

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/1180
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<b>Responsible Officer:</b>	Clare Costanzo
<b>Land to be developed (Address):</b>	Lot 2 SP 51300, 2 / 25 Charles Street FRESHWATER NSW 2096
<b>Proposed Development:</b>	Alterations and additions to a 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>	Marcus Alexander Rosenberg Charlotte Jane Ralph
<b>Applicant:</b>	Rapid Plans Pty Ltd

<b>Application Lodged:</b>	24/09/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	15/10/2020 to 29/10/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	3
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 138,800.00
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### PROPOSED DEVELOPMENT IN DETAIL

The subject development application seeks consent for alterations and additions to a dual occupancy, specifically to Unit 2 within the existing dual occupancy.

The works within Unit 2 are detailed as follows:

- Internal additions to the existing unit, which includes the demolition of internal walls and part of the rear roof, relocation of some internal walls, minor layout changes to living areas/kitchen/bedroom 1, renovation of the main bathroom, installation of a new ensuite bathroom within the master bedroom and a new internal stairway with storage and a pantry beneath.

- A new level is proposed to be added above the first floor. The attic/storage area (as nominated on the plans) will have an area of 24.43m<sup>2</sup>. this area will occupy an existing roof cavity. The existing roof form will remain unchanged, except for two new skylights. Internal ceiling heights will vary between 380mm and 2.18 metres; access to this area will be obtained via the proposed internal stairway from the kitchen referred to above.
- Construction of a balcony on the front elevation. The balcony will have an area of 15.12m<sup>2</sup>, will extend across the entire front elevation of the building and will have widths of between 1 and 2.3 metres. New doors are proposed from two bedrooms to the deck.
- Construction of a balcony on the rear elevation. The deck will form an extension of an existing balcony that is located on the southwest corner of the building. The balcony will have an area of 15.4m<sup>2</sup> (in addition to the existing 9.34m<sup>2</sup> balcony), will extend across the entire rear elevation of the building and will have widths of 1.25-2 metres. New bi-fold doors are proposed from adjoining internal living areas.
- Construction of a carport above an existing hardstand/car parking area within the southeast side setback.

Other proposed works on the site include changes to the front fence and a new gate. These works are detailed as works

- Alterations to the existing front masonry fence with 900mm timber slats
- Partial demolition of the front fence, installation of a 1.8 metre high sliding gate for the driveway and a 1.8 metre high pedestrian access gate.

**Note 1:** Development Application No. DA2020/1218 also proposed alterations and additions to Unit 1 and the site more broadly. Refer to the assessment of that application for other site modifications that are not proposed by this application.

**Note 2:** The additions to the front fence and the gate are a duplication of those proposed by DA2020/1218. Recommendations relating to the design of the fence are to reflect those of the conditions relating to front fence design within development consent no. DA2020/1218.

## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
 Warringah Development Control Plan - B3 Side Boundary Envelope  
 Warringah Development Control Plan - B5 Side Boundary Setbacks  
 Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting  
 Warringah Development Control Plan - D2 Private Open Space  
 Warringah Development Control Plan - D6 Access to Sunlight  
 Warringah Development Control Plan - D8 Privacy  
 Warringah Development Control Plan - E1 Preservation of Trees or Bushland Vegetation

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 2 SP 51300 , 2 / 25 Charles Street FRESHWATER NSW 2096
<b>Detailed Site Description:</b>	<p>The subject site is identified as Unit 2, 25 Charles Street, Freshwater (Lot 2, SP 51300), and is located on the southeast side of Charles Street.</p> <p>The site is a regularly-shaped allotment with a frontage of 15.24 metres and a maximum depth of 40.235 metres. The site has a surveyed area of 613.1m<sup>2</sup> and is slightly sloped, with a front-to-rear fall of approximately 1.4 metres and a side-to-side slope of approximately one metre.</p> <p>The subject site and all adjoining sites are located within an R2 Low Density Residential zone. It is mapped as being within a landslip-risk area (Area A; Less than 5 degrees), though no other major considerations were identified. The site does not contain a heritage item and is not within a heritage conservation area, it is however in close proximity to heritage items (Item No. 169 "Street Trees" along within Kooloora Avenue to the southeast and Item No. 170 'House known as "Felicità" at 46 Kooloora Avenue).</p> <p>Development on the site includes a three-storey building with a steeply pitched roof. The building contains a dual occupancy (originally approved by Building Application No. 261/51); Unit 2 occupies the top floor (Level 1) of this building; two (2) tandem car parking spaces are located between the building's southwest elevation and the southwest side boundary. Access to Unit 2 is provided via external stairways on both side elevations of the building. A private open space for Unit 2 is located within the northeast side of the front setback, while the rear setback is occupied by private open space for Unit 1.</p> <p>It should be noted that Unit 1 was also the subject of recent alterations and additions, which was approved by Development Consent No. DA2020/1218.</p> <p><b>Detailed Description of Adjoining/Surrounding</b></p>

