

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2015/1258
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Responsible Officer:	Alex Keller
Land to be developed (Address):	Lot 3 DP 11737, 62 Evans Street FRESHWATER NSW 2096
Proposed Development:	Demolition works and the construction of a dwelling house, secondary dwelling (pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009), garage and swimming pool
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:	Terry Androutsos Georgina Androutsos
Applicant:	Terry Androutsos Georgina Androutsos

Application lodged:	17/12/2015
Application Type:	Local
State Reporting Category:	Residential - Single new detached dwelling
Notified:	13/01/2016 to 28/01/2016
Advertised:	Not Advertised, in accordance with A.7 of WDCP
Submissions:	3
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,864,190.00
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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

NORTHERN BEACHES COUNCIL

Council / Government / Authority Officers on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D16 Swimming Pools and Spa Pools
Warringah Development Control Plan - E6 Retaining unique environmental features

SITE DESCRIPTION

Property Description:	Lot 3 DP 11737 , 62 Evans Street FRESHWATER NSW 2096
Detailed Site Description:	The site has an area of 473.7 square metres (sqm) with a depth of 35 metres (m) and a width of 14.0m. The site contains a two storey dwelling on the lower front portion of the site with no driveway or garage. The land has a large natural rock outcrop feature in mid section of the land with the site falling 9.5 metres from the rear to the front toward the road. The area behind the existing house is open area and there are no significant trees on the site. The land situated with "Area D" for landslip classification. Surrounding development consists of low density detached housing in landscaped settings. Coastal views are available toward Freshwater Beach and there are also a number of larger developments nearby including Harbord Diggers Club and residential flat buildings at the eastern end of Evans Street.

Map:



SITE HISTORY

All structures on site are to be demolished and removed and therefore no further details of previous development are relevant to the assessment.

PROPOSED DEVELOPMENT IN DETAIL

The proposal involves the following works:

- Demolition of existing building, excavation and site preparation works
- Construction of a new dwelling house, pool and secondary dwelling configured as:
 - RL18.5 - (Lower Ground Level) - New garage and storage, lift, hall & stair access, foyer entry;
 - RL22.12 - (Mid Ground Level) - Stair access, hallway, storeroom (2) lift access, secondary dwelling, with bedroom (1) and bathroom/laundry, balcony;
 - RL26.62 - (Upper Ground Level) - Stair access, entry foyer, lift, laundry, toilet, study, kitchen & pantry, living room & dining area, terrace and swimming pool (pool pump in space under terrace);
 - RL30.12 - (Upper First Floor Level) - Stair access, lift & hallway, bathrooms (2), storage, bedrooms (4), balcony;
 - RL33.90 - Roof (including roof top landscaping and solar panels)
- New driveway, landscaping, drainage and ancillary site works.

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:

NORTHERN BEACHES COUNCIL

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>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. Additional information, including amended plans were permitted to be provided following an advice letter sent to the applicant identifying planning issues with the development application. Amended plans No.DA01 to DA18, revision issues to "C" dated April 2016, by SpaceOut Studio Architects. (See details below for re-notification where not required pursuant to Part A.7 of the Warringah DCP.) <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 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.
Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and	(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 have a detrimental social impact in the locality considering the character of the proposal.

NORTHERN BEACHES COUNCIL

Section 79C 'Matters for Consideration'	Comments
economic impacts in the locality	(iii) The proposed development will 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. Amended plans (received on 3 April 2016 with a full plan set received on 10 April 2016) were not required to be re-notified as the internal areas were reduced to achieve more landscaping. In the process this reduced impacts on neighbours for height, bulk and scale and improved privacy measures were also included. Setbacks have also been increased and excavation reduced to address issues raised within Council's letter to the applicant dated 31 March 2016. Essentially the building has retained the same architectural appearance, as notified, only it is smaller and lower (reduced in height from RL34.3 to RL 33.9).
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. Details of issues raised in submissions received are addressed within this report.

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 3 submission/s from:

Name:	Address:
Ms Josephine Ann O'Donnell	45 Evans Street FRESHWATER NSW 2096
Mr Michael James Palme Joanne Betsy Palme	64 Evans Street FRESHWATER NSW 2096
Nolan Planning Consultants	75 Oliver Street FRESHWATER NSW

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

- Building height, bulk and storeys
- Excavation of rock
- Inadequate landscaping
- Wall height non-compliance
- Solar access
- Pool location
- Privacy impacts
- Vibration dilapidation, noise and dust

- Construction and parking

The matters raised within the submissions are addressed as follows:

- *Concern that the building is four storeys with dwellings opposite being mostly single storey in height the proposal exceeds the 8.5m height limit which is inappropriate for Evans Street.*

Comment:

Buildings opposite the site, located on the southern side of the road, include dwellings that are two or three storeys at the rear whereby the land falls steeply away from the road alignment. In reverse, dwellings on the high side of the road transition up the slope and some are constructed in elevated positions to be much higher than the road. Some properties, with more modern dwelling houses are much higher in appearance, especially if they are constructed over any rock ledges or terrace features that exist along the natural contours above Evans Street. The occurrence of variable land levels and natural rock ledges influences the height of buildings and will inevitably cause some non-compliance with the 8.5m height limit, in some sections of a building, where the topography is very steep. The pattern of buildings being higher on the upper side of the street is evident in the surrounding area as well and is consistent with other nearby streets, such as Oceanview Road and The Drive. The applicant has provided a written Clause 4.6 submission addressing the objectives of the building height control, and in addition to this, submitted amended plans to lower the building (by 0.4m) and reduce building bulk and the height non-compliance to ensure no unreasonable impacts on the streetscape.

This issue has been addressed in detail within the report and does not warrant refusal of the application.

