

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2021/1659
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Responsible Officer:	Clare Costanzo
Land to be developed (Address):	Lot 1 DP 954849, 74 Soldiers Avenue FRESHWATER NSW 2096
Proposed Development:	Demolition works and construction of a dwelling house and outbuilding
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:	Rohan Anthony Smith Margaret June Kaye
Applicant:	Nick Richter

Application Lodged:	17/09/2021
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	12/05/2022 to 19/05/2022
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 800,000.00
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PROPOSED DEVELOPMENT IN DETAIL

The subject development application proposes the demolition of an existing dwelling and construction of a new two (2) storey dwelling, including a new detached shed.

Revised plans were received 9 May 2022 which increased the setback and along the southern elevation at both ground and first floor from 900mm to 1.6m in the south western corner of the dwelling and 3m to the western boundary. The amended plans also increased the setback along a small portion of southern elevation of the first floor addition to increase articulation.

Ground Floor:

- Alfresco and deck with outdoor shower;
- Open-style kids room, dining and kitchen area (with butlers pantry);
- Powder and plant room;

First Floor:

- Master bedroom with attached ensuite;
- Three (3) bedrooms;
- Study;
- Bathroom;

Other works

- Detached shed and bike storage
- Proposed bin storage
- Landscaping works
- Conversion of existing shed into a carport

The proposal retains the existing carport and driveway. The application proposes the removal of two (2) low value prescribed Acacia trees on the site as well as addressed in the Arborist Report prepared by Raintree Consulting.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - C3 Parking Facilities

Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
 Warringah Development Control Plan - D6 Access to Sunlight
 Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 1 DP 954849 , 74 Soldiers Avenue FRESHWATER NSW 2096
Detailed Site Description:	The subject site has an address of 74 Soldiers Avenue, Freshwater, and is legally known as Lot 1, DP 954849. The subject site consists of an irregularly-shaped battle-axe allotment. The access handle has a road frontage to the north with Soldiers Avenue, has a frontage width of 5.18 metres and a length of 31.075 metres. The main body of the allotment is oriented in an east-west direction, has a maximum width of 35.67 metres (stepped) and a depth of 12.18 metres. Aside from the road frontage, all boundaries adjoin other residential allotments. The site has an area of 581.7m² (survey) and is gently sloped; there is a maximum west-to-east fall across the main body of the site is approximately 980mm, and a south-to-north downhill slope (i.e. towards Soldiers Avenue) of approximately 1.2 metres. The subject site is located within an R2 Low Density Residential zone under Warringah Local Environmental Plan 2011 (WLEP 2011). All boundaries adjoin R2-zoned sites, and the site is not in close proximity to any zone boundaries. The site is mapped by WLEP 2011 as being landslip prone (Area A, denoting slopes of less than 5%), though it is not mapped as being affected by any other major hazards or affectations. The subject site does not contain a heritage item and is not within a Heritage Conservation Area; the northern boundary however adjoins a local heritage item (item no. 175, 'Street trees, plaques and memorials'). Development on the site consists of a single-storey dwelling house, with a detached garage towards the front of the access handle (a carport is located to the front of that garage). Adjoining sites and surrounding area: The sites adjoining the northern boundary and the eastern side of the access handle are identified as 68, 70 and 72

Soldiers Avenue. Development on those sites consists of a single-storey detached dwelling at 68 Soldiers Avenue and two storey detached dwellings on the other two sites.

The site adjoining the eastern boundary is 66 Soldiers Avenue; development on this site consists of a three-storey residential flat building.

The site adjoining the southern boundary of the site is 49 Wilson Street, which is a battle-axe allotment; development on this site consists of a two-storey dwelling house.

The sites adjoining the western boundary are identified as 76 Soldiers Avenue and 71 Harbord Road. Development on both of these sites consists of a single-storey detached dwelling.

Aside from the above and with the exception of an automotive workshop on the corner of Soldiers Avenue and Harbord Road, sites on residential-zoned allotments within the surrounding area consists predominantly of low-density development (i.e. dwelling houses and associated development such as secondary dwellings, detached sheds/garages, swimming pools and the like), though there are isolated forms of higher-density development (i.e. residential flat buildings and multi-dwelling housing) within the area.

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:

- 7 January 2008: Development Application (Tree Removal) no. TDA2007/0044 approved for the removal of a tree.
- 30 August 2011: Development Application no. DA2011/0810 approved for the construction of a carport and shed.
- 17 September 2021: Subject Development Application lodged.

Application History

Following preliminary assessment of the application and site visits, Council raises some concerns with the applicant in regard to car parking non compliances, building bulk, overshadowing, privacy and landscaping.

