

# AGENDA

## DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held on

**WEDNESDAY 14 OCTOBER 2020**



**Ashleigh Sherry**  
**Manager Business Systems and Administration**



## **Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 14 October 2020**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Development Determination Panel held 7 October 2020	
<b>3.0</b>	<b>DEVELOPMENT DETERMINATION PANEL REPORTS .....</b>	<b>5</b>
3.1	DA2020/0749 - 86 Queenscliff Road, Queenscliff - Alterations and additions to a dwelling house .....	5
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## **2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD ON 23 SEPTEMBER 2020**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Development Determination Panel held on 23 September 2020 were approved by all Panel Members and have been posted on Council's website.

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### 3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2020/0749 - 86 QUEENSCLIFF ROAD, QUEENSCLIFF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Anna Williams
TRIM FILE REF	2020/605474
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6

#### PURPOSE

To refer the attached application for determination due to directions provided by the Department of Planning & Environment in relation to applications with a clause 4.6 variation to the building height standard.

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#### RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2020/0749 for alterations and additions to a dwelling house on land at Lot 4 DP 8373, 86 Queenscliff Road, Queenscliff, subject to the conditions outlined in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0749
<b>Responsible Officer:</b>	Adam Croft
<b>Land to be developed (Address):</b>	Lot 4 DP 8373, 86 Queenscliff Road QUEENSCLIFF NSW 2096
<b>Proposed Development:</b>	Alterations and additions to a dwelling house
<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>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Timothy Edgeworth Andrews Caroline Victoria Warne West
<b>Applicant:</b>	Housed Pty Ltd
<b>Application Lodged:</b>	07/07/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	15/07/2020 to 29/07/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 16.47%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 770,000.00

### Executive Summary

The proposed development is for alterations and additions to the existing dwelling house.

The proposal includes a variation to the height of buildings development standard of 16.47%. As such, the application is referred to the Development Determination Panel for determination.

An assessment of the proposed building height non-compliance and the accompanying Clause 4.6 written request is undertaken within this report and is found to be satisfactory.

No submissions were received in response to the notification/advertising of the application.



Amended plans were requested by Council in order to provide increased setbacks and spatial separation to the upper floor addition.

As discussed under the Detailed Description of the proposal, it was necessary to require the deletion of the lower ground floor kitchen in order to ensure that the existing single residential use of the site is retained.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies, including the applicable planning controls.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be approved subject to conditions attached to this report.

## PROPOSED DEVELOPMENT IN DETAIL

The proposal is for alterations and additions to the existing dwelling resulting in:

### Lower Ground

- Living, Kitchenette & Dining
- Bedroom with walk-in robe
- Bedroom
- Bath & Laundry
- Store
- Ex. Single Garage

### Ground Floor

- New Kitchen, Living & Dining
- New rear Deck
- New Laundry
- Ex. Lounge
- Ex. Sunroom
- Ex. Bedrooms 2 & 3
- Ex. Bath

### First Floor addition

- Main Bedroom with Ensuite
- Music Room
- Rear Deck

It is noted that there is no previous approval for use of the development site as a dual occupancy or secondary dwelling, and that the application is for alterations and additions to a dwelling house. Given that there is no existing or proposed internal access between the ground and lower ground floor levels, the proposed lower ground floor kitchen is to be deleted from the plans to prohibit use of that level as a separate habitation. Suitable conditions of consent are included in this regard.



## 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 - B1 Wall Heights  
 Warringah Development Control Plan - B3 Side Boundary Envelope  
 Warringah Development Control Plan - C3 Parking Facilities  
 Warringah Development Control Plan - D6 Access to Sunlight  
 Warringah Development Control Plan - D7 Views  
 Warringah Development Control Plan - D8 Privacy  
 Warringah Development Control Plan - E1 Preservation of Trees or Bushland Vegetation

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 4 DP 8373 , 86 Queenscliff Road QUEENSCLIFF NSW 2096
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the southern side of Queenscliff Road.</p> <p>The site is irregular in shape with a frontage of 12.32m along Queenscliff Road and a depth of m. The site has a surveyed area of 39.56m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates an existing dwelling house.</p> <p>The site slopes approximately 3.2m from front (north) to rear (south).</p>

The site contains one significant tree at the rear boundary.

**Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by a range of residential development including detached dwellings, dual occupancies and residential flat buildings.

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:

DA2008/0167 - Inground swimming pool together with fencing, retaining wall & paving - Approved 28 May 2008.

**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



Section 4.15 Matters for Consideration'	Comments
	an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&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	<p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the</p>



Section 4.15 Matters for Consideration'	Comments
on the natural and built environment and social and economic impacts in the locality	<p>Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered un/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 15/07/2020 to 29/07/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition of the application Council received no submissions.

#### REFERRALS

Internal Referral Body	Comments
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Warringah LEP 2011 and Warringah DCP 2011.</p> <p><b>Coastal Management Act 2016</b> The subject site has been identified as being within the coastal zone and therefore Coastal Management Act 2016 is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under</p>

Internal Referral Body	Comments
	<p>Clause 3 of the Coastal Management Act 2016.</p> <p><b>State Environmental Planning Policy (Coastal Management) 2018</b> As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.</p> <p>The subject land has been included on the 'Coastal Environment Area' map but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13 and 15 of the CM SEPP apply for this DA.</p> <p><u>Comment:</u></p> <p>On internal assessment and as also assessed in the submitted Statement of Environmental Effects (SEE) report prepared by HOUSED dated 9 June 2020, the DA satisfies requirements under clauses 13 and 15 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p><b>Warringah LEP 2011 and Warringah DCP 2011</b> No other coastal related issues identified.</p> <p>As such, it is considered that the application does comply with the requirements of the coastal relevant clauses of the Warringah LEP 2011 and Warringah DCP 2011.</p>
NECC (Development Engineering)	<p>The proposed addition is located over the existing structure and stormwater will be connected to the existing kerb connection for the property which is satisfactory.</p> <p>No objection to approval, subject to conditions as recommended.</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>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.</p>

#### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\***

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

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





operational provisions which the proposal is considered to be acceptable against.

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

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

#### **SEPP 55 - Remediation of Land**

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

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

A BASIX certificate has been submitted with the application (see Certificate No. A377691 dated 26 May 2020).

#### **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.

#### **SEPP (Coastal Management) 2018**

The site is subject to SEPP Coastal Management (2018). Accordingly, an assessment under the SEPP has been carried out as follows:

#### **13 Development on land within the coastal environment area**

- (1) *Development consent must not be granted to development on land that is within the coastal*



*environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*

- (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
- (b) coastal environmental values and natural coastal processes,*
- (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) Aboriginal cultural heritage, practices and places,*
- (g) the use of the surf zone.*

Comment:

The proposed works are sited generally within the existing development footprint and will not adversely impact the above values and coastal processes.

- (2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:**
  - (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or**
  - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or**
  - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.**

Comment:

The proposed development is appropriately sited and designed.

**15 Development in coastal zone generally—development not to increase risk of coastal hazards**

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

Comment:

The proposal is unlikely to cause increased risk of coastal hazards on the site or surrounding land.

**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	9.9m	16.47%	No

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	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:	9.9m
Percentage variation to requirement:	16.47%

The location and extent of the proposed height non-compliance is highlighted in the below plan images.



