

# AGENDA

## **DEVELOPMENT DETERMINATION PANEL MEETING**

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

**WEDNESDAY 28 FEBRUARY 2024**

**Ashleigh Sherry**  
**Manager Business System and Administration**

**Agenda for a Meeting of the Development Determination Panel  
to be held on Wednesday 28 February 2024  
via Teleconference  
Commencing at 10:00 AM**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
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### 3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

**ITEM 3.1      DA2023/1720 - 14 HAY STREET COLLAROY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL**

#### 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.

#### RECOMMENDATION

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants 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.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/1720 for alterations and additions to a dwelling house including a swimming pool on land at Lot B DP 335491, 14 Hay Street COLLAROY, subject to the conditions set out in the Assessment Report.

<b>REPORTING MANAGER</b>	Steve Findlay
<b>TRIM FILE REF</b>	2024/118919
<b>ATTACHMENTS</b>	<b>1</b> <a href="#">↓Assessment Report</a> <b>2</b> <a href="#">↓Site Plan and Elevations</a> <b>3</b> <a href="#">↓Clause 4.6</a>

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1720
Responsible Officer:	Reeve Cocks
Land to be developed (Address):	Lot B DP 335491, 14 Hay Street COLLAROY NSW 2097
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Stuart Brian Mcevoy Felicity Anne McEvoy
Applicant:	Stuart Brian Mcevoy
Application Lodged:	24/11/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	01/12/2023 to 15/12/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 21.4%
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,258,611.18

EXECUTIVE SUMMARY

Summary of Works

Council is in receipt of an application for alterations and additions to an existing dwelling house at 14 Hay Street Collaroy. The property sits on a corner allotment that borders Hay Street and Cumberland Avenue. The existing dwelling house is a 1 and 2 storey brick house with a tile and metal roof. Excavated below the house is a 3 car garage with storage areas and a water closet. The proposed works generally comprise internal and external changes to the existing dwelling, construction of a new Level 3 addition, a swimming pool and cabana.

Reason for Referral

The application is referred to the DDP as the proposed 10.3m building height represents a 21.4% variation to the 8.5m height of buildings development standard.

Clause 4.6 Report Adequacy

The submitted Clause 4.6 Variation report adequately justifies why enforcing the standard development control in this circumstance is unreasonable or unnecessary, and has provided reasonable environmental grounds to support their claim.







Building height plane - SE perspective



Building height plane - NE perspective

#### **Environmental Health Officer Concerns**

Council's Environmental Health Officer has raised concerns regarding the proposed wood fire external fireplace. A condition of consent is recommended requiring that the fireplace is to be gas powered in line with the Environmental Health Officer's comments. As no other objections to the development were raised by Environmental Health it is assumed that the application is now supported and no amended plans or additional information is required all concerns have been addressed.

#### **Submissions**

No submissions were received in response to Council's exhibition of the application.

#### **Conclusion**

This report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions.

#### **PROPOSED DEVELOPMENT IN DETAIL**

This development seeks consent for alterations and additions to the existing dwelling

Specifically, the works comprise of the following:

- Demolition Works

#### **Level 2**

- Enlarged open plan kitchen/living/dining,
- New pantry and laundry, replacing the existing formal dining room,
- Amendments to windows, doors and balustrades,
- Enlarged family room (with demolition of existing hall and bathroom),
- Replacement of existing balustrades,
- New covered area to south-west of family room,
- New internal stair access to Level 3.

Level 3

- Amendments to windows, doors, and balustrades of existing loft area,
- Construction of new master bedroom (with WIR and ensuite), sitting room, powder room, terrace and internal stair access to Level 2.

External Works

- New swimming pool, pool terrace, cabana and pool store,
- New cladding to roof,
- Landscaping, and Stormwater infrastructure.

**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  
 Assessment - SEPP (Sustainable Buildings) 2022  
 Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
 Warringah Development Control Plan - B1 Wall Heights  
 Warringah Development Control Plan - B3 Side Boundary Envelope  
 Warringah Development Control Plan - E10 Landslip Risk

**SITE DESCRIPTION**

<b>Property Description:</b>	Lot B DP 335491 , 14 Hay Street COLLAROY NSW 2097
<b>Detailed Site Description:</b>	<p>The subject site consists of a generally rectangular corner allotment located on the southern side of Hay Street and the eastern side of Cumberland Avenue.</p> <p>The site is regular in shape with a frontage of 18.235m along Hay Street and a depth of 44.7m (western side). The site has a surveyed area of 1039m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates an existing one and two storey dwelling house with an existing excavated garage situated below the house. Vehicular access is gained from Cumberland Avenue, and pedestrian access is gained via both street frontages (Cumberland Avenue and Hay Street).</p> <p>The site slopes gradually (approximately 15%) from the southwest (rear) of the site to the northeast (front) with an approximate 6.5m fall across the site.</p> <p>Existing on site is a combination of lawn and garden areas. The existing trees/vegetation proposed for removal are exempt by species or height and as such can be managed or removed at the discretion of the application without consent.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by detached single and two storey residential dwelling houses. The subject site is located in proximity to Dee Why Lagoon and Long Reef Beach.</p>

Map:



#### SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

#### 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	There are no current draft environmental planning instruments.
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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 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 29</u> of the EP&amp;A Regulation 2021 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 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 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 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 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 69</u> of the EP&amp;A Regulation 2021 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, including environmental impacts on the natural and built environment and social	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the</p>

Section 4.15 Matters for Consideration	Comments
and economic impacts in the locality	proposal.  (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.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 01/12/2023 to 15/12/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

#### REFERRALS

Internal Referral Body	Comments
Environmental Health (Solid Fuel/Oil Heater)	<p><b>Supported, subject to condition.</b></p> <p><b>Planner Comment</b></p> <p>Council has conditioned that the proposed external (terrace) fireplace be gas powered rather than a wood fire burner as proposed. This condition satisfies the concerns raised by the Environmental Health Officer and the application can therefore be supported.</p> <p><b>General Comments</b></p> <p>This application is seeking consent for alterations and additions to an existing dwelling at 14 Hay Street, Collaroy. There are two fireplaces proposed for the dwelling. One is a proposed gas fireplace within the dwelling and the other is a proposed wood fire burner at the pool terrace.</p> <p>The fireplace by the terrace is proposed to be wood burning and the indoor fireplace is proposed to be gas.</p> <p>The outdoor fireplace has the potential to create a smoke nuisance to neighboring properties given the close proximity to number 16 Hay Street and smoke has the potential to penetrate into the windows of 78 Cumberland Avenue. Therefore, Environmental Health determines the fireplace proposed for the terrace area is to be gas and not wood burning. To reflect this, can the applicant please amend the Statement of Environmental Effects.</p> <p>Environmental Health recommends refusal at this time.</p>
Landscape Officer	<p><b>Supported with conditions.</b></p> <p>The proposal is supported with regard to landscape issues.</p> <p>The application is assessed by Landscape Referral against Warringah Local Environmental Plan 2011 and the following Warringah Development Control Plan 2011 controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• D1 Landscaped Open Space and Bushland Setting</li> <li>• E1 Preservation of Trees or Bushland Vegetation</li> </ul> <p>The existing trees/vegetation shown for removal on the plans are exempt by species or height and as such can be managed or removed at the discretion of the applicant without consent. All trees and vegetation shown to be retained must be protected during works. The plans indicate areas of new landscaped gardens, although only indicative, and as such any new planting shall be installed in accordance with the requirements outlined in the conditions of consent.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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

All, Environmental Planning Instruments (SEPPs 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 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 (Transport and Infrastructure) 2021**

###### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

###### Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

##### **SEPP (Resilience and Hazards) 2021**

###### Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

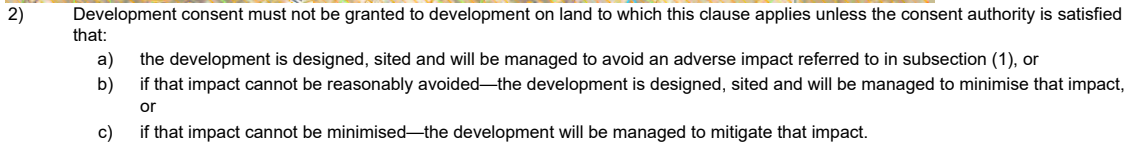
##### **Division 3 Coastal environment area**

###### **2.10 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 relate to mostly aboveground works within the existing building footprint. The subject site although located within a Coastal Environmental Area is surrounded by residential development (see figure 1 below). This minimizes the potential environmental impacts of the development on coastal ecosystems, processes and values.





## Division 5 General

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.

### 2.13 Development in coastal zone generally—coastal management programs to be considered

Comment: The subject site is not located within a coastal management program area.

## **Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

#### 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	10.3m	21.4%	No

#### Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.3 Development near zone boundaries	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

#### Detailed Assessment

##### 4.3 Height of buildings

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: Due to the topography of the site, the existing dwelling house sits significantly below the height of adjoining properties (as seen in figures 1 and 2 below). The proposed development is generally compliant with the overall height control as seen in figure 3 and will not be incompatible with surrounding development.

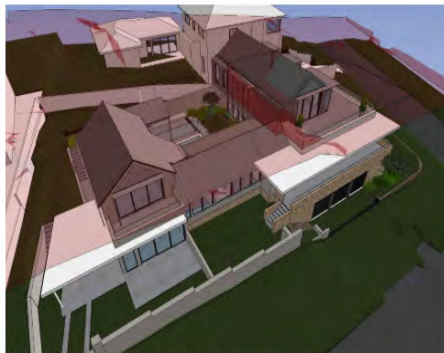




Figure 1



Figure 2



Building height plane - SE perspective



Wall height plane - SE perspective



Building height plane - NE perspective



Wall height plane - NE perspective

Figure 3

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

**Comment:** The proposed development is generally compliant with the applicable LEP and DCP controls and satisfies the relevant objectives. The design ensures that view sharing is facilitated while maintaining adequate amounts of privacy (visual and acoustic) and solar access.

