

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1122
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Responsible Officer:	Kent Bull
Land to be developed (Address):	Lot 4 DP 30205, 50 Condoover Street NORTH BALGOWLAH NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Shannon Joanna Rose Phoebe Rebecca Rose Charles Rose
Applicant:	Charles Rose

Application Lodged:	11/10/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	22/10/2019 to 05/11/2019
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 4.7%
Recommendation:	Approval

Estimated Cost of Works:	\$ 578,500.00
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PROPOSED DEVELOPMENT IN DETAIL

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

Garage Floor - RL 41.595

- Two (2) vehicle garage;
- Entry with internal stairs connecting to the Lower Ground Floor; and
- Storage area.

Lower Ground Floor - RL 45.00

- Internal stairs connecting to garage level;
- Living room;
- Kitchen with walk-in pantry;
- Dining room;
- Media room;
- Internal stairs connecting to ground floor level; and
- Deck with full-height privacy screen to the south-eastern elevation.

Ground Floor - RL 46.47

Mezzanine Floor - RL 47.40

- Demolition works to reconfigure existing rooms, remove the existing deck, windows and roof;
- New study/Guest Room;
- Two (2) bathrooms;
- Internal stairs providing connection between Lower Ground, Ground, Mezzanine, and First Floor;
- Two (2) bedrooms;
- Rumpus Room;
- Laundry; and
- Covered deck to the north.

First Floor - RL 50.30

- Demolition works to remove existing study, internal stairs and roof over;
- Internal stairs connecting to the ground floor level;
- Two (2) bedrooms, each with ensuite and robes;
- East facing covered balcony with full height privacy screens to the northern and southern elevations.

Landscaping and Driveway

- Concrete driveway and pedestrian stairs connecting to Condoever Street; and
- Additional native screen plantings along part of the southern and northern boundaries.

Classification as 'alterations and additions':

In this case, the planning principle relating to demolition (Coorey v Municipality of Hunters Hill [2013] NSWLEC 1187) has been considered in order to establish whether the proposed development is classified as alterations and additions or new development. An assessment of the qualitative and quantitative issues set by the planning principle is as follows:

Qualitative Issues

- *How is the appearance of the existing building to be changed when viewed from public places?*

Comment: The proposed development will result in significant alterations and additions of the existing building, comprising of works forward of the existing dwelling and the construction of a new first floor. While the architectural appearance of the mid-century "Pettit & Sevitt" residence will change, consideration has been given that modernist attributes will be maintained through the use of skillion/flat roof forms, vertical cladding, floor to ceiling window/doors, clean lines and a split-level design. When viewed from Condoover Street the dwelling house will continue to be filtered through vegetation including established trees and therefore considered as visually prominent.

- *To what extent, if any, will existing landscaping be removed and how will that affect the setting of the building when viewed from public places?*

Comment: The footprint of the building is increased with the proposed works. Turfed areas and vegetation to the front of the site is to be removed in order to facilitate the additions including off-street parking and a driveway that comply with relevant planning controls and Australian Standards. It should however be noted that the proposed development complies with landscaped area requirements and does not seek the removal of any native canopy trees on the site. The majority of the vegetation as viewed from Condoover Street, including the Queensland Brush Box and palms are not being sought to be removed.

- *To what extent, if any, will the proposal impact on a heritage item, the curtilage of a heritage item or a heritage conservation area?*

Comment: The subject site does not contain a heritage item, does not impact on the curtilage of a heritage item in the vicinity, and is not in a heritage conservation area.

- *What additional structures, if any, in the curtilage of the existing building will be demolished or altered if the proposal is approved?*

Comment: The proposal seeks to retain the majority of the external walls to the ground floor to the dwelling, but does seek also the removal of the majority of the internal walls in order to facilitate the reconfiguration of the dwelling to connect to the lower ground and first floor. The proposal also seeks the removal of the existing first floor loft and carport that were later additions approved by Council in 2003. The building envelope of the proposed development is larger than that of the existing dwelling. However, the visual bulk on the streetscape remains compatible when compared to adjoining and neighbouring developments.