#### Assessment of request to vary a development standard:

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





Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

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

Comment:

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

In doing so, the Applicant's written request has adequately demonstrated that compliance with the



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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

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

*The objects of this Act are as follows:*

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

The applicants written request argues, in part:

- *"The site is mostly level however has an undulating quality from front to rear as the original dwelling was built over a large rocky knoll. The rear of the site falls away approx. 1m from the street and the adjacent dwellings are of similar height and scale. The roof of the proposed addition is stepped with the side elevations presenting an equivalent height to the neighbouring 3 storey dwelling and the elevated highlight area forming a new habitable space.*
- *The existing dwelling presents as a single storey to the public domain with subground garage to the street front. From the rear of the site, where the topography falls away, the existing dwelling is two storey with the roof ridge at r143.74 The adjacent neighbouring site at number 88 Queenscliff road has a similar presentation to the street retaining the original dwelling with a three storey addition to the rear to r144.11. To the east at number 84 an overall third storey is*



*incorporated in the dwelling to r146.14.*

- *The proposed addition to the rear of number 86 Queenscliff rd, has been designed to retain the original dwelling to the streetscape and provide a new upper level main bedroom suite. The proposed retains the existing lower ground and ground floor levels while the roof forms are flat to minimise the overall height and stepped back from the side boundaries to reduce bulk and scale.*
- *In respect to the dwelling at 86 Queenscliff road, the requested additional height is predominantly located within the existing building footprint and is as a result of a new upper floor while substantially retaining of the existing original dwelling.*
- *From the exterior, the majority of the work is to the rear of the site and makes limited impact to the perceived bulk of the building from the public domain. The proposed addition marks an increase in overall height by 1metre presenting less than an additional storey from the street.*
- *Given the unique topography of the site and the surrounding built environment, it is considered that there are sufficient environmental planning grounds to justify a variation of the height development control and strict compliance with the development standard in this instance is unreasonable and unnecessary and allowing the height variation is not against the public interest."*

The development is significantly constrained by the sloping topography of the site and the location of the existing dwelling, which is built on top of a crest that runs across the portion front of the site. The majority of the existing dwelling is retained and the proposed additions are located to the rear of the existing roof ridge to maintain the character of the original dwelling from the street frontage. Despite these constraints, the resulting non-compliant height is generally consistent with the RL's of the adjoining properties (as discussed by the applicant), and sufficient articulation is provided at the upper levels to minimise the bulk and amenity impacts of the development. Based on the topography, the retention of the existing dwelling and the character/scale of adjoining and surrounding development, the proposed height variation is considered to be acceptable.

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 promotes good design and amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

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

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

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

#### Comment:

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



below.

### Objectives of development standard

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

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

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

Comment:

Despite the proposed height breach, the proposed additions of comparable height and scale to surrounding development, including the adjoining dwellings at Nos. 84 and 88 Queenscliff Road. The maximum RL of the proposed additions being RL44.7 is lower or comparable to those of Nos. 84 (RL46.14) and 88 (RL44.11).

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

Comment:

The proposed additions are appropriately set back to minimise visual and amenity impacts from adjoining properties and the public domain.

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

Comment:

The proposal will not adversely impact scenic qualities or bushland.

*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 additions and resulting height breach are sited to the rear of the existing roof ridge to minimise the appearance of the development from the streetscape. The bulk of the dwelling is consistent with surrounding development will not be visually dominant as viewed from other public places.

### Zone objectives

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

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

Comment:

The proposal maintains the existing single residential use.





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:

N/A. The existing use of the site is maintained.

It is considered that the development satisfies this objective.

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

Comment:

The proposed additions are retained largely within the existing development footprint and will not adversely impact the landscape setting or natural environment.

It is considered that the development satisfies this objective.

Conclusion:

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

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

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, issued by the NSW Department of Planning & Infrastructure, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Height of building Development Standard associated with a single dwelling house (Class 1 building).

#### **6.2 Earthworks**

The proposed development does not include significant additional excavation of the site.

#### **6.4 Development on sloping land**

A preliminary geotechnical assessment has been prepared in relation to the development.

#### **Warringah Development Control Plan**

##### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies



B1 Wall height	7.2m	9.1m	26.4%	No
B3 Side Boundary Envelope	5m	E: FF outside envelope GF partially outside envelope	24.6%	No
		W: FF outside envelope	22.5%	No
B5 Side Boundary Setbacks	0.9m	E: 1.1m	N/A	Yes
		W: 1.4m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	12.2m	N/A	Yes
B9 Rear Boundary Setbacks	6m	9.3m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% 188.88m <sup>2</sup>	42.8% 203.1m <sup>2</sup>	N/A	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 x 100 = 95 then 100 - 95 = 5% variation)

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
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



Clause	Compliance with Requirements	Consistency Aims/Objectives
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
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

#### **B1 Wall Heights**

##### Description of non-compliance

The proposed wall height of 9.1m is non-compliant with the 7.2m control.

##### Merit consideration:

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

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

##### Comment:

The proposed maximum wall height occurs at the rear of the dwelling and is not visible from the streetscape. The height of the wall/dwelling at the rear is consistent with adjoining and surrounding development and is sufficiently articulated to minimise visual impact.

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

##### Comment:

The site and surrounds not heavily vegetated and the proposed height is compatible within the locality.

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

##### Comment:

The non-compliant portion wall sections are stepped in at the rear and will not unreasonably impact views to and from public spaces or adjoining properties.

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



Comment:

The proposal is of a scale consistent with surrounding development.

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

Comment:

The proposed additions are stepped at the side and rear to provide suitable modulation of bulk given the natural topography and landform on which the existing dwelling is sited. No significant excavation is proposed.

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

Comment:

The pop-up flat roof minimises the overall height of the dwelling.

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 s1.3 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 proposed first floor exceeds the building envelope control by a maximum of 1.7m at the eastern elevation and 1.6m at the western elevation. The building envelope breaches are as shaded in the below images.



Image 1. Proposed eastern elevation building envelope non-compliance.



Image 2. Proposed western elevation building envelope non-compliance.





#### Merit consideration

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

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

#### Comment:

Notwithstanding the numerical non-compliance, the upper floor is set back from the lower levels to provide physical separation and visual relief from the adjoining properties. The numerical non-compliance described above occurs at the rear of the upper floor and the majority of the elevations breach the envelope control by a lesser extent, as indicated on the elevation plans in Images 1 & 2.

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

#### Comment:

The increased setbacks to the upper level provide adequate solar access, privacy and separation to the adjoining properties. The existing adjoining developments to the east and west are of similar or greater bulk and the proposed additions are acceptable in this context.

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

#### Comment:

The upper floor is set back from the side boundaries and steps in from the rear.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

### **C3 Parking Facilities**

#### Merit consideration

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

- To provide adequate off street carparking.*

#### Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Dwelling	2 spaces per	2	1	-1



house	dwelling			
<b>Total</b>	2 spaces	2	1	-1

The proposal is non-compliant with the required 2 car parking spaces.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment:

The proposal maintains the existing single garage and does not result in any increase to car parking requirements for the site. Given the constraints of the existing building location and the potential impact to the streetscape, the provision of additional car parking is not considered necessary in this case. As such, the proposed non-compliance is supported.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment:

The proposal does not include any additional car parking and the existing garage is retained.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

## **D6 Access to Sunlight**

### Compliance with control

The control requires the retention of a minimum of 3 hours sunlight to at least 50% of the private open space area of the subject dwelling and adjoining dwellings.

