

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2020/0434
Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 7 DP 6445, 62 Mactier Street NARRABEEN NSW 2101
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:	Aleksandar Popovski Michelle Anne Popovski
Applicant:	Tullipan Homes Pty Ltd
Application Lodged:	04/05/2020
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	13/05/2020 to 27/05/2020
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 1.7%
Recommendation:	Approval
Estimated Cost of Works:	\$ 998,000.00

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the construction of a two-storey residential dwelling, a detached secondary dwelling and associated landscape works.

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - B9 Rear Boundary Setbacks

SITE DESCRIPTION

Property Description:	Lot 7 DP 6445 , 62 Mactier Street NARRABEEN NSW 2101
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Mactier Street.</p> <p>The site is regular in shape with a frontage of 15.24m along Mactier Street and a depth of 57.8m. The site has a surveyed area of 888.0m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single storey residential dwelling.</p> <p>The site has a northerly orientation and is located on a relatively flat block, with a very minor slope of 0.6m falling in the direction from the rear yard towards the street frontage.</p> <p>The site has large areas of turf within the front and rear setback. Garden beds are located along the eastern side boundary.</p> <p>The rear yard has multiple trees, primarily along the western and eastern side boundaries.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low density residential dwellings, many with ancillary structures and/or outbuildings.</p>

Map:



SITE HISTORY

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

Application **DA2019/0975** for Construction of a dwelling house and secondary dwelling was withdrawn on 15/10/2019 by the applicant.

Application **DA2019/1034** for Construction of a swimming pool was approved on 15/10/2019 by Council staff under delegated authority.

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 Matters for Consideration'	Comments
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact</p>

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

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Daniel John Kelly	57 Clarke Street NARRABEEN NSW 2101
Nigel Lawrence Farquhar	5 Surrey Avenue COLLAROY NSW 2097

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

- Stormwater and flooding impacts
- Bulk and scale
- Setbacks and overshadowing
- Air-conditioning unit location

The matters raised within the submissions are addressed as follows:

- *Concern is raised that the location and piercing of the proposed secondary dwelling will impact upon natural water drainage during storm and flooding events. It is requested the secondary dwelling be sited further away from the rear boundary.*

Comment:

The application has been referred to Council's Natural Environment team for flooding comments. The proposed location of the secondary dwelling and its piercing is considered to be designed in accordance with all relevant flood planning controls, subject to conditions. As such, no change to the proposed location of the secondary dwelling is recommended.

- *Concern is raised that the bulk and scale of the proposed dwelling. It is requested the eastern elevation of the first floor be set back a further 500mm from the side boundary.*

Comment:

While the proposed dwelling does not comply with the side building envelope control, the non-compliance is generally caused by the flood planning restrictions on the site. Further discussion regarding the side building envelope non-compliance is included in this report below.

The dwelling proposes a side setback to the eastern boundary of between 1.42m and 2.02m at the first floor. This is well within the 0.9m setback requirement. It is considered the siting of the dwelling as proposed is reasonable in the context of the site and surrounds. No repositioning of the external walls of the first floor is recommended.

- *Concern is raised that the proposed side setback will unreasonably impact on the solar access of the neighbouring dwellings.*

Comment:

While additional overshadowing of the eastern and western properties is expected as a result of the proposed development, the relevant requirements of the DCP are demonstrated to be achievable, that being at least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.

- *Concern is raised regarding the proposed location of the external air-conditioning unit. It is requested the location be changed to beneath the rear deck.*

Comment:

The proposed location of the air-conditioning unit is not expected to cause an unreasonable noise impact to adjacent dwellings. No change to the proposed air-conditioning unit location is recommended.