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

**Comment:** The proposed development represents a tasteful addition to an existing dwelling. The addition is compatible with the existing structure and is reflective of designs in the immediate streetscape and neighbourhood.

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

**Comment:** The proposed development is consistent with Council's objectives for bulk and scale and ensures that the visual impact and dominance of the dwelling house when viewed from the public domain is minimized. The proposed planting and landscaped areas provide further screening and separation.

#### 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.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.

#### Conclusion:

The proposed addition is consistent with the zone objectives as it provides for housing needs and is reflective of the objectives of the height of buildings control. The proposal will result in added amenity of the subject site, adjoining property and public realm.

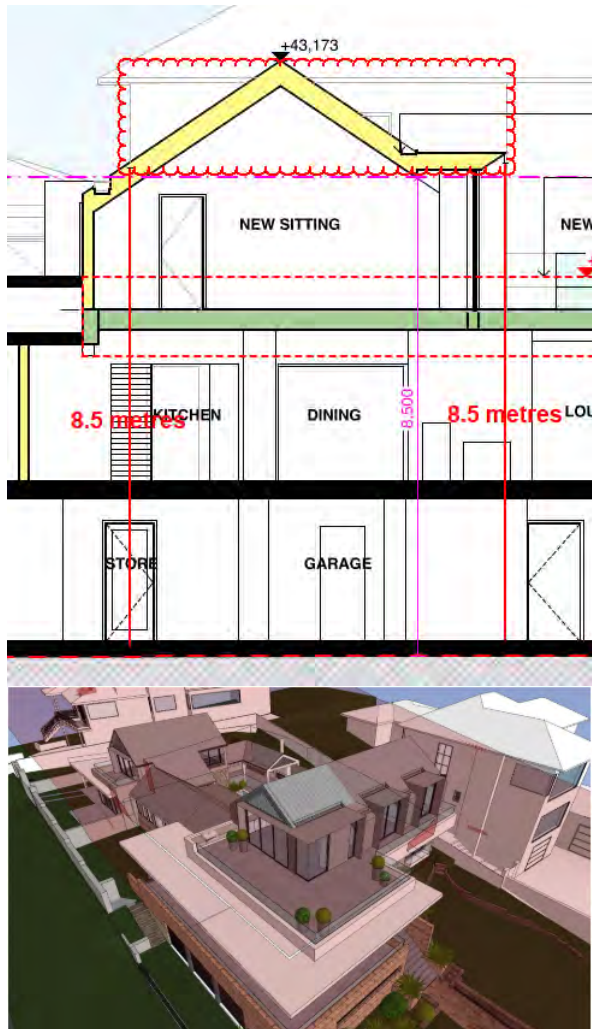
For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R2 Low Density Residential zone.

#### 4.6 Exceptions to development standards

The application seeks consent to vary a development standard as follows:

Development standard: Clause 4.3 Height of Buildings

Requirement: 8.5m  
Proposed: 10.3m  
Percentage of variation: 21.4%



With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the WLEP 2011 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

(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.*

**Comment:** The proposal is not inconsistent with the objectives of the clause as previously justified. Council has discretionary power to approve deviations from the development standard in circumstances where the applicant can demonstrate compliance with the standard is unreasonable or unnecessary in the circumstances, and there are sufficient environmental planning grounds to justify the contravention of the development standard.

Subclause (2) of this clause provides that:

- (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 is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

*(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 is unreasonable or unnecessary in the circumstances of this application for the following reasons:

- The proposed development is compatible with the height and scale of surrounding and nearby development.
- The proposed development will not result in any undue visual impact outcomes, disruption of views, loss of privacy or loss of solar access.
- The proposed development results in no adverse impact on the scenic quality of Warringah's coast and bush environments.
- The proposed development results in no adverse visual impact when viewed from public places such as parks and reserves, roads and community facilities.

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

Comment: In accordance with the most recent caselaw via the NSW Land and Environment Court *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, building height is calculated from the existing ground level defined as 'the existing level of a site at any point.' in the standard LEP instrument, whether disturbed or undisturbed. According to this calculation, the maximum building height is 10.3 metres, where the control allows for a maximum of 8.5 metres. However, if the building height were to be taken from the extrapolated natural ground level in accordance with *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 and *Nicola v Waverley Council* [2020] NSWLEC 1599, the maximum building height would be approximately 8 to 8.5metres as taken from the closest immediate proximity where existing (natural) ground can be found.

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.'

The Clause 4.6 Request argues, in part:

- *"The height breach occurs where the proposed upper roof form is situated over the excavated garage of the existing dwelling. In accordance with the findings of the NSW LEC in Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, *the prior excavation of the site within the footprint of the existing building which distorts the height plane can properly be described as an environmental planning ground within the meaning of clause 4.6(3)(b) of WLEP 2011."*

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 for the following reasons:

The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

#### Public Interest:

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

#### Conclusion:

Council is satisfied as to the matters set out in Clause 4.6 of the WLEP 2011.

It is considered on balance, that having regard to the particular circumstances the height of buildings development standard (8.5m) in this particular circumstances is acceptable, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

#### Warringah Development Control Plan

##### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	North: 7.2m - 8.4m East: 9.8m – 3.3m	13.2% (max)	No

		South: 2.5m – 7.2m West: 3.1m – 4.5m		
B3 Side Boundary Envelope	4m	Within envelope (south)	N/A	Yes
	4m	Outside envelope (west)	N/A	No
B5 Side Boundary Setbacks	0.9m	3m - 6.7m (South)	N/A	Yes
	0.9m	0.9m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	6.5m (Hay Street)	N/A	Yes
B9 Rear Boundary Setbacks	6m <sup>2</sup>	N/A (corner allotment)	N/A	N/A
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	47% (488.6m <sup>2</sup> )	N/A	Yes

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
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	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
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

**B1 Wall Heights**

Description of non-compliance

The proposed new upper floor sitting room at the eastern front corner of the dwelling breaches the 7.2m wall height plane by up to 1.2m on the northern front elevation and 2.6m on the eastern front elevation.

Merit consideration:

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

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

Comment: Due to the topography of the site the proposed non compliance does not result in notable visual impact on adjoining properties, streets, waterways and land zoned for public recreation purposes.

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

Comment: The site slopes from rear to front and there are little to no canopy trees existing on the property or within the streetscape. The proposed development is generally consistent with the overall height control and it is assumed that the proposed development would be consistent with the general height of canopy trees.

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

Comment: The proposal does not result in view loss from public or private properties within the immediate vicinity.

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

Comment: The proposed development generally maintains the existing visual, acoustic and privacy amenity of adjoining and nearby properties.

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

Comment: The proposed application does not include further excavation for the purposes of increasing the size of the dwelling house. The design ensures consistency with the existing dwelling and matches the topography of the site.

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

Comment: The roof design provides for sufficient roof pitch and variation in overall roof design.

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

A portion of the western side elevation of the upper floor encroaches within the building envelope prescribed by clause B3 of WDCP 2011.

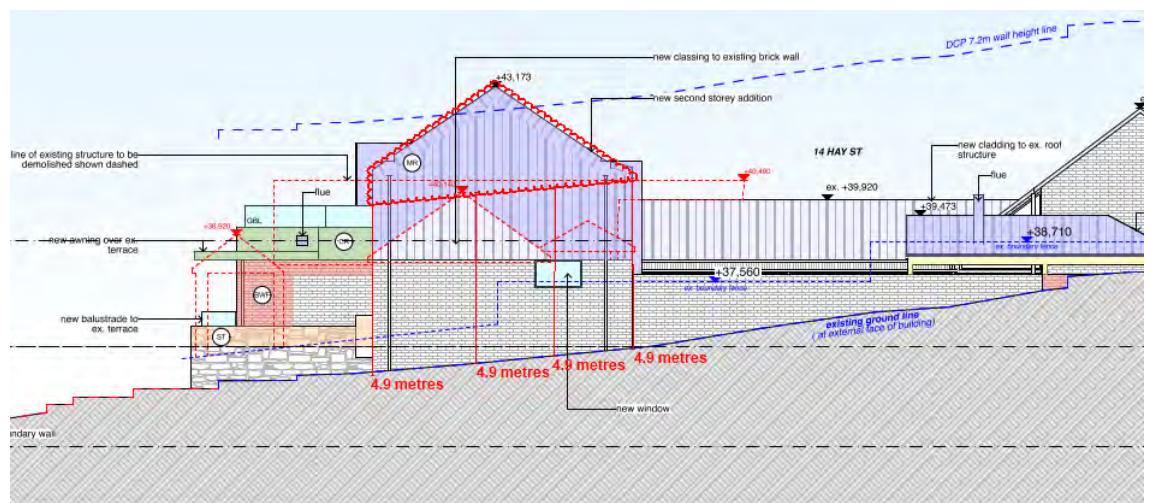
#### Merit consideration

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

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

Comment: The portion of the proposal that fails to comply with the side boundary envelope is significantly within the overall height control and does not present as visually dominant by virtue of height or bulk.

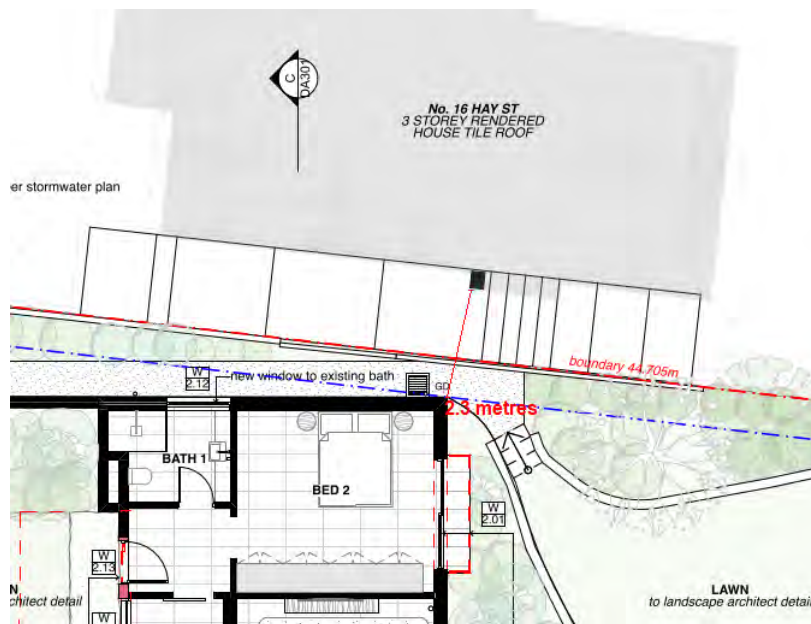




West Elevation

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

Comment: The existing ground storey has a 900mm setback from the western side boundary. Council notes that the applicant is proposing to maintain this setback in the first floor proposal. Due to the location of the dwelling house located at No.16 Hay Street there remains 2.3metres between the two dwellings, demonstrating adequate building separation.