The proposal will result in minor overshadowing of the rear yards of the subject site and Nos. 88 Queenscliff Road and 45 Greycliffe Street at 9am. The impact to these adjoining sites is limited to the early morning and compliant sunlight access will be retained throughout the remainder of the day. At 12pm and 3pm there is moderate overshadowing of the subject site and No. 84 Queenscliff Road. The orientation and reduced rear setback area of No. 84 Queenscliff Road make the retention of solar access to the rear yard impractical, particularly as the existing dwelling on that property largely overshadows its own rear yard throughout most of the day. It is noted that No. 84 also contains a private open space area within the large front setback, which will receive northerly sunlight through the day.

Given the topography, existing developments and the northern orientation of the site and adjoining properties, the overshadowing impacts of the development are considered to be acceptable.

## **D7 Views**

### Merit consideration

No submissions were received in relation to view loss impacts.



The subject site obtains some views of Manly Beach to the southeast and extensive district views over Manly and Fairlight to the south/southwest. Views to Manly Beach are significantly obscured by existing developments and vegetation to the southeast of the subject site. It is anticipated that No. 88 Queenscliff Road would obtain similar views given the proximity and comparable orientation and levels of the dwellings.

The proposed ground floor rear addition extends approximately 1.2m beyond the existing dwelling, and the upper floor steps back 2m from the rear building line of the ground floor wall. The bulk of the additions are located forward of any view corridors to the southeast and the rear building line is consistent with those of the adjoining developments.

The minimum proposed rear setback is 9.3m and any affected views are obtained across a side boundary through the centre of the subject site.

Given the above assessment, the development is not considered to result in any unreasonable view loss.

#### **D8 Privacy**

##### Merit consideration

The proposal will not result in unreasonable privacy impacts.

The eastern elevation includes one window (W1.02) at the ground floor and two windows (W2.04 & W2.05) at the upper floor. The proposed ground floor window W1.02 does not result in direct viewing as the two existing ground floor window openings at No. 84 Queenscliff Road have been built across internally with the glazing obscured. At the upper floor window W2.04 is narrow 900mm window to the music room and W2.05 is sufficiently set back and offset from the west-facing windows of No. 84.

The western elevation contains one window (W1.07) at the ground floor, which is set back and offset from the east-facing windows of No. 88.

The remaining windows proposed at the ground floor and upper levels are highlight windows and will not impact privacy.

The proposed rear decks are consistent with those existing on the site and adjoining properties, and are sufficiently set back from the side boundaries. The decks are orientated towards the rear of the site and the provision of privacy screens would result in additional visual bulk and potential view loss impacts. Given the context of the site and the lack of objections, the proposed decks are considered to be reasonable in this case.

#### **E1 Preservation of Trees or Bushland Vegetation**

The proposed works are generally contained within the existing development footprint, and will not require removal of or impact to significant vegetation on the site.

#### **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 2019**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2019.

A monetary contribution of \$7,700 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$770,000.

## **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 Environment 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.



The proposed development is for alterations and additions to the existing dwelling house. The proposal is considered to be a suitable and appropriate development within the context of the site.

The key planning issues considered within the assessment are the numerical compliance of the development and amenity impacts relating to views, privacy, sunlight access and visual bulk. Notwithstanding the proposed building height variation of 16.47%, the development is not considered to result in any unreasonable impacts to adjoining properties or the public domain.

No submissions were received in response to the notification/advertising of the application.

The amendments made to the proposal ensure satisfactory articulation of bulk and consistency with surrounding developments.

Suitable conditions of consent are imposed to prohibit the use of the site beyond that of a dwelling house.

Assessment of the amended application against the Warringah LEP and DCP finds that the development suitably addresses the concerns raised by Council and is acceptable in regard to the relevant numerical controls and amenity considerations.

Based on the assessment completed within this report, the application is recommended for approval. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

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

Accordingly Council as the consent authority grant Development Consent to DA2020/0749 for Alterations and additions to a dwelling house on land at Lot 4 DP 8373, 86 Queenscliff Road, QUEENSCLIFF, 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
DA1.00 Roof/Site Plan	26 August 2020	Housed
DA2.10 LGF Plan	26 August 2020	Housed



DA2.11 GF Plan	26 August 2020	Housed
DA2.12 UF Plan	26 August 2020	Housed
DA2.30 North Elevation	26 August 2020	Housed
DA2.31 South Elevation	26 August 2020	Housed
DA2.32 West Elevation	26 August 2020	Housed
DA2.33 East Elevation	26 August 2020	Housed
DA2.34 North-South Section	26 August 2020	Housed
DA2.35 East-West Section	26 August 2020	Housed
DA	26 August 2020	Housed

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Preliminary Geotechnical Assessment	30 June 2020	White Geotechnical Group

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.

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

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

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. **Approved Land Use**

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

A dwelling house is defined as:

“dwelling house means a building containing only one 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 and the development as proposed.

## 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 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 sewerage 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 2019

A monetary contribution of \$7,700.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$770,000.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at [www.northernbeaches.nsw.gov.au](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 demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's Warringah Water Management Policy PL850. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's policy 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 development.

8. **Erosion and Sediment Control Plan**

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

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

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

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

9. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is 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.

10. **Lower Ground Kitchen**

The proposed lower ground floor kitchen is to be deleted from the plans.

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

Reason: To maintain the use of the development as a dwelling house as proposed.

11. **Window 2.04**

The proposed east-facing window 2.04 to the Music room is to be a maximum width of 900mm, as indicated on the upper floor plan DA2.12.





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

Reason: To ensure consistency between the floor plans and elevation plans.

**12. Waste Management Plan**

A Waste Management Plan must be prepared for this development. The Plan must be in accordance with the Development Control Plan.

Details demonstrating compliance must be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that any demolition and construction waste, including excavated material, is reused, recycled or disposed of in an environmentally friendly manner.