## Development

Development on adjoining sites consists of detached dwelling houses. Residential-zoned areas contain predominantly low density-residential development (i.e. dwelling houses, dual-occupancies and associated structures), however the wider area also isolated multi-dwelling housing developments, residential flat buildings and commercial premises (e.g. the Harbord Hotel). RE1-zoned areas to the east/southeast are largely undeveloped except for beach carparks and a surf club.

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:

- 1951: The construction of a duplex was approved on the site.
- 13 November 1991: Development Application No. 1991/334 refused. The application proposed Alterations and additions to the existing duplex, including a new gable roof and balcony to the rear of the first floor level.
- 26 November 1992 :Building Approval No. 2117/92 approved for works (unspecified by Council records) to the building.
- 24 September 2020: Subject Development Application lodged.
- 18 January 2021: Development Application No. DA2020/1218 lodged for alterations and additions to Unit 1.

## 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)	<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 allow Council to request additional information. Additional information was requested in relation to building height and scale.</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 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

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

Section 4.65 of the Act defines an existing use as:

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

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

*(i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*

*(ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to*

*such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered:

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

Comment:

A search of Council records identified that Building Application No. 261/51 was approved for a duplex at this site at some point in 1951. Council records indicate that this approval was for a duplex under the 'Living Area' zone within the County of Cumberland Scheme. Such development was lawful at the time of that approval.

As part of the refusal of Development Application No. 1991/334, condition 2 indicated that the unauthorised conversion of the building to an RFB (consisting of four units) was inconsistent with the original approval for the building. The recommendations for that refusal included undertaking alterations to reconvert the building to the duplex as approved by Building Application No. 261/51. Subsequent approvals and the strata subdivision of the site in 1995 suggest that works were undertaken to convert the building back to its originally approved use at that time. While there is a third dwelling on the site (located within the lower ground floor), consent was not granted to this dwelling and its removal is required; there has been no consent approved since the original approval that has changed the consented use of the site as a duplex (which would be most appropriately defined under the Standard Instrument as a 'dual occupancy').

Such information indicates that the construction and use of the building as duplex was undertaken prior to the coming into force of Warringah Local Environmental Plan 2011.

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

Comment:

The construction and use of the building was lawfully approved by Council was lawfully approved by Council in 1951, prior to the coming into force of *Warringah Local Environmental Plan 2011*.

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

Comment:

The date of approval significantly predated *Warringah Local Environmental Plan 2011*. Subsequent approvals and subdivision of the site confirmed that the approved use has been continued.

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

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

Comment:

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

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

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

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

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

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

Comment:

The bulk and scale of the existing building (in terms of height, floor space and building envelope) are significantly greater than that of development on surrounding sites. Given the zoning and associated principal development standards which apply to the site and surrounding area under current planning provisions, it is highly unlikely that future development will reflect the scale of existing development on surrounding sites.

**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 subject application does not propose a change of use to the building. Demolition of the building is not proposed, however the proposed additions as part of this application relate to new decks at the front and rear of the building's top floor, internal alterations and minor external additions towards the rear of the building (noting that DA2020/1218 also approved an extension of the lower ground floor, a ground



floor deck and minor ground-level site improvements (e.g. the sail cover)). Such works will not significantly alter the bulk and scale of the building, noting that the building's existing maximum height is unchanged.

### 3. What are the impacts on adjoining land?

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

#### Comment:

The proposed works and ongoing use of the site will have minor additional solar access impacts on adjoining sites, however an assessment has found that the additional such impacts will be reasonable.