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</p>

Internal Referral Body	Comments
	<p>requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
<p>Environmental Health (Acid Sulphate)</p>	<p>The DA application form, the Statement of Environmental Effects and the Master Set of Plans all advise that the proposed development is for a new double story dwelling a detached secondary dwelling. The application documents include an Acid Sulphate Soil (ASS) assessment prepared by Intrax Consulting Engineers Pty Ltd (reference: Document Revision: A, dated 19/08/2019). The introduction of the Acid Sulphate Soil (ASS) assessment report states that the proposed development is a “double storey residential dwelling and a above ground swimming pool”. The body and findings of the ASS report also refer to a swimming pool.</p> <p>A swimming pool is not proposed by the applicant and will not be assessed and/or consented to by Council. It is therefore noted that the Acid Sulphate Soil (ASS) assessment report contains the above technical error.</p> <p>The report outlines the findings of the site investigation carried out on 7 August 2019, and the results of additional laboratory testing. The report advises that:</p> <ul style="list-style-type: none"> • Insitu soils encountered in the bore hole testing results do not contain any Actual or Potential Acid Sulfate Soils to a depth of about 1.0m below the existing surface grade. • The site does not require any Acid Sulfate Soils Management Plan (ASSMP) provided the depth of excavation is within 1.0m below the existing surface grade. • The soil below 1.0m has a potential to be acidic if exposed to the air during the construction of the proposed project. • If any material is excavated below 1.0m depth then Intrax should be notified and an Acid Sulphate Soil Management Plan (ASSMP) would be required.
<p>Landscape Officer</p>	<p>The plans indicate removal of two small trees to accommodate the secondary dwelling. No objections are raised to removal subject to replanting.</p> <p>The landscape plan provided indicates screen planting along the rear of the site. Conditions have been included to ensure installation of the screening.</p> <p>No objections are raised to approval subject to conditions as recommended.</p>

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	<p>This application was assessed against Warringah DCP E2 Prescribed vegetation, E4 Wildlife corridors, and E6 Retaining unique environmental features.</p> <p>The proposal is for the construction of a new dwelling and detached secondary dwelling. No native trees or vegetation are proposed to be impacted.</p> <p>Council's Natural Environment - Biodiversity section raises no objections, subject to conditions.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the <i>Coastal Management Act 2016</i>, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Warringah LEP 2011 and Warringah DCP 2011.</p> <p>Coastal Management Act 2016</p> <p>The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018</p> <p>As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>Comment:</p> <p>On internal assessment and as also assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Nolan Planning Consultants dated April 2020, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Warringah LEP 2011 and Warringah DCP 2011</p> <p>No coastal related issues identified.</p>

Internal Referral Body	Comments
	<p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Warringah LEP 2011 and Warringah DCP 2011.</p>
NECC (Development Engineering)	<p>No objections are raised to the proposed development, subject to conditions.</p>
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against:</p> <p>State Environment Planning Policy (Coastal Management) 2018 Part 2, Division 3, Clause 13</p> <p>Warringah Local Environment Plan 2011</p> <p>Warringah Development Control Plan 2011 C5 E8</p> <p>This application proposes the construction of a primary and secondary dwelling. The plans have included a sediment arrestor pit which must allow for safe access for regular maintenance. The Erosion and Sediment Controls detailed in the plan are just downstream of the proposed primary dwelling, however the applicant must demonstrate stabilised site access and a revised location of the erosion and sediment fencing to the boundary of the Site adjoining Mactier Street. The relocation of the erosion and sediment fencing will prevent the migration of any sediment offsite which may be caused during the development of the front lawn and construction of the driveway. Migration of sediment offsite will affect the water quality of the receiving aquatic environment (Narrabeen Lagoon).</p> <p>A revised Erosion and Sediment Control Plan must be submitted to the certifying Authority for approval prior to the issue of the Construction Certificate. Reference should be made to Landcom's 'Managing Urban Stormwater' 2004. With the relocation of these erosion and sediment controls and the addition of stabilised site access it is unlikely that this proposal will have an adverse impact on the integrity and resilience of the biophysical, ecological and hydrological environment. Therefore it is recommended for approval subject to conditions.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The application to construct a primary and secondary dwelling generally complies with Council's controls for flood prone land, subject to conditions and the recommendations of the Flood Management Report prepared by Steve Wyllie.</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 (Affordable Rental Housing) 2009

State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH) aims to provide new affordable rental housing and retain and mitigate any loss of existing affordable rental housing by providing a consistent planning regime. Specifically, SEPP ARH provides for new affordable rental housing by offering incentives such as expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards.