- *What is the extent, if any, of the proposed change to the use of the building?*

Comment: No change to the existing use of the building as a single dwelling.

- *To what extent, if any, will the proposed development result in any change to the streetscape in which the building is located?*

Comment: When comparing building scale with neighbouring developments, it is noted that No. 48 is also of a two (2) storey stepped design, whereas No. 52 appears as three (3) storeys when viewed from Condoover Street. The proposed development will not exceed two (2) storeys at any one point and will therefore be of a scale and built form that is consistent with streetscape of this particular areas of

Condoover Street. Neighbouring building are of varying ages and architectural styles.

- *To what extent, if any, are the existing access arrangements for the building proposed to be altered?*

Comment: The existing pedestrian access is along the south-eastern side of the dwelling. The proposal seeks to relocate the pedestrian access to the front of the dwelling house, beside the proposed garage. With regard to vehicle access, the proposed garage is to be located in a similar location to the existing carport, albeit larger in footprint.

- *To what extent, if any, will the outlook from within the existing building be altered as a consequence the proposed development?*

Comment: The primary outlook from the within the dwelling is towards Condoover Reserve (North-East), which has been considered to remain generally unchanged as a result of the proposed development.

- *Is the proposed demolition so extensive to cause that which remains to lose the characteristics of the form of the existing structure?*

Comment: The main structural aspects of the existing building are retained at the ground floor, with the majority of the external walls of the existing dwelling being retained. Furthermore, as discussed, the alterations and additions have been considered to incorporate elements to maintain the architectural characteristics of the dwelling.

Quantitative Issues

- To what extent is the site coverage proposed to be changed?

Comment: The proposal results in an increase in overall site coverage of the dwelling by approximately 100m². It should be noted that this much of this increase in site coverage is over an area that previously formed part of the existing driveway and carport area towards the front of the site. Despite this increase, the proposal results in compliance with 41.5% (351.6m²) of the site being maintained for landscaped open space.

- To what extent are any existing non-compliance's with numerical controls either increased or diminished by the proposal?

Comment: The proposed development facilitates for compliant off-street parking for two (2) vehicles as well incorporating privacy measures such as screening that were previously not accommodated on the site.

- To what extent is the building envelope proposed to be be changed?

Comment: The proposed additions result in a technical non-compliant with the side boundary envelope along the south-eastern elevation of the lower ground floor. Along the south-eastern elevation, the

lower ground floor breaches the 4m building envelope by 9cm (1.6%) at its greatest extent to the front elevation of the dwelling. A non-compliance is only applicable for a length of 600m along the south-eastern elevation, reducing to full compliance for the majority of the proposed development. See Part B3 Side Boundary Envelope for further discussion.

- To what extent is the boundary setbacks proposed to be changed?

Comment: Whilst the boundary setbacks to the front and sides are to be decreased by the alterations and additions, it should be acknowledged that the proposed development complies with relevant setback requirements of the Warringah DCP.

- To what extent will the present numerical degree of landscaping on the site be changed?

Comment: Whilst the numerical degree of landscaping on the site is being reduced, the proposal results in compliance with the requirements of the Warringah DCP, with 41.5% (351.6m²) of the site being maintained for landscaped open space. Further, the native canopy trees and rock outcrops to the rear of the site are preserved, with no works proposed in this area.

- To what extent will the existing floor space ratio be altered?

Comment: A Floor Space Ratio requirement does not apply to the proposed development or the subject site.

- To what extent will there be changes in the roof form?

Comment: The roof form will change from a gable style to skillion roof type.

- To what extent will there be alterations to the car parking/garaging on site and/or within the building?

Comment: The proposed development alters the carparking/garaging arrangement on site from a single detached carport to a double garage that is proposed to be below the lower ground floor.