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

**Comment:** The site gradually slopes from its southwestern boundary at the rear to its northeastern boundary at the front of the site. The proposed additions are at or above ground level (with exception to the proposed swimming pool) and are consistent with the height and bulk of adjoining dwellings and have been designed in accordance with the slope of the site.

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

#### E10 Landslip Risk

The applicant has submitted a geotechnical report as a part of the application. The recommendations have been incorporated into the conditions of consent.

#### 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 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$12,586 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,258,611.

#### 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 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.



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

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

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

Council is satisfied that:

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

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

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

#### **PLANNING CONCLUSION**

This proposal, for alterations and additions to an existing dwelling house has been referred to the Development Determination Panel (DDP) due to the proposed height of buildings non compliance of 21.4%

The proposed variation to the height of buildings development standard is adequately justified in the Applicant's Clause 4.6 written request, as assessed in this report.

No objections were raised during the notification period and assessment period.

The critical assessment issues are as follows:

- Height of building non compliance
- Wood burning fireplace (conditioned)

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

#### **REASON FOR DETERMINATION**

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 permits a contravention of 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 DA2023/1720 for Alterations and additions to a dwelling house including a swimming pool on land at Lot B DP 335491, 14 Hay Street, COLLAROY, subject to the conditions printed below:

#### **Terms and Reasons for Conditions**

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

#### **GENERAL CONDITIONS**

**1. No Approval for Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

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

2. **Approved Plans and Supporting Documentation**

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA001	A	Site Analysis	Corben Architects	10/11/2023
DA002	A	Site Plan	Corben Architects	10/11/2023
DA100	A	Level 1 Plan	Corben Architects	10/11/2023
DA101	A	Level 2 Plan	Corben Architects	10/11/2023
DA102	A	Level 3 Plan	Corben Architects	10/11/2023
DA200	A	North + East Elevation	Corben Architects	10/11/2023
DA201	A	West + South Elevation	Corben Architects	10/11/2023
DA300	A	Section AA + BB	Corben Architects	10/11/2023
DA301	A	Section CC + DD	Corben Architects	10/11/2023
DA403	A	Area Calculations	Corben Architects	10/11/2023
DA404	A	Waste Management Plan	Corben Architects	10/11/2023
DA406	A	Material Schedule	Corben Architects	10/11/2023
H-DA-00	A	Stormwater Plan (Legend, details & sedimentation control)	Corben Architects & itm design Pty Ltd	18/10/2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Waste Management Report	-	Corben Architects	Received by Council 23/11/2023
On-Site Stormwater Detention Checklist	-	itm design Pty Ltd	Received by Council 23/11/2023
Geotechnical Report	-	White geotechnical group	19/10/2023
Basix Certificate No. A1373075	-	Corben Architects	18/10/2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

3. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	4 December 2023

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

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

4. **Approved Land Use**

Nothing in this consent shall authorise the use of onsite structures as detailed on the approved plans for any land use of the site beyond the definition of a dwelling houses, in accordance with the Dictionary of the Warringah Local Environmental Plan 2011, as follows:

*"dwelling house means a building containing only one dwelling."*

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.

5. **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 Certifier 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 Certifier 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 Certifier 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.

#### **6. General Requirements**

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
  - o 7.00 am to 5.00 pm inclusive Monday to Friday,
  - o 8.00 am to 1.00 pm inclusive on Saturday,
  - o No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

  - o 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 an 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 following is required:
  - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% 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.
  - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any

- contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
- iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
  - (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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
  - (k) Prior to the commencement of any development onsite for:
    - i) Building/s that are to be erected
    - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
    - iii) Building/s that are to be demolished
    - iv) For any work/s that is to be carried out
    - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
  - (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
  - (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
  - (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
    - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

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

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

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

#### **FEES / CHARGES / CONTRIBUTIONS**

#### **7. Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$12,586.11 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 (as amended).

The monetary contribution is based on a development cost of \$1,258,611.18.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

and services.

8. **Security Bond**

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

**BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

9. **Stormwater Drainage Disposal**

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

10. **Amendments to the approved plans**

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

- The fireplace proposed for the terrace area is to be gas and not wood burning.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development. The outdoor fireplace has the potential to create a smoke nuisance to neighboring properties given the close proximity to number 16 Hay Street and smoke has the potential to penetrate into the windows of 78 Cumberland Avenue.

11. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans.

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

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

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

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,

2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

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 ensure no substance other than rainwater enters the stormwater system and waterways.

**14. 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 Certifier prior to the issue of the Construction Certificate.

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

**15. 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 Certifier 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.

**DURING BUILDING WORK**

**16. Tree and Vegetation Protection**

- a) existing trees and vegetation shall be retained and protected, including:
  - i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
  - ii) all trees and vegetation located on adjoining properties,
  - iii) all trees and vegetation within the road reserve.
- b) tree protection shall be undertaken as follows:
  - i) tree protection shall be in accordance with AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
  - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
  - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
  - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
  - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
  - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
  - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
  - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS 4970-2009 Protection of trees on development sites,
  - ix) the activities listed in section 4.2 of AS 4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
  - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS 4373-2007 Pruning of amenity trees,
  - xi) the tree protection measures specified in this clause must: be in place before work commences on the site, be maintained in good condition during the construction period, and remain in place for the duration of the construction works.
- c) the Principal Certifier must ensure that:
  - i) If activated, the arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as complaint to AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

**17. Condition of Trees**

- a) during the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:
  - i) a general decline in health and vigour,
  - ii) damaged, crushed or dying roots due to poor pruning techniques,
  - iii) more than 10% loss or dieback of roots, branches and foliage,

- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,
- v) yellowing of foliage or a thinning of the canopy untypical of its species,
- vi) an increase in the amount of deadwood not associated with normal growth,
- vii) an increase in kino or gum exudation,
- viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
- ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.

b) any mitigating measures and recommendations required by the Arborist/Project Arborist are to be implemented.

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

Reason: Protection of trees.

**18. 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.

**19. Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

**20. Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

**21. Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

**BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**

**22. Landscape Completion**

a) any new landscape works are to be implemented in accordance with the following conditions:

- i) landscape works are to be contained within the legal property boundaries,
- ii) mass planting shall be installed at minimum 1 metre intervals (or less) for shrubs of a minimum 200mm container size at planting, and at minimum 4 plants per metre square for groundcovers of a minimum 140mm container size at planting, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,
- iii) where swimming pools are part of the development works, selected planting shall comply with the planting and care requirements of AS1926.1 for a non-climbable zone.

b) prior to the issue of an Occupation Certificate, details shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.

Reason: Environmental amenity.

**23. Stormwater Drainage Disposal Certification**

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website

The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the authority to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure satisfactory management of stormwater.

24. **Geotechnical Certification Prior to Occupation Certificate**

A Geotechnical Engineer or Engineering Geologist is to provide written confirmation that they have inspected the site during construction or reviewed information relating to the construction and that they are satisfied that development referred to in the development consent has been constructed in accordance with the intent of the Geotechnical Report referenced in Condition 1 of this consent.

Written certification is to be provided to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

25. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure bushland management.

26. **House / Building Number**

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

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Proper identification of buildings.

27. **Waste Management Confirmation**

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

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

28. **Swimming Pool Requirements**

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

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

(i) Swimming Pools Act 1992;

(ii) Swimming Pools Amendment Act 2009;

(iii) Swimming Pools Regulation 2018

(iv) Australian Standard AS1926 Swimming Pool Safety

(v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools

(vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools

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

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

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

(e) Signage showing resuscitation methods and emergency contact

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

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



Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To protect human life.

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

29. **Landscape Maintenance**

a) any new plantings are to be mulched, watered and fertilised as required at the time of planting.

b) if any new planting under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with any conditions of consent.