Division 2: Secondary dwellings

Clause 19: Definition

Development for the purposes of a secondary dwelling includes the following:

- (a) the erection of, or alterations or additions to, a secondary dwelling,
- (b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.

Note: The standard instrument defines secondary dwelling as follows:

"secondary dwelling means a self-contained dwelling that:

- (a) is established in conjunction with another dwelling (the principal dwelling), and*
- (b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and*
- (c) is located within, or is attached to, or is separate from, the principal dwelling."*

Comment:

The proposed use is defined under WLEP 2011 as secondary dwelling, which is consistent with the Standard Instrument definition.

Clause 20: Land to which this Division applies:

Requirement	Comment
This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones, but <i>only if</i> development for the purposes of a dwelling house is permissible on the land:	
(a) Zone R1 General Residential, or (b) Zone R2 Low Density Residential, or (c) Zone R3 Medium Density Residential, or (d) Zone R4 High Density Residential, or (e) Zone R5 Large Lot Residential.	Consistent The site is located within the R2 Low Density Residential zone and, as such, the proposed use is permissible with consent under WLEP 2011.

Clause 21: Development to which this Division applies

Requirement	Comment
This Division applies to development, on land to which this Division applies, for the purposes of a secondary dwelling.	Consistent The development involves the construction of a secondary dwelling, as defined by the Standard Instrument. Therefore, this Division applies.

Clause 22: Development may be carried out with consent

Development to which this Division applies may be carried out with consent.

Requirement	Comment
(2) A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.	Consistent The proposed development will result in one principal dwelling and one secondary dwelling on the site.
(3) A consent authority must not consent to development to which this Division applies unless: (a) the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and (b) the total floor area of the secondary dwelling is no more than 60m ² or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.	Consistent The proposed secondary dwelling has a floor area of 60m ² . The site is not subject to a floor space ratio development standard.
(4) A consent authority must not refuse consent to development to which this Division applies on either of the following grounds: (a) site area if: (i) the secondary dwelling is located within, or is	Consistent The site area is 888m ² . As such, the proposed secondary dwelling cannot be refused on the basis of insufficient lot size. The principal dwelling is to have two parking spaces. No designated onsite parking is proposed

attached to, the principal dwelling, or
(ii) the site area is at least 450 square metres.

(b) parking if no additional parking is to be provided on the site.

for the secondary. While no parking for the secondary dwelling is proposed, the proposed secondary dwelling cannot be refused on the basis of not providing additional parking.

Note: A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (4).

Clause 24: No subdivision

Requirement	Comment
A consent authority must not consent to a development application that would result in any subdivision of a lot on which development for the purposes of a secondary dwelling has been carried out under this Division.	Consistent This application does not propose any subdivision of the existing allotment.

Conclusion

The proposed secondary dwelling demonstrates compliance with the relevant requirements of SEPP ARH. As such, no objection is raised regarding the proposed secondary dwelling.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1026114M_05, dated 8 April 2020). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0003995255-01, dated 17 March 2020 and 0003995263-01, dated 16 July 2019).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	50

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

SEPP (Coastal Management) 2018

The proposal has been assessed against the requirements of CM SEPP. See Coast and Catchments referral comment for details.

Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
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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	8.65m	1.7%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	8.65m
Percentage variation to requirement:	1.7%

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).

(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 proposal will provide for the construction of a new dwelling to provide for improved amenity for the site's occupants.