- *Concern that the excavation of the natural sandstone rock face area is excessive and the building does not retain landscaping to the streetscape.*

Comment:

The proposal includes the demolition of the existing dwelling and construction of a new contemporary dwelling house with a garage, secondary dwelling, pool and landscaping works. Re-development of the site requires some deep excavation work for the garage, stair and lift access. Concerns at the amount of excavation and impact on the natural rock face were raised with the applicant and amended plans were provided to ensure that much of the rock outcrop will now be retained, as far as practicable (being the eastern half of the middle terrace). The rock face at the front will also be retained where it is not needed to be excavated for the driveway access. Changes also include reducing carparking from four garage spaces to two spaces to limit the extent of excavation lines for the basement area. Landscaping will be provided to enhance the areas of natural rock face along the street frontage that will be conserved in-situ. The net landscaped area has also been increased as part of the amended plans (dated 8/4/16) to improve the visual setting of the building in the surrounding environment and reduce any unreasonable impacts on the excavation of the natural rock face and improve the landscape setting.

This issue has been addressed in further detail within the report and does not warrant refusal of the application.

- *Concern of the lack of appropriate landscaping in compliance with the Warringah DCP 40% requirement for landscape open space.*

Comment:

The applicant has submitted amended plans (dated 8/4/16) that increase the landscaped open space to 35.1%. This has required a detailed merit assessment in accordance with *Part D1 Landscaped Open Space and Bushland Setting* of the Warringah DCP 2011. In summary, consideration for preserving the occurrence of natural exposed rock as far as practicable has been achieved, which is part of the landscaped open space. Areas of landscaping have been increased (by amended plans) to ensure landscaped areas are at least 2.0m wide and provide opportunity for screen planting around the perimeter of the building and within the

front setback to the street. It is considered that the amended plans have adequately addressed this issue to ensure no unreasonable impacts from the proposed non-compliance with landscaped open space.

This issue has been addressed in further detail within the report and does not warrant refusal of the application.

- *Concern with the non-compliance to the wall height requirement under the Warringah DCP 2011.*

Comment:

The occurrence of variable land levels and high natural rock ledges influences the ability to comply with wall height where dwelling transitions to step up the site from Evans Street. This has been addressed in detail under *Part B1 Wall Height* within this report addressing the objectives of the building height control. In particular, the submitted amended plans to lower the building has reduced the wall height non-compliance to ensure no unreasonable impacts on streetscape and adjacent land.

This issue has been addressed in detail within the report and does not warrant refusal of the application.

- *Concern that the proposal will reduce solar access by the building overshadowing adjacent land at No.45 Evans Street and No.62 Evans Street.*

Comment:

Detailed shadow diagrams are shown for the winter solstice on June 21 for 9:00am, 12 midday and 3:00pm. The shadow diagrams dated 15/12/15 drawn by SpaceOut Design demonstrate there will be no unreasonable overshadowing for the private open space at No.45 Evans Street (on the opposite side of the road) in accordance with *Part D6 Access to Sunlight* for the Warringah DCP 2011. It is noted that the amended plans, dated 8/3/16, have lowered the building height and reduced the width of the building, therefore further reducing overshadowing that would reach across the road during the morning period, toward No.45 Evans Street. The proposal does not create unreasonable loss of sunlight to No.45 Evans Street.

The shadow details provided demonstrate that 3 hours of solar access will be maintained to the private open space at the rear of No.62 Evans Street in compliance with *Part D6 Access to Sunlight*. Private open space includes the broader area of a rear open space and therefore partial overshadowing of the rear deck does not exclude consideration of the full solar access regime for the 21 June. The amended plans reduced the building height to better maintain solar access to No.62 Evans Street in compliance with the DCP and to respond to this issue by ensuring no unreasonable loss of solar access to adjacent land.

This issue has been addressed by the amended plans and while there will be greater overshadowing during the afternoon period, the northern aspect of this site and adjacent land will ensure the WDCP objectives are satisfied and therefore this issue does not warrant refusal of the application.

- *Concern that the proposal includes a swimming pool in the front setback.*

Comment:

The pool location and shape has been amended to ensure it now does not encroach within the 6.5m front building setback, as addressed in detail under *Part D16 Swimming Pools and Spa Pools* within this report. The pool area is integrated into the front terrace area off the living/kitchen area and forms part of the usable open space for the dwelling. Since the pool structure and pump system is integrated into the building above the secondary dwelling it is

not readily visible from the street level that the pool is actually in front of the main house. The pool surroundings include a privacy wall and side landscaping (planter boxes) to maintain privacy to adjacent land. In addition the pool has no accessible area on the southern side that would permit overlooking from a forward position.

This issue has been addressed in detail within the report and does not warrant refusal of the application.

- *Concern about privacy impacts on No.62 Evans Street.*

Comment:

The proposal has been substantially amended to improve privacy to adjacent land. This includes high sill windows along the eastern elevation, operable and fixed privacy screens and screen walls with planter boxes, landscaping. Bedrooms are located on the upper level since these are low occupancy activity rooms and the dwelling design has ensured the rear of the building is only single storey. Details are shown on the plans dated 8/4/16 drawn by SpaceOut Design. Therefore, this issue has been addressed by the amended plans to ensure no unreasonable privacy impacts on neighbouring land.

This issue does not warrant refusal of the application, subject to conditions.

- *Concern about excavation impacts of noise, vibration and dust that may affect adjacent land owners health and the need for a dilapidation report to address risk of damage to adjacent land.*

Comment:

The proposal has been substantially amended to reduce excavation works, however conditions are recommended to ensure appropriate site management to minimise noise, dust and potential excavation impacts. Conditions include limitation on construction / excavation hours, noise and site management to ensure no unreasonable amenity impacts. A condition for a dilapidation report is recommended to protect against dilapidation risks to adjacent land. Standard conditions are also applied to ensure works are carried out in an appropriate manner to comply with occupational health, safety and noise amenity laws.

Therefore, this issue does not warrant refusal of the application, subject to conditions.

- *Concern about construction management and parking of vehicles on site during excavation and potential commercial use of a four car garage.*

Comment:

The application includes a demolition plan, DA02(A) drawn by SpaceOut Design, and a waste management plan to address this issue. The day to day site management of the construction process is the responsibility of the Principal Certifying Authority and standard conditions and additional information is supplied by Council to ensure safety, environmental controls and other relevant matters are managed during construction to minimise impacts on adjacent public and private land. The amended plans (dated 8/4/16) have reduced the garage area from four car spaces to two car spaces and therefore the issue of excess (commercial) parking is no longer applicable. The garage setback is satisfactory to enable visitor parking and driveway space for on-site loading during excavation of the site and delivery of construction materials without having an unreasonable adverse impact on street parking. Standard conditions have been recommended by Council's development engineers to ensure the driveway width complies with Council specifications, including width, kerb reconstruction, sight lines and gradients.