A meeting was conducted between the applicant and Council to advise of these concerns and to request amended plans to address the issues raises.

The applicant responded by submitting amended plans. These plans were notified to the neighbouring properties for a 7 day notification period in accordance with the Northern Beaches Community Participation Plan.

Additional site visits were also conducted from the subject site and four neighbouring sites directly to the north, south and west of the subject site.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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

Section 4.15 Matters for Consideration	Comments
	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 allow Council to request additional information. No additional information was requested in regard to amended plans. <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. <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. <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 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	(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. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.

Section 4.15 Matters for Consideration	Comments
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 from 12/05/2022 to 19/05/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 7 submission/s from:

Name:	Address:
Timothy Jack Broadbent	65 Harbord Road FRESHWATER NSW 2096
Rachel Slessar	72 Soldiers Avenue FRESHWATER NSW 2096
Mr Guy Winston Broadbent	71 Harbord Road FRESHWATER NSW 2096
Mr Stephen Murray Jones	49 Wilson Street FRESHWATER NSW 2096
Byron Thomas Markby Slessar	72 Soldiers Avenue FRESHWATER NSW 2096
Ms Annette Elizabeth Jones	49 Wilson Street FRESHWATER NSW 2096
Mr Erik Nadeau	70 Soldiers Avenue FRESHWATER NSW 2096

The application was notified from 27 September 2021 to the 11 October 2021 and the 12 May 2022 to the 19 May 2022 following amendments received.

Seven submissions were received from the two notification periods required with the following issues raised as outlined and addressed below:

- Solar access
- Bulk and scale
- Asbestos
- Control of any dust as a result of demolition
- Privacy
- Tree removal and re-location of boundary fence
- Site Coverage
- Location of the water tanks

The matters raised within the submissions are addressed as follows:

- Solar access

Comment:

This issue has been addressed in detail under 'D6 Access to Sunlight' in this report. It was found that given the orientation of the subject site and the existing subdivision pattern of the surrounding sites, the proposal will slightly reduce the level of solar access currently afforded to

the POS of the adjoining properties. Although the development did have additional impacts on the southern adjoining sites (in particular 65 Harbord Road), the additional shadow cast by the development was considered reasonable in the circumstances and that the proposal satisfied the objectives of the clause. The proposed development does not create any additional shadows towards 71 Harbord Road located directly west of the subject site.

Concern has been raised by No. 72 Soldiers Avenue that the proposed demolition of the existing shed and alteration to the existing carport to create a tandem compliant car parking space

- Bulk and scale

Comment:

Concern is raised in regard to the bulk and scale of the dwelling. Given the subdivision pattern and configuration of the lot, the site is identified as having three (3) side boundaries (north, south and west) and a rear boundary (east). The development generally complies with the setbacks with revised plans received by Council on 1 February and 9 May which increased the setback from the southern boundary in the south western corner of the site from 900mm to 1.6m at both ground and first floor and 3m to the western boundary for both the ground and first floor. In addition, further articulation has been provided along the southern elevation through varying setbacks. The wall height measures 5.9m in the south west corner and given it adjoins the side boundary of 65 Harbord Road and 49 Wilson Street, it is not deemed excessive.

- Asbestos

Comment:

An appropriate condition is imposed to ensure the handling of any asbestos materials is in accordance with the relevant procedures as outlined in the development consent.

- Control of any dust as a result of demolition

Comment:

Concern was raised from a neighbouring property in relation to the management of any just as a result of the proposed demolition. To ensure this is managed appropriately. An erosion and sediment control plan is to be submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate.

- Privacy

Comment:

Concern is raised from No. 61 Harbord Road, 71 Harbord Road No. 72 Soldiers Avenue and 49 Wilson Street in relation to potential loss or privacy and overlooking towards the private open space and living areas of these dwellings. The current privacy enjoyed by the occupants at 71 Harbord Road to the east is not considered to be impacted on. A window with a 1.6m high sill is proposed along the eastern elevation which will ensure reasonable privacy is maintained towards the private open space of 71 Harbord Road.

It is reasonable to assume that the privacy of the properties to the north of the subject site will experience some overlooking towards their backyards and possibly windows along the southern elevation. Whilst it is acknowledged that the subdivision pattern and configuration of the dwelling

creates difficulties in protecting the amenity of all surrounding dwellings, it is reasonable to consider the level of overlooking that will occur from the windows located along the northern elevation of the proposed dwelling at first floor. The windows service four (4) bedrooms, an ensuite, a bathroom and the staircase landing and are located along the northern boundary. To ensure the privacy and amenity of the adjoining properties to the north on Soldiers Avenue are protected privacy screens have been included on all of these windows and the northern and southern elevation of the east facing balcony.