- To what extent is the existing landform proposed to be changed by cut and/or fill to give effect to the proposed development?

Comment: The proposal does involve excavation works, particularly to accommodate off-street parking and ad driveway in accordance with relevant controls. See Part E6 Retaining unique environmental features of the Warringah DCP for further discussion. It should be noted that the existing landform to the rear of the dwelling remains unchanged. Consideration is also given that the proposed development being of a stepped design, responds to the topography of the site.

- What relationship does the proportion of the retained building bear to the proposed new development?

Comment: The portion of the retained building contains bedrooms, bathrooms, a rumpus room and study, while also providing internal connections to the lower ground floor and first floor.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D7 Views
 Warringah Development Control Plan - D8 Privacy
 Warringah Development Control Plan - E6 Retaining unique environmental features

SITE DESCRIPTION

Property Description:	Lot 4 DP 30205 , 50 Condoover Street NORTH BALGOWLAH NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southwestern side of Condoover Street.</p> <p>The site is irregular in shape with a primary frontage of 8.32m along Condoover Street, a secondary frontage of 13.715m to Kimo Street and a depth of 47.195m. The site has a surveyed area of 847.2m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two storey dwelling house located centrally on the site, with a detached carport towards the front of the site.</p>

The slope of the site is measured at 33.8%, falling approximately 15.93m from the rear (Kimo Street) to the front boundary (Condover Street).

The site contains a modified landscape/bushland setting, with vegetation consisting of large native canopy trees and rock outcrops to the rear of the site and lawned turfed areas toward the front of the site.

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. Condover Reserve is located across the road, towards the north of the subject site.

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:

5 December 2003

Development Application No. DA2003/1358 for alterations and additions (loft and carport) was granted approval by Council.

13 August 2019

Pre-Lodgement Meeting No. PLM2019/0156 held at Council to discuss alterations and additions to an

existing dwelling.

9 October 2019

Development Application No. DA2019/1109 for alterations and additions was rejected by Council.

APPLICATION HISTORY

11 October 2019

Development Application No. DA2019/1122 for alterations and additions to a dwelling house was received by Council.

22 November 2019

Photo evidence provided by the Applicant indicating that the notification sign had been in place for the duration of the notification period.

2 December 2019

Site inspection undertaken by the Development Assessment Officer.

12 December 2019

Email correspondence from the Development Assessment Officer to the Applicant requesting further details to be provided to address solar access concerns and to consider additional privacy measures.

13 December 2019

Email correspondence from the Applicant to the Development Assessment Officer that included an amended plan and additional information to address the above concerns. This amended plan forms the basis of the following assessment.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
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

Section 4.15 Matters for Consideration'	Comments
	<p>addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<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>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>

Section 4.15 Matters for Consideration'	Comments
	(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Consultancy Australia, dated July 2019) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Paul Bernard Kaplan Mrs Sandra Mae Kaplan	2 / 13 - 15 Ethel Avenue BROOKVALE NSW 2100
Mr Fotis Tsagaris	3 Battle Boulevarde SEAFORTH NSW 2092
John Tsagaris Pty Ltd	87 Seaforth Crescent SEAFORTH NSW 2092

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

- Non-compliance with Building Height
Comment:
Submissions were received on behalf of the property owners of No. 48 Condover Street and No.

53 Condoover Street, raising concerns that the proposed development breaches the height limit. Based on the plans submitted, the proposed building height is measures at 8.9m, resulting in a 400mm breach to the 8.5m height of building development standard. In this regard, the Applicant has submitted a written request under Clause 4.6 of the Warringah LEP 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings. See Clause 4.6 of the Warringah LEP 2011 for further discussion.

- Non-compliance to Side Boundary Envelope

Comment:

A submission was received on the behalf of the property owners of No. 48 Condoover Street, raising concerns that the proposed development breaches the side building envelope control. Based on the plans submitted, the proposed development breaches the building envelope along part of the south-eastern elevation by 0.09m, being 1.6%. The application has been considered to meet the objectives of Part B3 (Side Boundary Envelope) of the Warringah DCP. See Part B3 (Side Boundary Envelope) of the Warringah DCP for further discussion.

