

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

|                            |             |
|----------------------------|-------------|
| <b>Application Number:</b> | DA2021/2148 |
|----------------------------|-------------|

|                                           |                                                                         |
|-------------------------------------------|-------------------------------------------------------------------------|
| <b>Responsible Officer:</b>               | Claire Ryan                                                             |
| <b>Land to be developed (Address):</b>    | Lot 12 DP 7392, 73 Hay Street COLLAROY NSW 2097                         |
| <b>Proposed Development:</b>              | Alterations and additions to a dwelling house including a swimming pool |
| <b>Zoning:</b>                            | Warringah LEP2011 - Land zoned R2 Low Density Residential               |
| <b>Development Permissible:</b>           | Yes                                                                     |
| <b>Existing Use Rights:</b>               | No                                                                      |
| <b>Consent Authority:</b>                 | Northern Beaches Council                                                |
| <b>Land and Environment Court Action:</b> | No                                                                      |
| <b>Owner:</b>                             | Olivia Mireille Rudomino<br>Patrick Rudomino                            |
| <b>Applicant:</b>                         | Olivia Mireille Rudomino                                                |

|                                  |                                         |
|----------------------------------|-----------------------------------------|
| <b>Application Lodged:</b>       | 11/11/2021                              |
| <b>Integrated Development:</b>   | No                                      |
| <b>Designated Development:</b>   | No                                      |
| <b>State Reporting Category:</b> | Residential - Alterations and additions |
| <b>Notified:</b>                 | 22/11/2021 to 06/12/2021                |
| <b>Advertised:</b>               | Not Advertised                          |
| <b>Submissions Received:</b>     | 2                                       |
| <b>Clause 4.6 Variation:</b>     | 4.3 Height of buildings: 4.35%          |
| <b>Recommendation:</b>           | Approval                                |

|                                 |               |
|---------------------------------|---------------|
| <b>Estimated Cost of Works:</b> | \$ 990,000.00 |
|---------------------------------|---------------|

### PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to the existing dwelling house, as follows:

- Ground floor reconfiguration and extensions including double garage;
- First floor addition with deck;
- Construction of a swimming pool with deck;
- Construction of a new driveway; and
- Landscaping works.

On 7 January 2022, the applicant provided amended plans that provided an increased side setback to

the southern elevation at the first floor, in response to Council's concerns about non-compliance with the side boundary envelope control. The amended plans demonstrated a lesser environmental impact and did not require re-notification, in accordance with Council's Community Participation Plan.

## ASSESSMENT INTRODUCTION

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

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

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks  
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land  
 Warringah Development Control Plan - B3 Side Boundary Envelope  
 Warringah Development Control Plan - B7 Front Boundary Setbacks

## SITE DESCRIPTION

|                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Property Description:</b>      | Lot 12 DP 7392 , 73 Hay Street COLLAROY NSW 2097                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Detailed Site Description:</b> | <p>The subject site consists of one allotment located on the eastern side of Hay Street, Collaroy.</p> <p>The site is regular in shape with a frontage of 15.24m along Hay Street and a depth of 45.72m. The site has a surveyed area of 696.8m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single-storey detached dwelling house.</p> <p>The site is relatively level and contains one mature tree.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> |

Adjoining and surrounding development is characterised by one- and two-storey detached dwelling houses.

Map:



## SITE HISTORY

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

- CDC2017/0500 for Alterations and Additions to an existing dwelling was approved by a private certifier on 21 August 2017.
- DA2017/0812 for Removal/Pruning of 1-2 Trees was approved by Council on 23 August 2017.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

| Section 4.15 Matters for Consideration                                               | Comments                                                                                                                                                                                                                                                                                                                                                                                                       |
|--------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument        | See discussion on “Environmental Planning Instruments” in this report.                                                                                                                                                                                                                                                                                                                                         |
| Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument | Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk. |

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

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

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 22/11/2021 to 06/12/2021 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

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

| Name:                                                       | Address:                        |
|-------------------------------------------------------------|---------------------------------|
| Mr Douglas John Mansfield<br>Mrs Colleen Margaret Mansfield | 71 Hay Street COLLAROY NSW 2097 |
| Ms Kerry Margaret Pratt                                     | 75 Hay Street COLLAROY NSW 2097 |

The following issues were raised in the submissions:

- Impact on the privacy of No. 75 Hay Street from the upper balcony.
- Concern regarding the bulk of the development.
- Concern about pool filter noise.
- Concern regarding the location of the construction waste and materials storage location and resulting dust, dirt and noise.
- Impact on the solar access to No. 71 Hay Street as a result of the building bulk.