### 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 proposed additions will both increase the amount of private open space that is directly accessible from the building, in addition to improving internal solar access (at both the front and rear of the top floor as a result of installing larger windows/doors, and the installation of a skylight at the rear of the top floor).

### Conclusion

The use has been approved under a previous environmental planning instrument (County of Cumberland Planning Scheme) and, therefore, is a lawful use. Subsequently, the use can be retained under the current environmental planning instrument (*Warringah Local Environmental Plan 2011*).

### **BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

### **NOTIFICATION & SUBMISSIONS RECEIVED**

The subject development application has been publicly exhibited from 15/10/2020 to 29/10/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

Name:	Address:
Mrs Katherine Ann Bateman	38 Kooloorra Avenue FRESHWATER NSW 2096
Mr Steven William Menzies	C/- Nolan Planning Consultants 75 Oliver Street FRESHWATER NSW 2096

Name:	Address:
Mr Lance James Horlyck Mrs Karen Jennene Horlyck	128 Wyadra Avenue NORTH MANLY NSW 2100

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

- The proposal will adversely affect visual privacy. Views will be directed into bedrooms at 38 Koolara Avenue, Freshwater. Views will be directed into the back deck, living room, dining room, and kitchen of 36 Kooloora Avenue, Freshwater.
- The frequency of overlooking will be increased into a main bathroom at 40 Kooora Avenue Freshwater. Providing we able to erect a privacy screen on the fence boundary line, no objection would be raised.
- The works will block light and direct sunlight into adjoining properties in Kooloora Avenue.
- The height of the additions will exceed the 8.5 metre height limit, due to the existing height of the building within the R2 zone it should not go ahead.
- There will be more noise directly opposite the two bedrooms at the rear of 36 Kooloora Avenue, Freshwater.
- The proposal reduces the setbacks between the subject dual occupancy and the the side boundary of 40 Kooloora Avenue, Freshwater.

The matters raised within the submissions are addressed as follows:

- The proposal will adversely affect visual privacy. Views will be directed into bedrooms at 38 Koolara Avenue, Freshwater. Views will be directed into the back deck, living room, dining room, and kitchen of 36 Kooloora Avenue, Freshwater.  
Comment:  
It is agreed that the development is likely to adversely affect the visual privacy of allotments adjoining the southwest side boundary. It is therefore recommended that minimum 1.65 metre-high fixed privacy screens be installed on the side elevations of the deck. The erection of such screens would subsequently direct views from the main part of the balcony and adjoining internal rooms towards the rear of the site and away from the sites referred to within the submissions.
- The frequency of overlooking will be increased into a main bathroom at 40 Kooora Avenue Freshwater. Providing we able to erect a privacy screen on the fence boundary line, no objection would be raised.  
Comment:  
It is considered unlikely that the proposed additions will adversely affect the visual privacy of the site adjoining the subject site's rear boundary. The minimum 12.698 metre rear setback is well beyond the minimum 6 metre requirement stipulated by the DCP, and dense vegetation at the rear of the subject site would assist in screening this adjoining site. It is also noted that views from the existing rear deck and living area (sun room) already direct views from the rear of Unit 2 towards this site, therefore the proposal is unlikely to worsen the visual privacy of this adjoining site. Further, to place screens atop of the boundary fence as requested by the objector will also both:
  1. Result in development outcomes that are contrary to Part D15 (side and rear fences) of Warringah DCP 2011, and
  2. Worsen solar access to this adjoining site.
 As such, additional screening on top of the boundary fence is not supported.

- The works will block light and direct sunlight into adjoining properties in Kooloora Avenue.

Comment:  
The existing development at 25 Charles Street already significantly overshadows adjoining allotments in Kooloora Avenue, largely as a result of the unusually high (albeit consented) development on the subject site as well as the placement and orientation of both the subject site and allotments fronting Kooloora Avenue. Further, the nature of development on the site is such that any additional works that prevent additional impacts is unavoidable. An assessment of proposed solar access confirmed that while the proposal would increase overshadowing on adjoining sites, such additional impacts are small, reasonable and would not alter existing compliance with applicable development controls; such impacts are therefore acceptable.
- The height of the additions will exceed the 8.5 metre height limit, due to the existing height of the building within the R2 zone it should not go ahead.