- Proximity of proposed development to Side Boundaries

Comment:

Submissions were received on behalf of the property owners of No. 48 Condoover Street and No. 53 Condoover Street, raising concern that the proposed development encroached into the side boundary setbacks. Part B5 (Side Boundary Setbacks) of the Warringah DCP requires a minimum side setback of 0.9m. Based on the plans submitted, the proposed development at its nearest point, is measured 0.9m from the north-western side boundary and 1.7m from the south-eastern side boundary. The proposal therefore complies with the numerical requirements of this control.

- Apparent non-compliance to Front Setback

Comment:

A submission was received on behalf of the property owners of No. 52 Condoover Street, raising concern that the proposed dwelling appeared too forward in relation to neighbouring properties. Part B7 (Front Boundary Setbacks) of the Warringah DCP requires a minimum setback of 6.5m. Based on the plans submitted, the proposed development is measured at 9.6m from the nearest point of the building to the front boundary and therefore complies with the numerical requirements of this control.

- Overshadowing concerns

Comment:

A submission was received on the behalf of the property owners of No. 48 Condoover Street, raising concerns and seeking clarification with regards to extent of shadowing that would be created by the resultant development. In response to this concern, the Applicant submitted updated solar access diagrams on the 13th of December 2019 to more clearly demonstrate the extent of overshadowing to the rear private open space area of No. 48 Condoover Street. The application has been considered to meet the minimum requirements of Part D6 (Access to Sunlight) of the Warringah DCP. See Part D6 (Access to Sunlight) of the Warringah DCP for further discussion.

- View Impacts

Comment:

A submission was received on the behalf of the property owners of No. 48 Condoover Street, requesting that the proposal apply greater articulation to the south-eastern elevation in order to accommodate existing views towards Condoover Reserve from the rear private open space area. 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 concerns

Comment:

Submissions were received on behalf of the property owners of No. 48 Condoover Street and No. 53 Condoover Street, raising privacy concern with the proposed decks and window arrangement. In response to these concerns and in order to limit overlooking, the Applicant submitted revised plans on the 13th of December 2019 to incorporate native screen plantings. 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.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The plans indicate some rock removal in the front yard and side of the site to accommodate the proposed works. It is noted that the site is listed as Category 1 - Extremely High for potential sites of Aboriginal significance. A referral to the AHO is recommended to assess the site.</p> <p>An Arborist's Report was submitted with the application indicating that the proposed works have an acceptable level of impact on 2 trees adjacent to the proposal.</p> <p>No objections are raised with regard to landscape issues subject to conditions as recommended.</p>
NECC (Development Engineering)	<p>The existing rock outcrops within council road reserve will need to be excavated for the proposed stairs and driveway. This may impact on the existing rock outcrop with setback area. Planners may consider whether the retention of the rock outcrops is necessary. If it is not required to retain the rock outcrops then the following conditions will be applicable for the approval.</p>
Parks, reserves, beaches, foreshore	No issues with the proposal.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p>
NSW Rural Fire Service – local branch (s79BA EPAA)	<p>The application was referred to the NSW Rural Fire Service who provided a response in a letter (Ref. DA-2019-03749, dated 8 November 2019) stating that the proposal is acceptable subject to recommended conditions. These conditions will be enforced as a condition of consent.</p>
Aboriginal Heritage Office	<p><u>Planner Comments 16.12.19:</u></p> <p>The Aboriginal Heritage Office provided comments the following comments on the 22 October 2019:</p>

External Referral Body	Comments
	<p><i>"DA2019/1122 50 Condover Street NORTH BALGOWLAH</i></p> <p><i>Reference is made to the proposed development at the above area and Aboriginal heritage.</i></p> <p><i>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</i></p> <p><i>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</i></p> <p><i>Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the Department of Planning, Industry and Environment (DPIE) and the Metropolitan Local Aboriginal Land Council should be contacted."</i></p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A359641_04, dated 30 September 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	8.9m	4.7% (400mm)	No

Compliance Assessment

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

Detailed Assessment

4.3 Height of buildings

Clause 4.3 (2) stipulates that a building on any land is not to exceed the maximum height of building for land as shown on the Height of Building Map. The subject site is located within Area 'I' of the Height of Building Map which has a maximum building height of 8.5m.