The matters raised within the submissions are addressed as follows:

#### Privacy

##### Comment:

The proposed development is compliant with the requirements of Clause D8 Privacy of the WDCP 2011, in that proposed new windows do not result in direct viewing to adjoining sites, and the proposed upper balconies are either orientated away from adjoining dwellings and their private opens spaces, or are suitably screened.

#### Building Bulk

##### Comment:

The proposed development, as modified by amended plans, is acceptable in relation to building bulk for the reasons detailed throughout this report.

#### Pool Filter Noise

##### Comment:

A condition of consent has been applied requiring that the pool filter motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

#### Construction Waste and Materials Storage

##### Comment:

The proposed construction waste and materials storage areas are suitably located at the front of the dwelling house adjacent to the driveway for easy access.

#### Solar Access

##### Comment:

The proposed development is compliant with the requirements of Clause D6 Access to Sunlight of the WDCP 2011, in that shadowing is limited to less than 50% of the open space of the property to the south for the required 3 hours between 9am and 3pm on June 21.

### REFERRALS

| Internal Referral Body | Comments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Landscape Officer      | <p>This proposal seeks approval for alterations and additions to an existing dwelling including a new swimming pool.</p> <p>The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• D1 Landscaped Open Space and Bushland Setting</li> <li>• E1 Preservation of Trees or Bushland Vegetation</li> </ul> <p>The Arborist's Report prepared by Peake Arboriculture is noted.</p> <p>The Report indicates that three trees are located within the vicinity of the works. The report indicates two trees to be retained and one tree to be removed. The tree to be removed, T2 <i>Schinus molle</i> (Peppercorn Tree) is rated of Low significance with internal hollows and canopy dieback.</p> <p>The plans provided with the application don't indicate that T2 is proposed to be removed. However, given the declining health of the tree, removal is not objected to.</p> |

| Internal Referral Body         | Comments                                                                                                    |
|--------------------------------|-------------------------------------------------------------------------------------------------------------|
|                                | No objections are raised to approval with regard to landscape issues, subject to conditions.                |
| NECC (Development Engineering) | Development Engineering has no objection to the application subject to the following conditions of consent. |

| External Referral Body | Comments                                                                                                                                                                                                                                                                     |
|------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Ausgrid: (SEPP Infra.) | The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent. |

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

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

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

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

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

### SEPP 55 - Remediation of Land

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

### SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A437649\_03 dated 2 November 2021). 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 who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

**Warringah Local Environmental Plan 2011**

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

Principal Development Standards

| Standard             | Requirement | Proposed | % Variation | Complies |
|----------------------|-------------|----------|-------------|----------|
| Height of Buildings: | 8.5m        | 8.87m    | 4.35%       | No       |

Compliance Assessment

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

Detailed Assessment

**4.6 Exceptions to development standards**

Description of non-compliance:

|                                      |                     |
|--------------------------------------|---------------------|
| Development standard:                | Height of Buildings |
| Requirement:                         | 8.5m                |
| Proposed:                            | 8.87m               |
| Percentage variation to requirement: | 4.35%               |

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

*(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*  
*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

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

*(a) the consent authority is satisfied that:*

*(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*  
*(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*  
*(b) the concurrence of the Secretary has been obtained.*

**Clause 4.6 (4)(a)(i) (Justification) Assessment:**

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

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

Comment:

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

compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by Clause 4.6(3)(a).

