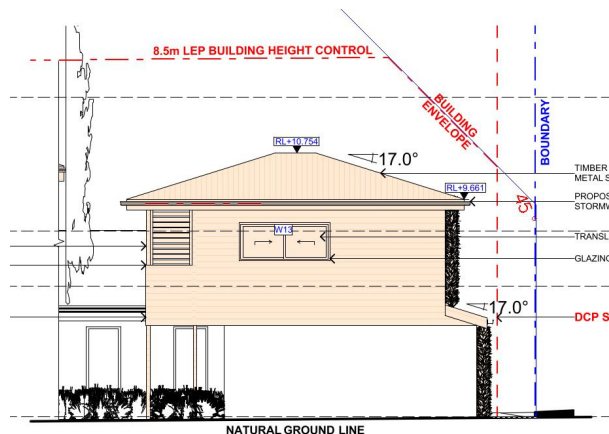
Name:	Address:
Mr Wayne Graham Hall	23 Bennett Street CURL CURL NSW 2096
Mrs Marcia Prelog Lancaster	4 Michele Road CROMER NSW 2099

The following issues were raised in the submissions and each have been addressed below:

- Side Boundary Envelope

### Comment:

A submission was received from the property owner of No. 23 Bennett Street raising concern and seeking clarification with the proposed southern side boundary envelope in relation to the proposed garage and home office arrangement. The submitted elevation plan (Figure 1) demonstrates a building envelope that has factored in the setback to the southern boundary. The plan should however had indicated a building envelope determined by projecting planes at 45 degrees from a height above ground level (existing) at the side boundaries. As seen in Figure 1, the correct building envelope (marked as a continuous blue line) indicates a 45 degree plane from a measurement of 5m from the southern side boundary demonstrates that proposed development compliant within the building envelope as prescribed under B3 (Side Boundary Envelope) of the Warringah DCP.



**Figure 1.** Drawing No. DA13 by Action Plans depicting the western elevation - Carport/Home Office.

- Side Boundary Setbacks

Comment:

A submission was received from the property owner of No. 23 Bennett Street raising concern and seeking clarification with the proposed southern side setback in relation to the proposed garage and home office arrangement. At its nearest point, the garage is 948mm from the southern side boundary and the home office is setback 1.915m from the southern side boundary. The proposed development therefore complies with the 0.9m setback control required under B5 (Side Boundary Setbacks) of the Warringah DCP.

- Rear Boundary Setback

Comment:

A submission was received from the property owner of No. 23 Bennett Street raising concern that the proposed upper floor additions not meeting objectives including creating a sense of openness in rear yards, and maintaining a visual continuity and pattern of buildings, rear gardens and landscape elements. It should be noted that the 8 Holloway Place is of a battle-axe configuration, with the rear boundary being along the eastern side of the property. The proposed development complies with B9 (Rear Boundary Setbacks) of the Warringah DCP which requires a minimum rear setback requirement of 6m, with a setback of 9.86m from the rear boundary.

- Stormwater

Comment:

Submissions were received from the rear adjoining property owners of No(s) 23 and 25 Bennett Street, raising concern with the stormwater drainage and the proximity of the proposed development to a stormwater easement. Council's Development Engineer has reviewed the proposal, raising no objections subject to conditions. The conditions recommended ensure appropriate provision for disposal and stormwater management arising from the development.

- Overshadowing concerns

Comment:

Submissions were received from the rear adjoining property owners of No(s) 23 and 25 Bennett Street, raising concern and seeking clarification regarding the extent of shadowing that would be created by the resultant development. In response to these concerns, the Applicant submitted updated solar access diagrams on 31 March 2020 to more clearly demonstrate the extent of overshadowing to the rear private open space areas of both properties. The application has been considered to meet the requirements of Part D6 (Access to Sunlight) of the Warringah DCP. See Part D6 (Access to Sunlight) of the Warringah DCP for further discussion.