The maximum height of the proposed development has been measured at 8.9m from the ridge of the roof to the existing ground level below.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	8.9m
Percentage variation to requirement:	4.7%

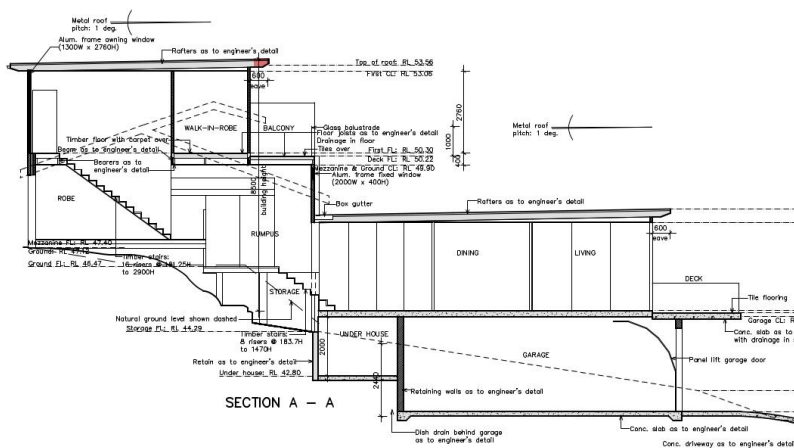


Figure 1. Section A-A showing the extent of the building height breach in red.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

Clause 4.6 (4)(a)(i) (Justification) assessment:

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

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

Comment:

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

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

In this regard, the Applicant's written request has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- The works will present a minor variation to the building height control which occurs as a result of the site's sloping topography, previous excavation and the requirements of BASIX. The resultant dwelling is considered to be compatible with the form and nature of the surrounding development.
- The proposal is consistent with the character of development in the locality.
- The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.
- The proposed new works do not present any unreasonable additional impacts in terms of view loss for neighbours, or bulk and scale.
- The proposed development is considered to promote good sustainable design with the non-complying element relating to a roof overhang/eave which provides sun protection to northeast openings which is consistent with the Objective 1.3 (g) of the EPA Act which is a suitable environmental planning ground which justifies the flexible application of the development standard.
- The external form of the proposed dwelling is stepped to follow the sloping topography of the site and results in a dwelling which is compatible in scale to its surrounding neighbours, which promotes the orderly & economic use of the land.

It is accepted that despite the variation to the building height development standard, the breach predominately relates to a roof eave element that is a BASIX requirement for shading. Following a site inspection, it did become apparent that minor excavation likely occurred at some point to the sandstone outcrop in the under-croft area below the existing dwelling house, however it is unlikely that this excavation was greater than 400mm (being the extent of the building height breach). It is noted that Ground Level (existing) should be taken as a reference to the ground level in an undisturbed state (i.e. not taken from within an excavation or from on top of filled land). As the side setback areas have been disturbed with stairs and landscaped with retaining walls, it is agreed that the Applicant's measurement of building height better reflects the sloping topography of the site. Consideration is also given that the proposed development responds being of a stepped design, responds to the topography of the site, as well as being compatible to the bulk and scale of neighbouring dwellings. It is further accepted that the proposed first floor will not give rise to an unacceptable impact on the amenity of adjoining or adjacent properties in terms of solar access, visual bulk, privacy and views.