Therefore, this issue does not warrant refusal of the application, subject to conditions.

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 subject to inclusion of the attached conditions to ensure the requirements for a Class 2 development are met under the Building Code of Australia (BCA). These BCA detail issues are appropriate to determine at Construction Certificate stage.
Development Engineers	No Development Engineering objection is raised to the proposed development subject to conditions.
Landscape Officer	<u>Revised comments to Amended Plans 15/04/2016</u> Amended plans noted relocating the pool out of the front setback, reducing building bulk and height and increasing areas of rock to be retained. No objections subject to conditions as recommended. <u>Original Comments</u> Site inspection revealed significant rock outcrops behind the existing dwelling. The dwellings to the west of the site have been constructed above the rock. No. 58 and 60 Evans Street have been constructed with a garage below the rock and the dwelling above. The proposal at No. 62 appears to take the building up through the rock, necessitating removal. The proposed removal of the rock outcrop is of concern and it is recommended that the design of buildings address retention on the same manner as adjoining properties to retain this distinctive landscape feature. It is noted that the proposed dwelling, garage and swimming pool extends into of the front landscape setback and the dwelling extends into the rear landscape setback. Whilst some concession might be considered for breaching the setbacks to protect significant environmental features, there appears little by way of environmental benefit to the proposed incursions. Further to this, it is apparent that the proposal will be deficient in landscape open space. It is noted on Drawing DA15 (A) - Landscape Area Plan, that non-compliant landscape areas have been included. The Landscape Area Plan includes all the land along the western boundary in the calculation, however the architectural, landscape and

Internal Referral Body	Comments
	stormwater plans indicate that a large portion of this space is occupied by access stairs and concrete dish drain. Further, the landscape and stormwater plans indicate paving and decking in the front setback which are not addressed in the landscape area calculation. Finally, the landscape and stormwater plans indicate a paved section at the rear of the site, facilitating access from level 1 in to the rear yard. The removal of these areas from the calculation provided would reduce the LOS below the required 40%. In view of the apparent landscape open space shortfall, incursions into the front and rear setbacks and removal of rock outcrops, the proposal is not supported in relation to landscape assessment against the relevant planning controls.
Traffic Engineer	There are no objections to the proposal on traffic grounds subject to the following condition: The proposed garage parking spaces are to comply with the Australian Standards AS 2890.1 in respect to width and length.

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*
- (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 a *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 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.

NORTHERN BEACHES COUNCIL

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.	The proposal satisfies this requirement that there will be only one principal dwelling on the site and a 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.	No floor space ratio applies to the site under the Warringah LEP 2011. The total floor area of the secondary dwelling is 56 sqm and therefore complies with the floor area requirement.
(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 secondary dwelling is attached to and integrated with the principal dwelling house proposed for the site. The site area is 473.7 sqm and therefore satisfies the minimum site area requirement. No additional parking is required for the secondary dwelling.

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 meets the requirements for a Secondary Dwelling, pursuant to the SEPP.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 680768M dated 11 December 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 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.

Other Service Authorities

The application was not required to be referred to the Roads and Maritime Service (RMS) and no other Service Authority referral issues have been raised pursuant to the SEPP.

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

NORTHERN BEACHES COUNCIL

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	450 sqm	473.7 sqm (Existing)	N/A	Yes
Height of Buildings: (RL80.94 roof - RL72.57 existing floor)	8.5m	9.7m	14.1%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	No
5.3 Development near zone boundaries	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard and is assessed taking into consideration the questions established in Winten Property Group Limited v North Sydney Council (2001) NSW LEC 46.

Requirement:	8.5m
Proposed:	9.7m
Is the planning control in question a development standard?	YES
Is the non-compliance with to the clause requirement a Numerical and / or Performance based variation?	Numerical
If numerical enter a % variation to requirement	14.1%

The proposal must satisfy the objectives of Clause 4.3 – Height of Buildings, the underlying objectives of the particular zone, and the objectives of Clause 4.6 - Exceptions to Development Standards under the WLEP 2011. The assessment is detailed as follows:

Is the planning control in question a development standard?

The prescribed Height of buildings limitation pursuant to Clause 4.3 of the WLEP 2011 is a development standard.

What are the underlying objectives of the development standard?

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

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

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

Comment:

The proposal is in an area of sloping terrain and surrounding development is generally 1 to 2 storeys with some 3 storey buildings on steeper properties, for dwelling houses more recently constructed. Therefore, the natural topography leads to varying height planes for surrounding development due to natural terraces and rock ledges in the local surroundings. In this case the contains a rock ledge about 3.0m high in the central area of the site. Due to significant variation in natural levels on site part of the upper roof and storey will exceed the 8.5m height plain where the building transitions down the slope. However, the height and scale of the building is consistent with more recent surrounding and nearby housing development.

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

Comment:

The building is a highly contemporary design (compared to the original existing house) with various levels stepping up the site and terrace/balcony areas oriented to the coastal views of Freshwater Beach and the coastal area to the south east. The non-compliance with the height 8.5m height plane is moderate (1.2m) and will not unreasonably affect visual amenity, views, privacy or solar access to surrounding land in the context of the existing pattern of development. Terrace and balcony screens have been provided where appropriate to screen the pool area at the front of the house.

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

Comment:

The non-compliance is created by the existing natural rock terrace and steep slope of the site. The new building is surrounded by houses of various age and styles and does not have an adverse impact on the scenic quality of the coastal location when viewed from the coastal area near Harbord Diggers Club or Freshwater Beach.

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

Comment:

The dwelling design is integrated into the slope and excavation is required to provide internal lift and stair access between the three levels. The height is consistent with the residential pattern of development and at the rear of the dwelling the building is single storey. In achieving a single level at the rear the dwelling floor plate extends forward over the rock ledge in the centre of the site which contributes to the non-compliance with the height plane, and similar non-compliances occur in surrounding and nearby properties. The visual impact of the non-compliance with building height is not readily perceptible when viewed from surrounding public land such as Freshwater Beach reserve (140m to the south east).