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

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

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

Section 1.3 of the EPA Act reads as follows:

*1.3 Objects of Act(cf previous s 5)*

*The objects of this Act are as follows:*

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

The Applicant's written request argues, in part:

*"The non-compliance is a direct result of the levels of the existing dwelling a desire to provide a roof to complement the existing dwelling. The non-complying portion is very minor being only 370mm and located at the rear of the site and not visible from the street. Reducing the rear roof form to ensure compliance with the height control would not have any impact on views or bulk and scale.*

*The area of non-compliance is very minor and is not discernible from the public domain.*

*No unreasonable impacts upon the amenity of the adjoining properties particularly in relation to visual and acoustic privacy or overshadowing result from the non-compliant height of building.*

*The amended design promotes an objective of the Environmental Planning and Assessment Act 1979 section 1.3 in that the proposal will provide for the "good design and amenity of the built environment".*

*The contravention is justified by the following environmental planning grounds:*

- *The site is constrained by the existing dwelling and the adopted floor levels. The proposed*

- *additions reduce the extent of the existing non-compliance.*  
*The area of non-compliance is not visible from the street and does not result in any detrimental impacts."*

The above justification is acceptable, with the exception of the reference to the proposed additions reducing the extent of the existing non-compliance, as this appears to be an error. The existing dwelling is compliant with the height of buildings development standard.

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

The Applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by Clause 4.6 (3)(b). Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

#### **Clause 4.6 (4)(a)(ii) (Public Interest) Assessment:**

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

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

##### Comment:

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

#### **Objectives of Development Standard**

The underlying objectives of the standard, pursuant to Clause 4.3 Height of Buildings of the WLEP 2011 are addressed as follows:

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

##### Comment:

The proposed development is of a height and scale consistent with other developments along Hay Street and within the Collaroy area. The extent of the non-compliance with height is minor in nature and limited to the rear of the proposed dwelling, so is not generally discernible from the street. The proposed development is acceptable in relation to the built form controls of the WDCP 2011, as detailed throughout this report.

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

##### Comment:

Despite the non-compliance in relation to height of building, the proposed development is designed and sited so as not to give rise to any unreasonable visual impact, disruption of views, loss of privacy or loss of solar access. The proposed development is acceptable in relation to these elements as detailed throughout this report.

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

##### Comment:

The proposed development retains a development of high visual quality in the context of the Collaroy coastal

and bush environment. The proposed development is supported by a schedule of colours and finishes and a landscaping plan, which demonstrate the proposed development will be a positive contribution to the streetscape.

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

Comment:

The proposed development is not in the immediate vicinity of any parks, reserves or community facilities. As above, the extent of the height of building non-compliance is minor and is situated to the rear of the proposed development. As such, the visual impact of the proposed development as viewed from the road is suitably managed.

### **Zone Objectives**

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

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

Comment:

The proposed development provides for the housing needs of the community in that the use of the site as a detached dwelling house is retained and enhanced by alterations and additions.

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

Comment:

Not applicable. The proposed development retains the residential use of the site.

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

Comment:

The proposed development retains the low density residential use of the subject site in a landscaped setting.

### **Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment:**

Clause 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted. Planning Circular PS20-002 dated 5 May 2020 issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of Buildings Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

## **6.2 Earthworks**

The objectives of Clause 6.2 Earthworks require development:

*(a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*

*(b) to allow earthworks of a minor nature without requiring separate development consent.*

In this regard, before granting development consent for earthworks, Council must consider the following matters:

*(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the*

*locality*

Comment:

The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

*(b) the effect of the proposed development on the likely future use or redevelopment of the land*

Comment:

The proposal will not unreasonably limit the likely future use or redevelopment of the land.

*(c) the quality of the fill or the soil to be excavated, or both*

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

*(d) the effect of the proposed development on the existing and likely amenity of adjoining properties*

Comment:

The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

*(e) the source of any fill material and the destination of any excavated material*

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

*(f) the likelihood of disturbing relics*

Comment:

The site is not mapped as being a potential location of Aboriginal or other relics.