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

As such, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

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

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The proposed development will not exceed two (2) storeys at any one point and will therefore be of a scale and built form that is consistent with neighbouring dwellings along Condoover Street. Furthermore, with the exception of roof eave element previously discussed, the additions proposed are wholly below the height limit to ensure that the development remains compatible with the height of surrounding development. Consideration is also given that due to the sloping topography, the building footprint falls over 5m from the rear to the front of the dwelling. To respond sensitively to the topography of the site, the proposed development has demonstrated a stepped design, with the extent of excavation is generally limited to the garage and driveway that is required to comply with relevant planning controls and Australian Standards. When comparing building scale with neighbouring developments, it is noted that No. 48 is also of a two (2) storey stepped design, whereas No. 52 appears as three (3) storeys when viewed from Condoover Street. It is therefore considered that the proposed development is compatible with the prevailing height and scale of the neighbouring and surrounding developments.

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

Comment:

Despite the proposed development being technically non-compliant with the side boundary envelope by 9cm (1.6%) along part of the south-eastern elevation of the lower ground floor, the majority of the alterations and additions comply with the building height and envelope control to ensure that the development does not appear as visually dominant. The proposed development has also been considered to continue to provide for a reasonable sharing of views for adjoining properties. While it is recognised that the proposed development will result in additional shadowing to the adjoining property to the south, the alteration and additions are not seen to result in a numerical non-compliance with the provisions of the WDCP. Subject to conditions recommended to incorporate additional privacy measures, the proposed development is considered to minimise overlooking and consistent with the relevant objectives of the WDCP.

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

Comment:

The proposed development is not considered to adversely impact on the scenic quality of the coastal and bush environments of the area. The additions proposed are considered to maintain a reasonable sharing of views, in particular for adjoining dwellings. Furthermore, the application does not propose the removal nor the impact upon of any existing native canopy trees. No works are proposed to rear portion of the site that consists of large native canopy trees and rock outcrops.

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

Comment:

The proposed development manages the visual impact when viewed from Condoover Street and Condoover Reserve through incorporating architectural elements that provide a street presence such as through the arrangement of windows and balconies, the entry feature, the skillion roof form as well as building mass that steps down the slope. Whilst also incorporating design elements of the existing dwelling, the proposed additions are of a coherent contemporary style

and considered to be complimentary with the overall streetscape.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The proposed development includes works to provide for additional habitable floor area, outdoor entertaining areas and compliant off-street vehicle parking, ensuring that the dwelling continue to meet the housing needs of the occupants. It is therefore considered that these alterations and additions to the dwelling are consistent with the housing needs of the community within a low density environment.

It is considered that the development satisfies this objective.

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

Comment:

This outcome is not considered to applicable in this instance, as the proposed development maintains the permissible use of the structure as a dwelling house for the occupants of the site.

It is considered that the development satisfies this objective.

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

Comment:

The proposed development seeks to maintain established gardens and landscaped open space that exceeds the 40% of the overall site area. Furthermore, the proposal does not seek the removal of any native canopy trees.

It is considered that the development satisfies this objective.

Conclusion:

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

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development

standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to Height of buildings Development Standard is assumed by the a delegate of council as the development contravenes a numerical standard by less than or equal to 10%.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7.1m (North-West) 7m (South-East)	-	Yes
B3 Side Boundary Envelope	4m	Within Envelope (North-West)	-	Yes
	4m	Outside Envelope (South-East)	Breach: 0.09m (1.6%)	No
B5 Side Boundary Setbacks	0.9m	0.9m (North-West)	-	Yes
	0.9m	1.7m (South-East)	-	Yes
B7 Front Boundary Setbacks	6.5m	9.6m	-	Yes
B9 Rear Boundary Setbacks	6m	14.6m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	41.5% (351.6m ²)	-	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	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

Clause	Compliance with Requirements	Consistency Aims/Objectives
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	Yes
D7 Views	Yes	Yes
D8 Privacy	No	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