- Tree removal and re-location of boundary fence

Comment:

Concern is raised with the level of landscaped open space proposed for the site. Whilst this is non-compliant with the minimum 40% requirement, the development proposes 36% of the site to be landscaped which is considered acceptable and is discussed in more detail under Part D1 Landscaped Open Space and Bushland Setting.

The submission received from 49 Wilson Street raises concern with the number of trees to be removed as part of the proposal. An Arborist Report (Prepared by rain Tree consulting dated 30 August 2021) accompanies the DA which identifies 18 trees to be assessed of which 13 of these trees being located within adjoining properties. To accommodate the proposal four (4) trees are proposed for removal with written consent received from 65 Harbord Road. Eight (8) trees (Tree 2,3,4,5, 12, 16 and 17) are to be removed which is supported by the Arborist Report and Council's Landscape Officer with Tree 18 an exempt species. The removal of tree 12 is as a result of the relocated boundary fence along the southern boundary.

- Site coverage

Comment:

Site coverage is not a consideration for the assessment of the proposed two storey dwelling. The submission raises concern with the proposed built upon area, however as discussed within the report, the proposal is largely compliant with setbacks, with a minor shortfall of landscaped open space and a minor non-compliance to the side building envelope to the south east corner of the dwelling. It is reasonable to identify the eastern boundary of as the rear boundary which is currently utilised as the private open space and will continue to be used as this as a result of the proposal. The proposed footprint of the development is considered generally acceptable when assessing the proposal against the built form controls.

- Location of the water tanks

Comment:

A submission has been received raising concern regarding the location of the water tanks along the southern boundary of the site. Water tanks (above ground) are permissible under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 without development consent should they be located at least 450mm from each lot boundary, if the tank has a height of more than 1.8m above ground level (existing). The water tanks are proposed to be located 600mm from the boundary and a varying height of approximately 2.4m above ground and therefore require development consent. Council considers there is sufficient building separation to allow for the rainwater tanks in this location and given their modest height of 2.4m will not have any unreasonable amenity impacts on the surrounding dwellings. This issue does not warrant refusal of the development application.

REFERRALS

Internal Referral Body	Comments
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Internal Referral Body	Comments					
Landscape Officer	The development application is for demolition of existing structures and the construction of a dwelling with a detached shed, and associated works. The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to): • D1 Landscaped Open Space and Bushland Setting • E1 Preservation of Trees or Bushland Vegetation and E2 Prescribed Vegetation The development site fronts Soldiers Avenue which is listed as a local landscape heritage item under item 175 - Street Trees, and standard conditions shall be imposed for the protection of all street trees that shall not be impacted especially by construction and delivery vehicles. A Landscape Plan and a Arboricultural Impact Assessment are submitted with the development application and the proposed landscape enhancement and the recommendations of the Arboricultural Impact Assessment are considered supportable. The Landscape Plan provides recommendations for tree retention within the rear of the property not covered by the Arboricultural Impact Assessment, and these shall be retained in accordance to the Landscape Plan. The Arboricultural Impact Assessment provides recommendations that require removal of existing trees within the adjoining property at 76 Soldiers Avenue. A letter of consent is included in the development application from the owner of 76 Soldiers Avenue, and as these trees are Exempt Species, Council raises no objections to the removal.					
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following condition of consent.					
Strategic and Place Planning (Heritage Officer)	<table><tr><th>HERITAGE COMMENTS</th></tr><tr><td>Discussion of reason for referral</td></tr><tr><td> The proposal has been referred to Heritage as the subject site adjoins a heritage item 175 - Street trees, plaques and memorials - Soldiers Avenue </td></tr><tr><th>Details of heritage items affected</th></tr><tr><td> Details of the item as contained within the Warringah inventory is as follows: <u>Statement of Significance</u> Socially significant as plantings undertaken by the local community to commemorate those who had died in WW1. Aesthetically a visually dominant planting with important streetscape qualities. <u>Physical Description</u> Established Brushbox trees (Lophostomen confertus) along both </td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	The proposal has been referred to Heritage as the subject site adjoins a heritage item 175 - Street trees, plaques and memorials - Soldiers Avenue	Details of heritage items affected	Details of the item as contained within the Warringah inventory is as follows: <u>Statement of Significance</u> Socially significant as plantings undertaken by the local community to commemorate those who had died in WW1. Aesthetically a visually dominant planting with important streetscape qualities. <u>Physical Description</u> Established Brushbox trees (Lophostomen confertus) along both
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Internal Referral Body	Comments		
	sides of the street		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register		
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	The proposal seeks consent for a new dwelling. The lot's access handle directly adjoins the heritage item, however the main portion of the lot is located further to the south behind numbers 68-72 Soldiers Avenue. As the proposed house will be mostly screened by other dwellings and there is no change proposed to the existing crossover, the proposal is considered to not impact upon the heritage street trees or their significance. However the heritage listed street located near to the driveway must be protected during demolition and construction work. Heritage notes a condition from Landscaping to this affect has already been applied and Heritage supports this condition.		
	Therefore Heritage raises no objections and requires no additional conditions.		
	Consider against the provisions of CL5.10 of WLEP.		
	Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No		
	Further Comments		
	COMPLETED BY: Brendan Gavin, Principal Planner		
DATE: 29 September 2021			