- Views**  
Comment:  
 A submission was received from the property owner of No. 25 Bennett Street highlighting view loss concerns towards the sporting ovals and tree line adjoining Greendale Creek. Due to the owners of No. 25 Bennett Street being elderly and understandably not eager for those outside of their household entering their property due to the circumstances arising from the COVID-19 pandemic, an inspection was undertaken from the first floor of No. 23 Bennett Street in order to anticipate likely impacts and photos were received from the owners of No. 25 Bennett Street. Consideration has been given that the proposed development provides for a reasonable sharing of views in accordance with the Planning Principle established by the Land and Environment Court in *Tenacity Consulting v Warringah Council (2004) NSWLEC 140*. See Part D7 (Views) of the Warringah DCP for further discussion.
- Privacy**  
Comment:  
 A submission was received from the property owner of No. 23 Bennett Street raising concern with overlooking arising from the proposed development, specifically in relation to the western elevation of the home office addition and from the master bedroom balcony. In response to these concerns, the Applicant submitted revised plans on the 31 March 2020 to incorporate a full height privacy screen and changed the window glazing to translucent along the western elevation of the home office. The application has been considered to meet the objectives of Part D8 (Privacy) of the Warringah DCP. See Part D8 (Privacy) of the Warringah DCP for further discussion.
- Building Bulk**  
Comment:  
 Submissions were received from the rear adjoining property owners of No(s) 23 and 25 Bennett Street, raising concerns with southern elevation of the proposed office being a black wall that is designed to have "green wall" installed to soften the visual bulk of the structure. Concerns were also raised with regards to the maintenance and upkeep of this green wall. Consideration has been given that the proposed home office provides an acceptable setback from the southern side boundary and complies with the objectives and requirements of D9 (Building Bulk) of the Warringah DCP that seek to minimise the visual impact of building bulk through such treatments as landscape plantings. Further, the Applicant has agreed to conditions to ensure the establishment and maintenance of this green wall.

## REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	No objections are raised to the proposed development, subject to conditions.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed first floor additions and ground floor internal alterations generally comply with the flood requirements of the DCP and LEP.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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



External Referral Body	Comments
	recommended.

## **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. A365107, dated 28 November 2019).

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

### **SEPP (Infrastructure) 2007**

#### Ausgrid

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

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

Comment:

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

**Warringah Local Environmental Plan 2011**

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.7m	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.3 Development near zone boundaries	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.3 Flood planning	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	6.3m (Dwelling House) 5m (Home Office)	-	Yes
B3 Side Boundary Envelope	5m	Within Envelope	-	Yes
	5m	Within Envelope	-	Yes
B5 Side Boundary Setbacks	0.9m (North)	5.2m (First Floor - Dwelling)	-	Yes
	0.9m (West)	0.97m (Garage) 0.97m (First Floor - Home Office) 10.63 (First Floor - Dwelling)	-	

	0.9m (South)	0.95m (Garage) 1.92m (First Floor - Home Office) 11.03 (First Floor - Dwelling)	-	Yes
B7 Front Boundary Setbacks	6.5m	70.7m (Measured along access handle to Holloway Place)	-	Yes
B9 Rear Boundary Setbacks	6m	9.86m (First Floor - Dwelling)	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	26.7% (288.8m <sup>2</sup> )	66.7%	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	Yes	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	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
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

### Detailed Assessment

#### **D1 Landscaped Open Space and Bushland Setting**

The proposal is technically non-compliant with the control that requires 40% of the total site area to be dedicated towards landscaping. The proposal seeks to vary this control to an overall landscaped open space area of 26.7% (288.8m<sup>2</sup>). It should be noted that with the exception of the timber access stairs to the home office, the proposal does not seek to reduce the existing landscaping on-site. The maintenance and enhancement of landscaping on site assists to mitigate the height, bulk and scale of the building. Despite the proposal being short of the minimum landscaped area requirements, the site does incorporate permeable areas, including areas with plantings (that do not meet the minimum width requirements), across the site to reduce stormwater run-off. Further, Council's Development Engineer has supported the proposal subject to conditions relating to stormwater disposal and Council's Floodplain Engineering division has reviewed the proposal raising no issues on flooding grounds. In addition to the existing landscaping arrangement, the proposal is considered to protect privacy through such measures as incorporating windows with acceptable sill heights, and appropriate off-set and separation to limit overlooking of neighbouring properties. The site accommodates sufficient areas for outdoor recreation and for service functions, including clothes drying within the site.