The new works maintain a bulk and scale which is in keeping with the extent of surrounding development, with a consistent palette of materials and finishes, in order to provide for high quality development that will enhance and complement the locality.

The maximum ridge level will stand at RL 10.65m. Notwithstanding the non-compliance with the maximum overall height, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood.

The proposed dwelling has been located to mitigate any adverse impacts of overshadowing and loss of view towards any neighbouring properties.

The development will not see any unreasonable impacts on view sharing.

It is considered that the applicant's justification for the proposed building height non-compliance is well founded and the non-compliance is acceptable in the context of the site and locality.

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.

Therefore, 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 dwelling demonstrates appropriate architectural design to reduce perceived bulk and scale when viewed from adjacent properties and the public domain. The height and scale of the dwelling is considered to be in-keeping with that of surrounding development.

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

Comment:

The proposed dwelling is not considered to unreasonably impact upon the amenity of adjacent properties by way of visual impact, view loss, privacy or solar access.

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

Comment:

The proposed dwelling is not considered to unreasonably impact upon the scenic qualities of the Narrabeen Lagoon coastal and bushland environment.

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

Comment:

The design, bulk and scale of the proposed dwelling is consistent with surrounding development and is not expected to cause an unreasonably visual impact when viewed from the public domain.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone are:

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

Comment:

The proposal is for the construction of a new two-storey residential dwelling and single storey secondary dwelling.

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:

The proposal relates to an ongoing residential land use for 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 is sited, scaled and landscaped to remain in harmony with the natural environment of the Narrabeen Lagoon locality.

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 issued by the NSW Department of Planning & Infrastructure, 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 the Height of buildings Development Standard is assumed by the 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	Dwelling - 7.2m	N/A	Yes
		Secondary Dwelling - 5.0m	N/A	Yes
B3 Side Boundary Envelope	E - 4m	Dwelling - Outside envelope	19.9% to 33.2%	No
		Secondary Dwelling - Within envelope	N/A	Yes
	W - 4m	Dwelling - Outside envelope	Up to 18.3%	No
		Secondary Dwelling - Within envelope	N/A	Yes
B5 Side Boundary Setbacks	E - 0.9m	Dwelling - 1.0m	N/A	Yes
		Secondary Dwelling - 1.94m	N/A	Yes
	W - 0.9m	Dwelling - 1.3m	N/A	Yes
		Secondary Dwelling - 1.0m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	6.0m	7.7%	No
B9 Rear Boundary Setbacks	6m	Dwelling - 29.1m	N/A	Yes
		Secondary Dwelling - 6.0m	N/A	Yes
		Secondary Dwelling Deck - 3.0m	50%	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	Excluding swimming pool approval DA2019/1034 - 43.6% (387.4m ²)	N/A	Yes
		Including swimming pool approval DA2019/1034 - 39.5% (350.6m ²)	1% (4.6m ²)	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 x 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	No	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes
E11 Flood Prone Land	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

The control requires that a building must be sited within the building envelope which is determined by projecting planes at 45° from a height of 4.0m above the ground level.

The dwelling encroaches into the side boundary envelope along the western elevation to a height of 1.1m in two sections measuring 4.9m towards the front elevation and 7.1m towards the rear elevation. The dwelling encroaches into the side boundary envelope along the eastern elevation to a height of between 1.2m and 1.8m.

Merit consideration

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

- *To ensure that development does not become visually dominant by virtue of its height and bulk.*

Comment:

It is considered that the resultant development is consistent with the existing surrounding residential development. The design demonstrates sufficiently articulation and demonstrates good setbacks to all boundaries ensuring compliance with this merit consideration.

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

Comment:

The application has demonstrated that the proposal will not have an unreasonable impact with regards to solar access. The adjoining properties will maintain solar access in accordance with the DCP requirements.

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

Comment:

The subject site is generally flat and is subject to flood planning controls. As such, the floor level of structures need to be built above the flood planning level. This generally results in taller structures on flood affected sites. It is considered the proposal appropriately responds to the site topography, limits amenity impact and provides a sufficient visual outcome, given the context and characteristics of the site.