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	An external referral was made to the relevant energy supply authority. An undated response was received on 22 October 2021, which

External Referral Body	Comments
	advised that a decision was not required.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1229065S, dated 31 August 2021).

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.87m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
5.3 Development near zone boundaries	N/A
5.8 Conversion of fire alarms	N/A
6.2 Earthworks	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	N: 7.2m	7.6m	5.5%	No
	S: 7.2m	6.4m	N/A	Yes
	E: 7.2m	5.9m	N/A	Yes
B3 Side Boundary Envelope	N: 5m	Within envelope	N/A	Yes
	S: 5m	Maximum 300mm in height for a length of 5.0m	4.9%	No
	W: 5m	Within envelope	N/A	Yes
B5 Side Boundary Setbacks	N: 0.9m	2.0m - pergola 3.0m - dwelling	N/A N/A	Yes Yes
	W: 0.9m	3m - dwelling	N/A	Yes
	S: 0.9m	1.0m - 1.6m (ground level)	N/A	Yes
		1m - 2.2m (first floor level) 0.6m - rainwater tanks	N/A 33%	Yes No
B9 Rear Boundary Setbacks	6m	E: 10.1m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (232.68m ²)	36% (209m ²)	10%	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	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	N/A	N/A
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	N/A	N/A
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	Yes
D7 Views	N/A	N/A
D8 Privacy	No	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	N/A	N/A
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E6 Retaining unique environmental features	N/A	N/A
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

This clause requires that walls do not to exceed 7.2 metres from ground level (existing) to the underside of the ceiling on the uppermost floor of the building.

The proposed maximum wall height is 7.6m on the northern elevation, representing a variation of 5.5%.

The variation is a result of the proposed roof form and is not expected to result in unreasonable amenity impacts to the north.

Merit consideration:

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

- *To minimise the visual impact of development when viewed from adjoining properties, streets, waterways and land zoned for public recreation purposes.*

Comment:

The proposed wall height breaches relate to the additions to the northern side of the building. The extent of the non-compliance is relatively minor and adequate separation from the street frontages and adjoining properties is maintained to mitigate the associated visual impact.

- *To ensure development is generally beneath the existing tree canopy level*

Comment:

The development remains generally beneath the surrounding tree canopy level.

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

Comment:

The proposal will not result in any unreasonable view impacts.

- *To minimise the impact of development on adjoining or nearby properties.*

Comment:

The non-compliant walls are located centrally within the development site and will not adversely impact surrounding properties.

- *To ensure that development responds to site topography and to discourage excavation of the natural landform.*

Comment:

The proposal responds appropriately to the site topography.

- *To provide sufficient scope for innovative roof pitch and variation in roof design.*

Comment:

The proposed asymmetrical skillion roof form is an example of modern architectural design and is considered to demonstrate roof form diversity in the locality.

Having regard to the above assessment, it is concluded that the proposed development is consistent

with the relevant objectives of the control. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

B3 Side Boundary Envelope

Description of non-compliance

Part B3 of Warringah Development Control Plan 2011 states buildings must be sited within a building envelope determined by projecting planes at 45 degrees from a height of 5 metres above ground level (existing) at the side boundaries. Given the orientation of the dwelling along with the subject site identified as a rear battleaxe lot, the side boundaries are identified as the northern, southern and western boundaries.

The proposed development results in a numerically non-compliant side boundary envelope along the southern elevation. The development breaches the southern boundary envelope for a length of 5.0m at a maximum height of 300m, resulting in 4.9% variation to the development control.