Based on the above, the proposed development is considered acceptable on merit and consistent with the objectives of the clause in this particular instance.

#### **D6 Access to Sunlight**

The control requires at least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21. Submissions were received from the rear adjoining property owners of No(s) 23 and 25 Bennett Street, raising concern and seeking clarification regarding the extent of shadowing that would be created by the proposed development. In response to these concerns, the Applicant submitted updated solar access diagrams on 31 March 2020 to more clearly demonstrate the extent of overshadowing to the rear private open space areas of both properties.

The solar access diagrams indicate that at its greatest extent, the shadowing of the rear private open spaces of these neighbouring properties resulting from the proposed development at No. 23 Bennett Street would be 41.4% at 9am, reducing to no overshadowing at 12pm on June 21. The shadowing at No. 25 Bennett Street would be 48.3% at 9am, reducing to 30.9% at 12pm and 26.4% at 3pm on June

21.

Whilst it is understood that No. 23 Bennett Street is southward of an adjoining property with comprises of trees that do contribute towards shadowing, the control states that overshadowing by vegetation will not form part of Council's assessment of access to sunlight.

The proposal is seen to comply with the above requirements of this control, however for avoidance of doubt, an assessment against the relevant planning principles established in the *Benevolent Society v Waverley Council (2010) NSWLEC 1082* has also been used in the assessment of sunlight.

### **The Benevolent Society v Waverley Council [2010] NSWLEC 1082**

- *The ease with which sunlight access can be protected is inversely proportional to the density of development. At low densities, there is a reasonable expectation that a dwelling and some of its open space will retain its existing sunlight. (However, even at low densities there are sites and buildings that are highly vulnerable to being overshadowed.) At higher densities sunlight is harder to protect and the claim to retain it is not as strong.*

Comment: The locality is a low density environment consisting of detached one and two storey dwellings. It is reasonable to require that the adjoining dwelling and some of its open space will retain existing sunlight given the residential setting. The assessment is conducted with the density in mind, however, the impacted private open space areas are considered to be quite vulnerable given it is directly south of the proposed development and due to the lot configuration, along a boundary that acts as a side boundary to 8 Holloway Place.

- *The amount of sunlight lost should be taken into account, as well as the amount of sunlight retained.*

Comment: The solar access diagrams indicate the amount of sunlight retained in the rear private open space of No. 23 Bennett Street would 58.6% at 9am. The amount of sunlight lost at 9am is indicated as being 41.02m<sup>2</sup>. Likewise, the amount of sunlight retained in the rear private open space of No. 25 Bennett Street would be 51.7% at 9am. The amount of sunlight lost at 9am is indicated as being 14.95m<sup>2</sup> and at 12pm indicated as being 21.82m<sup>2</sup>. As previously discussed, the percentage of sunlight retained is reflective of the at time when each property is expected to have the least amount of sunlight available (9am on June 21). Each property will have well sized landscaped area/gardens throughout the rear yard which will receive full solar access in a private landscaped setting.

- *Overshadowing arising out of poor design is not acceptable, even if it satisfies numerical guidelines. The poor quality of a proposal's design may be demonstrated by a more sensitive design that achieves the same amenity without substantial additional cost, while reducing the impact on neighbours.*

Comment: The proposed development, specifically the home office addition that resulting on in a shadowing impact, is situated above an existing garage. In addition to having the home office addition setback 1.9m from the side boundary, this component of the proposal is compliant with building envelope and building height requirements. Overall, the development is not considered to be unreasonable and is an appropriate response to the spatial characteristics of the site and neighbouring sites. Should the development be situated further forward, would likely still result in an impact on solar access and potentially a greater level of impact on No. 9 Holloway Place for example.