Comment:  
Amendments to the plans have removed proposed attic additions that would have extended beyond the existing roof form.
- There will be more noise directly opposite the two bedrooms at the rear of 36 Kooloora Avenue, Freshwater.

Comment:  
The part of the subject site that adjoins the rear boundary of 36 Kooloora Avenue is already used for car parking. As both the use of the site and the southwest side setback will not be changed by the proposal, there is no information to suggest that the proposal would adversely affect acoustic amenity.
- The proposal reduces the setbacks between the subject dual occupancy and the the side boundary of 40 Kooloora Avenue, Freshwater.

Comment:  
Whilst reduced, the proposed rear setback is still well in excess of minimum requirements; adverse impacts associated with the reduced rear setback have also not been identified. The proposed rear setback is therefore considered to be satisfactory.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>

Internal Referral Body	Comments
Landscape Officer	<p>Review of amended plans has been undertaken.</p> <p>The plans indicate that the proposed deck at the front of the property is adjacent to an existing tree in the front yard. The deck is indicated to extend marginally further forward than the existing roofline. It is apparent that the deck can be constructed without removal of the tree, though some minor pruning may be required.</p> <div><div>area 51 - Google Maps</div><div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><div></div><d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Internal Referral Body	Comments		
	<p>are in poor health they are a prominent visual element in the Freshwater Beach area &amp; are representative of seaside plantings &amp; associated with recreation/holiday themes.</p> <p><u>Physical description:</u> Norfolk Island Pines (22) along both sides of Kooloora Avenue, with an average height of 15 - 20 metres. Those in the western section of the street are in poorer condition, however most are not very healthy. Some have been removed. Planting is not regular</p>		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	<p>The proposal seeks consent for alterations and additions to the existing residential flat building. The heritage street trees are located to the south and south west of the subject property on Kooloora Avenue. Given the separation between the property and the heritage items, the proposal is considered to not impact upon the heritage items or their significance.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of WLEP.</p> <p>Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No</p>		
	Further Comments		
	<p>COMPLETED BY: Brendan Gavin, Principal Planner</p> <p>DATE: 8 October 2020</p>		

External Referral Body	Comments



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

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

### SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate (Certificate No. A383346\_03, prepared by Rapid Plans dated 5 February 2020) has been submitted with the application.

In the event of approval, a condition has been included 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 who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

**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
Minimum subdivision lot size:		N/A	N/A	N/A
Height of Buildings:	8.5m	8.47m (existing 10.93m ridge height unchanged)	N/A	N/A
Rural Subdivision:	N/A	N/A	N/A	N/A
No Strata Plan or Community Title Subdivisions in certain rural and environmental zones:	N/A	N/A	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
5.3 Development near zone boundaries	N/A
5.8 Conversion of fire alarms	N/A
6.2 Earthworks	N/A
6.4 Development on sloping land	Yes

Detailed Assessment

### 4.3 Height of buildings

The plans propose multiple breaches of the 8.5 metre building height standard.

The maximum breach of the building height standard will be caused by additions associated with the attic storage area; the entirety of this area will breach the building height standard, which is detailed as follows:

- The maximum height of the attic storage area will be created by a 500mm extension of the RL 16.19 ridge towards the rear of the building. The maximum height of this work will be 10.93 metres, which is a 2.43metre (i.e. an 28.59%) breach of the development standard. The height is based on the ridge and the existing RL 5.26 lower ground floor level beneath this area.
- The minimum height of the attic storage area will be 10.63 metres, which is a 2.13 metre (i.e. a 25.06%) breach of the development standard. The height is based on the lowest point of this element (i.e. the eaves with RLs of 10.63) and the existing RL 5.26 lower ground floor level beneath this area.

The northwest corner of the eaves which form part of the proposed extension of the roof at the rear of the building will also breach the building height standard (based on the RL 13.72 ridge and existing ground level RL 5.17 below this area); the size of the breach is calculated at 55mm (i.e. 0.65%).

Aside from the aforementioned 55mm by the eaves, no part of the proposed rear deck and associated roof will be more than 8.5 metres.

The proposed variations are assessed under clause 4.6 of WLEP 2011 below.

