

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2015/1265
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Responsible Officer:	Nick England
Land to be developed (Address):	Lot 12 DP 14450, 88 Brighton Street FRESHWATER NSW 2096
Proposed Development:	Alterations and Additions to an existing dwelling, and the construction of swimming pool and secondary dwelling
Zoning:	LEP - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Warringah Council
Land and Environment Court Action:	No
Owner:	Anthony James Brown Vanessa Leigh Brown
Applicant:	Anthony James Brown Vanessa Leigh Brown

Application lodged:	17/12/2015
Application Type:	Local
State Reporting Category:	Residential - Alterations and additions
Notified:	13/01/2016 to 28/01/2016
Advertised:	Not Advertised, in accordance with A.7 of WDCP
Submissions:	1
Recommendation:	Approval

Estimated Cost of Works:	\$ 600,125.00
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ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

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SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - R2 Side Boundary Envelope Exceptions
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

SITE DESCRIPTION

Property Description:	Lot 12 DP 14450 , 88 Brighton Street FRESHWATER NSW 2096
Detailed Site Description:	The subject site consists of one (1) allotment located on the southern side of Brighton Street. The site is irregular in shape with a width varying between 15.545m and 9.785m and a depth of approximately 81m. The site has a surveyed area of 1,035m². The site is located within the R2 Low Density Residential zone and accommodates a dwelling house and detached carport. Surrounding development consists of residential dwellings to the east and west and an educational establishment (Freshwater Senior Campus) to the north. The site has a northerly aspect with a pronounced slope rising up to the rear boundary. The site contains a number of mature trees mostly to the rear of the site.

Map:



SITE HISTORY

There is no site history relevant to the application.

PROPOSED DEVELOPMENT IN DETAIL

The application consists of the following:

- alterations and additions to an existing dwelling;
- construction of an outbuilding forward of the existing dwelling, for the purposes of a secondary dwelling with associated parking and storage; and
- in-ground swimming pool.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of the application was taken into account detail provided within Attachment A.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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. <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. <u>Clauses 54 and 109</u> of the EP&A Regulation 2000, permits Council to requested additional information and therefore consider the number of days taken in this assessment in light of this clause within the Regulations. However, no additional information was requested. <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.

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Section 79C 'Matters for Consideration'	Comments
	<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 matter has been addressed via a condition of consent. <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. <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. <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.
Section 79C (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	(i) 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. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.
Section 79C (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.

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 Warringah Development Control Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

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Name:	Address:
Mrs Jill Baron Nye	92 Brighton Street FRESHWATER NSW 2096

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

- *The eaves on the roof of the proposed dwelling should be setback 0.9m from the side boundary, to ensure no potential for overflow of stormwater and permit adequate maintenance.*

The matters raised within the submissions are addressed as follows:

- *The eaves on the roof of the proposed dwelling should be setback 0.9m from the side boundary, to ensure no potential for overflow of stormwater and permit adequate maintenance.*

Comment: An assessment of the eaves' non-compliance with the Side Setback and Side Boundary Envelope controls of WDCP 2011 is provided elsewhere in this report. In summary, the non-compliance proposed are consistent with the objectives of the controls and are under the circumstances are acceptable. Provided the approved development is maintained in adequate working order, stormwater management can be adequately achieved on the site and is unlikely to cause any adverse impact on adjoining properties. The location of the eave adjoining the side boundary will no encroach on the adjoining property and can be adequately maintained from this property. In summary, the proposed non-compliance is not to the extent that would warrant refusal of the application.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development. <i><u>Note:</u> The proposed development may not comply with some requirements of the BCA. Issues such as this however may be determined at Construction Certificate stage.</i>
Development Engineers	The proposed development does not require on-site stormwater detention and connection of stormwater to the existing system is satisfactory. The proposed transition grades for the internal driveway are to comply with AS/NZS 2890.1:2004 which has been conditioned. No objection to approval, subject to conditions as recommended.
Landscape Officer	No objections to approval subject to conditions as recommended.
Traffic Engineer	There is no objection to the proposed development of a secondary dwelling and associated car parking with regard to traffic.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (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**

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(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".

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.	In the existing condition and as proposed in the application, there will only be one (1) principal dwelling associated with the proposed secondary dwelling.
(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.	The total floor area of the proposed secondary dwelling (incorporating the lift only on one of the ground and first floors) will not exceed 60m ² in total floor area as defined by the SEPP ARH 2009.