- *To be assessed as being in sunlight, the sun should strike a vertical surface at a horizontal angle of 22.5 degrees or more. (This is because sunlight at extremely oblique angles has little effect.) For a*



*window, door or glass wall to be assessed as being in sunlight, half of its area should be in sunlight. For private open space to be assessed as being in sunlight, either half its area or a useable strip adjoining the living area should be in sunlight, depending on the size of the space. The amount of sunlight on private open space should be measured at ground level.*

Comment: The proposed development is not seen to impact upon solar access to areas such as the windows of neighbouring dwellings. Sunlight will be available to the rear decked/entertainment area of No. 23 Bennett Street. Further while it is noted that the south facing verandah appears to be the and the outdoor area nearest the upper floor living room of No. 25 Bennett Street, it is recognised that sunlight will be available to the rear of the dwelling at ground level also.

- *Overshadowing by fences, roof overhangs and changes in level should be taken into consideration. Overshadowing by vegetation should be ignored, except that vegetation may be taken into account in a qualitative way, in particular dense hedges that appear like a solid fence.*

Comment: The assessment has considered the existing and proposed impact with regards to solar access. As discussed earlier in this report, while it is understood that vegetation does not form part of Council's assessment of access to sunlight, it is noted that the rear yard of No. 23 Bennett Street and the property directly north (No. 9 Holloway Place) does comprise of a combination of trees, hedges and palms which would inevitably shadow areas of the rear yard.

- *In areas undergoing change, the impact on what is likely to be built on adjoining sites should be considered as well as the existing development.*

Comment: The locality is not anticipate to be subject to significant change, however consideration has been given that existing neighbouring sites are mostly two stories dwellings and therefore the extent of further loss of sunlight is limited.

## **D7 Views**

One (1) submission was received from the adjoining property at 25 Bennett Street, Curl Curl raising concern with the obstruction of views as a result of the proposal. As discussed earlier in this report, a view loss assessment was based upon photos taken by the occupants of the subject site and an inspection undertaken by the Assessment Officer from the adjoining property to the west. The reason for the Assessment Officer not undertaking an inspection from the 25 Bennett Street, Curl Curl was due to reservations from the elderly occupants of allowing those outside their household entering the property due to the unfolding COVID-19 pandemic.

The view loss assessment was undertaken to assess the impact of the proposal by utilising the four step planning principal established in *Tenacity Consulting v Warringah Council [2004] NSW LEC 140*.

### **Step 1 - Assessment of views to be affected:**

The assessment revealed that the affected views were predominantly obscured, filtered through vegetation towards the ovals and treeline adjoining Greendale Creek.

### **Step 2 - Consideration from what part of the property views are obtained:**

The affected view is obtained across the rear boundary, appear to be from the first floor dining and north facing bedroom (based on the photos provided).

### **Step 3 - Assess the extent of the impact for the entire property:**

The assessment found that the property has filtered views towards the ovals and treeline adjoining Greendale Greek. This view appears to also comprises of rooftops of dwelling houses. When taking into consideration the extent of views that are anticipated to be obtained from 25 Bennett Street, Curl Curl the overall view impact arising from the proposed development at 8 Holloway Place, Curl Curl is considered as minor.

### **Step 4 - Assess the reasonableness of the proposal causing the impact:**

A proposal that complies with all controls is considered more reasonable than one that breaches them. In this regard, the proposed development at 8 Holloway Place, Curl Curl is compliant with relevant building height requirements and built form controls. Further, it should be noted that the Commissioner of *Tenacity Consulting v Warringah Council [2004] NSW LEC 140* indicates that views obtained over a side boundary are difficult to protect. It should be noted that for 8 Holloway Place, Curl Curl, based on its battle-axe configuration, the southern boundary that adjoins 25 Bennett Street, Curl Curl acts as a side boundary, and therefore this particular this consideration is seen to be applicable to the proposal in this particular instance.

When accounting for the extent of the view impact and the level of compliance of the proposal, the development is considered acceptable and the view sharing reasonable.

Based on the above, the proposal is not seen to result in a noncompliance with the provisions of this control.