### Warringah Development Control Plan

#### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	N/A	N/A	N/A
B2 Number of storeys	N/A	4		N/A
B3 Side Boundary Envelope	NE: 5m	5.47m	9.4%	No
	SW: 5m	5.6m	12%	No
B4 Site Coverage	N/A	N/A	N/A	N/A
B5 Side Boundary Setbacks	0.9m	1.5m	N/A	Yes
	0.9m	0.6m	33.3%	No
B7 Front Boundary Setbacks	6.5m	8.066m		Yes
B9 Rear Boundary Setbacks	6m	12.698m		Yes
B11 Foreshore Building Setback	N/A	N/A	N/A	N/A
B12 National Parks Setback	N/A	N/A	N/A	N/A
B13 Coastal Cliffs Setback	N/A	N/A	N/A	N/A
B14 Main Roads Setback	N/A	N/A	N/A	N/A
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (245.24m <sup>2</sup> )	38.23% (234.4m <sup>2</sup> )	12.5%	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	N/A	N/A
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	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
C6 Building over or adjacent to Constructed Council Drainage Easements	N/A	N/A
C7 Excavation and Landfill	N/A	N/A
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	N/A	N/A
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	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	N/A	N/A
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	N/A	N/A
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	N/A	N/A
E6 Retaining unique environmental features	N/A	N/A
E10 Landslip Risk	N/A	N/A

#### Detailed Assessment

### **B3 Side Boundary Envelope**

The plans propose minor breaches of the building envelope. These breaches occur at the highest point of the proposed roof replacement above alterations at the rear of the building; the highest points of the breaches on the northeast and southwest envelopes would be 470mm and 600mm respectively.

The existing wall setbacks and heights at this point of the site are unchanged, therefore the breaches are created by small increases to the heights of those walls; the noncompliant sections subsequently affect the upper parts of the walls, and no windows nor any part of the rear deck extension are affected. Despite the breaches, the bulk and scale of the building will not be substantially increased; being towards the rear of the building and well below the ridge height, the noncompliances are unlikely to be visible from the public domain and streetscape character will be unaffected. The variations will have no impact on visual privacy. The breach on the northeast side of the building will be self-contained within the site, while the breach on the southwest side of the building is unlikely to substantially contribute to additional overshadowing of adjoining sites (noting that the works will not substantially reduce solar access to adjoining sites), given its location to the southeast of the highest point of the steeply-raked roof.

As such, the objectives of the control will be satisfied, and the variations will not result in adverse impacts on adjoining sites. The proposed variations are therefore considered to be acceptable and supportable on merit.

### **B5 Side Boundary Setbacks**

Areas to be altered within the building footprint comply with the side setback requirement, and as such will not be discussed further.

The only variation relates to the 600mm setback of supports for the proposed carport within the southwest side setback. Despite this variation, the carport will be erected above an existing hardstand area, and as such will have no impact on landscaped and impervious areas. The limited height of the structure (noting that the levels of the car parking area beneath will be unchanged) is such that there will be no adverse impacts on visual privacy, overshadowing nor streetscape character.

As such, the objectives of the control will be satisfied and there will be no unreasonable impacts on adjoining sites. The proposed variation is therefore considered to be both acceptable and supportable on merit.

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

**Note:** The submitted plans do not reflect the alterations and additions associated with Development Consent No. DA2020/1218, which included at-grade modifications to the site. The calculated landscaped area has therefore considered the approved works at ground level.

The total proposed landscaped area of the site would be 234.4m<sup>2</sup>, which equates to a 10.84m<sup>2</sup> (12.5%) variation to the control. Noting works approved by DA2020/1218, the primary reduction to landscaped area as a result of this application will be the elevated deck at the front of the building. Despite the variation, the layout of the site will still permit sufficient deep soil and landscaped area within the front and rear setback areas for landscaping and private recreation purposes. The reduction of landscaping within the front setback area will have no adverse impacts on visual privacy. Council's development engineer has also not raised any issue with regard to the variation.

With regard to the above, the objectives of the controls will be satisfied, and the variation is therefore acceptable and supportable on merit.



## D2 Private Open Space

### Description of proposed private open space area

The proposed development provides 57m<sup>2</sup> of private open space area within at grade areas within the front setback. Whilst noncompliant in terms of placement and size, this area will not be altered by the proposed development and shall therefore not be discussed further.

The proposed rear deck will however add a 31.1m<sup>2</sup> outdoor area adjacent to internal living areas, including a 19.1m<sup>2</sup> area capable of meeting minimum dimensions for dwellings not at ground level.