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

B7 Front Boundary Setbacks

Description of non-compliance

The control requires development to be setback a minimum of 6.5m from the front boundary.

The proposed dwelling is to incorporate a 6.0m setback to the front boundary.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

While the dwelling does not comply with the numerical setback requirement, the portion of the dwelling that encroaches into the front setback area is the front entry porch and first floor balcony. The front building line of the dwelling is set back 7.8m from the front boundary. As these structures are open on three sides, they are not considered to unreasonably impact the sense of openness in the front setback area. These parts of the dwelling can be considered architectural elements to create a more visually interesting front facade that faces a public reserve.

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

Comment:

The proposed development is considered to be generally in-keeping with the existing building pattern and maintains visual continuity with landscaped elements in the front setback area.

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

Comment:

The proposed development is considered to substantially improve the visual quality of the site and its relation to the street and adjacent public domain.

- *To achieve reasonable view sharing.*

Comment:

The proposed development is not expected to cause any unreasonable impact to existing view corridors.

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

B9 Rear Boundary Setbacks

Description of non-compliance

The control requires all structures to be setback 6m from the rear boundary. On land zoned R2 Low Density Residential, where the minimum rear building setback is 6 metres, exempt development, swimming pools and outbuildings that, in total, do not exceed 50% of the rear setback area, provided that the objectives of this provision are met.

The proposed secondary dwelling is to incorporate a deck that is setback 3.0m from the rear boundary. The secondary dwelling itself is setback 6.0m from the rear boundary, which demonstrates compliance with the control.

The rear setback area of the site is 91.5m². The secondary dwelling deck floor area is 18.6m². This represents 20.3% of the rear setback area. As such, the variation outlined above applies in this instance.

Merit consideration:

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

- *To ensure opportunities for deep soil landscape areas are maintained.*

Comment:

Adequate deep soil landscaping is provided on the site.

- *To create a sense of openness in rear yards.*

Comment:

The proposed development is not considered to unreasonably impact upon the openness of the rear yard.

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

Comment:

While the deck is elevated due to flood planning requirements, the amenity impact of the deck on adjacent properties is not considered to be unreasonable in the context of the site and surrounds.

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

Comment:

The existing visual continuity and building pattern is not considered to be unreasonably impacted by the proposed development. Substantial areas of landscaping is able to be provided to reduce the visual impact of built structures.

- *To provide opportunities to maintain privacy between dwellings.*

Comment:

Privacy between dwellings is considered to be maintained.

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

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 \$9,980 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$998,000.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

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.

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the WLEP 2011 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and 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 DA2020/0434 for Alterations and additions to a dwelling house on land at Lot 7 DP 6445, 62 Mactier Street, NARRABEEN, 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
7292-wd8 Sheet 1 of 15	23 March 2020	Tullipan Homes
7292-wd8 Sheet 2 of 15	23 March 2020	Tullipan Homes

7292-wd8 Sheet 3 of 15	23 March 2020	Tullipan Homes
7292-wd8 Sheet 4 of 15	23 March 2020	Tullipan Homes
7292-wd8 Sheet 5 of 15	23 March 2020	Tullipan Homes
7292-wd8 Sheet 6 of 15	23 March 2020	Tullipan Homes
7292-wd8 Sheet 7 of 15	23 March 2020	Tullipan Homes
7292-wd8 Sheet 9 of 15	23 March 2020	Tullipan Homes
7292-wd8 Sheet 10 of 15	23 March 2020	Tullipan Homes
7292-wd8 Sheet 11 of 15	23 March 2020	Tullipan Homes

Engineering Plans		
Drawing No.	Dated	Prepared By
T8939-7292 Sheet 1 of 2 Revision B Issue 3	3 April 2020	Ibrahim Stormwater Consultants
T8939-7292 Sheet 2 of 2 Revision B Issue 3	3 April 2020	Ibrahim Stormwater Consultants