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(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 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.	The site area exceeds 450m² in area, consistent with this requirement.
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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 proposal is consistent with the provisions of SEPP ARH.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application, for both the principal dwelling and secondary dwelling (see Certificate Nos. A233369 and 678770S). The BASIX Certificate is supported by a NATHERS Certificate (see Certificate No. 14733549 issued 11 November 2015).

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

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

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

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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 Environment Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.2m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.8 Conversion of fire alarms	Yes
5.9AA Trees or vegetation not prescribed by development control plan	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.2m (dwelling) 5.3m (secondary dwelling)	N/A N/A	Yes Yes
B3 Side Boundary Envelope	5m	No breach	N/A	Yes

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	5m	Breach on west elevation on eave of dwelling	N/A	No
B5 Side Boundary Setbacks	0.9m	0.9m (west - building) 0.432m (west - eave)	N/A 50%	Yes No
	0.9m	1.685m (east)	N/A	Yes
B7 Front Boundary Setbacks	6.5m	6.5m (secondary dwelling)	N/A	Yes
B9 Rear Boundary Setbacks	6m	12.8m (pool)	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	396m ² or 38%	5%	No

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
R2 Side Boundary Envelope Exceptions	No	Yes
B5 Side Boundary Setbacks	No	Yes
Side Setbacks - R2	No	Yes
Side Setback Exceptions - R2	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
R2 - All other land in R2 Zone	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
All other land under R2	Yes	Yes
Rear Boundary Exceptions - R2	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
Residential accommodation - one or two dwellings	Yes	Yes
Mixed Use Premises (Residential/Non-Residential)	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes

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Clause	Compliance with Requirements	Consistency Aims/Objectives
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
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
E1 Private Property Tree Management	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

Description of non-compliance

A part of the eave on the western boundary will extend beyond the permitted exception (675mm) from the side boundary envelope. This results in an encroachment on the side boundary of approximately 240mm for a length of 2.5m.

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:

The extent of the encroachment is very minor and is unlikely to result in any visual dominance by the proposed principal dwelling on the land.

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

Comment:

As stated previously, the proposed variation is very minor. This encroachment is unlikely to result in any adverse amenity impact on adjoining properties. In this regard, the proposal is consistent with this objective.

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

Comment:

The proposal responds adequately to the topography of the site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP 2011 and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

R2 Side Boundary Envelope Exceptions

A very minor portion of the eave on the dwelling (the south-western corner) will encroach beyond the permitted 0.675m distance from the side boundary. This non-compliance is discussed in the section of the report pertinent to Side Boundary Envelope.

B5 Side Boundary Setbacks

Description of non-compliance

A minor part of the eave on the principal dwelling (for a length of approximately 2.5m) adjoining the western boundary is located 0.432m from this boundary. This represents a 50% non-compliance with the minimum setback.

Merit consideration

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

- *To provide opportunities for deep soil landscape areas.*

Comment:

The proposed variation relates to an eave only and will not result in any loss in landscaped open space at ground level. The proposed variation is hence consistent with this objective.

- *To ensure that development does not become visually dominant.*

Comment:

The extent of the variation is very minor and relates to an eave on the roof of the proposed works to the existing residential dwelling. This variation will not have the effect of making the proposal become visually dominant. In this regard, the proposal is consistent with this objective.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment:

The extent of the proposed variation is minor and relates to services infrastructure to a

dwelling. In this regard, the scale and bulk of the proposal will be minimised to achieve compliance with this objective.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment:

The proposed variation will not result in any significant loss of acoustic or visual privacy and solar access or adverse visual impact.

- *To provide reasonable sharing of views to and from public and private properties.*

Comment:

The extent of the proposed variation is unlikely to result in any adverse loss of views enjoyed by adjoining residences.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP 2011 and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

A total of 396m² or 38% of the site is set aside as landscaped open space. This represents a 5% variation with the minimum requirement.

Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

Comment: Sufficient planting is provided on the frontage of the site to maintain and enhance the streetscape.

- *To conserve and enhance indigenous vegetation, topographical features and habitat for wildlife.*

Comment: Sufficient area is provided to maintain this objective.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment: Sufficient area is provided to maintain this objective.

- *To enhance privacy between buildings.*

Comment: The proposed variation is minor and will not result in any adverse impact in respect to acoustic and visual privacy.

- *To accommodate appropriate outdoor recreational opportunities that meet the needs of the occupants.*

Comment: Sufficient area is provided to maintain this objective.

- *To provide space for service functions, including clothes drying.*

Comment: Sufficient area is provided to maintain this objective.