What are the underlying objectives of the zone?

In assessing the developments the non-compliance, consideration must be given to its consistency with the underlying objectives of the R2 Low Density Residential zone.

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The proposal is for a new dwelling house, including a new garage to be accessed at from the road level with a dwelling and secondary dwelling integrated into the site above. The proposal also includes a ancillary site works for landscaping and is surrounded by low density development.

It is considered that the development satisfies this objective.

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

Comment:

The proposal does not seek to introduce any other land uses for other facilities and services for the community

It is considered that the development satisfies this objective.

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

Comment:

The dwelling structure utilises the natural site levels as far as practicable to step up the site and transition over a 3.0m rock terrace with the internal floor plans, and maintain a single storey dwelling at the rear. The proposal has been amended to reduce bulk and scale and increase landscaped open space so that it does not adversely affect the landscaped setting for the building.

It is considered that the development satisfies this objective.

Is the variation to the development standard consistent with the objectives of Clause 4.6 of the WLEP 2011?

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development.

Comment:

The non-compliance with the building height is 1.2m and is due to the existing site levels and the steep slope of the land. Flexibility with the development standard is appropriate in this circumstance in enabling new construction of the dwelling house, given the steep slope of land.

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Comment:

The location of the new garage and house enables at grade access from the road. The existing steepness of the site is utilised to provide a garage and lower ground floor, central living areas and 5 bedrooms within the house without creating a significant non-compliance with the building height. The dwelling is an open plan design with a contemporary architecture and does not have an adverse impact on the streetscape.

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

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

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

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

Comment:

In the circumstances of the site conditions and proposed building design creates a minor non-compliance with the 8.5m due along the side and eaves at the back of the building and is unnecessary and unreasonable given the existing excavation and minor non-compliance. The excavation of the site due to the existing dwelling (to be demolished) and steep terrain contributes to the non-compliance across the front edge of upper storey (being 9.7m above existing ground level)

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

(a) the consent authority is satisfied that:

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

Comment:

The applicant has provided a written request, dated 22 December 2016, detailing the matters to be demonstrated for the variation to the height limit and addressing the objectives of the zone.

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

Comment:

For reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density zone in the WLEP 2011.

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(b) the concurrence of the Director-General has been obtained

Comment:

Planning Circular PS 08-003 dated 9 May 2008, as issued by the NSW Department of Planning, advises that the concurrence of the Director-General may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Director-General for the variation to the Height of buildings Development Standard is assumed.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	9.1m	26.3%	No*
B3 Side Boundary Envelope	45 degrees at 4m (East)	Breach of envelope	1.5m	No*
	45 degrees at 4m (West)	Breach of envelope	2.7m	No*
B5 Side Boundary Setbacks	0.9m (East)	1.5m to 3.6m	N/A	Yes
	0.9m (West)	2.0m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	4.8m to 6.5m	up to 26%	No*
B9 Rear Boundary Setbacks	6.0m	3.05m (Dwelling)	49%	No
D1 Landscaped Open Space (LOS) and Bushland Setting Site area 473.7sqm	40% (189.4sqm)	34.1% (161.5 sqm)	17.25%	No

* Refer to detailed merit assessment of the built form controls within this report.

Compliance Assessment

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

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Clause	Compliance with Requirements	Consistency Aims/Objectives
Side Setback Exceptions - R2	Yes	Yes
B7 Front Boundary Setbacks	No	Yes
Front Boundary Exceptions - All Zones	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
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
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	No	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Private Property Tree Management	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	No	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The maximum wall height is 9.1m which is a variation of 26.3%.

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 non-compliance with the wall height control is confined to the forward element of the bedrooms rooms where the building steps above a rock ledge in the central area of the site. This element of the building will have no unreasonable visual impact on surrounding properties or views from adjacent properties or public land and the street. The height and width of the building has been reduced by amended plans in order to address visual bulk and provide increased landscaping.

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

Comment:

While there are no trees on the site the building height is single storey at the rear and is not inconsistent with the pattern of surrounding sites that have been re-developed for newer homes. The escarpment forms a backdrop to the site and the rocky landscape limits the possibility for deep soil and large canopy trees along the side and rear of the dwelling.

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

Comment:

The non-compliance with wall height will have no unreasonable impact on view sharing nearby public land or surrounding private property as the non-compliance with wall height equates to only a single storey (3.4m high at the rear) and adjacent properties generally overlook the site toward Freshwater Beach.

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

Comment:

The variation to the wall height will not have adverse impact on the adjoining and surrounding development with the reduced building bulk and height achieved by amended plans.

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

Comment:

The garage area is located toward the front of the site and internal connections is proposed via hallway , stair and lift access to join to the new dwelling house and secondary dwelling proposed. This requires the building work to step down the site and take advantage of the steep topography for utility rooms, recreational room, terrace, secondary dwelling and to minimise excavation. The building has been able to retain a substantial portion of the rock outcrop in its natural state behind the garage and therefore

responds to the existing topography and natural site features.

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

Comment:

The proposed building is of a contemporary residential style with a flat roof form. Variation and visual interest (including light and ventilation) is provided by building transitions at the front of the site to provide an innovative modern design response to the steep terrain to integrate the building into the land form and available site area.

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

B3 Side Boundary Envelope

Description of non-compliance

The proposal breaches the side boundary envelope by up to 1.5m at the upper forward corner of the east elevation and 2.7m at the upper forward corner of the west elevation.

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 amended design (dated 6.4.2016) has substantially reduced building bulk to address this issue. The building is single storey at the rear and transitions down the slope of the site to show part four storeys from the street setback stepping down between three principal setbacks for the front elevation. The front walls and the side walls step up and transition in response to the natural terracing on the topography and the existing building structure. The lower ground levels below the central area of the site fall away steeply which contributes to the breach of the envelope plane as the building platform steps down the edge of a 3.0m high rock ledge.

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

Comment:

The non-compliance with the building envelope does not cause an unreasonable loss of sunlight to adjacent land. The upper storeys are set back from the side boundaries to minimise the non-compliance on either side of the building. The building will maintain adequate light and solar access to adjacent land due to the northerly aspect of the rear setback area. Highlight windows, screen walls and operable screens are used for privacy for the side elevations and no unreasonable overlooking is created from forward balcony areas that overlook roof areas and the street.