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

**13. Installation and Maintenance of Sediment and Erosion Control**

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

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

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

**14. 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.

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

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

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

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

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



## OCCUPATION CERTIFICATE

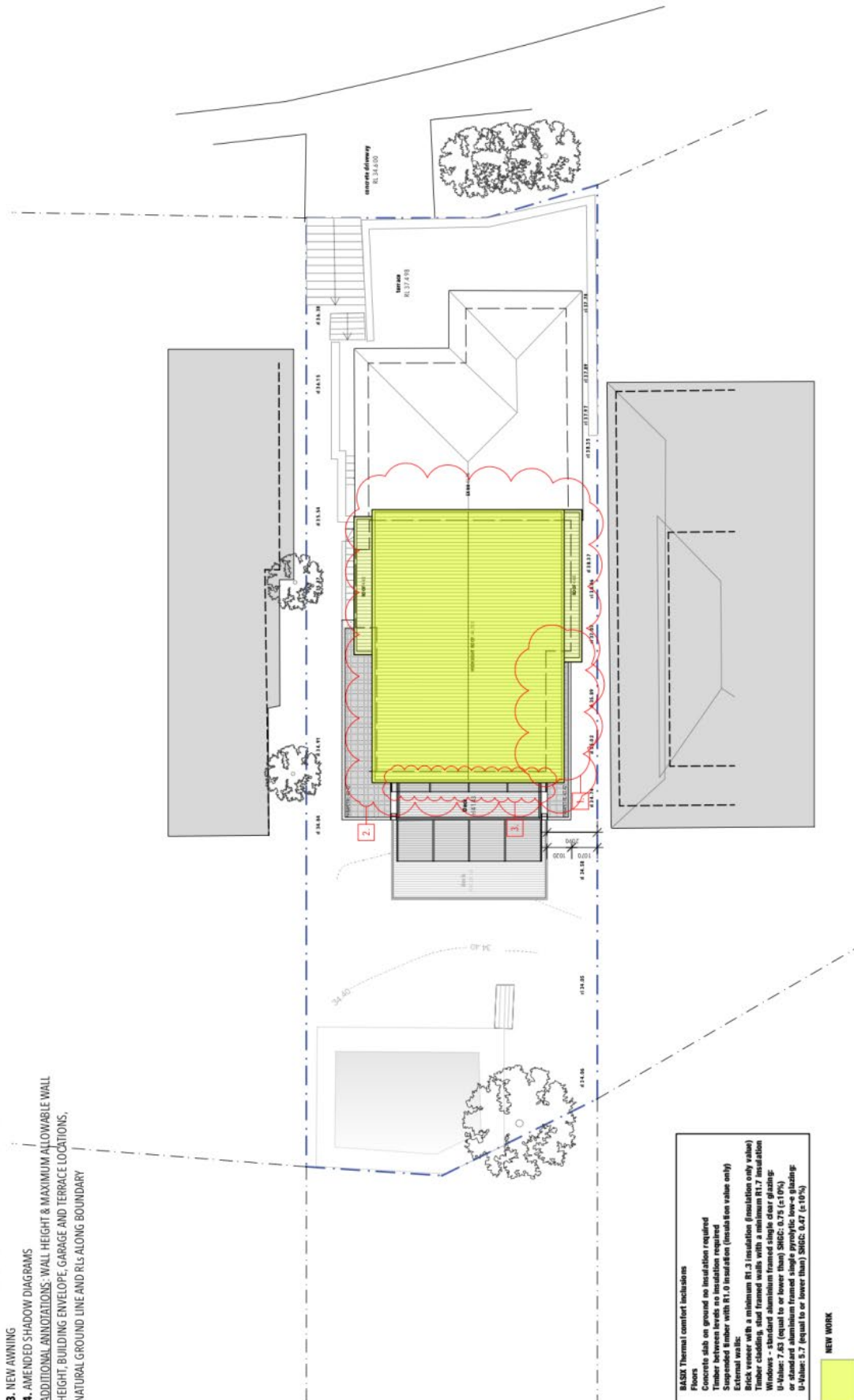
16. **Stormwater Disposal**

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 the Occupation Certificate.

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

**REVISIONS - 26 AUGUST 2020:**

1. INCREASED SETBACK OF MASTER BEDROOM AND ASSOCIATED ROOF
  2. REDUCED NORTH AND SOUTH OVERHANG OF HIGHLIGHT ROOF
  3. NEW AWNING
  4. AMENDED SHADOW DIAGRAMS
- ADDITIONAL ANNOTATIONS: WALL HEIGHT & MAXIMUM ALLOWABLE WALL HEIGHT, BUILDING ENVELOPE, GARAGE AND TERRACE LOCATIONS, NATURAL GROUND LINE AND RLs ALONG BOUNDARY



<p>PROJECT: 86 Queenscliff Road Queenscliff Lot 4 DP 8373</p>	<p>DA 1.00 ROOF SITE PLAN</p>	<p>DATE: 26 AUGUST 2020</p>	<p>SCALE: 1:150</p>	<p>STATUS: Development Application</p>

**HOUSED**  
BY NANA LESIUK  
m:0405128186 e:nanna.lesuk@yahoo.com.au

**REVISIONS - 26 AUGUST 2020:**

1. INCREASED SETBACK OF MASTER BEDROOM AND ASSOCIATED ROOF
  2. REDUCED NORTH AND SOUTH OVERHANG OF HIGHLIGHT ROOF
  3. NEW AWNING
  4. AMENDED SHADOW DIAGRAMS
- ADDITIONAL ANNOTATIONS: WALL HEIGHT & MAXIMUM ALLOWABLE WALL HEIGHT, BUILDING ENVELOPE, GARAGE AND TERRACE LOCATIONS, NATURAL GROUND LINE AND RLs ALONG BOUNDARY



**BACK Thermal comfort inclusions**

**Floors**  
Concrete slab on ground or insulation required  
Timber floors with a minimum R1.0 insulation (insulation value only)  
Suspended timber with R1.0 insulation (insulation value only)

**External walls:**  
Brick veneer with a minimum R1.3 insulation (insulation value only)  
Timber cladding, stud framed walls with a minimum R1.7 insulation  
Windows - standard aluminium framed single clear glazing:  
U-Value: 1.45 (equal to or lower than) SHGC: 0.75 (±10%)  
Glazing: 5.7 (equal to or lower than) SHGC: 0.47 (±10%)

NEW WORK

**HOUSED**  
BY NANA LESIUK  
m-0465128186 e-nanmale.sik@yahoo.com.au

project:  
86 Queenscliff Road  
Queenscliff  
Lot 4 DP 8373

All works to be in accordance with Australian Standards, The Building Code of Australia, BASIX and with Manufacturer's recommendations and instructions.  
Do not scale from drawing & verify all dimensions as per photo instruction.

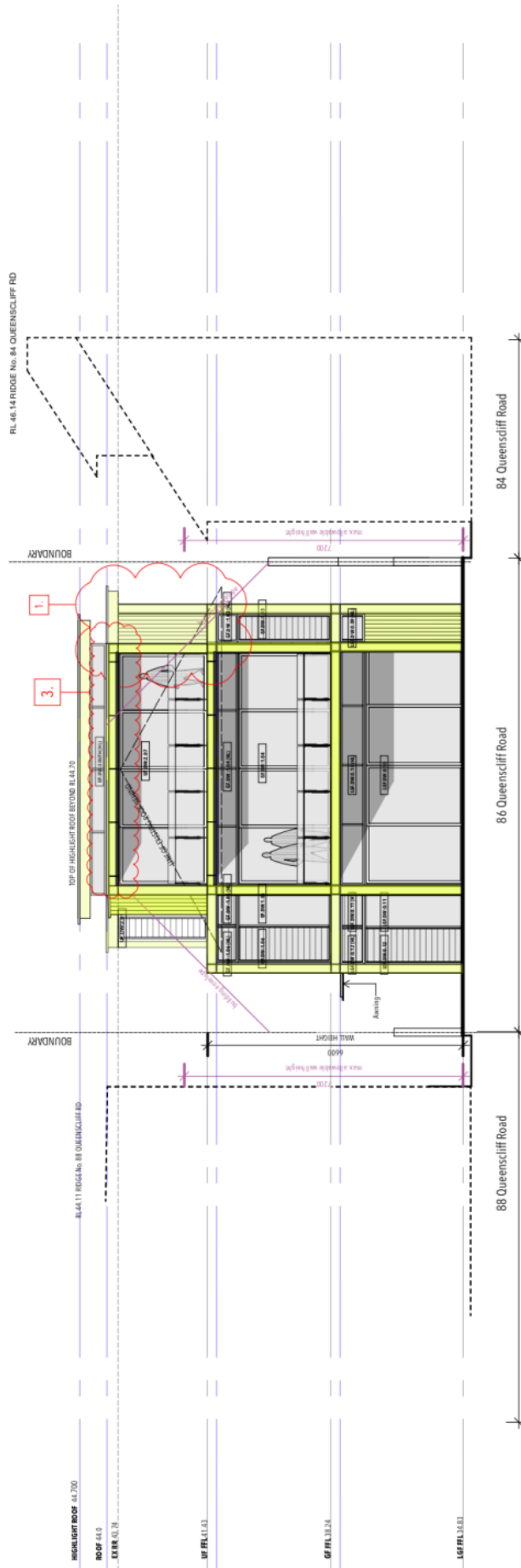
drawing:  
DA 2.30 ELEVATIONS NORTH (PROPOSED)  
status:  
Development Application

date:  
26 AUGUST 2020  
scale:  
1:100



**REVISIONS - 26 AUGUST 2020:**

1. INCREASED SETBACK OF MASTER BEDROOM AND ASSOCIATED ROOF
  2. REDUCED NORTH AND SOUTH OVERHANG OF HIGHLIGHT ROOF
  3. NEW AWNING
  4. AMENDED SHADOW DIAGRAMS
- ADDITIONAL ANNOTATIONS: WALL HEIGHT & MAXIMUM ALLOWABLE WALL HEIGHT, BUILDING ENVELOPE, GARAGE AND TERRACE LOCATIONS, NATURAL GROUND LINE AND RLs ALONG BOUNDARY