*(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area*

Comment:

The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

## **6.4 Development on sloping land**

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

*(a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and*

Comment:

The subject site is low risk in relation to landslip. The proposed development does not include significant earthworks. Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

*(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and*

Comment:

The application has been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

(c) *the development will not impact on or affect the existing subsurface flow conditions.*

Comment:

The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

## Warringah Development Control Plan

### Built Form Controls

| Built Form Control                                  | Requirement     | Proposed               | % Variation* | Complies                         |
|-----------------------------------------------------|-----------------|------------------------|--------------|----------------------------------|
| B1 Wall height                                      | 7.2m            | Max. 7.1m              | -            | Yes                              |
| B3 Side Boundary Envelope                           | N: 4m           | 500mm Outside Envelope | 7.25%        | No                               |
|                                                     | S: 4m           | 900mm Outside Envelope | 14.63%       | No                               |
| B5 Side Boundary Setbacks                           | N: 900mm        | 900mm-2.5m             | -            | Yes                              |
|                                                     | S: 900mm        | 1-1.15m                | -            | Yes                              |
| B7 Front Boundary Setbacks                          | 6.5m            | 4.15m                  | 36.15%       | No                               |
| B9 Rear Boundary Setbacks                           | 6m              | Pool Deck: 1m          | 83.33%       | Yes - As per Clause B9 exception |
|                                                     |                 | Dwelling: 16.3m        | -            | Yes                              |
| D1 Landscaped Open Space (LOS) and Bushland Setting | 40% (278.72sqm) | 40.1% (279.7sqm)       | -            | Yes                              |

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

### Compliance Assessment

| Clause                        | Compliance with Requirements | Consistency Aims/Objectives |
|-------------------------------|------------------------------|-----------------------------|
| A.5 Objectives                | Yes                          | Yes                         |
| B1 Wall Heights               | Yes                          | Yes                         |
| B3 Side Boundary Envelope     | No                           | Yes                         |
| B5 Side Boundary Setbacks     | Yes                          | Yes                         |
| B7 Front Boundary Setbacks    | No                           | Yes                         |
| B9 Rear Boundary Setbacks     | Yes                          | Yes                         |
| C2 Traffic, Access and Safety | Yes                          | Yes                         |
| C3 Parking Facilities         | Yes                          | Yes                         |
|                               |                              |                             |

| Clause                                          | Compliance with Requirements | Consistency Aims/Objectives |
|-------------------------------------------------|------------------------------|-----------------------------|
| C4 Stormwater                                   | Yes                          | Yes                         |
| C7 Excavation and Landfill                      | Yes                          | Yes                         |
| C8 Demolition and Construction                  | Yes                          | Yes                         |
| C9 Waste Management                             | Yes                          | Yes                         |
| D1 Landscaped Open Space and Bushland Setting   | Yes                          | Yes                         |
| D2 Private Open Space                           | Yes                          | Yes                         |
| D3 Noise                                        | Yes                          | Yes                         |
| D6 Access to Sunlight                           | Yes                          | Yes                         |
| D7 Views                                        | Yes                          | Yes                         |
| D8 Privacy                                      | Yes                          | Yes                         |
| D9 Building Bulk                                | Yes                          | Yes                         |
| D10 Building Colours and Materials              | Yes                          | Yes                         |
| D11 Roofs                                       | Yes                          | Yes                         |
| D12 Glare and Reflection                        | Yes                          | Yes                         |
| D14 Site Facilities                             | Yes                          | Yes                         |
| D16 Swimming Pools and Spa Pools                | Yes                          | 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 Preservation of Trees or Bushland Vegetation | Yes                          | Yes                         |
| E2 Prescribed Vegetation                        | Yes                          | Yes                         |
| E6 Retaining unique environmental features      | Yes                          | Yes                         |
| E10 Landslip Risk                               | Yes                          | Yes                         |

### Detailed Assessment

#### **B3 Side Boundary Envelope**

The proposed development includes breaches to the northern and southern side boundary envelopes by maximums of 500mm and 900mm, respectively. Amended plans were received increasing the southern setback of the upper level to 2m for a length of 8m from the rear. 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 proposed development is acceptable in relation to the proposed height of building, as detailed in the section of this report relating to Clause 4.6 Exceptions to Development Standards of the WLEP 2011. The proposed height of building non-compliance is minor and does not result in any unreasonable visual dominance. The proposed development is compliant with the side boundary setback control. However, amended plans were requested to increase the southern side setback of the upper level as detailed above. This reduces the visual impact of the upper level on the property to the south, and reduces the building envelope non-compliance. With this amendment, the proposed

development will be of acceptable bulk.