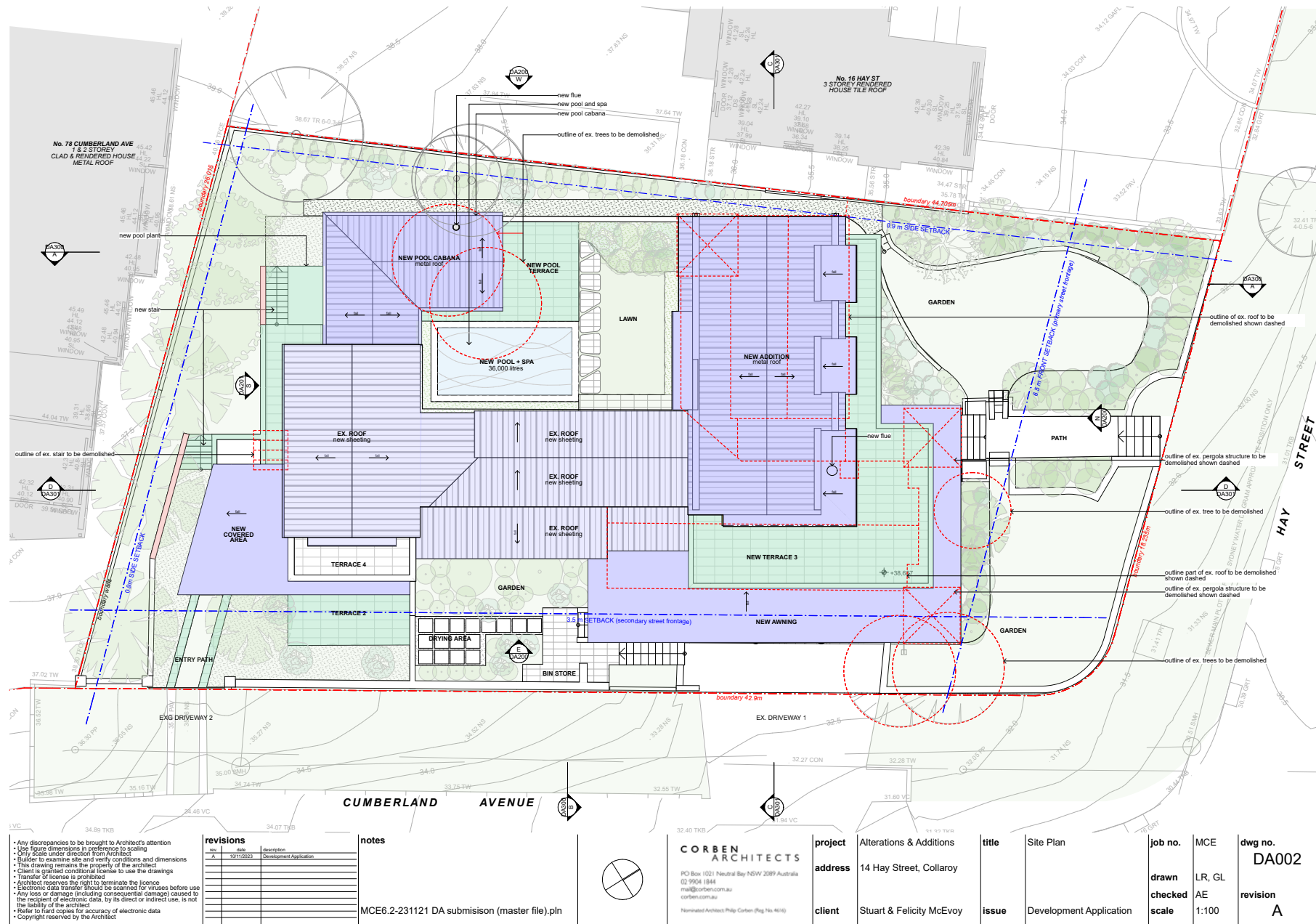
c) the approved landscape planted areas, whether containing lawn, gardens or planters shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

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

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

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





- \* Any discrepancies to be brought to Architect's attention
- \* Use figure dimensions in preference to scaling
- \* Only scale under direction from Architect
- \* Builder to examine site and verify conditions and dimensions
- \* This drawing remains the property of the architect
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[illegible]

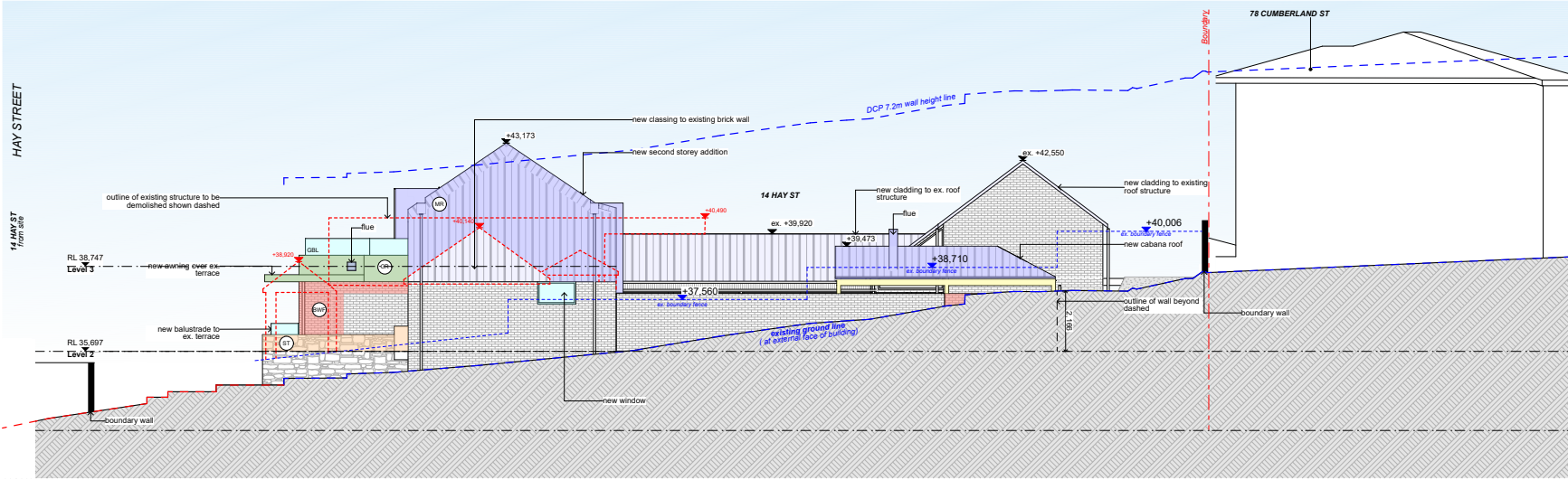
**MATERIALS KEY**

- cement
- glass
- metal
- stone
- brick

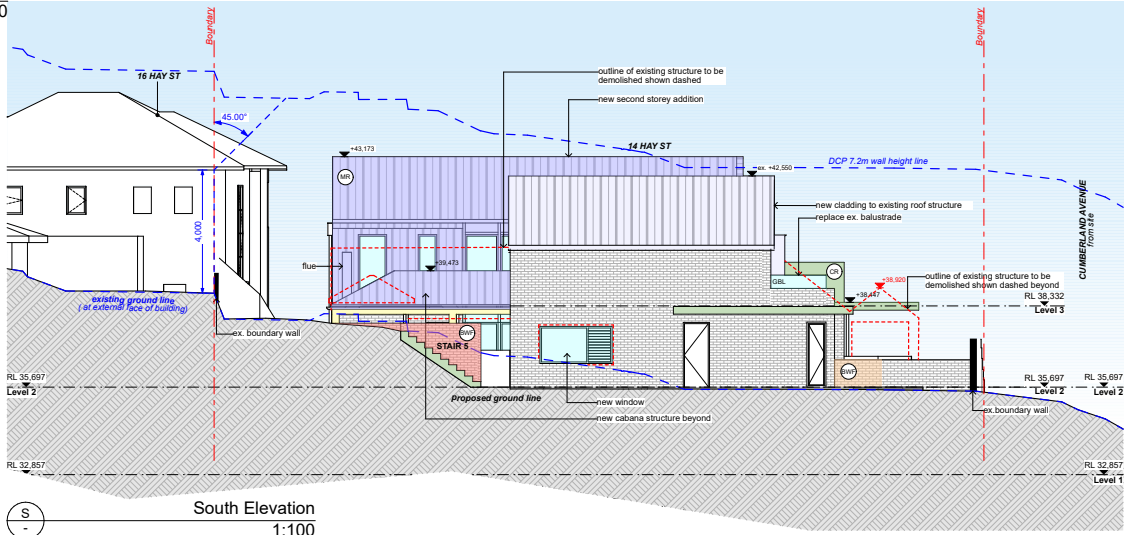
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**CORBEN ARCHITECTS**  
PO Box 1021 Neutral Bay NSW 2089 Australia  
02 9904 1844  
mail@corben.com.au  
corben.com.au  
Nominated Architect Philip Corben (Reg No 4616)

<b>project</b>	Alterations & Additions	<b>title</b>	North + East Elevation	<b>job no.</b>	MCE	<b>dwg no.</b>
<b>address</b>	14 Hay Street, Collaroy			<b>drawn</b>	LR, GL	DA200
				<b>checked</b>	AE	<b>revision</b>
<b>client</b>	Stuart & Felicity McEvoy	<b>issue</b>	Development Application	<b>scale</b>	1:100	A








West Elevation  
1:100



South Elevation  
1:100

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- Only scale under direction from Architect
- Builder to examine site and verify conditions and dimensions
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revisions		
no.	date	description
A	10/11/2023	Development Application

MATERIALS KEY	
	cement render
	glass
	metal
	stone
	brick
.jbmisson (master file).pln	

**CORBEN ARCHITECTS**  
PO Box 1021 Neutral Bay NSW 2089 Australia  
02 9904 1844  
mail@corben.com.au  
corben.com.au  
Nominated Architect Philip Corben (Reg No. 6416)

**project** Alterations & Additions  
**address** 14 Hay Street, Collaroy  
**client** Stuart & Felicity McEvoy

**title** West + South Elevation  
**issue** Development Application

**job no.** MCE  
**drawn** LR, GL  
**checked** AE  
**scale** 1:100

**dwg no.** DA201  
**revision** A



*request to vary  
a development standard*



## REQUEST TO VARY A DEVELOPMENT STANDARD

14 HAY STREET  
COLLARROY NSW 2097

October 2023

Prepared by Rebecca Englund  
B Arch Studies | M Plan | MPIA

Director | Northern Beaches Planning

Phone: 0472 65 74 74

Web: [www.northernbeachesplanning.com.au](http://www.northernbeachesplanning.com.au)

Email: [rebecca@northernbeachesplanning.com.au](mailto:rebecca@northernbeachesplanning.com.au)



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## *introduction*

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This request to vary a development standard is made by Northern Beaches Planning on behalf of Stuart & Felicity McEvoy in relation to a development application for alterations and additions to the existing dwelling at 14 Hay Street, Collaroy (**site**). This request is made pursuant to clause 4.6 of Warringah Local Environmental Plan 2011 (**WLEP 2011**) and with regard to relevant case law.

## *standard to be varied*

---

With a maximum building height of 10.316m, the proposed development is non-compliant with the 8.5m maximum building height prescribed by clause 4.3 of WLEP 2011. The maximum building height is a development standard, as defined by the EP&A Act:

***development standards** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of: ...*

*(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work...*

Accordingly, the provisions of clause 4.6 of WLEP 2011 can be applied.