**BACK Thermal comfort inclusions**  
Floors  
Concrete slab on ground or insulation required  
Walls  
Suspended timber with R1.0 insulation (insulation value only)  
External walls:  
Brick veneer with a minimum R1.3 insulation (insulation value only)  
Timber cladding, stud framed walls with a minimum R1.7 insulation  
Windows - standard aluminium framed single clear glazing:  
U-Value: 1.45 (equal to or lower than) SHBC 4.75 (±10%)  
Solar Heat Gain Coefficient: 0.45 (equal to or lower than) SHBC 4.75 (±10%)  
U-Value: 5.7 (equal to or lower than) SHBC 6.47 (±10%)

**NEW WORK**

**HOUSED**  
BY NANA LESIUK  
m-0465126186 e-nanmale.sik@yahoo.com.au

project:  
86 Queenscliff Road  
Queenscliff  
Lot 4 DP 8373

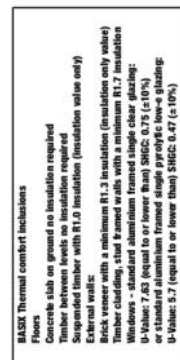
All works to be in accordance with Australian Standards, The Building Code of Australia, AS/NZS and with Manufacturer's recommendations and instructions.  
Do not scale from drawing & verify all dimensions as per photo instructions.

drawing:  
DA 2.31 ELEVATIONS SOUTH (PROPOSED)  
status:  
Development Application

date:  
26 AUGUST 2020  
scale:  
1:100







# HOUSE

**BY NANNA LESIUK**  
 m:0405128186 e:nannalesiuk@yahoo.com.au

All works to be in accordance with Australian Standards, The Building Code of Australia, BASIX and with Manufacturers' recommendations and instructions.

886 Queenscliff Road  
Queenscliff  
Lot 4 DP 8373

Drawing: DA 2.32 ELEVATIONS WEST (PROPOSED)

date : 26 AUGUST 2020



**REVISIONS - 26 AUGUST 2020:**

1. INCREASED SETBACK OF MASTER BEDROOM AND ASSOCIATED ROOF
  2. REDUCED NORTH AND SOUTH OVERHANG OF HIGHLIGHT ROOF
  3. NEW AWNING
  4. AMENDED SHADOW DIAGRAMS
- ADDITIONAL ANNOTATIONS: WALL HEIGHT & MAXIMUM ALLOWABLE WALL HEIGHT, BUILDING ENVELOPE, GARAGE AND TERRACE LOCATIONS, NATURAL GROUND LINE AND RLs ALONG BOUNDARY



**BASIC Thermal comfort inclusions**

Floors  
Concrete slab on ground or insulation required  
Concrete slab on ground or insulation required  
Suspended timber with R1.0 insulation (insulation value only)

External walls:  
Brick veneer with a minimum R1.2 insulation (insulation value only)  
Timber cladding, stud framed walls with a minimum R1.7 insulation  
Windows - standard aluminium framed single clear glazing:  
U-Value: 1.45 (equal to or lower than) SHBC 4.75 (±10%)  
U-Value: 1.45 (equal to or lower than) SHBC 4.75 (±10%)  
U-Value: 1.45 (equal to or lower than) SHBC 4.75 (±10%)

NEW WORK

**HOUSED**  
BY NANA LESIUK  
m-0465128186 e-nanmale.suk@yahoo.com.au

project:  
86 Queenscliff Road  
Queenscliff  
Lot 4 DP 8373

All works to be in accordance with Australian Standards, The Building Code of Australia, BASIX and with Manufacturer's recommendations and instructions.  
Do not scale from drawing. Verify all dimensions on the plans to construction.

drawing:  
DA 2.33 ELEVATIONS EAST (PROPOSED)  
status:  
Development Application

date:  
26 AUGUST 2020  
scale:  
1:100



# HOUSED

by nanna lesiuk  
abn 17579979784  
acn 151408945

15 June 2020

## **Submission to NORTHERN BEACHES COUNCIL**

### **APPLICATION UNDER CLAUSE 4.6 OF WARRINGAH LEP 2100 INCLUDES JUSTIFICATION OF HEIGHT BEING IN EXCESS OF COUNCIL'S LEP MAXIMUM HEIGHT OF 8.5M**

In respect of proposed alterations and additions to the existing dwelling  
**86 Queenscliff rd Queenscliff**

#### **Prepared by:**

Nanna Lesiuk

## **CONTENTS**

1. Introduction 3
2. Reason For The Application under Clause 4.6 of Council's LEP
3. Justification of the proposed HEIGHT being in excess of Council's LEP
4. Conclusion

## **1. INTRODUCTION**

The application for a proposed alterations and additions to the existing dwelling has been prepared by Nanna Lesiuk for Housed. This application includes proposed works to vary a development standard under Clause 4.6 of Council's LEP with regard to "Height of buildings" as defined by Warringah Council's Local Environment Plan.

## **2. REASON FOR THE APPLICATION UNDER CLAUSE 4.6 OF COUNCIL'S LEP**

Clause 4.6 allows for flexibility in the application of certain development standards to achieve *"better outcomes for and from development by allowing flexibility in particular circumstances."* The proposal seeks a variation of 1.4m to the maximum height standard 8.5, to permit a maximum height of 9.9m on the site.



Clause 4.6 sets out requirements that must be met before a variation to a development standard can be approved. The requirements, set out in clause 4.6 are reproduced from the WLEP as follows:

#### **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.*
- (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 Planning Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—*
  - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
  - (b) the public benefit of maintaining the development standard, and*
  - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*

### **3. JUSTIFICATION OF THE CONTRAVENTIONS OF THE MAXIMUM HEIGHT CONTROL UNDER CLAUSE 4.6**

The subject site is abutted by two to three storey residential dwellings and has a surrounding context of 3 storey residential flat buildings opposite.

The site is mostly level however has an undulating quality from front to rear as the original dwelling was built over a large rocky knoll. The rear of the site falls away approx. 1m from the street and the adjacent dwellings are of similar height and scale. The roof of the proposed addition is stepped with the side elevations presenting an equivalent height to the neighbouring 3 storey dwelling and the elevated highlight area forming a new habitable space.

The existing dwelling presents as a single storey to the public domain with sub-ground garage to the street front. From the rear of the site, where the topography



falls away, the existing dwelling is two storey with the roof ridge at RL43.74. The adjacent neighbouring site at number 88 Queenscliff road has a similar presentation to the street retaining the original dwelling with a three storey addition to the rear to RL44.11. To the east at number 84 an overall third storey is incorporated in the dwelling to RL46.14.