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

Comment:

The design elements of the building are influenced by the desire for lift access and internal stairs to access the building from street / garage level. The building floor levels are split between different levels to ensure the dwelling transitions down the site between the garage level and between floors. Therefore, the non-compliances to the eastern and western building envelope are minimal intrusions to respond to the existing slope where the building steps down the steeper terraced section of the site.

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

B7 Front Boundary Setbacks

Description of non-compliance

The garage building is located within the front boundary setback area at a distance of 0.83m to 4.76m from the front boundary.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The site currently has a double garage on a 0.0m setback in the south east corner of the site with an "L" shape driveway entry. This existing garage and driveway currently covers most of the front setback with hard surface / building. The new garage will enable more than 50% of the front setback to remain open with pedestrian access, new grass / garden area and provide for a new more direct driveway alignment. The forward position of the garage is necessary to protect the large rock outcrop behind the front setback that is a prominent feature of the street.

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

Comment:

The front half of the property contains a steep rock outcrop that is prominent in the streetscape. The majority of this rock outcrop will be retained by ensuring minimal excavation at the front of the site and locating the new access hallway / lift on the western side of the land where the existing access steps has been cut into the rock. Given the site has an existing garage in the front setback and the replacement garage will restore / retain landscape elements in order to assist in retaining the existing visual continuity of the street the proposal is consistent with this objective.

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

Comment:

Landscape elements will be retained in order to substantially protect the significant rock outcrop in front of the house. This requires the garage to be located within the front setback to avoid unnecessary excavation.

- *To achieve reasonable view sharing.*

Comment:

The new location of the garage will have no adverse impact on views.

Having regard to the above assessment, it is concluded that, subject to conditions, the proposed development is consistent with the relevant objectives of WDCP 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.

B9 Rear Boundary Setbacks

Description of non-compliance

The proposal includes a rear setback of 3.64m to 3.05m which is a non-compliance of up to 49%

Merit consideration:

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

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

Comment:

The site will maintain 34.1% of deep soil areas however these areas include natural exposed rock, and the rear setback contains some exposed rock areas. Therefore, the site has limited areas for deep soil planting due to the extent of bedrock. Notwithstanding this landscaped areas around the rear and side setbacks are 2.0m or more in width to enable sufficient space for planting where those opportunities exist in the remaining parts of the site with deeper soil.

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

Comment:

The rear of the building is single storey at the back and neighbouring dwellings overlook the site. Dwellings to the north and west have setbacks of 2.0m or less with the adjacent dwelling to the east having a rear setback of 18.5m. Therefore, the surrounding setbacks to the rear of the site are inconsistent with the DCP. Notwithstanding this the principal private open space has been located toward the front of the dwelling to capitalise on views and the rear setback will serve as a landscape setback area for privacy between dwellings.

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

Comment:

The amenity of adjacent land has been retained by designing the building to be only single level at the back and providing a landscape buffer that is not required to be used as the

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principal private open space because the front terrace and pool area has been integrated to service the principal internal living areas. Privacy is also maintained by the use of side fencing, screen walls, landscaping, operable screens and highlight windows.

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

Comment:

The steep surrounding topography and subdivision pattern does not allow for consistent rear setbacks that would adjoin one another. Therefore, the surrounding dwelling positions, scale, height and alignments vary and do not allow for visual continuity that is possible in other areas where the terrain is flatter and the subdivision pattern is regular. The proposal has provided a landscaped setback to assist in supporting landscape elements to enhance the visual appearance of the dwelling when viewed from surrounding land.

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

Comment:

The proposal has been designed to place only utility rooms (bathrooms, internal stairs, laundry) within minimal windows facing the rear setback. Therefore, privacy will be maintained at the rear and the building does not create overlooking issues toward the northern rear setback area.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in 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

The site will retain 138 sqm (27%) landscaping which is a variation of 7.25% to the required 200 sqm (40%).

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 proposal has not provided a detailed landscaping plan to demonstrate that the reduced landscape area will be able to maintain and enhance the streetscape. The variation to landscaped open space is reduced by the new pool hard surface areas and not removing existing hard stand areas within the site.

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

wildlife.

Comment:

The site has been developed for a dwelling house for a significant period with minimal changes to the property. No new landscaping is shown to be completed to provide an enhanced landscaped setting for the dwelling additions and no additional native plantings to provide habitat for wildlife to compliment the adjacent reserve.

- *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:

No comprehensive landscape planting is proposed to provide native shrubs, ground covers and small canopy trees to screen the rear private open space and provide a enhanced setting to the dwelling, including softening the visual appearance of the bulk and scale of the buildings.

- *To enhance privacy between buildings.*

Comment:

Landscape screening is proposed to address privacy and create a landscaped setting for the private open space. The pool is also partly screened by the existing side fencing and no unreasonable privacy impacts are created at the rear, or front, of the property for the adjacent public land.

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

Comment:

Landscape areas have been designed provide practicable level areas to meet the recreational opportunities of the occupants. This includes providing setbacks to the pool and retaining natural ground levels along the rear setback.

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

Comment:

The site contains adequate space for service functions, clothes drying and the like to service the domestic needs of the occupants. The landscape plan shows suitable pathway connections and access to ensure practical access for maintenance and use of service areas. There are inconsistencies between the plans with the solar access plans showing a driveway structure along the side boundary and the site plans showing this area as being grassed. A condition is included to address this issue, and the deletion of the pool (by condition) will retain the existing landscaping area constant at 148 sqm (35%).

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

Comment:

The site adjoins Manly Lagoon waterway and does not require any on-site detention since the land is flood prone.

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

D7 Views

Merit consideration

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

- *To allow for the reasonable sharing of views.*

Comment:

In determining the extent of potential view loss to adjoining and nearby properties, the four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd vs Warringah Council (2004) NSWLEC 140*, are applied to the proposal.

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured".