Pursuant to clause 4.6(2) of WLEP 2011, consent may be granted for development even though the proposal contravenes a development standard prescribed by an environmental planning instrument. Whilst this clause does not apply to those standards expressly excluded from this clause, the building height development standard of clause 4.3 of WLEP 2011 is not expressly excluded and thus, the provisions of clause 4.6 can be applied in this instance.

## *extent of the proposed breach*

---

The proposed development reaches a maximum height of 10.316m, representative of a 1.816m or 21.4% variation to the 8.5m maximum building height development standard. The height non-compliance is limited to a minor portion of the proposed upper floor roof form, where it overlaps with the existing excavated garage.

The extent of non-compliance with the 8.5m building height development standard is highlighted in the Sections by Corben Architects at Figures 1 and 2 and the Height Plane Diagram by Corben Architects at Figure 3.



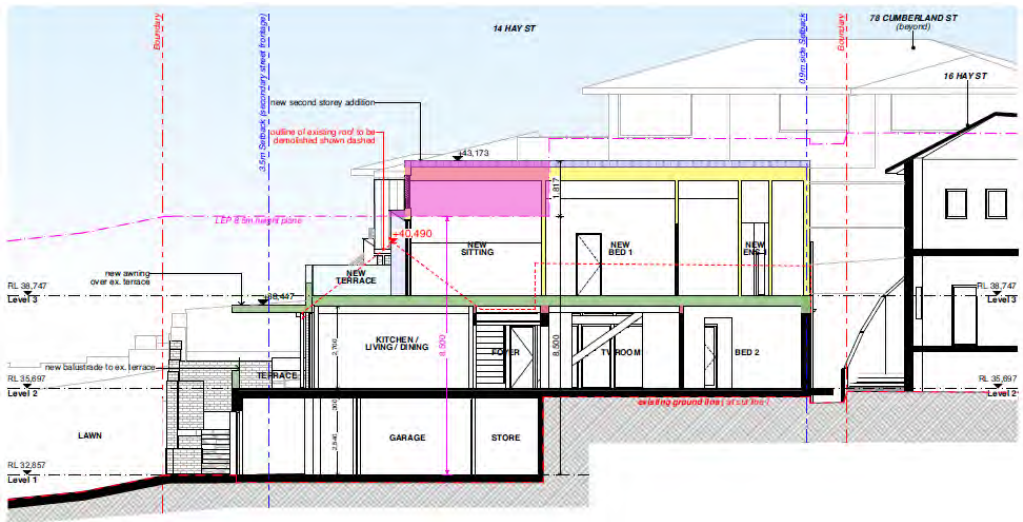


Figure 1 –Section C, with height non-compliance highlighted in pink  
Source: Corben Architects



Figure 2 –Section D, with height non-compliance highlighted in pink  
Source: Corben Architects





Figure 3 – Height Plane Diagram  
Source: Corben Architects

*unreasonable or unnecessary*

Pursuant to clause 4.6(4) of WLEP 2011, consent can only be granted if the consent authority is satisfied that the applicant's written request to vary the development standard has addressed the criteria of clause 4.6(3) of WLEP 2011. Clause 4.6(3)(a) of WLEP 2011 requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

In accordance with the decision of the NSW LEC in the matter of *Wehbe v Pittwater Council* [2007] NSWLEC 827 and as confirmed in the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, one way in which strict compliance with a development standard may be found to be unreasonable or unnecessary is if it can be demonstrated that the objectives of the standard are achieved, despite non-compliance with the development standard.

The proposed development is consistent with the objectives of the building height development standard, as prescribed by clause 4.3(1) of WLEP 2011, as follows:

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

Comment: As demonstrated on the North Elevation (Figure 4) and East Elevation (Figure 5) prepared by Corben Architects, the height of the proposed development is maintained below that of neighbouring dwellings. Further, in accordance with the findings of the NSW LEC in the matter of *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191, to be compatible in an urban design context is to be capable of existing in harmony together. As

*northern beaches planning*

demonstrated in Figures 6-11, the stepped two and three storey scale of the proposed development is in keeping with that of surrounding and nearby dwellings, resulting in a form that will be harmonious with both the Hay Street and Cumberland Avenue streetscapes.

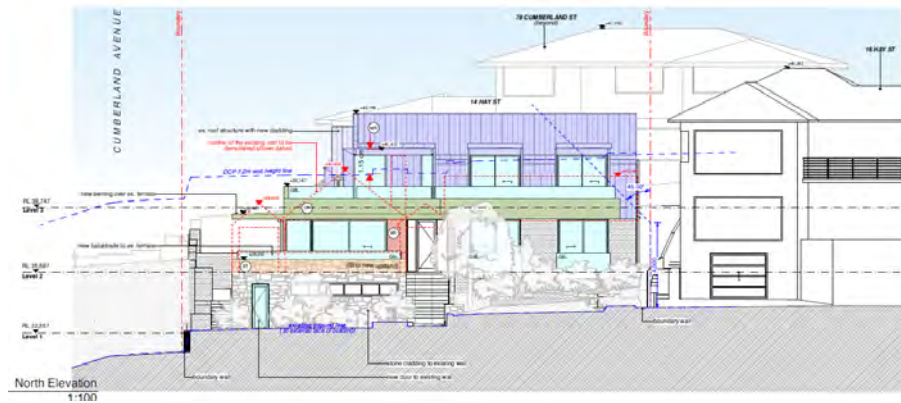


Figure 4 – Extract of North Elevation  
Source: Corben Architects

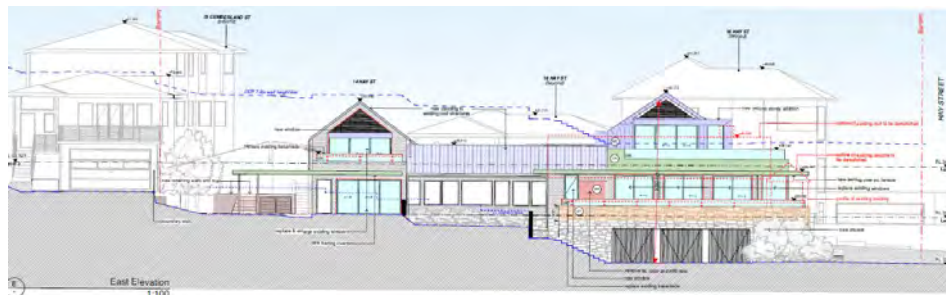


Figure 5 – Extract of East Elevation  
Source: Corben Architects





Figure 6 – Three storey dwellings at 20 and 22 Hay Street  
Source: NBP



Figure 7 – Three storey dwellings at 16 and 18 Hay Street  
Source: NBP





Figure 8 – Three storey dwellings at 10 and 12 Hay Street  
Source: NBP



Figure 9 – Three storey dwelling at 78 Cumberland Avenue  
Source: NBP



Figure 10 – Three storey dwellings at 68 and 70 Cumberland Avenue  
Source: NBP



Figure 11 – Three storey dwelling at 72 Cumberland Avenue  
Source: NBP



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

Comment: The height non-compliance does not result in any adverse visual impacts, particularly noting the context of the site and the scale of surrounding dwellings (as demonstrated in Figures 6-11).

The proposed additions have also been sited to minimise impacts upon views currently enjoyed from neighbouring properties, as follows:

#### 78 Cumberland Avenue

The adjoining dwelling at Cumberland Avenue sits higher than the dwelling at the subject site. Views from the front living room and deck (yellow view line in Figure 12) are unaffected by the proposed additions, with no change to the height or massing of the dwelling in immediate proximity to the common side boundary. Views from the upper floor windows and deck should also be reasonably retained, noting that the upper floor of the dwelling at 78 Cumberland Avenue sits almost an entire floor above the ridge of the new roof proposed. Furthermore, even if the new roof obstructed views towards the ocean in a north-easterly direction (dark blue shaded area in Figure 12), the primary views to Long Reef over the central portion of the site (light blue shaded area in Figure 12) would remain unaffected, with no change to the height and massing of the central portion of the dwelling.

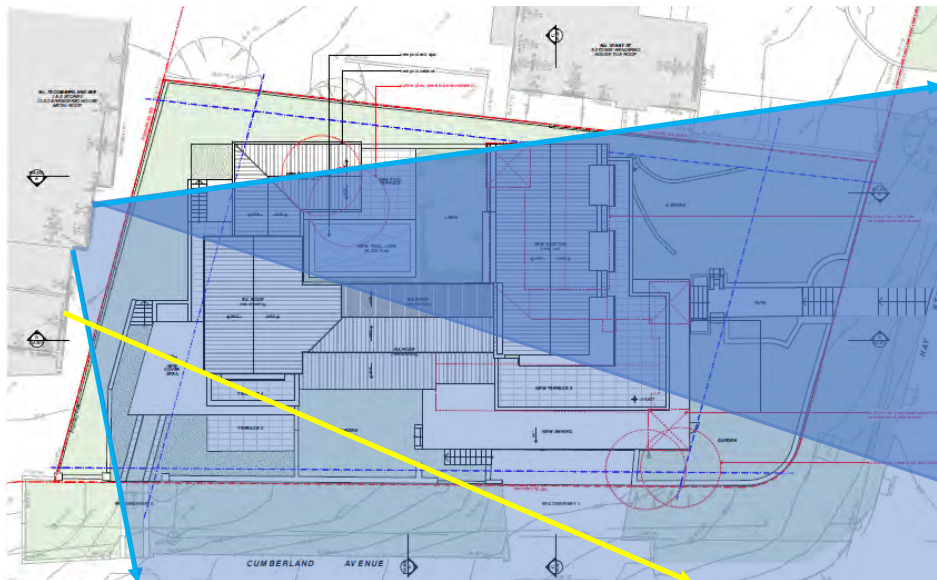


Figure 12 – View corridors from 78 Cumberland Avenue over the subject site  
Source: NBP

#### 16 Hay Street

The upper floor additions are setback from the front façade and the side windows associated with habitable rooms of the dwelling at 16 Hay Street, with no impacts to views currently obtained over the front of the subject site.