## D6 Access to Sunlight

Given the size of the existing development and the orientation of both the subject site and surrounding sites, the most notable overshadowing impacts will affect the following two sites:

- 36 Kooloora Avenue, and
- 38 Kooloora Avenue.

Assessments of impacts on these sites are as follows:

### **36 Kooloora Avenue**

The submitted plans indicate that less than 50% of this site's principal private open space area within the rear setback will obtain direct solar access for three hours on June 21 (noting that a swimming pool and private open space area are also located within the front setback of this site). The majority of this impact is caused by existing development on the subject site, with the only additional impact (which would occur late in the morning on June 21) being created by the southwest-most point of the proposed front deck and ballustrade. The existing development is therefore already technically noncompliant with the control. With regard to the additional overshadowing impact, the following is noted:

- The additional overshadowing impact is located close to the rear boundary and for only a small part of the day, and
- Compliance with the control is constrained by the northwest/southeast orientation of the subject site, and the northeast-southwest orientation of these sites to the south.

With regard to such constraints, and noting that a large proportion of this site's private open space area is located within the front setback (and therefore would be unaffected by the proposed alterations and additions), the level of overshadowing impact on this site is not considered to be unreasonable. The proposal is therefore considered to be satisfactory with regard to impacts on solar access.

### **38 Kooloora Avenue**

The proposal will enable at least 50% solar access to this site for at least three hours (noting that more than 50% of this site's private open space area within the rear setback area will have direct solar access at 12:00pm on June 21). The proposal therefore complies with regard to impacts on this site.

## D8 Privacy

Both the proposed front deck and the alterations and additions to the internal areas of the first floor are considered to be satisfactory, and will not be discussed further.

With regard to the proposed rear deck, a 1.6 metre privacy screen is proposed on the northeast side of the deck; with regard to the below, it is recommended that the screen be raised in height to 1.65 metres; if implemented then no issues are raised with regard to privacy from this area.

Concern is however raised by a lack of screening on the southwest side of the deck, as views from this area will directly overlook the private open space areas of adjoining sites to the south/southeast. While it is acknowledged that the existing balcony does not currently have a screen, this area is only accessible from a bedroom and is therefore unlikely to be a regular gathering point. As a result of the propose amendments, the balcony will be extended towards the rear by two metres and will also be directly accessible from the main internal living area; this area is therefore likely to become the principal private open space area for Unit 2, and as such will be subject to higher levels of use (thereby increasing instances of overlooking). As such, a condition is recommended that will require that a privacy screen be erected on the southwest side elevation of the deck; the screen will be required to be a fixed structure with a height of at least 1.65 metres above the finished floor area of the deck.

If undertaken in accordance with the conditions, the proposal is unlikely to have significant nor adverse impacts on the visual privacy of surrounding sites.

### **E1 Preservation of Trees or Bushland Vegetation**

The proposed alterations and additions do not require the removal of any trees or vegetation. The proposed deck can be constructed without the removal of the tree, however some minor pruning may be required.

Tree protection measures have been recommended as conditions of consent to ensure compliance with the requirement to retain and protect significant planting on the site.

### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

### **POLICY CONTROLS**

#### **Northern Beaches Section 7.12 Contributions Plan 2019**

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

A monetary contribution of \$ 694 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 138,800.

### **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 DA2020/1180 for Alterations and additions to a dual occupancy on land at Lot 2 SP 51300, 2 / 25 Charles Street, 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
Site Survey (Drawing No. DA1002)	05/02/2021	Rapid Plans
Site Plan (Drawing No. DA1003)	05/02/2021	Rapid Plans
Demolition First Floor (Drawing No. DA1010)	05/02/2021	Rapid Plans
Alterations & Additions (Drawing No. DA1011)	05/02/2021	Rapid Plans
Landscape Plan (Drawing No. DA1014)	05/02/2021	Rapid Plans
Sediment & Erosion Plan (Drawing No. DA1015)	05/02/2021	Rapid Plans