Comment to Principle 1:

The views potentially affected are water views of the coastal waters of coastal fringe toward Freshwater and are shared to principally affect properties to the west and north where the view is at a broad angle, but overlooking across a side or rear boundary. The properties potentially most affected / concerned are No.8 The Drive and No.60 Evans Street, and a site inspection was made in the vicinity of the site to evaluate the broad views available. No objection to view loss has been made, however a general assessment of the possible views affected and the general relationship as to what those views are available, is identified as ocean views and coastal fringe views. Therefore, the general focal interest is toward Freshwater beach, with the coastal interface and ocean horizon beyond. Other properties adjacent the site and to the rear, also have expansive views especially from the first floor level, and view sharing is equally maintained. These surrounding properties are either much higher on the escarpment or have a partial view back toward Harbord village at the rear of their property.

2. What part of the affected property are the views obtained

"The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of

views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic”.

Comment to Principle 2:

Good views are obtained from the ground level (where higher topography permits) and the upper storey of surrounding dwellings. In general, some views are partly obscured due to existing development at ground level and from other structures such as fencing, telegraph poles, outbuildings and trees / vegetation. While views across the site, by others, are over side boundaries (side views), or rear boundary, due to the subdivision pattern, these are valuable views because the dwellings are configured to capitalise on the coastal south easterly outlook, not necessarily a street outlook. The applicant has provided view information that indicates the principal views are gained from the upper storeys with some views from side windows.

3. Extent of impact

“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.

Comment to Principle 3:

The subject proposal is to be built over the existing building footprint and extending the building footprint within some view lines. Views potentially affected from the upper floors of adjacent surrounding dwellings will mostly impact a negligible component of the broad view of the ocean. The views available from different standing / sitting positions for upper storey level and are considered to be generally maintained, with the impact being negligible. The view can change with respect to a particular standing position particularly toward Freshwater Beach since this may be either an oblique or acute angle, such as from a particular room or open space area looking over the site.

4. Reasonableness of the proposal that is causing the impact

“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

Comment to Principle 4:

The element of the proposal causing the view impact is generally the forward edge of the building and roof lines in that the subject site slopes toward the south and the existing topography changes dramatically in level from 28.08AHD to 24.00AHD across the central area of the site. Therefore, the non-compliance with the 8.5m building height, 7.2m wall height control, and side boundary envelope is accentuated by the rock ledge near the middle of the site. Overall the view impact is regarded as minor. However, conditions are recommended to ensure no variation to the roof height during the Construction Certificate that might also affect elements that cause an unnecessary intrusion into the view lines.

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

Comment:

The proposed roof is of a contemporary style, however being a flat roof assists in maintaining views for overlooking properties. Landscaping has also been included to the roof surface to soften the roof appearance from above. The retention of single storey level at the rear and consistent front boundary setback and higher adjacent topography assist to also maintain view lines from adjacent land.

- *To ensure existing canopy trees have priority over views.*

Comment:

There are no trees causing any significant obstruction to views.

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

D16 Swimming Pools and Spa Pools

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 swimming pools and spas are located to preserve the natural environment, streetscape and residential amenity.*

Comment:

The proposed swimming pool is located on top of the garage structure and along the edge of the front setback. While the location of the pool is well above street and integrated into the level above the secondary dwelling, additional height also requires a planterbox/safety fence with the pool structure being 5.3m above road level. The proposal includes a pool across the width of the front setback along the edge of the 6.5m setback. In this regard, it is considered that the proposal has been located sufficiently into the main building structure to preserve the streetscape and adjacent residential amenity.

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

Comment:

The pool design is fully located along the edge of the front setback and integrated into the front balcony level to be an innovative design solution and respond to the site location, available land characteristics and existing amenity. In this regard, it is considered that the proposal does not demonstrate an innovative design to minimise or reduce non-compliance variation's to improve the urban environment.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

E6 Retaining unique environmental features

Merit consideration:

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

- *To conserve those parts of land which distinguish it from its surroundings.*

Comment:

The site contains a rock ledge formation across the central area of the site which is distinct to the surrounding topography. At various location the rock formation is visible from Evans street depending on where surrounding development has been able to conserve those parts of the rock feature. In this case the existing house is constructed forward of the rock feature and the new garage, access stairs/hall and secondary dwelling will impact on that rock feature by excavation. The proposal has been amended to reduce the impact on the rock feature to conserve over 50% of the rock escarpment and construct around (forward) and above it in order to retain the natural rock face as much as practicable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in 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 \$ 1,864,190		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 17,710
Section 94A Planning and Administration	0.05%	\$ 932
Total	1%	\$ 18,642

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 DA2015/1258 for Demolition works and the construction of a dwelling house, secondary dwelling (pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009), garage and swimming pool on land at Lot 3 DP 11737, 62 Evans 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
Demolition Plan DA02 (A)	15/12/2015	SpaceOut Studio
Garage Entry Level DA03 (C)	8/4/2016	SpaceOut Studio
Granny Flat Level DA04 (C)	8/4/2016	SpaceOut Studio
Ground Floor Level DA05 (B)	3/4/2016	SpaceOut Studio
First Floor DA06 (B)	3/4/2016	SpaceOut Studio
Roof Level DA07 (B)	8/4/2016	SpaceOut Studio
South Elevation DA08 (C)	6/4/2016	SpaceOut Studio
East Elevation DA09 (C)	8/4/2016	SpaceOut Studio
West Elevation DA10 (C)	8/4/2016	SpaceOut Studio
North Elevation DA11 (B)	3/4/2016	SpaceOut Studio
Section AA DA12 (B)	8/4/2016	SpaceOut Studio
Section BB DA13 (B)	8/4/2016	SpaceOut Studio
Section CC DA14 (B)	8/4/2016	SpaceOut Studio
Window Schedule DA16 (B)	8/4/2016	SpaceOut Studio
Colour and Materials Schedule DA18 (B)	8/4/2016	SpaceOut Studio

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Site Investigation 2015-195	30/10/2015	Crozier Geotechnical Group
Basix 680768M	11/12/2015	Building Sustainability

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.