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:

Notwithstanding the non-compliance, the proposed dwelling complies with the maximum permitted building height and minimum setback control, thereby not becoming visually dominant by virtue of its height and bulk. The height and bulk is consistent with the established character of the wider area and anticipated by the low density zoning.

It is also worth noting the dwelling readily complies with the side boundary envelope control along the southern elevation.

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

Comment:

The proposed development allows for adequate light, solar access and privacy, given the orientation of the lot and siting of the works in relation to adjoining dwellings. Privacy measures have been incorporated to the design by including highlight windows and privacy screening to mitigate any unreasonable privacy concerns.

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

Comment:

The topography of the site is generally flat and it is considered that the development responds to the topography of the site.

Having regard to the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

B5 Side Boundary Setbacks

Given the configuration of the dwelling on the lot, the traditional side, rear and front boundaries are not applicable when applying the built form controls. For the purpose of assessing the proposed development, the western, northern and southern boundaries are identified as side boundaries with the eastern boundary identified as the rear boundary. A front boundary does not apply to the site, given the site is a rear battle-axe lot with the dwelling being located to the rear of the 68, 70 and 72 Soldiers Avenue.

Applying the setback control prescribed in the WDCP, the northern, southern and western setbacks should be located a minimum 900mm from the aforementioned boundaries.

Description of non-compliance

Revised plans were received on 1 February 2022 and again on the 9 May 2022 which increased the setback at first and second floor to the south western part of the boundary from 900mm to 1.6m. The northern boundary proposes a 2m setback to the pergola and 3.0m to the dwelling at ground and first floor. The development proposes to extend the building footprint to the east, creating a 3m setback at ground floor and first floor to the west. However, the development does propose three (3) rainwater tanks 600mm from the southern elevation creating a 33% variation to the side setback control.

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 modification does not result in the loss of any deep soil landscaped areas as the rainwater tanks are located in within an area that does not provide sufficient area for deep soil landscaping.

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

Comment:

The rainwater tanks are located 33m from the northern boundary (Soldiers Avenue) and will be located behind an existing garage and the proposed shed and bike store which will ensure the tanks will not be visually dominant.

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

Comment:

The rainwater tanks measure a maximum 2.3m above natural ground level and 600mm in width and are not considered to be excessive in their bulk or scale.

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

Comment:

The rainwater tanks does not compromise privacy, and does not cause any shadowing over and above the existing structure.

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

Comment:

The rainwater tanks are not found to result in any unreasonable view loss from the public domain or private properties.

Having regard to the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

C3 Parking Facilities

The proposal originally provided one car parking space within the existing carport. This was not supported by Council and an additional car parking space on site was requested through amended plans. The applicant provided amended plans to address this concern.

The proposal provides for an additional car parking space through alterations and additions to the existing shed. This will see a net gain of one car parking space on site. Two on site tandem car parking spaces will now be provided on site and the proposal will therefore complies with the control.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The control requires the minimum landscape open space (LOS) as being of 40% (232.68m²) of the site area with minimum dimensions of 2 metres.

The proposed development incorporates 36% (209m²) of LOS, representing a variation of 10%.

The Warringah LEP 2011 4.1 Minimum Subdivision Lot Size (3A) states that for the purpose of calculating the size of the lot the area of any access corridor (including any right of carriageway, access way or other area that provides for vehicle access) is to be excluded, whether the access corridor is to be created or is in existence at the time of the application for the development consent for subdivisions. Although this is strictly for the purposes of subdivision and not for calculating site area for the purpose of landscape area calculations. Should this principal be applied and vehicle access handles removed from the site area calculation, the site would have a compliant landscaped area of 49.5% (209m²). It is also worth noting that typical battle-axe sites would have an access handle that is wholly made up of a hard paved driveway for vehicle access.

It is also worth noting the footprint of the new dwelling allows for additional numerically compliant landscaped area along the northern side boundary.

A merit consideration against the variation of 10% has been conducted below.

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:

The proposed development does not result in the removal of significant vegetation on the site. The existing landscape treatment on the site will continue to ensure that a reasonable landscaping outcome is provided

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

Comment:

The proposal does not impact upon any indigenous vegetation, topographical features or habitat for wildlife.

- *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:

The proposed LOS provides sufficient dimensions for the enjoyment of residents, in turn providing a positive residential amenity outcome. The supporting landscape plan includes appropriate landscaping to ensure any perceived bulk and scale of the dwelling is mitigated.

- *To enhance privacy between buildings.*

Comment:

The proposal maintains suitable privacy between the subject site and adjoining dwellings and their private open space and principal living areas.

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

Comment:

The proposal includes a generous rear yard for the benefit of residents providing sufficient opportunities for recreational use.