Waste Management Plan (Drawing No. DA1016)	05/02/2021	Rapid Plans
Stormwater Plan (Drawing No. DA1017)	05/02/2021	Rapid Plans
Lower Ground Floor Plan (Drawing No. DA2001)	05/02/2021	Rapid Plans
Ground Floor Plan (Drawing No. DA2002)	05/02/2021	Rapid Plans
First Floor Plan (Drawing No. DA2003)	05/02/2021	Rapid Plans
Attic Floor Plan (Drawing No. DA2004)	05/02/2021	Rapid Plans
Roof Plan (Drawing No. DA2005)	05/02/2021	Rapid Plans
Section 1 (Drawing No. DA3000)	05/02/2021	Rapid Plans
Section 2 (Drawing No. DA3001)	05/02/2021	Rapid Plans
Elevations 1 (Drawing No. DA4000)	05/02/2021	Rapid Plans
Elevations 2 (Drawing No. DA4001)	05/02/2021	Rapid Plans
Elevation Front Fence (Drawing No. DA4002)	05/02/2021	Rapid Plans
Material & Colour Sample Board (Drawing No. DA5001)	05/02/2021	Rapid Plans

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	
BASIX Certificate No. 383346_03	05/02/2021	Rapid Plans

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

d) 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>
Waste Management Plan	10/09/2020	Rapid Plans

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. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a 'dwelling'.

A dwelling is defined as:

*"A room or suite of rooms occupied or used or so constructed or adapted as to be capable of being occupied or used as a separate domicile."*

Unit 2 is to be used as a single dwelling.

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

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

**3. Prescribed conditions (Demolition):**

(a) 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 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
- (ii) 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.

(b) 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.

(c) 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.

Reason: Legislative Requirement.

**4. Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon



- plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
- (i) showing the name, address and telephone number of the Principal 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.

## 5. General requirements (Demolition):

(a) Unless authorised by Council:

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 a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. 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) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy. )

(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.

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

## 6. General Requirements

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

- 7.00 am to 5.00 pm inclusive Monday to Friday,
- 8.00 am to 1.00 pm inclusive on Saturday,
- No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a

safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

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

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

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

## FEES / CHARGES / CONTRIBUTIONS

### 7. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$694.00 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 \$138,800.00.

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.

## 8. **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 are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

## 9. **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 "Water Management Policy". Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Northern Beaches Council's "Water Management Policy" 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.

**10. Amendments to the approved plans**

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

- The proposed changes to the front fence that encompasses the front private open space area of Unit 2 are approved, however the heights of both the proposed front fence and gates (i.e. the fences and gates on the lower 'step' on the street frontage are to be reduced to a maximum height of 1.5 metres above existing ground level..

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

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

**11. Boundary Identification Survey**

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

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

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

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

**12. Tree protection and pruning**

(a) Existing trees which must be retained

All trees unless listed as exempt or noxious in the relevant planning instruments

(b) Tree protection and pruning

- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree protection measures, including fencing, are to be in place prior to commencement of works
- v) Tree pruning within the subject site is approved to enable construction in accordance with the approved plans.
- vi) Tree pruning is not to exceed 15% of any existing tree canopy
- vii) All tree pruning to be in accordance with AS4373-2007 Pruning of amenity trees.

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

**13. Compliance with standards (Demolition):**

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 Council prior to the commencement of demolition works.

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

14. **Compliance with Standards**

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

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

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

15. **External Finishes to Roof**

The external finish to the roof shall have a 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.

16. **Privacy Screen**

The following privacy screens are to be installed on the site:

- A minimum 1.65 metre high privacy screen is to be installed along the entire northeast side elevation of the rear deck.
- A minimum 1.65 metre high privacy screen is to be installed along the entire southwest side elevation of the rear deck.

The heights of both screens are to be measured from the finished floor level of the rear deck. The screens shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

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

17. **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**

**18. Road Reserve**

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

Reason: Public safety.

**19. Removing, Handling and Disposing of Asbestos**

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

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

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

**20. Demolition Works - Asbestos**

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

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

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

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

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

**21. 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.

## 22. **Installation and Maintenance of Sediment Control**

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

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

## 23. **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.

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

## 24. **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 the Occupation Certificate.

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

25. **House / Building Number**

House/building number is to be affixed to the building to be readily visible from the public domain.

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

Reason: Proper identification of buildings.

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

**Signed**



**Clare Costanzo, Planner**

The application is determined on 22/02/2021, under the delegated authority of:



**Anna Williams, Manager Development Assessments**