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

Landscape Plans		
Drawing No.	Dated	Prepared By
Site Landscape Plan L-04 C	7/12/2015	Space Landscape Design

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Details and Specifications L-05 A	7/12/2015	Space Landscape Design
Landscape Area Plan DA15 (B)	3/4/2016	SpaceOut Design Studio

Waste / Sediment Control Plans		
Drawing No.	Dated	Prepared By
Waste Management Plan	10/12/2015	Anthony Taverniti
Sediment and Erosion Control D02 Issue A	11/12/2015	iStruct Consulting Engineers

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. Amendments to the approved plans

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

- Landscape plans are to be amended to be consistent with the architectural plans. Areas of rock outcrops shown to be retained in situ are to be protected from excavation work with details of those protection methods to be employed shown on the plans.

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

Reason: To ensure development minimises unreasonable impacts in accordance with WLEP2011 and WDCP. (DACPLB02)

3. Occupancy

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

A secondary dwelling is defined as:

- “secondary dwelling means a self-contained dwelling that:**
- (a) is established in conjunction with another dwelling (the principal dwelling), and*
 - (b) is on the same lot of land as the principal dwelling, and*
 - (c) is located within, or is attached to, or is separate from, the principal dwelling.”*

(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

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

Reason: To ensure compliance with the terms of this consent. (DACPLB03)

4. Prescribed Conditions

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

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

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

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

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

(d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:

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

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

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

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

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

Reason: Legislative Requirement (DACPLB09)

5. **General Requirements**

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

(b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

(c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.

(d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.

(e) Prior to the release of the Construction Certificate payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

(f) 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 unsewerred 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)

6. Design of Garage

The proposed garage parking spaces are to comply with the Australian Standards AS 2890.1 in respect to width and length

Reason: Provide convenient and safe vehicle access. (DACTRBOC2)

FEES / CHARGES / CONTRIBUTIONS

7. 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 \$ 1,864,190.00		
Contributions	Levy Rate	Payable
Total Section 94A Levy	0.95%	\$ 17,709.81
Section 94A Planning and Administration	0.05%	\$ 932.10
Total	1%	\$ 18,641.90

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.

8. Security Bond

A bond (determined from cost of works) of \$10,000 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

9. **On-site Stormwater Detention Compliance Certification**

Drainage plans detailing the provision of On-site Stormwater Detention in accordance with Warringah Council's "On-site Stormwater Detention Technical Specification" and the concept drawing by iSTRUCT Consulting Engineers,, drawing number D01- Project No 150918 dated Dec 2015.

Details demonstrating compliance are to be submitted to the Certifying Authority 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. (DACENC03)

10. **Sub-Soil Seepage**

All sub-soil seepage drainage shall be discharged via a suitable silt arrester pit, directly to Council's street drainage system and is to be carried out in accordance with relevant Australian Standards.

(Note: At the time of determination the following (but not limited to) Standards applied:

- Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 Plumbing and drainage - Stormwater drainage
- Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 / Amdt 1 - 2006 Plumbing and drainage - Stormwater drainage.)

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

Reason: To ensure appropriate drainage and stormwater management on site to protect amenity of residents. (DACENC10)

11. **Vehicle Crossings Application Formwork Inspection**

An application for street levels shall be made with Council subject to the payment of fee applicable at the time of payment. The fee includes all Council inspections relating to the driveway construction and must be paid.

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

Reason: To facilitate suitable vehicular access to private property. (DACENC12)

12. **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)

13. **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. (DACENC05)

14. **Tree protection**

- (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

- 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 pruning within the subject site is to be in accordance with

WDCP2011 Clause

E1 Private Property Tree Management and AS 4373 Pruning of amenity trees

v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

15. **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**
- (g) AS1668 The use of mechanical ventilation

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website
http://www.humanrights.gov.au/disability_rights/buildings/good.htm

**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)

16. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range, including details as shown on the approved roof plan, in order to minimise solar reflections to neighbouring properties. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

Reason: To ensure that excessive glare or reflectivity nuisance does not occur as a result of the development. (DACPLC03)

17. **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)

18. **Dilapidation Report**

A pre-construction / demolition Dilapidation Report is to be prepared by a suitably qualified person to record and address potential dilapidation risk to adjacent land of No.45, No.60 and No.64 Evans Street, Freshwater, and No.8 The Drive, Freshwater. The report is to also record the condition of public assets / infrastructure within the road reserve in front of the site. A photographic survey of adjoining private properties (as appropriate) detailing the physical condition of those properties, both internally and externally, including such items as walls, ceilings, roof, structural members and other similar items, SHALL BE submitted to Council/Accredited Certifier prior to the issue of a Construction Certificate. This survey is to be prepared by an appropriately qualified person.

On completion of the excavation and building works and prior to occupation of the building, a certificate prepared by the appropriately qualified person to the effect that no damage has resulted to adjoining premises, is to be provided to the Principal Certifying Authority.

If damage is identified by the appropriately qualified person which is considered to require rectification, the damage shall be rectified or a satisfactory agreement for rectification of the damage is to be made with the affected person/s as soon as possible and prior to a final Occupation Certificate being issued. All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on this Consent. In the event that access for undertaking the dilapidation survey is denied by an adjoining owner, the applicant MUST DEMONSTRATE, in writing, to the satisfaction of Council/Accredited Certifier that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed.

The pre-construction / demolition dilapidation report must be submitted to Council for approval and the Certifying Authority prior to the issue of the Construction Certificate.

Note: This documentation is for record keeping purposes only, and may be used by an applicant or affected property owner to assist in any action required to resolve any dispute over damage to adjoining properties arising from the works. It is in the applicant's and adjoining owner's interest for it to be as full and detailed as possible. Council's Guidelines are available at <http://www.warringah.nsw.gov.au>

Blank condition for prior construction certificate (DACPLCPCC1)

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. **Public Liability Insurance - Works on Public Land**

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

Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land. (DACEND01)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

20. Surveyor's Report

A Registered Surveyor's identification report indicating the finished ground floor levels to a nominated fixed datum point are in accordance with the levels indicated on the approved plans. A Surveyor's Report is to be provided for confirmation prior to pouring of the slab or construction of the floor platform.