The proposed addition to the rear of number 86 Queenscliff rd, has been designed to retain the original dwelling to the streetscape and provide a new upper level main bedroom suite. The proposed retains the existing lower ground and ground floor levels while the roof forms are flat to minimise the overall height and stepped back from the side boundaries to reduce bulk and scale.

While in excess of the 8.5m development standard, the proposed upper floor is less than one metre above the existing roof height and remains 1.5m below the adjacent dwelling at number 84 and the lower roof is equivalent to the rear at number 88 RL44.11.

In respect to the dwelling at 86 Queenscliff road, the requested additional height is predominantly located within the existing building footprint and is as a result of a new upper floor while substantially retaining of the existing original dwelling.

The proposed works meet the aims and objectives of the Warringah Local Environment Plan 2011 in respect to the Height of buildings including:

- ensuring the building is compatible with the height and scale of surrounding dwellings
- minimising visual impact from the street and public domain, retaining views and solar amenity to adjacent dwellings
- retaining the scenic qualities of the surrounding natural environment

From the exterior, the majority of the work is to the rear of the site and makes limited impact to the perceived bulk of the building from the public domain. The proposed addition marks an increase in overall height by 1 metre presenting less than an additional storey from the street.

The proposed new additions retains the landscape amenity of the site with limited additional visual impact from the public domain and as such complies with the objectives of the WLEP standards.

Regarding strict compliance with the numeric control, the existing dwelling is 8.9m in overall height and the proposed 9.9m, both representing a non compliance. The proposal achieves the objectives of the height control in respect to visual impact.

The proposed new addition is similar and compatible in height when viewed from the south and neighbouring dwellings 9.2m (no 88) and 11.2m (no 84) when viewed from the same aspect.

The proposal achieves a suitable balance between amenity, view, and aspect while at the same time enhancing the built form of the existing residence by providing usable floor area which results in limited adverse environmental impacts.



## 5. CONCLUSION

The requested variation to the height standard would not undermine the application of the height development control standard in the Warringah Council Local Environmental Plan, nor create an undesirable precedent. Council has applied the variation to the height standard with some degree of flexibility on sloping sites, where additional height can be accommodated without increasing building bulk, scale and height or reducing amenity.

Given the unique topography of the site and the surrounding built environment, it is considered that there are sufficient environmental planning grounds to justify a variation of the height development control and strict compliance with the development standard in this instance is unreasonable and unnecessary and allowing the height variation is not against the public interest.

It is requested that Council support the requested variation to the 8.5m height development control to allow an additional 1.4m height to permit improved amenity for the inhabitants of the dwelling. The encroachment is located predominantly within the existing footprint in a manner that does not impact adversely on the bulk and scale of the building and results in no streetscape or neighbour amenity impacts.

Furthermore, in achieving consistency with the objectives of the height control and the objectives for development in the Environmental Living Zone, it is considered that the proposed development is also in the public interest.

### ITEM 3.2

**DA2020/0933 - 164 WARRINGAH ROAD, BEACON HILL - USE OF PREMISES AS AN EXISTING APPROVED RESTAURANT WITH EXTENDED HOURS OF OPERATION**

## REPORTING MANAGER

## Steve Findlay

**TRIM FILE REF**

**2020/607907**

## ATTACHMENTS

## 1 Assessment Report

## PURPOSE

To refer the attached application for determination by the discretion of the Executive Manager Development Assessment.

## RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2020/0933 for Use of premises as an existing approved restaurant with extended hours of operation on land at Lot 1 DP 570451 & Lot 1 DP 575638, 164 Warringah Road, Beacon Hill, subject to the conditions outlined in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0933
<b>Responsible Officer:</b>	Lashta Haidari
<b>Land to be developed (Address):</b>	Lot 1 DP 570451, 164 Warringah Road BEACON HILL NSW 2100 Lot 1 DP 575638, 164 Warringah Road BEACON HILL NSW 2100
<b>Proposed Development:</b>	Use of premises as an existing approved restaurant with extended hours of operation
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	No
<b>Existing Use Rights:</b>	Yes
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Mcdonald's Australia Limited
<b>Applicant:</b>	Mcdonald's Australia Limited
<b>Application Lodged:</b>	18/08/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	26/08/2020 to 09/09/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	5
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 0.00

### Executive Summary

The Development Application seeks an extension of trading hours of an existing McDonald's restaurant to 24 hours, 7 days a week.

The site is located at 164 Warringah Road, Beacon Hill, at the intersection of Warringah Road, Willandra Road and Cornish Avenue and has an approximate area of 2,562m<sup>2</sup>. An existing McDonald's



operation with dual lane drive-thru, on-site car parking and landscaping currently occupies the site.

The subject site is zoned R2 - Low Density Residential with the current use (Food and Drink Premises) being a prohibited land use within the zoning, however the use benefits from existing use rights. No changes are proposed to existing building, structures, seating capacity or car parking. Therefore, the built form controls and considerations of size, bulk and scale are not applicable to the proposal.

Five (5) submissions were received as result of the notification. The issues raised relate to noise impacts, safety and security, and loss of residential amenity. The concerns raised within the submissions have been considered and as result it is recommended that the application be approved on the basis of 24 month trial period, which is reflected in the draft conditions.

The reasoning for the recommendation is based on the fact that Beacon Hill McDonald's is already trading 24 hours (since 16 July 2020), under the Environmental Planning and Assessment (Covid-19 Development- Extended Operation) Order 2020. The EPA Order 2020 has enabled an informal 24/7 trade trial period for the Beacon Hill McDonald's operation to occur over a two (2) month period. Furthermore, the Beacon Hill McDonald's is adjacent to another commercial premises.

The Caltex service station and associated convenience store (adjoining site to the west) operates under the approved trading hours of 24 hours/7 days a week under Mod2016/0060, hence there is precedent for after hours commercial uses in the area.

Accordingly, this report recommends that consent be granted to this application, subject to a 24 month trial period.

## PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks consent the extension of trading hours. This development application seeks 24 hour 7 days a week operation for the existing use, including the internal operation and drive-thru operation.

## 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 - Zone R2 Low Density Residential  
Warringah Development Control Plan - D3 Noise

## SITE DESCRIPTION

<b>Property Description:</b>	<p>Lot 1 DP 570451 , 164 Warringah Road BEACON HILL NSW 2100</p> <p>Lot 1 DP 575638 , 164 Warringah Road BEACON HILL NSW 2100</p>
<b>Detailed Site Description:</b>	<p>The subject allotment is located in a unique position with a frontage to three streets and sharing an 'island' between the roads with one other site.</p> <p>Surrounding the sites are the following streets with frontages of:</p> <p>North - Cornish Avenue - 45.765m South - Warringah Road - 44.835m East - Willandra Road - 39.0m West - Caltex Service Station - 41.795m</p> <p>Further to the east of the allotment is a large portion of land zoned RE1 Public Recreation and consists of bushland and playing fields. Surrounding the allotment in all other directions are detached residential dwellings on land zoned R2 Low Density Residential.</p> <p>The site has a surveyed area of 2562m<sup>2</sup> and is on land zoned R2 Low Density Residential. Given that the site currently operates as a McDonald's Restaurant, the site is reliant upon existing use rights, as discussed elsewhere in this report.</p> <p>Presently the site accommodates an open-air at-grade car park with a drive-thru facility, and a single storey restaurant with indoor and outdoor seating, cooking facilities, a cafe and a playground.</p> <p>The site is generally flat and has a landscaped perimeter along all boundaries, with a significant tree present on the north-eastern corner of the site at the Willandra Road and Cornish Avenue intersection.</p>

Map:





## SITE HISTORY

**Development Application No. 1994/0437** for the construction of a McDonald's Restaurant, associated carparking and landscaping was refused by Council on 14 December 1994. The proposal was subsequently appealed to the the Land and Environment Court in proceeding No. 10758 of 1995 and was approved on 20 February 1996.