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

Comment:

The site does provide landscaped and hard-surfaced areas of sufficient proportions to accommodate service functions, including clothes drying

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

Comment:

The proposal includes adequate water management measures, subject to conditions of consent.

Having regard to the above assessment, it is concluded that the objectives of the control are achieved. Therefore, the application is supported on merit in this particular circumstance.

D6 Access to Sunlight

Merit consideration

Clause D6 of the WDCP 2011 stipulates that at least 50% of the required area of private open space (POS) for the subject site and adjoining properties are to receive a minimum three (3) hours of sunlight between 9am and 3pm on June 21. Clause D6 of the WDCP 2011 stipulates that at least 50% of the required areas of private open space for the subject site and adjoining properties are to receive at least three (3) hours of sunlight between 9am and 3pm on June 21 (Winter Solstice). Concern was raised within a submission of the bulk and scale of the proposed development and the resulting overshadowing to adjoining properties that may arise.

Another submission raised concerns that the proposed demolition of the existing shed and construction of the carport will result in overshadowing and loss of natural lighting within their living area.

Accordingly, the application is assessed against the requirements of the Control as follows:

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

- *To ensure that reasonable access to sunlight is maintained.*

Comment:

Four (4) submissions were received from the adjoining properties raising concern with overshadowing to the south at 65 Harbord Road and 49 Wilson Street, to the north at 72 Soldiers Avenue and to 61 Harbord Road located along the western boundary of the subject site. The shadow diagrams submitted with the application reveal that the properties to the north and to the west will be minimally impacted by the development receiving a similar level of solar access as the current situation. The property directly south (49 Wilson Street) will receive a slightly reduced level of solar access to the private open space area to the eastern side of the site, however will maintain 50% of solar access for a minimum of 3 hours on June 21 between 9am and 3pm.

The property most affected by the proposal in relation to the level of solar access is 65 Harbord Road located to the south / south west of the subject site. Given the existing subdivision pattern of the immediate vicinity and the orientation of the subject site, the level of solar access afforded to the private open space area at No. 65 Harbord Road is currently compromised. The shadow diagrams submitted with this application indicate that at 9am, the proposal will reduce the existing solar access currently received to less than 50% of the POS area (backyard) of 65 Harbord Road. The proposal does not further impact the existing solar access achieved in the POS area at midday and 3pm.

The private open space of these properties are also vulnerable to self shadowing throughout

9am to 3pm during the winter solstice by virtue of siting and existing vegetation.

Given the limited building separation and between No. 72 and No. 74 Soldiers Avenue, the existing single storey carport causes some overshadowing and loss of natural light into the highlight living room window along the western elevation. The existing and proposed carports are setback 700mm from the eastern side boundary and the existing dwelling at 74 Soldiers Avenue is currently 600mm. The new carport will continue to overshadow onto the neighbouring property at No. 74 Soldiers Avenue. Although the carport does not strictly comply with the side boundary setback control of 0.9m it is worth noting that even a compliant dwelling house on an allotment following the subdivision pattern would result in substantially greater overshadowing and loss of natural light given the close proximity and configuration of the lots. This subject window is also subject to self shadowing during the morning. Council does not consider this to warrant refusal of the carport.

It is argued that whilst the development results in a technical non-compliance with the solar access control, the level of solar access is considered reasonable given the subdivision pattern and the orientation of the site.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposal is considered to be generally acceptable in the context of the site and surrounding development, and will provide a development that will be a improvement to the urban environment. The design is considered to be sufficiently innovative, and will not have unreasonable impacts on the solar access of neighbours, as discussed above. Whilst the level of solar access is compromised at 9am, the increased setback along the southern boundary from 900mm to 1.6m will assist in reducing the bulk and scale of the development in the south western corner of the subject site.

- *To maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.*

Comment:

As detailed above, the proposal will have no unreasonable impact on the penetration of mid winter sunlight into high use indoor areas of the southern neighbour

- *To promote passive solar design and the use of solar energy.*

Comment:

The main indoor living areas of the proposal are orientated to the east and north and will be warmed by the sun in the morning in mid winter. The development is considered to adequately promote passive solar design and the use of solar energy.

- *To minimise the need for artificial lighting.*

Comment:

Windows provided along the northern and eastern side of the development will allow for sunlight to penetrate living areas, mitigating the need for artificial lighting.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of and the objectives specified in this clause. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

D8 Privacy

Merit consideration

Clause D8 of the WDCP 2011 requires the building layout to be designed to optimise privacy for occupants of the development and occupants of adjoining properties.