Council can also be satisfied that the proposed height non-compliance will not result in any adverse overshadowing impacts, with the shadows cast by the non-compliance element maintained within the subject site or the adjacent road reserve, as demonstrated in the accompanying Shadow Diagrams by Corben Architects.

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

Comment: The proposed development is compatible with the form and scale of surrounding and nearby development and will not be visually offensive in the streetscape context or when seen from Long Reef Headland.

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

Comment: The proposed development is well articulated and is stepped in response to the fall of the land. The height non-compliance occurs away from the leading edge of the development, with no three storey sheer wall/façade presenting to the public domain. The visual impact of the proposed development is appropriately minimised, particularly in light of the height and scale of surrounding development.

As such, strict compliance with the maximum building height development standard is unreasonable and unnecessary in the circumstances of this case.

### *sufficient environmental planning grounds*

---

Clause 4.6(3)(b) of WLEP 2011 requires the applicant to demonstrate that there are sufficient environmental planning grounds to justify contravention of the standard. The specific environmental planning grounds to justify the proposed contravention of the height standard are as follows:

#### **1. Historical excavation**

The height breach occurs where the proposed upper roof form is situated over the excavated garage of the existing dwelling. In accordance with the findings of the NSW LEC in *Merman Investments Pty Ltd v Woollahra Municipal Council* [2021] NSWLEC 1582, the prior excavation of the site within the footprint of the existing building which distorts the height plane can properly be described as an environmental planning ground within the meaning of clause 4.6(3)(b) of WLEP 2011.

#### **2. Superior architectural design & characterisation of development**

Whilst attributing to the height non-compliance, the pitch and form of the roof over the proposed northern upper floor addition have been designed to match that of the existing roof over the southern portion of the dwelling, ensuring that the proposed alterations and additions appropriately integrate with the style and form of the existing dwelling. This design solution achieves a superior architectural and aesthetic outcome that reduces bulk and scale

associated with a boxy form and positively contributes to the streetscape, which would be adversely compromised by a reduced roof pitch or an alternate roof form.

### 3. Minor breach and distribution of floor space

The maximum breach, being 1.816m, is limited to the pitch of the roof and recedes quickly over a maximum width of 5.4m. In consideration of the size of the development, and the portion of the development that sits well below the height limit, the breaching element is reasonably described as minor.

Consistent with the findings of Commissioner Walsh in *Eather v Randwick City Council* [2021] NSWLEC 1075 and Commissioner Grey in *Petrovic v Randwick City Council* [2021] NSWLEC 1242, the particularly small departure from the actual numerical standard and absence of impacts consequential of the departure constitute environmental planning grounds, as it promotes the good design and amenity of the development in accordance with the objects of the EP&A Act.

### 4. Contextual Response

As identified in Figures 4-11, the development is maintained below the height of neighbouring dwellings and the perceived height and scale of the development is entirely consistent and compatible with that of surrounding dwellings, the majority of which reach up to three storeys in height.

As concluded in the matter of *HPG Mosman Projects Pty Ltd v Mosman Municipal Council* [2021], the desired future character of the locality can be evaluated by reference to matters other than the development standards that determine the building envelope for the site, including the existing development that forms the built context of the site. Despite non-compliance with the height plane in one minor portion of the resultant dwelling, the proposal is consistent with the desired future character of the locality, which is characterised by dwellings up to three storeys in height.

Allowing for the development to appropriately respond to the individual context of the site, including the levels of the existing dwelling, promotes good design and amenity of the built environment, and the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants, consistent with objectives (g) and (h) of the EP&A Act.

Furthermore, allowing for a variation to the height plane that is consistent with the height and scale of nearby development promotes the orderly and economic development of the land, consistent with objective (c) of the EP&A Act.

Overall, there are sufficient environmental planning grounds to justify contravention of the maximum height development standard.



### *public interest*

---

Under the provisions of clause 4.6(4)(a) of WLEP 2011, consent must not be granted to a proposal that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the zone in which the development is to be carried out.

As identified above, the proposed development is consistent with the objectives of the building height development standard. Furthermore, the proposal is consistent with the objectives of the R2 Low Density Residential zone, as follows:

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

Comment: The proposed alterations and additions provide for the housing needs of the existing occupants of the dwelling, within the existing low density environment.

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

Comment: Not applicable – The application relates to a dwelling house.

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

Comment: The site retains sufficient landscaped area, with an enhancement of landscaping proposed in the accompanying Landscape Plan by Andrew Pearce Landscape Design. The landscaped character of the resultant development will be entirely commensurate with that of surrounding and nearby sites.

Council can be satisfied that the proposal is in the public's interest, in so far as it is consistent with both the objectives of the zone and the objectives of the maximum height limit.

### *concurrence*

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Pursuant to clause 4.6(4) of WLEP 2011, development consent must not be granted to a development that contravenes a development standard unless the concurrence of the Secretary has been obtained. In accordance with Council's DDP Charter (in response to advice received from the Department of Planning, Industry and Environment, dated 2 November 2021), applications for Class 1 buildings with a variation greater than 10% to the building height development standard within WLEP 2011 may be determined by the DDP.

As such, the Secretary's concurrence can be assumed by the DDP in this instance.

### *conclusion*

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Overall, the consent authority can be satisfied that this written request has adequately addressed all relevant matters and that the provisions of clause 4.6 of WLEP 2011 have been met. As such, there is no jurisdictional impediment to the granting of consent in relation to the proposed breach of the building height development standard.



**Rebecca Englund**

B Arch Studies | M Plan | MPIA

**Director | Northern Beaches Planning**

<b>ITEM 3.2</b>	<b>DA2023/1538 - 75 GRANDVIEW DRIVE NEWPORT - CONSTRUCTION OF A SECONDARY DWELLING</b>
-----------------	--

**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.

**RECOMMENDATION**

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of PLEP 2014 as the applicants 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.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/1538 for construction of a secondary dwelling on land at Lot 1 DP 718681, 75 Grandview Drive NEWPORT, subject to the conditions set out in the Assessment Report.

<b>REPORTING MANAGER</b>	Steve Findlay
<b>TRIM FILE REF</b>	2024/119160
<b>ATTACHMENTS</b>	<b>1</b> <a href="#">↓ Assessment Report</a> <b>2</b> <a href="#">↓ Site Plan and Elevations</a> <b>3</b> <a href="#">↓ Clause 4.6</a>

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1538
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 1 DP 718681, 75 Grandview Drive NEWPORT NSW 2106
Proposed Development:	Construction of a secondary dwelling
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Roberto Miguel Brozky Ofelia Brozky
Applicant:	Roberto Miguel Brozky
Application Lodged:	07/11/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	14/11/2023 to 28/11/2023
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 60%
Recommendation:	Approval
Estimated Cost of Works:	\$ 282,925.00

#### EXECUTIVE SUMMARY

This development application seeks consent for the construction of a secondary dwelling.

The application is referred to the Development Determination Panel (DDP) due to the exceedance of the 5.5m building height limit (which applies to secondary dwellings), in this case a height of 8.8m or 60% departure from the 5.5m standard.

One submission was received during the notification period requesting obscure glazing to be used on the balustrade of the balcony. This submission is addressed within the report.

Critical assessment issues include the building height, which exceeds the 5.5m height limit for secondary dwellings under the Pittwater LEP. The maximum height of the building is 8.8m, or 60% departure from the 5.5m control. This is despite the fact that the secondary dwelling is no more than 1 storey in any place (apart from the connecting internal stair).

The height breach is a direct result of the very steep topography of the land and optimal positioning of the development in order to retain all canopy trees. The site has a number of natural features including significant canopy trees, a natural drainage channel and rock outcrops, as well as generous spatial separation between the adjoining buildings. As such, the chosen location of the secondary dwelling, despite the height breach, is the optimal location for a secondary dwelling on the site in order to avoid impacts to the all native canopy trees, provide generous spatial separation to the adjoining buildings and avoid the natural drainage channel. The slope of the land directly beneath the location of the secondary dwelling is 70% in gradient and directly contributes to the height breach, even when the building is single storey. Furthermore, the construction technique which includes pier and beam footings to minimise site disturbance is preferred to excavating into the land, which may have an increased level of impact to the canopy trees.

As proposed, the location of the secondary dwelling is optimal having regard to the site constraints and the proposal retaining all significant canopy trees on the site. The site also has a slight flood affectation which requires the building to be elevated to allow flood waters to flow beneath the building in the 1% flood event. This also contributes to the extent of height breach and does not allow the building to be excavated into the ground.

This report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions.

#### PROPOSED DEVELOPMENT IN DETAIL

The proposal is for the construction of a secondary dwelling. Specifically, the proposal consists of:

- Construction of a split level secondary dwelling, comprising of 60m<sup>2</sup> of floor area containing two bedrooms (second bedroom marked 'office');
- Associated stormwater drainage;
- Access stairs.

#### 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

Assessment - SEPP (Sustainable Buildings) 2022  
 Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards  
 Pittwater Local Environmental Plan 2014 - 7.2 Earthworks  
 Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection  
 Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards  
 Pittwater 21 Development Control Plan - A4.10 Newport Locality  
 Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements  
 Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan

#### SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 718681 , 75 Grandview Drive NEWPORT NSW 2106
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the south-eastern side of Grandview Drive.</p> <p>The site is irregular in shape with a frontage of 13.76m along Grandview Drive and a depth of 44m. The site has a surveyed area of 938.7m<sup>2</sup>.</p> <p>The site is located within the C4 Environmental Living zone and accommodates a two storey dwelling with a double garage.</p> <p>The site is extremely steep consisting of rock outcrops, a number of high value canopy trees and a informal drainage channel through the centre of the site. Portions of the site have gradients of over 50% and rock outcrops. The area in which the secondary dwelling is situated has fall of 7m across the building footprint or a slope of 77% (7m fall over a building footprint length of 9m).</p> <p>The site is identified in the state government 'Biodiversity Values Map' and contain Pittwater Spotted Gum Trees.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by detached one, two and three storey dwelling houses with some outbuildings. To the east and west are two storey dwellings. To the south is a two storey dwelling.</p>

Map:



#### SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

#### Application History

Additional information was requested in relation to the colour schedule, flooding/overland flow, floor space and the Clause 4.6 Variation request. The applicant responded with additional information to address each of these issues, including a slight reduction of floor area, updated flood information, a dark colour schedule and an updated Clause 4.6 Variation request. As the scope of the proposal was slightly reduced, re-notification was not required in accordance with the Northern Beaches Community Consultation plan.