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

Comment:

The proposed development is compliant with the requirements of Clauses D6 Access to Sunlight and D8 Privacy. As such, the proposed development suitably allows for light, solar access and privacy for the subject site and adjacent sites. However, concern was raised regarding the visual imposition of the proposed upper level on the property to the south. As above, amended plans were requested that provide a greater southern setback to a portion of the upper level, which result in greater separation to the south.

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

Comment:

The subject site is relatively level. The proposed development generally follows the topography of the site.

## **B7 Front Boundary Setbacks**

The proposed development includes a double garage and front porch 4.15m from the front boundary, where 6.5m is required. 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 proposed development maintains a sense of openness despite the non-compliance with the front boundary setback. The proposed double garage spans half the frontage of the site, but maintains compliant side setbacks. The proposed front porch is open in construction, and allows suitable building articulation. The dwelling itself is located between 6 and 7.1m from the front boundary.

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

Comment:

The proposed development is consistent with existing front building lines along Hay Street and the surrounding streets. The proposed development maintains the existing building pattern and suitable landscaping.

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

Comment:

The proposed development retains a development of high visual quality in the context of the Collaroy area. The proposed development is supported by a schedule of colours and finishes and a landscaping plan, which demonstrate the proposed development will be a positive contribution to the streetscape.

*To achieve reasonable view sharing.*

Comment:

The proposed development does not result in obstruction of views to or from public or private places.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## POLICY CONTROLS

### Northern Beaches Section 7.12 Contributions Plan 2021

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

A monetary contribution of \$9,900 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$990,000.

## CONCLUSION

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

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

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

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

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

Council is satisfied that:

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

- a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case; and
- b) There are sufficient environmental planning grounds to justify the contravention.

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

It is considered that the proposed development satisfies the appropriate controls and that all processes

and assessments have been satisfactorily addressed.

## RECOMMENDATION

That Northern Beaches Council as the consent authority vary the development standard of Clause 4.3 Height of Buildings pursuant to Clause 4.6 of the WLEP 2011, as the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2021/2148 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 12 DP 7392, 73 Hay Street, COLLAROY, 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 |
| DA3 Site Analysis Plan                                       | 7 February 2022 | sketchArc   |
| DA4 Ground Floor Plan                                        | 7 February 2022 | sketchArc   |
| DA5 Ground Floor Plan                                        | 7 February 2022 | sketchArc   |
| DA6 First Floor Plan                                         | 7 February 2022 | sketchArc   |
| DA7 Roof Plan                                                | 7 February 2022 | sketchArc   |
| DA8 North Elevation / South Elevation                        | 7 February 2022 | sketchArc   |
| DA9 East Elevation / West/Street Elevation                   | 7 February 2022 | sketchArc   |
| DA10 Section A-A / Section B-B                               | 7 February 2022 | sketchArc   |
| DA11 Section C-C / Drive Section / Section D-D / Section E-E | 7 February 2022 | sketchArc   |

| Reports / Documentation – All recommendations and requirements contained within: |                 |                         |
|----------------------------------------------------------------------------------|-----------------|-------------------------|
| Report No. / Page No. / Section No.                                              | Dated           | Prepared By             |
| BASIX Certificate No. A437649_03                                                 | 2 November 2021 | Bodill Ventures Pty Ltd |
| Arboricultural Impact Assessment                                                 | 1 November 2021 | Peake Arboriculture     |

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

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

|  |
|--|
|  |
|--|

| Landscape Plans       |                 |             |
|-----------------------|-----------------|-------------|
| Drawing No.           | Dated           | Prepared By |
| DA13 Landscaping Plan | 7 February 2022 | sketchArc   |

| Waste Management Plan |                 |             |
|-----------------------|-----------------|-------------|
| Drawing No/Title.     | Dated           | Prepared By |
| Waste Management Plan | 10 October 2021 | Applicant   |

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

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

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

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

| Other Department, Authority or Service | EDMS Reference                                  | Dated            |
|----------------------------------------|-------------------------------------------------|------------------|
| Ausgrid                                | Ausgrid Referral Response - Overhead Powerlines | 10 December 2021 |

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

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

## 3. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the

following information:

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

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

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

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

Reason: Legislative requirement.

#### 4. **General Requirements**

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are

breaking up/removing materials from the site).