**Development Application No. 2005/0592** for the construction of a play area. This development was approved by the Application Determination Panel on 24 January 2006.

**Development Application No. 2007/0137** for a customer display order unit, menu boards and awning for the drive thru was approved under delegation on 21 May 2007.

**Development Application No. 2008/0652** for alterations and additions to the restaurant including widening the drive thru access was lodged with Council. The application was subsequently rejected on 14 May 2012 pursuant to Clause 51 of the Environmental Planning and Assessment Regulation 2000 (the 'EPA Regs 2000') as the application failed to submit a Geotechnical Report, a Survey Plan or a Bushfire Report.

**Development Application No. 2012/0978** for alterations and additions to the restaurant to widen the drive thru access was lodged with Council. The application was determined under delegation on 05 October 2012.

A review of the history of the site and previous application has revealed that the operating hours for the site was included as condition 52 within the original development consent, which stipulates as follows:

### Condition 52

*The development shall operate as follows -*

*(a) The opening and closing hours of the development for the supply or consumption of products being confined to 6.00am to 10.30pm Sunday, Monday, Tuesday, Wednesday and Thursday and 6.00am to 12.00 midnight Friday, Saturday and Public Holidays.*



## 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 McDonald purposes for an extended period of time. The proposed development retains the use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<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>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 clause is not relevant to this application.</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>
Section 4.15 (1) (b) – the likely impacts of the development,	<p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the</p>

Section 4.15 Matters for Consideration'	Comments
including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
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

- Does the existing use satisfy the definition of "existing use" under the Environmental planning and Assessment Act, 1979 (the 'Act')?

Section 4.65 of the Act defines an existing use as meaning:

*"(a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for Division 4A of Part 3 or Division 4 of this Part, have the effect of prohibiting that use, and*

*(b) the use of a building, work or land:*

- (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
- (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse."*

This necessarily requires the following questions to be answered.

1. Was the use of the building, work or land a lawful purpose immediately before the coming into force of an environmental planning instrument which would have the effect of prohibiting that use?

#### Comment:

Council has obtained evidence in the form of a Land and Environment Court Consent (Appeal 10758 of





1995 for DA1994/0437) which reveals that the use of the building commenced as a lawful purpose prior to the coming into force of the Warringah Local Environment Plan 2011 on 9 December 2011.

2. Was the use of the building / work / land granted development consent before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use?

Comment:

The use of the building was lawfully approved by the Land and Environment Court on 20 February 1996, prior to the coming into force of Warringah Local Environmental Plan 2011 on 9 December 2011.

3. Has the use of the building been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse?

Comment:

Previous development applications for this site have addressed this matter, however upon review, referenced building consents could not be located. From historical imagery and reliance upon Council's previous assessments, it is considered that the use of the building has been carried out within one year after the date of consent.

- **What is "the land on which the existing use was carried out" for the purposes of cl 42(2) (b) of the Environmental Planning and Assessment Regulation 2000 ("the Regulation")?**

Meagher JA in *Steedman v Baulkham Hills Shire Council* [No. 1] (1991) 87 LGERA 26 stated (at 27) the rule to be applied as follows: "that if the land is rightly regarded as a unit and it is found that part of its area was physically used for the purpose in question it follows that the land was used for that purpose".

Comment:

Having regard to the above case law, it is noted that a part of the area of the land was physically used for the purpose in question and therefore, it is considered that the land was not used for that purpose and that existing use rights apply to the whole of the subject site.

- **What are the planning principles that should be adopted in dealing with an application to alter enlarge or rebuild and existing use?**

The judgement in *Fodor Investments v Hornsby Shire Council* (2005) NSWLEC 71, sets out the planning principles which should be applied in dealing with development applications seeking to carry out development on the basis of existing use rights.

The following four principles adopted by the court in this case will have general application in dealing with Development Applications that rely on existing use rights:

- 1. How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?**



*While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessments.*

Comment:

The subject site is unique in that it benefits from having three street frontages to Warringah Road, Willandra Road and Cornish Avenue. West of the site is a Caltex Service Station. The service station and subject restaurant are on an island-type allotment surrounding by roads. Given the unique location of the site and that the development is only single storey, it is considered that the development existing relates positively to that of the surrounding R2 Low Density Residential area.

Furthermore, the scale, setback, bulk and height of the existing building will remain unchanged.

## **2. What is the relevance of the building in which the existing use takes place?**

*Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists. However, where the existing building is proposed for demolition, while its bulk is clearly an important consideration, there is no automatic entitlement to another building of the same floor space ratio, height or parking provision.*

Comment:

The proposal relates to extended hours of operation and does not seek any physical works. However, the intensity of use will change by the extension of operating hours allowing customers to access the site and purchase/consume food products 24 hours per day, 7 days per week. This raises the principle issue of potential noise disturbance associated with the operations and customer activity. The site is within a low density residential area and existing use rights are considered in the context of likely activity, noise, security, deliveries, customer vehicles, and whether the same level of activity during the day should be permitted throughout the night and early morning. In this case, it is recommended that the extended trading hours only be permitted for a 24 month trial period.

## **3. What are the impacts on adjoining land?**

*The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.*

Comment:

It is considered that based on a trial period of 24 months, the extended trading hours will not cause any unreasonable or detrimental impacts to surrounding developments given the prolonged and continued use of the site as a drive-through food premises. In addition, it is noted that the premises is currently trading 24/7 under the Environmental Planning and Assessment (Covid-19 Development- Extended Operation) Order 2020.

## **4. What is the internal amenity?**

*Internal amenity must be assessed as it is assessed for all development. Again,*





*numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.*

Comment:

Given the reasons listed above and elsewhere in this report, it is considered that the amenity impacts caused by this development are not unreasonably dissimilar to the other development generally.

**Conclusion**

The use has been approved under a previous EPI (Warringah LEP 1985) and therefore, is a lawful use. Subsequently, the use can be retained under the current EPI (WLEP 2011).

**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 26/08/2020 to 09/09/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Mr Nathan Fullbrook	30 Willandra Road BEACON HILL NSW 2100
Ms Penelope Gae Cross	26 Willandra Road BEACON HILL NSW 2100
Rexford John Carlson	195 Warringah Road BEACON HILL NSW 2100
Jeanette Horstead	193 Warringah Road BEACON HILL NSW 2100
Ms Kathryn Louise Rinaldo	2 / 6 Jackson Street BALGOWLAH NSW 2093

The matters raised within the submissions are addressed as follows:

- **Acoustic Impact**

The main concern in the submissions received was in relation to noise impacts associated with late night trading. The applicant has submitted a Noise Assessment prepared by a noise consultant, Muller Acoustic Consulting, to address potential noise issues relating to 24 hour trading.

The acoustic impact is addressed in detail under the WDCP section of the report, where it is found that subject to a condition that restricts the business to a 24 month trial period, the acoustic impact is considered to be satisfactory.

- **Safety & Security and Littering**

Concerns have been raised regarding the safety and security, including crowd and anti-social



behaviours at the premises during late night trading.