#### 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	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 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 29</u> of the EP&amp;A Regulation 2021 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 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to stormwater/overland flow, colours and materials secondary dwelling floor space. Information was provided in response to each of these matters which satisfied Council.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 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 62 and/or 64</u> of the EP&amp;A Regulation 2021 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 69</u> of the EP&amp;A Regulation 2021 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>

Section 4.15 Matters for Consideration	Comments
	Clause 69 of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 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

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 application has been publicly exhibited from 14/11/2023 to 28/11/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Withheld	NEWPORT NSW 2106

The following issues were raised in the submissions:

- Request for the balcony balustrade to be frosted glazing to assist with privacy.

The above issues are addressed as follows:

- Request for the balcony balustrade to be frosted glazing to assist with privacy.**

Comment: The Pittwater DCP requires the following with regard to privacy treatment “Private open space areas including swimming pools and living rooms of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout”.

The proposed balcony off the secondary dwelling is setback 10m from the eastern (side) and the southern (rear) boundary. The useable private open space and buildings on the adjoining land are situated further away again. As such, given the spatial separation of the proposal to the boundary, the proposal is not considered to result in unacceptable privacy impacts due to being greater than 9m from adjoining Private Open Space and buildings.

The proposal is also surrounded by established canopy trees which assist in screening views between properties.

As such the proposal is acceptable without frosted balustrades.

#### REFERRALS



Internal Referral Body	Comments
Landscape Officer	<p>The proposal is supported with regard to landscape issues.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan clause C4 zone Environmental Living, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• B4.22 Preservation of Trees and Bushland Vegetation</li> <li>• C1.1 Landscaping</li> <li>• D10 Newport Locality</li> </ul> <p>The site is located in the C4 Environmental Living zone, requiring development to achieve a scale integrated with the landform and landscape, and to minimise impact on the natural environment, including the retention of natural landscape features and existing trees, to satisfy the landscape objectives of the C4 Environmental Living zone.</p> <p>The Arboricultural Impact Assessment (AIA) identified nine trees of which all are proposed to be retained. No concerns would be raised with the removal of tree 9 as it is a weed species. All trees to be retained shall be protected in accordance with the recommendations of the AIA and imposed conditions. The AIA states "<i>To ensure the stability of trees is not disrupted tree root investigations are required to identify the location, distribution and impact on critical roots by footing placement. Management of structural roots should then be provided by an appointed project arborist based on the outcome of the service.</i>". Footing locations and design shall be completed in collaboration with an Arborist to ensure footings within tree protection zones will not impact the viable retention or stability of trees. A Project Arborist shall be engaged to supervise all work in the tree protection zone of trees to be retained.</p> <p>To help satisfy PDCP D10.16 screen planting shall be installed to suitably screen the undercroft areas created by the proposed secondary dwelling.</p>
NECC (Bushland and Biodiversity)	<p>The proposal seeks approval for the construction of a secondary dwelling. The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> <li>• NSW Biodiversity Conservation Act 2016</li> <li>• NSW Biodiversity Conservation Regulation 2017</li> <li>• Pittwater LEP - Clause 7.6 Biodiversity Protection</li> <li>• Pittwater DCP - Clause B4.7 Pittwater Spotted Gum Forest Endangered Ecological Community</li> </ul> <p>Portions of the site are identified on the Department of Planning and Environment's Biodiversity Values Map (BV Map). Under the NSW Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the Biodiversity Offsets Scheme (BOS) and the requirement for a Biodiversity Development Assessment Report (BDAR).</p> <p>However, the submitted plans and documentation indicate that the proposed works will not require the removal of native vegetation or any tree in the BV Mapped areas on the site. A site inspection was conducted to confirm that no impacts would take place. The site inspection revealed that the proposal has attempted to avoid and minimise impacts to biodiversity by considering trees and other environmental features (rock outcrops and easement) to be a constraint. A range of high risk weeds were identified on site and their removal will be conditioned to ensure that remnant understory vegetation in undisturbed areas of the site is maintained.</p> <p>The development is designed, sited and will be managed to avoid any significant adverse environmental impact.</p>
NECC (Development Engineering)	<p>The development is affected by flows from an upstream catchment. An Engineer's Flood Study &amp; Report will be required to certify that the development will not increase flood affection elsewhere, having regard to:</p> <ul style="list-style-type: none"> <li>i) Loss of flood storage. The new dwelling is to be designed suspended to provide flood storage under with sufficient openings to allow floodwaters to enter, store and leave.;</li> <li>ii) Providing pre and post development flood models.</li> <li>iii) Changes in flood levels (maximum 0.005 m), flows, velocities and hazard caused by alteration to flood flows; and</li> <li>iv) Setting floor levels for the new development. Habitable floor levels are to be a minimum of 0.3m above the 1% AEP flood levels. Set all external power points, air conditioning units, hot water systems and pumps for rainwater tanks above the habitable floor level.</li> <li>v) Relocating the rainwater/ on-site detention tank clear of the flow path. Where this is not possible the rainwater tank is to be provided on a suspended support above the flowpath.</li> </ul> <p>Note:</p> <ul style="list-style-type: none"> <li>a) The Flood Study hydrology will be based on the local catchment draining to the site using a simplified DRAINS model. Use ARR2019 methodology with ARR Data Hub parameters and BOM</li> </ul>

Internal Referral Body	Comments
	<p>rainfall data. Use an IL-CL hydrological model. Maximum travel time is 10 minutes.</p> <p>b) Use HEC-RAS 1D model to assess flood levels and velocities. The HEC-RAS section locations are to be clearly shown on the plans, maintaining where possible the same location for the pre and post model sections. Show all obstructions, including those on neighbouring properties, and provide ineffective flow areas for sections close to the obstructions.</p> <p>c) Assume all upstream stormwater pipes are fully blocked. Lidar data can be used for all upstream and downstream properties with survey data to be used for the subject site. Allow for a minimum Mannings n generally of 0.05 for the catchment.</p> <p>d) No active flow is permitted under the buildings, or through garages, including the subject development (secondary dwelling). Consider these as blocked in the model. Consider also the fill ramps required to drive into any new raised garage as a blockage.</p> <p>e) Ensure the site has a maximum provisional hazard of 0.4 for pedestrian access in a 1% AEP event.</p> <p>f) As well as the report, the electronic copy of the flood models are to be provided to Council for assessment.</p> <p><b>Engineering comments 02.02.24</b></p> <p>A Flood Study and report for the proposed development has been submitted. I have no objections to the proposed development subject to the inclusion of the recommended engineering conditions of consent.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Aboriginal Heritage Office	<p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

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

All, Environmental Planning Instruments (SEPPs 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 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 (Transport and Infrastructure) 2021

##### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

##### Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this

report.

**SEPP (Resilience and Hazards) 2021**

**Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

**Pittwater Local Environmental Plan 2014**

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	5.5m	8.8m (max)	60%	No
Secondary Dwelling - GFA	60m <sup>2</sup>	60m <sup>2</sup>	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.10 Essential services	Yes

Detailed Assessment

**4.6 Exceptions to development standards**

The application seeks consent to vary a development standard as follows:

**Development Standard:** Clause 4.3(2FA) - Height of Secondary Dwelling

**Requirement:** 5.5m for secondary dwelling

**Proposed:** 8.8m

**Percentage of variation:** 60%

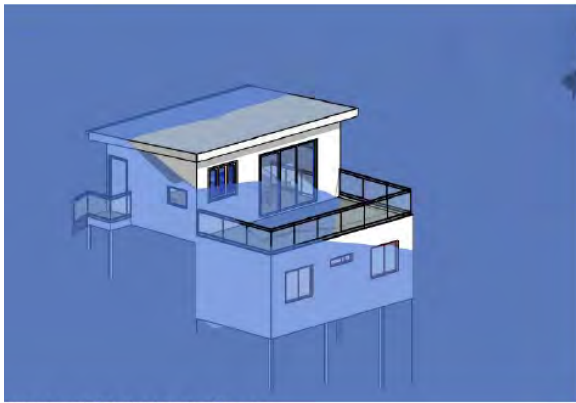
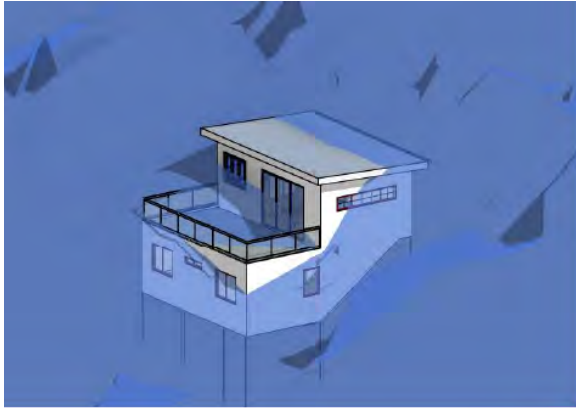
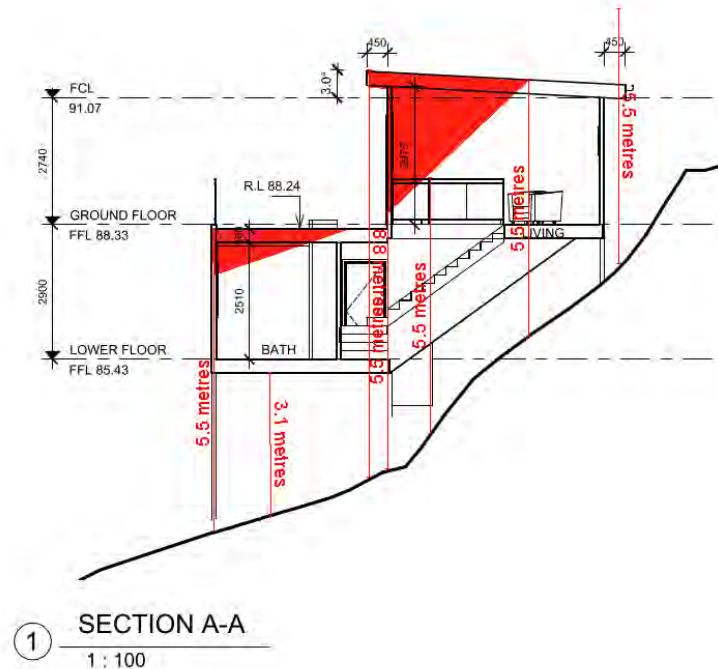


Image 1 and 2: 5.5m height on the 3D model.