The proposal includes an elevated balcony and seven (7) windows at the first floor orientated to the north boundary.

The development is considered against the underlying Objectives of the Control as follows:

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

The existing subdivision pattern and configuration of the lot limits the location of the dwelling and therefore the potential for overlooking towards adjoining properties is greater. Whilst the first floor windows along the northern elevation are setback 3 - 4m from the northern boundary, the elevated position does result in the potential for overlooking towards the private open space of 68, 70 and 72 Soldiers Avenue. As such, following preliminary assessment of the application, Council requested the applicant to address these privacy concerns. The applicant responded by proposing privacy screening along each of the north facing windows and the northern and southern elevation of the eastern balcony. Council considers the privacy screening will address these concerns and ensure there will be no unreasonable privacy impacts.

- *To encourage innovative design solutions to improve the urban environment.*

Comment:

The proposed privacy controls of screening along the northern elevation windows and side elevations of the bedroom balcony will provide a innovative solution to improve the urban environment. The remainder of the development has been designed to provide a reasonable level of privacy to both the occupants of the site and the adjoining dwellings.

- *To provide personal and property security for occupants and visitors.*

Comment:

The location of the ground and first floor windows along the northern elevation of the site provides appropriate opportunities for causal surveillance for the occupants of the site. The proposal provides personal and property security for occupants and visitors.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of this clause and accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2021

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2021.

A monetary contribution of \$8,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$800,000.

CONCLUSION

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

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

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

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

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2021/1659 for Demolition works and construction of a dwelling house and outbuilding on land at Lot 1 DP 954849, 74 Soldiers

Avenue, 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
Dwg No. 100:01 Revision C - Site Plan	4 May 2022	Saturday Studio
Dwg No. 110:01 Revision C - Ground Floor	4 May 2022	Saturday Studio
Dwg No. 110:02 Revision C - First Floor	4 May 2022	Saturday Studio
Dwg No. 110:03 Revision C - Roof Plan	4 May 2022	Saturday Studio
Dwg No. 200:01 Revision C - Elevations	4 May 2022	Saturday Studio
Dwg No. 800:01 Revision A - Material Board	4 May 2022	Saturday Studio

Engineering Plans		
Drawing No.	Dated	Prepared By
D01 Issue A - Stormwater General Notes and Drawing Schedule	27 August 2021	NB Consulting Engineers
D02 Issue A - Site Drainage Plan	27 August 2021	NB Consulting Engineers
D03 Issue A - First Floor and Roof Drainage Plan	27 August 2021	NB Consulting Engineers
D03 Issue A - Stormwater Drainage Details	27 August 2021	NB Consulting Engineers
D04 Issue A - Stormwater Drainage Details	27 August 2021	NB Consulting Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1229065S	31 August 2021	Saturday Studio
Arboricultural Impact Assessment Report	30 August 2021	Rain Tree Consulting

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

Dwg No. LA-01 - Landscape Statement and Schedule - Rev B	30 August 2021	KRLA
Dwg No. LA-01 - Landscape Site Plan - Rev B	30 August 2021	KRLA
Dwg No. LA-01 - Landscape Plan - Rev B	30 August 2021	KRLA
Dwg No. LA-01 - Landscape Palette - Rev B	30 August 2021	KRLA

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Northern Beaches Waste Management Plan	31 August 2021	Saturday Studio

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

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

FEES / CHARGES / CONTRIBUTIONS

4. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$8,000.00 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 2021. The monetary contribution is based on a development cost of \$800,000.00.

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 2021 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 are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

6. 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.

7. On-site Stormwater Detention Details

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's WATER MANAGEMENT FOR DEVELOPMENT POLICY, and generally in accordance with the concept drainage plans prepared by NB Consulting Engineer, number job 210760, issue A and dated 27/08/2021. Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

8. Compliance with Standards

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

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

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

9. 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.

10. Erosion and Sediment Control Plan

An 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 that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.

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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. Project Arborist

A Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged to provide tree protection measures in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites. The Project Arborist is to specify and oversee all tree protection measures such as tree protection fencing, trunk and branch protection, and ground protection.

The Project Arborist is to supervise all demolition, excavation and construction works near all trees to be retained, including construction methods near the existing trees to protect tree roots, trunks, branches and canopy. Where required, manual excavation is to occur ensuring no tree root at or >25mm (Ø) is damaged by works, unless approved by the Project Arborist.

Existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by the Project Arborist.

The Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, including:

- i) section 2.2 Recommended tree management & protection principles, including tree protection measures to neighbouring trees 6, 8, 9, 10 and 11
- ii) table 1, certification requirements & hold points

All tree protection measures specified must:

- a) be in place before work commences on the site, and
- b) be maintained in good condition during the construction period, and
- c) remain in place for the duration of the construction works.

The Project Arborist shall provide certification to the Certifying Authority that all recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note:

- i) A separate permit or development consent may be required if the branches or roots of a protected tree on the site or on an adjoining site are required to be pruned or removed.
- ii) Any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

12. **Tree Removal Within the Property**

This consent approves the removal of the following tree(s) within the property (as recommended in the Arboricultural Impact Assessment):

- i) tree 12 Bottlebrush, tree 16 Fringe Wattle, and tree 17 Fringe Wattle.

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal, and within the development site the following trees are Exempt Species by either type or height:

- ii) tree 18 Grevillea.

Reason: To enable authorised building works.

13. **Removal of Exempt Species in adjoining property by owners consent**

Prior to the removal of Exempt Species located within 76 Soldiers Avenue, the owner of that property shall provide confirmation of which trees are to be removed by way of a tie or similar, and the applicant or Project Arborist shall photograph the trees as evidence and documentation of trees approved for removal.

Document evidence shall be provided to the Certifying Authority.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. Protection of Existing Street Trees

All existing street trees in the vicinity of the works and along Soldiers Avenue shall be protected during all construction stages in accordance with Section 4 of Australian Standard 4970-2009 Protection of Trees on Development Sites.

The felling, lopping, topping, ringbarking, damage to branches by construction and delivery vehicles, or removal of any street tree is prohibited.

Should any problems arise with regard to the existing or proposed trees on public land during construction, Council's Tree Services section is to be contacted immediately to resolve the matter to Council's satisfaction and at the cost of the applicant.

Reason: Street tree protection.

15. Tree and Vegetation Protection

a) Existing trees and vegetation shall be retained and protected, including:

- i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
- ii) all trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation.

b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites, including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity

Trees.

c) Tree protection shall specifically be undertaken in accordance with the recommendations in the Arboricultural Impact Assessment.

The Certifying Authority must ensure that:

d) The arboricultural works listed in c) are undertaken and certified by an Arborist as compliant to the recommendations of the Arboricultural Impact Assessment.

e) The activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites, do not occur within the tree protection zone of any tree, and any temporary access to, or location of scaffolding within the tree protection zone of a protected tree, or any other tree to be retained on the site during the construction, is undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of that standard.

Reason: Tree and vegetation protection.

16. **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.

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

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

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

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

18. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor is to be provided demonstrating all perimeter walls columns and or other structural elements, floor levels and the finished roof/ridge height are in accordance with the approved plans.

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

Reason: To demonstrate the proposal complies with the approved plans.

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

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

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

20. Waste Management During Development

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

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

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

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

21. Landscape Completion

Landscaping is to be implemented in accordance with the approved Landscape Plan, and inclusive of the following conditions:

- i) all tree planting shall be a minimum planting size of 75 litres, and shall meet the requirements of Natspec - Specifying Trees,
- ii) all trees shall be planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established, and shall be located at least 3.0 metres from buildings, and at least 1.5 metres from common boundaries,
- iii) mass planting shall be installed at minimum 1 metre intervals for shrubs, at 4 plants per metre square for groundcovers, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 50mm depth of mulch,
- iv) the proposed *Rhaphiolepis* species shall be removed from the plant schedule and replaced with a similar species in form and size that is not self-seed spreading.

Prior to the issue of an Occupation Certificate, details (from a landscape architect or landscape designer) shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Governments 5 Million trees initiative.
<https://5milliontrees.nsw.gov.au/>

22. Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures

The Applicant shall lodge the Legal Documents Authorisation Application with the original completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) to Council and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification.

The Applicant shall create on the Title a restriction on the use of land and a positive covenant in respect to the ongoing maintenance and restriction of the on-site stormwater disposal structures within this development consent. The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction for on-site storm water detention as to user is to be submitted.

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

Reason: To ensure the on-site stormwater disposal system is maintained to an appropriate operational standard.

23. **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)

24. **House / Building Number**

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

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

Reason: Proper identification of buildings.

25. **Waste Management Confirmation**

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

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

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

26. **Landscape Maintenance**

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan and any conditions of consent.

All weeds are to be removed and controlled in accordance with the NSW Biosecurity Act 2015.

Reason: To maintain local environmental amenity.

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

Signed



Clare Costanzo, Planner

The application is determined on 25/05/2022, under the delegated authority of:



Rodney Piggott, Manager Development Assessments