- *To facilitate water management, including on-site detention and infiltration of stormwater.*

Comment: Sufficient area is provided to maintain this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP 2011 and the objectives specified in section 5(a) 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

Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

Warringah Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 600,125		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 5,701
Section 94A Planning and Administration	0.05%	\$ 300
Total	1%	\$ 6,001

CONCLUSION

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

applicant and the provisions of:

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2015/1265 for Alterations and Additions to an existing dwelling, and the construction of swimming pool and secondary dwelling on land at Lot 12 DP 14450, 88 Brighton Street, FRESHWATER, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A/01 A	aug '15	Atelier Haefeli Pty Ltd
A/02 B	aug '15	Atelier Haefeli Pty Ltd
A/03 A	aug '15	Atelier Haefeli Pty Ltd
LA/01	dec '15	Atelier Haefeli Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By

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BASIX Certificate No.678770S	11 November 2015	Efficient Living
BASIX Certificate No.A233369	29 October 2015	Efficient Living
Geotechnical Landslip Assessment Ref No.28735Z	24 September 2015	JK Geotechnics

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

c) No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

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

Landscape Plans		
Drawing No.	Dated	Prepared By
L1 (Sheet 1 of 2) Issue E	15.12.15	Wallman Partners Pty Ltd
L2 (Sheet 2 of 2) Revision B	15.12.15	Wallman Partners Pty Ltd

Engineering Plans		
Drawing No.	Dated	Prepared By
2015-173-C1	Oct. 2015	Burgess, Arnott & Grava Pty.Ltd.

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

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

2. **Prescribed Conditions**

(a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).

(b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);

(c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.

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

(d) Residential building work within the meaning of the Home Building Act 1989 must not be

carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
- (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

(e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

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

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

Reason: Legislative Requirement (DACPLB09)

3. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) At all times after the submission the Notice of Commencement to Council, a copy of the

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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) Where works are to be carried out to a Class 1a building, smoke alarms are to be installed throughout all new and existing portions of that Class 1a building in accordance with the Building Code of Australia prior to the occupation of the new works.

(g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.

(h) No building, demolition, excavation or material of any nature 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) All sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

(k) 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.

(l) 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.

(m) Any Regulated System (e.g. air-handling system, hot water system, a humidifying system, warm-water system, water-cooling system, cooling towers) as defined under the provisions of the Public Health Act 2010 installed onsite is required to be registered with Council prior to operating.

Note: Systems can be registered at www.warringah.nsw.gov.au

(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 sewerred 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.

(o) New solid fuel burning heaters or existing solid fuel heaters affected by building works must comply with the following:

- (1) AS 2918:2001 Domestic Solid Fuel Burning Appliances – Installation.
- (2) AS 4013:2014 Domestic Solid Fuel Burning Appliances – Method of Determination of Flue Gas Emissions.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development

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Contributions Plan.

The following monetary contributions are applicable:

Warringah Section 94 Development Contributions Plan		
Contribution based on a total development cost of \$ 600,125.00		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 5,701.19
Section 94A Planning and Administration	0.05%	\$ 300.06
Total	1%	\$ 6,001.25

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

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

Reason: To provide for contributions in accordance with Warringah's Development Contributions Plan.

5. Security Bond

A bond (determined from cost of works) of \$2,000 and an inspection fee in accordance with Councils 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.warringah.nsw.gov.au/your-council/forms).

Reason: To ensure adequate protection of Councils infrastructure.

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

6. Vehicle Driveway Gradients

Driveway gradients to the proposed new garages within the private property are to be in

accordance with AS/NZS 2890.1:2004 Parking facilities Part 1: Off-street car parking.

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

Reason: To ensure suitable vehicular access to private property. (DACENC13)

7. **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 Certifying Authority prior to the issue of the Construction Certificate.

Reason: Safety. (DACENC19)

8. **Shoring of Adjoining Property**

Should the proposal require shoring to support an adjoining property or Council land, owner's consent for the encroachment onto the affected property owner shall be provided with the engineering drawings. Council approval is required if temporary rock anchors are to be used within Council land.

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

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land. (DACENCO5)

9. **Tree protection and pruning**

- (a) Existing trees which must be retained

All trees not indicated for removal on the approved plans, unless exempt or noxious in Warringah

- (b) Tree protection and pruning

- i) No tree roots greater than 50mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 50mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures. .
- iv) All tree protection measures, including fencing, are to be in place prior to commencement of works
- v) Tree pruning within the subject site is approved to enable construction in accordance with the approved plans.