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

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

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

adjustments as those Authorities may deem necessary.

- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

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

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2018
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2021

A monetary contribution of \$9,900.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2021. The monetary contribution is based on a development cost of \$990,000.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2021 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)

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

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

## **6. Security Bond**

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

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

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

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

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

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

### **7. Stormwater Disposal**

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

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

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

### **8. Vehicle Crossings Application**

The Applicant is to submit an application for driveway levels with Council in accordance with

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

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

Reason: To facilitate suitable vehicular access to private property.

9. **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.

## **CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

10. **Tree Removal Within the Property**

This consent approves the removal of the following tree(s) within the property as identified in the Arboricultural Impact Assessment dated 1/11/2021 prepared by Peake Arboriculture:

- i) Tree 2 - *Schinus molle*

Note: Exempt Species as listed in the Development Control Plan or the Arboricultural Impact Assessment do not require Council consent for removal.

Reason: To enable authorised building works.

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

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

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

## **CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**

12. **Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected including:
  - i) all trees and vegetation within the site not approved for removal, excluding exempt trees and vegetation under the relevant planning instruments of legislation,
  - ii) all trees and vegetation located on adjoining properties,
  - iii) all road reserve trees and vegetation.
- b) Tree protection shall be undertaken as follows:

- i) tree protection shall be in accordance with the Arboricultural Impact Assessment dated 1/11/2021 prepared by Peake Arboriculture and Australian Standard 4970-2009 Protection of Trees on Development Sites including the provision of temporary fencing to protect existing trees within 5 metres of development,
- ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained unless authorised by an Arborist with minimum AQF Level 5 in arboriculture,
- iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist with minimum AQF Level 5 in arboriculture,
- iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
- v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist with minimum AQF Level 5 in arboriculture on site,
- vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone without consultation with an Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
- vii) should either or all of v), vi) and vii) occur during site establishment and construction works, an Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- viii) any temporary access to or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of Australian Standard 4970-2009 Protection of Trees on Development Sites,
- ix) the activities listed in section 4.2 of Australian Standard 4970-2009 Protection of Trees on Development Sites shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
- x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy and shall be in accordance with Australian Standard 4373-2007 Pruning of Amenity Trees,
- xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Certifying Authority must ensure that:

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

**Note:** All street trees within the road verge and trees within private property are protected under Northern Beaches Council development control plans except where Council's written consent for removal has been obtained. The felling, lopping, topping, ringbarking or removal of any tree(s) is prohibited.

**Reason:** Tree and vegetation protection.

**13. Road Reserve**

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

**Reason:** Public safety.

**14. Survey Certificate**

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

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

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

**15. Vehicle Crossings**

The Applicant is to construct one vehicle crossing 4 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/3 NL and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

**Reason:** To facilitate suitable vehicular access to private property.

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

**16. Required Tree Planting**

Trees shall be planted in accordance with the following:

- i) 2 trees capable of attaining a minimum height of 5m at maturity; 1 x front yard; 1 x Rear yard; Minimum pot size 200mm

Native tree planting species may be selected from Council's list:

[www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide](http://www.northernbeaches.nsw.gov.au/environment/native-plants/native-plant-species-guide).

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

**Note: Please consider registering your new tree through the link below to be counted as part of the NSW State Government's 5 Million trees initiative**

<https://5milliontrees.nsw.gov.au/>

Reason: To maintain environmental amenity.

17. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

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

18. **Swimming Pool Requirements**

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

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the relevant legislative requirements and relevant Australian Standards (including but not limited) to:

- (i) Swimming Pools Act 1992;
- (ii) Swimming Pools Amendment Act 2009;
- (iii) Swimming Pools Regulation 2008
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

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

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system. Appropriate instructions of artificial resuscitation methods.

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

(e) Signage showing resuscitation methods and emergency contact

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

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

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

Reason: To protect human life.

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

19. **Swimming Pool/Spa Motor Noise**

The swimming pool / spa motor shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

Reason: To ensure that the development does not impact on the acoustic privacy of surrounding residential properties.

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

**Signed**



**Claire Ryan, Principal Planner**

The application is determined on 09/02/2022, under the delegated authority of:



**Rodney Piggott, Manager Development Assessments**