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

Reason: To ensure the height of buildings under construction comply with levels shown on approved plans. (DACENE04)

21. Vehicle Crossings

The provision of normal standard vehicle crossing 6.0 metres wide at the boundary and 5.0 metres wide at the kerb in accordance with Warringah Council Drawing No A4-3330/1 and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property. (DACENE05)

22. Layback Construction

A layback 5.0 metres wide (excluding the wings) is to be constructed in accordance with Warringah Council Drawing No A4-2276 and specifications.

Reason: To ensure suitable vehicular access to private property. (DACENE08)

23. 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)

24. 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. (DACLAEO3)

25. Protection of rock and sites of significance

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

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

Reason: Preservation of significant environmental features (DACLAEOG1)

26. 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**

27. Authorisation of Legal Documentation Required for On-site Stormwater Detention

The original completed request forms (Department of Lands standard forms 13PC and/or 13RPA) must be submitted to Council, with a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers certification and Compliance Certificate issued by an Accredited Certifier in Civil Works.

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

Reason: To create encumbrances on the land. (DACENF01)

28. Registration of Encumbrances for On-site Stormwater Detention

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 any interim / final Occupation Certificate.

Reason: To identify encumbrances on land. (DACENF02)

29. Restriction as to User for On-site Stormwater Detention

A restriction as to user shall be created on the title over the on-site stormwater detention system, restricting any alteration to the levels and/or any construction on the land. The terms of such restriction are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Council prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such restriction.

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

Reason: To ensure modification to the on-site stormwater detention structure is not carried without Council's approval. (DACENF04)

30. On-Site Stormwater Detention Compliance Certification

Upon completion of the on-site stormwater detention (OSD) system, certification from a consulting engineer and a "work as executed" (WAE) drawing certified by a registered surveyor and overdrawn in red on a copy of the approved OSD system plans are to be provided to Council. Additionally a Compliance Certificate is to be issued by an Accredited Certifier in Civil Works registered with the Institute of Engineers Australia, stating that the works are in accordance with the approved plans.

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 stormwater disposal is constructed to Council's satisfaction. (DACENF10)

31. Positive Covenant for On-site Stormwater Detention

A positive covenant shall be created on the title of the land requiring the proprietor of the land to maintain the on-site stormwater detention structure in accordance with the standard requirements of Council. The terms of the positive covenant are to be prepared to Council's standard requirements, (available from Warringah Council), at the applicant's expense and endorsed by Warringah Council's delegate prior to lodgement with the Department of Lands. Warringah Council shall be nominated as the party to release, vary or modify such covenant.

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 ongoing maintenance of the on-site stormwater detention system. (DACENF12)

32. Creation of Positive Covenant and Restriction as a User

Where any conditions of this Consent require the creation of a positive covenant and/or restriction as a user, the original completed request forms, (Department of Lands standard forms 13PC and/or 13RPA), shall be submitted to Warringah Council for authorisation.

A certified copy of the documents shall be provided to Warringah Council after final approval and registration has been affected by the "Department of Lands".

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

Reason: To identify encumbrances on land. (DACENF14)

33. **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)

34. **House / Building Number**

House/building number is to be affixed to the building / letterbox 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. (DACPLF04)

35. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

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

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000. (DACPLF07)

36. **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;
- (ii) Swimming Pools Regulation 2008
- (iii) Australian Standard AS1926 Swimming Pool Safety
- (iv) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (v) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming 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

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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 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

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

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

Alex Keller, Senior Development Planner

The application is determined under the delegated authority of:

Rodney Piggott, Development Assessment Manager

ATTACHMENT A

No notification plan recorded.

ATTACHMENT B

No notification map.

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ATTACHMENT C

Reference Number	Document	Date
 2015/382484	Pre-Lodgement Meeting Notes	10/07/2015
 2015/382455	Plans - Notification	07/12/2015
 2015/382560	Report - Geotechnical Site Investigation and Landslip Risk	07/12/2015
 2015/382453	Plan - Survey	10/12/2015
 2015/382533	Plans - Architectural - ABSA Stamped	15/12/2015
 2015/382548	Plan - Stormwater Management	15/12/2015
 2015/382565	Report - Waste Management Plan	15/12/2015
 2015/382569	Letters - Support for Development Application	15/12/2015
 2015/382514	Report - Visual Impact and View Sharing Assessment	15/12/2015
 2015/382508	Report - Architectural Design Statement	16/12/2015
 2015/382464	Report - Clause 4.6	16/12/2015
 2015/382460	Report - Statement of Environmental Effects	16/12/2015
 DA2015/1258	62 Evans Street FRESHWATER NSW 2096 - Development Application - New	17/12/2015
 2015/375050	DA Acknowledgement Letter - Georgina Androutsos - Terry Androutsos	17/12/2015
 2015/382487	Plans - External	22/12/2015
 2015/382493	Plans - Internal	22/12/2015
 2015/382573	Plans - Master Set	22/12/2015
 2015/382501	Certification of Shadow Diagrams with Plans	22/12/2015
 2015/382520	Report BASIX Certificate and NatHERS Certificates	22/12/2015
 2015/382435	Development Application Form	22/12/2015
 2015/382437	Applicant Details	22/12/2015
 2015/382439	Cost Summary Report	22/12/2015
 2015/384859	Traffic Engineer Referral Response	23/12/2015
 2015/388635	File Cover	30/12/2015
 2015/388667	Referral to AUSGRID - SEPP - Infrastructure 2007	30/12/2015
 2016/005436	Building Assessment Referral Response	08/01/2016
 2016/006347	Development Engineering Referral Response	11/01/2016
 2016/010348	Notification Letter - 51 sent	13/01/2016
 2016/010347	Map Notification	13/01/2016
 2016/023636	Online Submission - O'Donnell	26/01/2016
 2016/033756	Submission - on behalf of Palme	02/02/2016
 2016/090156	Landscape Referral Response	23/03/2016
 2016/098447	Request for Withdrawal of Development Application - Georgina Androutsos - Terry Androutsos	30/03/2016
 2016/101569	Working plans	31/03/2016
 2016/111705	Plans Rev B Received to address 7 Day letter issues	03/04/2016

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3rd April - Evans Street

	2016/111708	Full Set Architectural Plans received - Revision B & C to address Issues	10/04/2016
	2016/118103	Landscape Referral Response	15/04/2016