The proposed development is technical non-compliant with the side boundary envelope along the south-eastern elevation of the lower ground floor. Along the south-eastern elevation, the lower ground floor breaches the 4m building envelope by 9cm (1.6%) at its greatest extent to the front elevation of the dwelling. A non-compliance is only applicable for a length of 600m along the south-eastern elevation, reducing to full compliance for the majority of the proposed development. Consideration has been given that the development is not visually dominant by virtue of its height and bulk and also effectively responds to the topography of the site. The variation sought for the lower ground floor does not result in an unreasonable impact on neighbouring properties with regards to views, privacy, light and solar access.

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 proposed development will result in additional shadowing of the adjoining property to the south. A submission was received on behalf of the property owners of No. 48 Condoever Street raising concern regarding the extent of overshadowing to their rear private open space area. An assessment of the certified shadow diagrams submitted with the development application indicates that between 9am and 3pm on June 21 (winter solstice), that a ground floor window and a portion of the rear private open space will be impacted by a reduced access to sunlight. However, the additional overshadowing maintains a minimum of 3 hours of sunlight between 9am and 3pm on June 21 to at least 50% of the private open space of No. 48 Condoever Street, and as such, the proposal is not seen to result in a numerical noncompliance with the provisions of this control. Furthermore, it should be noted that during

this time, the front balcony area of No. 48 Condoover Street that faces Condoover Reserve will not be impacted by additional shadowing.

D7 Views

The proposed development is considered to continue to provide for a reasonable sharing of views towards Condoover Reserve, for the adjoining property to the south. The proposed alterations and additions are anticipated to partially obscure bushland views from the rear private open space. 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 and this is applicable to the proposal in this particular instance. Furthermore, existing views from the Condoover Street facing balcony areas and windows will not be impacted by the proposal. When accounting for the extent of the view impact at No.48 Condoover Street 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

The proposed development does incorporate measures such as highlight windows and full height privacy screens to elevated decks in order to minimize overlooking. Concerns however have been raised that the kitchen 'letterbox style' window (numbered "24") oriented to the south-east would result in visual privacy impacts for the occupants of No. 48 Condoover Street. In order to address overlooking from this window to the rear private open space of No. 48 Condoover Street, a condition is recommended that window 24 be of translucent glazing (i.e. opaque) or be raised to a minimum sill height of 1.7m from the Lower Ground finished floor level (RL 45.00). To ensure that privacy is optimised for the occupants of the development and for neighbours, a condition has also been recommended for the planting of locally native shrub species along part of the south-eastern and north-western boundaries in order to restrict direct views towards windows of adjoining properties.

Subject to compliance with these conditions, the proposal is considered acceptable on merit and consistent with the objectives of the clause in this particular instance.

E6 Retaining unique environmental features

The proposed development seeks to remove a rock outcrop that is forward of the existing carport. The Applicant has detailed that its removal is unavoidable in order to provide on-site parking and driveway in accordance with Council controls. The proposal also indicates the partial removal of a rock outcrop within the road reserve to facilitate the new access driveway. Discussions between the Development Assessment Officer and Council's Development Engineer identified that a reduction to the proposed driveway width would likely be problematic noting the constraints, limited visibility and topography of the site. Given that the proposed development will be retaining extensive rock outcrops in the rear yard and referral comments being received from the Aboriginal Heritage Office advising that there are no Aboriginal heritage issues for the proposed development, the rock removal is considered acceptable and supported in this regard.

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 \$5,785 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$578,500.