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1026114M_05	8 April 2020	Energi Thermal Assessors Pty Ltd
NatHERS Certificate No. 0003995255-01	17 March 2020	Energi Thermal Assessors Pty Ltd
NatHERS Certificate No. 0003995263-01	16 July 2019	Energi Thermal Assessors Pty Ltd
Flood Management Report & Addendum	15 August 2019 & 17 February 2020	Pittwater Data Services

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

c) The development is to be undertaken generally in accordance with the following:

Landscape Plans		
Drawing No.	Dated	Prepared By
7292-wd8 Sheet Landscaping	23 March 2020	Tullipan Homes

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	Undated	Unnamed

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

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

2. Prescribed Conditions

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

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

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

(k) Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

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

(l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

(m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.

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

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

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$9,980.00 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 \$998,000.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

5. Security Bond

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

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

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

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is

located on Council's website at www.northernbeaches.nsw.gov.au).

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

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

6. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to Mactier Street.

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

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

7. **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.

8. **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.

9. **Flooding**

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

Building Components and Structural Soundness – C1

All new development shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering

Committee (2006).

Building Components and Structural Soundness – C2

All new development must be designed and constructed to ensure structural integrity up to the Probable Maximum Flood level of 5.0m AHD, taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion. Structural certification shall be provided confirming the above.

Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level of 3.55m AHD.

Storage of Goods – D1

Hazardous or potentially polluting materials shall not be stored below the Flood Planning Level unless adequately protected from floodwaters in accordance with industry standards.

Flood Emergency Response – E2

Appropriate access to the shelter in place refuge should be available from all areas of the new development.

Floor Levels – F1

New floor levels within the development shall be set at or above the Flood Planning Level of 3.55m AHD.

Floor Levels – F2

The underfloor area of the dwelling below the 1% AEP flood level is to be designed and constructed to allow clear passage of floodwaters. The underfloor perimeter of the dwelling is to have a minimum of 50% open area below the 1% level

Car parking – G4

Vehicle barriers or restraints are to be installed to a minimum height of the Flood Planning Level.

Perimeter walls/louvres installed as vehicle barriers or restraints are to be designed to allow flood waters to pass through and are to have a minimum of 50% open area below the 1% flood level.

Car parking – G6

Car ports are to be designed to allow flood waters to pass through and are to have a minimum of 50% open area below the 1% flood level.

Fencing – H1

New fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open for the passage of flood waters - All new fencing on the property must be designed with a minimum of 50% open area between the 1% flood level and natural ground level, to allow flood waters to pass through.

Recommendations

The development must comply with the following recommendations in the Flood Management Report Addendum prepared by Pittwater Data Services Pty Ltd dated 17 February 2020:

- An access key is to be provided to the primary dwelling in a wall mounted key storage box as depicted in Figure 1 with a code issued to the residents of both dwellings.

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

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

10. **Erosion and Sediment Control Plan**

A revised Erosion and Sediment Control Plan (ESCP) shall be prepared by an appropriately qualified person and implemented onsite prior to commencement. The ESCP must meet the requirements outlined in the Landcom publication Managing Urban Stormwater: Soils and Construction - Volume 1, 4th Edition (2004). The ESCP must include the following as a minimum:-

- Site Boundaries and contours;
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities);
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls;
- North point and scale.
- Details of stabilised site access
- Revised location of sediment fencing

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

Reason: To mitigate environmental impact resulting from site disturbance.

11. **Water Quality Management**

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment

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. Public Liability Insurance - Works on Public Land

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

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

15. 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 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.

16. **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).

The erosion and sediment controls must be located at the site boundary adjoining Mactier Street and include stabilised site access. These are to be installed prior to construction and only once the revised Erosion and Sediment Control Plan is approved by the Certifying Authority.

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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

17. **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.

18. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 3 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

19. **Prevent Disturbance of Acid Sulphate Soils**

Prevent Disturbance of Acid Sulphate Soils

To prevent potential disturbance of Acid Sulfate Soils, excavation works must not exceed 1 metre below the natural ground level as no Acid Sulfate Soil Management Plan has been submitted.

Reason: For protection of the environment.

20. **Requirement to notify about new Acid Sulfate Soils evidence**

Requirement to notify about new Acid Sulfate Soils evidence

Any new information revealed during excavation works that has the potential to alter previous conclusions about Acid Sulfate Soils shall be immediately notified to the Council and the Principal Certifying Authority prior to further commencement.

Reason: To protect the environment and private & public infrastructure

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

21. **Landscape completion certification**

a) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape consultant or horticulturalist shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any approved landscape plan and inclusive of any conditions of consent.

Reason: To ensure that the landscape treatments are installed to provide landscape amenity.

22. **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.

23. **Acid Sulfate Soils Management Certification**

Acid Sulfate Soils Management Certification

Prior to the issue of the Occupation Certificate, written certification from a suitably qualified person(s) must be submitted to the Principal Certifying Authority, stating that all the works/methods/procedures/control measures/recommendations have been undertaken in compliance with the Acid Sulphate Soil (ASS) assessment prepared by Intrax Consulting Engineers Pty Ltd (reference: Document Revision: A, dated 19/08/2019).

Reason: To ensure compliance with standards.

24. **Required Planting**

a) Trees shall be planted in accordance with the following schedule:

Minimum No. of Trees Required.	Species	Location	Minimum Pot Size
2	Trees capable of attaining a minimum height of 5 metres at maturity	Grounds of property	200mm

- b) Screen planting is to be provided in a garden bed located between the secondary dwelling and the rear boundary.
- c) The garden bed is to be prepared with a suitable free draining planter soil mix, mulched and planted with species capable of attaining a minimum height of 2 metres at maturity.
- d) Plants are to be planted at minimum 1.5 metre centres and be of a minimum pot size of 200mm at planting.

Reason: Local amenity and visual privacy

25. **Flooding**

Certification of the Structural Stability of the Building (C2)

A suitably qualified structural engineer is to certify the structural stability of the new development considering lateral flood flow, buoyancy, suction effects, wave action and debris load impact of the Probable Maximum Flood (PMF) design flood depths and velocities. Details demonstrating compliance are to be submitted to the Certifying Authority for approval.

Undercroft Area below the 1% Flood Level - F2

A restriction shall be imposed on the title of the land, pursuant to S88B of the Conveyancing Act confirming that the undercroft area does not impede flows and is not to be enclosed, with the perimeter having a minimum of 50% open area from the natural ground level up to the 1% AEP flood level. The terms of such a restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Council prior to lodgement with NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such restriction. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

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

26. **Works as Executed Drawings - Stormwater Treatment Measures**

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment

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

27. **Maintenance of Stormwater Treatment Measures**

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment

28. **No Planting Environmental Weeds**

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

29. **Works to cease if item found**

If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

Reason: To protect Aboriginal Heritage.

30. **Dead or Injured Wildlife**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

31. **Domestic Animals Exclusion**

For the life of the development, cats are to be kept in a cat run and/or inside the dwelling such that they are prevented from entering wildlife habitat areas at all times. Dogs are to be kept in an enclosed area such that they cannot enter areas of bushland, unrestrained, on surrounding properties.

Reason: Wildlife protection

32. **Fencing for Wildlife Passage**

Any new fencing (with the exception of swimming pool fencing) is to be made passable to native wildlife. Hole dimensions are to be a minimum of 150mm wide x 100mm high at ground level spaced at 6 metre intervals.

Reason: Management of wildlife corridors

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

Signed



Nick Keeler, Planner

The application is determined on 02/07/2020, under the delegated authority of:



Matthew Edmonds, Manager Development Assessments