The applicant has lodged a detailed Plan of Management (PoM) with the application, which provides details in relation to safety and security and how the crowd control is controlled and managed within the premises. In addition, it is noted that the outdoor areas are also well lit to encourage casual surveillance and minimise blind spots. The lights (in compliance with AS4282) will be projected directly onto the site, therefore minimising light spill and amenity impacts to adjacent properties whilst also improving CCTV and passive surveillance performance.

in relation to the issue of littering, the applicant has submitted a Waste Management Plan, which outlines the methodology for cleaning the existing McDonald's premise as well as clearing litter in the surrounding public domain.

Accordingly, this issue does not warrant the refusal of the application.

- **Traffic/Parking**

A number of submissions have raised issues associated with Traffic and Parking.

Council's Traffic Engineer has reviewed the proposal and has raised no objection to the proposal on traffic generation grounds. The proposal seeks to extend the operating hours of the Beacon Hill McDonald's to allow for late night and early morning trading but does not include an increase of seating or drive-thru capacity. These periods are generally aligned with significantly less traffic, and therefore any additional traffic which comes through the area during the late night is likely to be very light and such that it will not have an impact on safety.

There is adequate parking for staff and customers within the site. Accordingly, this issue does not warrant the refusal of the application.

- **Delivery Vehicles**

One (1) submission raised an issue with late night delivery vehicles at the site.

Waste deliveries and vehicles only occur between the hours of 7.00am to 10.00pm each day and this will not change with the proposed extension to the operating hours.

Accordingly, this issue does not warrant the refusal of the application.

- **Light Pollution**

Concern has been raised in relation to lighting impact at night.

The existing external lighting is located within the site boundary and the existing configuration presents the light downwards so as not to create light spill or nuisance upon nearby properties. The proposal does not seek any additional signage or external lighting, and existing signage and lighting is in accordance with Australian Standards and RMS Guidelines, the increased trading hours will not create significant additional impact upon adjoining properties via external lighting and signage.

Accordingly, this issue does not warrant the refusal of the application.



## Odour

One (1) submission raised concerns over the proximity of the McDonald's operation to residential properties and the associated odour impacts as result of late trading.

The operation of the kitchen will continue to operate as existing and in accordance with the Food Standards Code and The Food Regulation 2004, and any relevant Council Codes.

Accordingly, this issue does not warrant the refusal of the application.

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<p><b>General Comments</b></p> <p>Environmental Health has reviewed the acoustic report prepared by Muller Acoustic Consulting dated July 2020 ref MAC201079-01RP1 and it has been determined that sleep disturbance from the operation of the development will not be impacted. A review of past CRMs relating to the operation of McDonalds has not highlighted any ongoing problems relating to noise and odour.</p> <p><b>Recommendation</b></p> <p>APPROVAL - no conditions</p>
Traffic Engineer	The proposal is for extension of hours of Beacon Hill McDonald's to allow 24-Hour trading, 7 days. The proposed modification will not result in any impact on the road network. Therefore, it can be supported on traffic grounds.

External Referral Body	Comments
NSW Police – Crime Prevention Office (Local Command matters)	The proposal was referred to NSW Police. 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)



Nil

#### Warringah Local Environmental Plan 2011

Is the development permissible?	No
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	No changes to building height	-	N/A

#### Compliance Assessment

Clause	Compliance with Requirements
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes

#### Detailed Assessment

#### Zone R2 Low Density Residential

The existing and proposed continuation of the site use is permitted as per Section 4.65 of the Environmental Planning and Assessment Act (1979) (EP&A Act) and is detailed in the *Existing Use Rights* section of this report.

#### Warringah Development Control Plan

##### Built Form Controls

The proposal relates to trading hours, therefore no changes are proposed to the compliance of the development with the built form controls.

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D3 Noise	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
D7 Views	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes

#### Detailed Assessment

#### **D3 Noise**

##### Merit Consideration

With regard to the consideration under this Clause, the development is considered against the underlying Objectives of the Control as follows:

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

##### Comment:

The proposal involves an extension to the existing hours of operation to permit 24 hour trading/7 days per week. No physical changes to the premises is proposed or required. Subject to a condition limiting the trading hours to a 24 month trial period, the proposal is considered to satisfy this objective

*To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.*

##### Comment:

The Noise Assessment by Muller Acoustic Consulting has quantified potential operational emissions pertaining to customer generated noise and mechanical plant. The results of the acoustic report demonstrate that the operational noise emissions from the proposed extension of trading hours would satisfy relevant criteria at all assessed receivers. Noise modelling identified that customer noise emissions are predicted to satisfy the relevant sleep disturbance at all assessed receivers surrounding the site.

Having regard to the above assessment and subject to a 24 month trial period, it is concluded that the proposed development, subject to such conditions is consistent with the relevant objectives of WDCP and the objectives specified in section 1.3 of the Environmental Planning and Assessment Act, 1979.

Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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





The proposal will not significantly 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 2019**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

### **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

The proposal to extend the operating hours of the Beacon Hill McDonald's restaurant and drive-through to allow for 24/7 trade, is considered appropriate for the area based on the context of the site, surrounding areas and previous operational performance.

Importantly, it is recognised that the site is within the close proximity to residential dwellings to the north of the site, however the proposal has implemented and will implement mitigation measures through the Operational Management Plan to manage potential amenity impacts.

Acoustic analysis has been carried out, which found the proposed 24 hour operation, will not result in adverse noise impacts during the night-time hours.



Accordingly, it is recommended that the application be approved on a 24 month trial basis to ensure the extended hours will not have an adverse impact on the adjoining residential development. The applicant will need to carry out additional noise monitoring and present the findings to Council before making application to modify the consent for permanent 24/7 hours of operation.

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 DA2020/0933 for Use of premises as an existing approved restaurant with extended hours of operation on land at Lot 1 DP 570451, 164 Warringah Road, BEACON HILL, Lot 1 DP 575638, 164 Warringah Road, BEACON HILL, 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:

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Plan of Management	July 2020	Monique Younis
Noise Assessment	July 2020	MAC - Muller Acoustic Consulting

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

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.

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

#### 2. 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) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities\*\*
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities\*\*
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking\*\*
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities\*\*
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set\*\*
- (l) AS 1428.1 - 2009\* Design for access and mobility - General requirements for access - New building work\*\*
- (m) AS 1428.2 - 1992\*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities\*\*
- (n) AS 4674 Design, construction and fit out of food premises
- (o) 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](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)

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

#### 3. Hours of Operation (Trial Period of 24 Months)

The hours of operation are approved as follows:

- o 24 hours a day/7 days a week

These approved hours are limited to a trial period of 24 months from the date of this consent.

A modification application may be submitted to Council, to be lodged not more than 3 months prior to the expiration of the 24 month trial period, seeking the continuation of the extended hours of operation. If such an application is lodged, the extended hours of operation will continue to apply until such time as the application is determined by Council.

It should be demonstrated that the extended hours of operation have been in effect for a continuous period of at least 6 months prior to the lodgement of any modification application to extend or conclude the trial period.

The modification application is to be accompanied by a Noise Assessment Report, addressing noise associated with late night/early morning trading and any complaints received and how those complaints have been addressed.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

#### 4. Commercial Waste Collection and Deliveries

Waste and recyclable material, generated by this premises and food and beverage deliveries,



must not be carried out between the hours of 9.00pm and 7.00am on any day.

Reason: To protect the acoustic amenity of surrounding properties.(DACPLG18)