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

Council is satisfied that:

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

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

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

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

Accordingly Council as the consent authority grant Development Consent to DA2019/1122 for Alterations and additions to a dwelling house on land at Lot 4 DP 30205, 50 Condoover Street, NORTH BALGOWLAH, 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
DA-01 (Site Plan)	September 2019	Duffy Regan Design
DA-02 (Demolition Plans)	September 2019	Duffy Regan Design
DA-03 (Garage Floor Plan)	September 2019	Duffy Regan Design
DA-04 (Mezzanine, Ground and Lower Ground Floor Plans)	September 2019	Duffy Regan Design
DA-05 (First Floor Plan)	September 2019	Duffy Regan Design
DA-06 (South East Elevation, North East Elevation)	September 2019	Duffy Regan Design
DA-07 (North West Elevation, South West Elevation)	September 2019	Duffy Regan Design
DA-08 (Section A-A, Section B-B)	September 2019	Duffy Regan Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Bushfire Assessment Report Ref. 50Con-01	29 August 2019	Bushfire Consultancy Australia
Geotechnical Report Ref. J2371A	24 September 2019	White Geotechnical Group
Arboricultural Impact Assessment	28 September 2019	Complete Arborcare
BASIX Certificate Ref. A359641_04	30 September 2019	Efficient Living Pty Ltd

c) 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:

Landscape Plans		
Drawing No.	Dated	Prepared By
DA-09 (Landscape Plan & Erosion & Sediment Control Plan)	October 2019	Duffy Regan Design

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Northern Beaches Council Waste Management Plan - 50 Condoover Street, North Balgowlah	No Date	No Author

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

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

2. **Compliance with Other Department, Authority or Service Requirements**

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
NSW Rural Fire Service	NSW RFS Referral Response Ref. DA-2019-03749	8 November 2019

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website www.northernbeaches.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

3. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
 - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been

completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. **General Requirements**

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No 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.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
 - i) Building/s that are to be erected
 - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
 - iii) Building/s that are to be demolished
 - iv) For any work/s that is to be carried out
 - v) For any work/s that is to be demolished

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$5,785.00 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 \$578,500.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater

Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

6. **Security Bond**

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

Reason: To ensure adequate protection of Council's infrastructure.

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

7. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's Warringah Water Management Policy PL850. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification 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 development.

8. **Amendments to the approved plans**

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

- The kitchen 'letterbox style' window numbered 24, is to of translucent glazing (i.e. opaque) or is be raised to a minimum sill height of 1.7m from the Lower Ground finished floor level (RL 45.00).

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 privacy impacts upon the adjoining property directly to the south-east.

9. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

10. **Vehicle Crossings Application**

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

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

Reason: To facilitate suitable vehicular access to private property.

11. **Installation and Maintenance of Sediment and Erosion Control**

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

12. **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.

13. Sydney Water "Tap In"

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

Please refer to the website www.sydneywater.com.au for:

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

14. Tree protection

(a) Existing trees which must be retained

- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
- ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with the Arboricultural Impact Assessment dated 28/09/2019 prepared by Complete Arborcare and AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. 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.

16. 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)] and
- 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.
- 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.

17. **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.

18. **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.

19. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3.5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/4 EH and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated

works within the road reserve in plain concrete. Proposed stairs should be located at least 1.5m away from kerblines. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

20. **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.

21. **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.

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

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

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

Reason: Preservation of significant environmental features.

23. **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.

24. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

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

Reason: To ensure bushland management.

25. **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.

26. **Certification of Landscape Works (Screen Planting)**

Landscaping is to be implemented inclusive of the following requirements:

i) planting of locally native shrub species along the south eastern boundary to the extent (width) of window '27', consisting of screen plantings that attain a minimum mature height of 3 metres and planted at a minimum 200mm potsize, and planted no more that 1 metre apart, and


ii) planting of locally native shrub species along the north western boundary to the extent (width) of window '26', consisting of screen plantings that attain a minimum mature height of 3 metres and planted at a minimum 200mm potsize, and planted no more that 1 metre apart.

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

Reason: to ensure that the landscape treatments are installed to maintain sufficient privacy between neighbours and provide landscape amenity.

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

Signed



Kent Bull, Planner

The application is determined on 14/01/2020, under the delegated authority of:



Matthew Edmonds, Manager Development Assessments