### **D8 Privacy**

As discussed previously in this report, concerns were raised with regards to overlooking arising from the proposed development, specifically in relation to the western elevation of the home office addition and from the master bedroom balcony. In response to these concerns, Applicant submitted revised plans on the 31 March 2020 to incorporate a full height privacy screen and changed the window glazing to translucent along the western elevation of the home office. An assessment based on these revised plans demonstrated that the application was capable of complying with the requirements of this control.

### **D9 Building Bulk**

Concerns were raised that that the proposed development, in particular the proposed home office incorporating a blank wall along the southern elevation. The requirements of this control include that continuous wall planes are to be avoided by varying building setbacks and using appropriate techniques to provide visual relief. In this regard, the application has indicated that the southern elevation of the home office be designed to incorporated a "green wall" The installation of a green wall is seen to help soften the visual bulk of this structure. To ensure the upkeep of this green wall, conditions have been applied for its maintenance. Subject to compliance with these condition, the application is considered acceptable and compliant with the requirements of this control.

## **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 \$2,750 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$275,000.

## **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 DA2020/0018 for Alterations and additions to a dwelling house on land at Lot 7 DP 242144, 8 Holloway Place, CURL CURL, 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

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA02 (Site, Roof, Sediment Erosion, Waste Management, Stormwater Concept)	30 March 2020	Action Plans
DA04 (Proposed Ground Floor Plan)	30 March 2020	Action Plans
DA05 (Proposed First Floor Plan)	30 March 2020	Action Plans
DA07 (Proposed Carport Floor Plan)	30 March 2020	Action Plans
DA08 (Proposed Home Office Floor Plan)	30 March 2020	Action Plans
DA09 (North/East Elevation)	30 March 2020	Action Plans
DA10 (South/West Elevation)	30 March 2020	Action Plans
DA11 (Long/Cross Section)	30 March 2020	Action Plans
DA12 (North/East Elevation - Carport/Home Office)	30 March 2020	Action Plans
DA13 (South/West Elevation - Carport/Home Office)	30 March 2020	Action Plans
DA14 (Long/Cross Section - Carport/Home Office)	30 March 2020	Action Plans

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BASIX Certificate Ref. A365107	28 November 2019	Action Plans
Flood Risk Management Report	10 December 2019	Pittwater Data Services 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:

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Northern Beaches Council Waste Management Plan	No date.	Peter Walsh

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) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

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

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

- (i) Swimming Pools Act 1992
  - (ii) Swimming Pools Amendment Act 2009
  - (iii) Swimming Pools Regulation 2008
  - (iv) Australian Standard AS1926 Swimming Pool Safety
  - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
  - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. **Policy Controls**

#### Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$2,750.00 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 \$275,000.00.

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](http://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.

### 5. **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](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. **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.

7. **Flooding**

In order to protect property and occupants from flood risk the following is required:

Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 5.7m AHD. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed cut electricity supply during flood events.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

8. **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.

9. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

10. **Sydney Water "Tap In"**

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

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

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

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

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

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

11. **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.

12. **Survey Certificate**

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

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

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

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

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

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

13. **Waste Management During Development**

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

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

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

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

14. **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.

15. **Waste Management Confirmation**

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

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

16. **Landscape Completion**

The landscaped green wall as indicated in Drawing No. DA13 is to be planted. Evidence demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Final Occupation Certificate.

Reason: to ensure that the landscape treatments are installed to provide landscape amenity and soften the built form.

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

17. **Landscape Maintenance**

Any existing landscaping including trees required to be retained together with any additional landscaping (inclusive of the green wall along the southern elevation of the home office) required by this consent is to be maintained for the life of the development.

A 12 month establishment period shall apply for all new landscaping. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. All planting must be maintained for the life of the development, or for their safe useful life expectancy. Planting that may die or is approved for removal must be replaced.

Reason: to maintain local environmental amenity and ensure landscaping continues to soften the built form.

18. **Separately Accessible Structures**

The provision of laundry or cooking facilities within the home office above the garage are prohibited in order for the structure to not be used for the purposes of separate habitation or as a secondary dwelling.

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

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

**Signed**



**Kent Bull, Planner**

The application is determined on 24/04/2020, under the delegated authority of:



**Matthew Edmonds, Manager Development Assessments**