- vi) Tree pruning is not to exceed 15% of any existing tree canopy
- vii) All tree pruning to be in accordance with AS4373-2007 Pruning of amenity trees.

Reason: To ensure compliance with the requirement to retain and protect significant planting on the site. (DACLAC01)

10. **Compliance with Standards**

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

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

Reason: To ensure the development is constructed in accordance with appropriate standards. (DACPLC02)

Advice to Applicants: At the time of determination in the opinion of Council, the following (but not limited to) Australian Standards are considered to be appropriate:

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites'***
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to. (DACPLC02)

11. **Sewer / Water Quickcheck**

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

12. **Maintenance of Road Reserve**

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

Reason: Public Safety. (DACENE09)

13. **Trees Condition**

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees. (DACLA03)

14. **Installation and Maintenance of Sediment Control**

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Warringah Council Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

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

Reason: To protect the environment from the effects of sedimentation and erosion from development sites. (DACPLE02)

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

15. **Stormwater Disposal**

The stormwater drainage works shall be connected to the existing system and 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.

Note: The following Standards and Codes applied at the time of determination:

- (a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
- (c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

16. Required Planting

The tree/s listed in the following schedule shall be planted in accordance with the following schedule:

No. of Trees Required.	Species	Location	Minimum Pot Size
All trees	As indicated on Landscape Plans Dwg No. 1E and 2B dated 15.12.15 prepared by Wallman Partners Landscape Architects	As indicated on the landscape plan	200mm

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

Reason: To maintain environmental amenity. (DACLAF01)

17. 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 interim / final Occupation Certificate.

Reason: To ensure bushland management. (DACPLF01)

18. Swimming Pool Requirements

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the 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

pools

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite 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. Appropriate

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instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of an Interim / Final Occupation Certificate.

Reason: To protect human life (DACPLF09)

I am aware of Warringah's Code of Conduct and, in signing this report, declare that I do not have a Conflict of Interest.

Signed

Nick England, Planner

The application is determined under the delegated authority of:

Rodney Piggott, Development Assessment Manager

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ATTACHMENT A

Notification Plan	Title	Date
 2015/383949	Plans - Notification	14/12/2015

ATTACHMENT B

No notification map.

ATTACHMENT C

Reference Number	Document	Date
 2015/384874	Report - Geotechnical Landslip Assessment	28/09/2015
 2015/384847	Report BASIX Certificate - A233369	29/10/2015
 2015/384860	Report BASIX Certificate - 678770S and NatHERS Certificates	12/11/2015
 2015/384871	Plans - Stamped Energy Rating	12/11/2015
 2015/383942	Plan - Survey	13/11/2015
 2015/383959	Report Statement of Environmental Effects	30/11/2015
 2015/383949	Plans - Notification	14/12/2015
 DA2015/1265	88 Brighton Street FRESHWATER NSW 2096 - Development Application - Alterations and Additions	17/12/2015
 2015/375911	DA Acknowledgement Letter - Vanessa Leigh Brown - Anthony James Brown	17/12/2015
 2015/384844	Certification of Shadow Diagrams with Plans	23/12/2015
 2015/383922	Development Application Form	23/12/2015
 2015/383925	Applicant Details	23/12/2015
 2015/383932	Builders Quotation	23/12/2015
 2015/384517	Plans - External	23/12/2015
 2015/384725	Plans - Landscape	23/12/2015
 2015/384617	Plans - Internal	23/12/2015
 2015/384877	Plans - Master Set	23/12/2015
 2016/002432	File Cover	05/01/2016
 2016/002912	Referral to AUSGRID - SEPP - Infrastructure 2007	06/01/2016
 2016/005644	Building Assessment Referral Response	08/01/2016
 2016/007700	Traffic Engineer Referral Response	11/01/2016
 2016/010480	Notification Letter - 14 sent	13/01/2016
 2016/010656	Letter Notification - 12 sent	13/01/2016
 2016/010653	Map Notification	13/01/2016
 2016/012307	Development Engineering Referral Response	14/01/2016
 2016/029401	Submission - Nye	29/01/2016
 2016/036841	Submission Acknowledgement Letter - Jill Baron Nye - SA2016/029401	04/02/2016
 2016/066925	Request for update - 88 Brighton Street Freshwater	02/03/2016
 2016/067958	Landscape Referral Response	03/03/2016
 2016/074787	Request for early consideration - 88 Brighton Street Freshwater	08/03/2016
 2016/125760	Request for Withdrawal of Development Application - Vanessa Leigh Brown - Anthony James Brown	20/04/2016