With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the PLEP 2014 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

(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.

Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

(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(2FA) is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3(2FA) is unreasonable or unnecessary in the circumstances of this application for the following reasons:

- The applicant has demonstrated within the Clause 4.6 written request that compliance is unreasonable and unnecessary because the objectives of the development standard have been met, notwithstanding the non-compliance. The written request provides a thorough analysis of the proposal against the objectives of the control as included within pages 4 to 6 of the written request. This approach is confirmed in *Wehbe v Pittwater Council* whereby demonstrating compliance with the underlying objectives of the standard is an acceptable approach in showing that compliance is 'unreasonable or unnecessary'.

Whilst Council is satisfied the applicant's request has demonstrated this, for completeness, an assessment of the proposal against the objectives of the standard is carried out below:

(a) *to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,*

Comment: The proposal presents as split level dwelling which is consistent with the surrounding buildings which are situated on steeply sloping sites. The proposal is situated on pier and beam footings which is consistent with a 'light weight' approach to development on steeply sloping sites. As discussed later in this report, an assessment is undertaken against the Newport Desired Future Character statement and the proposal is consistent with the DFC, despite the numerical height breach. Refer to that assessment later in this report.

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

Comment: The surrounding buildings are generally 2 stories and up to the 8.5m height limit which is applicable for dwelling houses. Because the structure is a secondary dwelling, it requires a height limit of 5.5m. However, when compared to the surrounding buildings the proposal remains compatible as it gives the appearance of a split level dwelling situated beneath the tree canopy level. The proposal will read as a single storey building stepping down the slope which is consistent with the surrounds.

(c) *to minimise any overshadowing of neighbouring properties,*

Comment: The adjoining properties will maintain high levels of solar access. The breaching portion of the development does not directly contribute to the overshadowing of the private open space of the adjoining property.

(d) *to allow for the reasonable sharing of views,*

Comment: The location of the dwelling means that view sharing is maintained for surrounding properties.

(e) *to encourage buildings that are designed to respond sensitively to the natural topography,*

Comment: The proposal steps with the slope of the land to respond to the topography and to mitigate bulk and scale, whilst responding to the level change. The proposal requires minimal excavation and respects that natural site features including rock outcrops by minimising excavation. The site has a number of natural features including significant canopy trees, a natural drainage channel and rock outcrops, as well as respecting the existing spatial separation between the adjoining buildings. As such, the chosen location of the secondary dwelling, despite the height breach, is the optimal location for a secondary dwelling on the site with regards to avoiding impacts to the natural site features. The proposal does not require any tree removal or impact to any significant understory planting. The slope of the land directly contributes to the height breach (70% slope over the building footprint).

(f) *to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.*

Comment: The proposal includes generous setbacks, a dark materials and colour schedule and maintains all significant canopy trees to appropriately respond to the natural environment and minimise visual impacts upon surrounding properties and from a distance.

Council is satisfied that the proposal meets the objectives of the development standard, notwithstanding the numerical non-compliance.

(b) *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.'*

The Clause 4.6 Request argues, in part:

- *The variation in height is a direct result of the topography and characterisation of the development as a secondary dwelling. The proposed secondary dwelling and associated roof form have been designed to respond to the topography of the site and existing built form by recessing the levels as far as practicable.*
- *The variation is in part cause by an environment constraint, being the flood affectation of the site. This requires a minimum of 300mm above the natural ground level with no excavation. We respectfully submit that the flood affectation is an environmental constraint and a flood management report has been prepared and submitted along with the application.*
- *The proposal provides for an appropriate scale and form that reflects the desired future character for development in the area, commensurate to the large land area. The proposal will be generally hidden from the public domain as a result of the allotment*

characteristics and the significant canopy trees. However, where visible, will provide a high quality two storey dwelling which is consistent with the character of the locality. Importantly, it should be noted that the secondary dwelling is located to have access from the existing pathway and the more we push the secondary dwelling towards the eastern boundary, the more breach in height will occur. Hence, if the dwelling is visible from the beach, it will be perceived as a compatible, stepped residential dwelling that responds to the topography of the locality and has incorporated high quality elements to significantly improve the existing dwelling.

- The extent of the non-compliance creates no additional adverse overshadowing to adjoining properties which will create any adverse impacts. Specifically, the proposed development will retain solar access to the adjoining dwellings considering that shadows already exist from the excessive trees located on the subject site. As such, the overshadowing impact created by the non-compliant elements are insignificant or nil.
- The height breach does not result in any additional privacy impacts. Therefore, the height variation will have no greater impact on the privacy of adjoining properties.
- The proposed development will not result in any unreasonable loss of views or outlook when compared to a building with a compliant height. As discussed in this Statement, the non-compliant building height will not result in significant or unreasonable loss of primary views from the neighbouring properties.
- The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:
  - a) The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for residential uses (1.3(c))
  - b) The proposed developed promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).
- The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum building height control.
- It is considered that these environmental planning grounds are particular to the circumstances of the site and support the proposed variation to the maximum building height standard. The proposal promotes good design and amenity and as such there is no planning purpose in strictly upholding the development standard. It is a better planning outcome to permit a variation to Clause 4.3 in this instance.

#### Assessment Officers Comments on Environmental Planning Grounds

It is agreed that the steep topography of the land contribution to the height breach is an environmental planning ground. The site has a number of natural features including significant canopy trees, a natural drainage channel and rock outcrops, as well as respecting the existing spatial separation between the adjoining buildings. As such, the chosen location of the secondary dwelling, despite the height breach, is the optimal location for a secondary dwelling on the site with regards to avoiding impacts to the natural site features (including the drainage channel and significant trees). The slope of the land directly beneath the location of the secondary dwelling is 70% in gradient and directly contributes to the height breach, even when having a building that is single storey. Furthermore, the construction technique to include pier and beam footings to minimise site disturbance is considered favorable to excavating into the land form in order to lower the height. As such, the location of the secondary dwelling is optimal having regard to the site constraints and the proposal will retain all significant canopy trees which is considered an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

It is also noted that the PLEP allows a variation to dwelling houses when the slope of the land is in excess of 30%. No such exemption exists for secondary dwellings, however, a similar logic would apply to this development due to the 70% slope of land.

The site also has a slight flood affectation which requires the building to be elevated to allow flood waters to flow beneath the building in the 1% flood event. This also contributes to the extent of height breach and does not allow the building to be excavated into the ground.

Council is satisfied that sufficient environmental planning ground have been established to warrant the height breach.

#### **Public Interest:**

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

#### **Conclusion:**

Council is satisfied as to the matters set out in Clause 4.6 of the PLEP 2014.

It is considered on balance, that having regard to the particular circumstances due to the extremely steep topography of the land (70% gradient) and fact that the proposal has been designed to retain all significant canopy trees and respect the natural site features to result in a building that is sympathetic to the natural and building environment, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

#### **7.2 Earthworks**

The objective of Clause 7.2 - 'Earthworks' requires development to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

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

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

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



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

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

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

Comment: The proposal involves minimal excavation for footings only. Any excavated material to be processed as per the waste management plan.

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

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

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

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

*(f) the likelihood of disturbing relics*

Comment: The development was referred to the Aboriginal Heritage Office who provided comments and conditions that have been included in the consent.

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

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

*(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

*(i) the proximity to and potential for adverse impacts on any heritage item, archaeological site or heritage conservation area.*

Comment: The site is not a heritage item, in the vicinity of a heritage item or in a conservation area or archaeological site.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of PLEP 2014, Pittwater 21 DCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## 7.6 Biodiversity protection

Before determining a development application for development on land to which this clause applies, this clause requires the consent authority to consider:

*(a) whether the development is likely to have:*

- (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
- (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
- (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
- (iv) any adverse impact on the habitat elements providing connectivity on the land, and*

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development will not have any adverse impact on the condition, ecological value and significance of the fauna and flora on the land; the importance of the vegetation on the land to the habitat and survival of native fauna; or the habitat elements providing connectivity on the land. Council is also satisfied that the development will not unreasonably fragment, disturb, or diminish the biodiversity structure, function, or composition of the land.

*(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

The development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the proposal includes appropriate measures to avoid, minimise, or mitigate the impacts of the development.

Before granting development consent, this clause also requires the consent authority to be satisfied that:

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—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 development has been assessed by Council's Biodiversity Team, who raised no objections to approval. Therefore, Council can be satisfied that the development is designed, sited and will be managed to any significant adverse environmental impact.

**7.7 Geotechnical hazards**

Under Clause 7.7 Geotechnical Hazards, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account all geotechnical risks:

- (a) site layout, including access,
- (b) the development's design and construction methods,
- (c) the amount of cut and fill that will be required for the development,
- (d) waste water management, stormwater and drainage across the land,
- (e) the geotechnical constraints of the site,
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Comment:

The proposed development is supported by a geotechnical risk assessment, architectural plans, an excavation plan, and stormwater management plans that demonstrate all geotechnical risks have been taken into account. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

Development consent must not be granted to development on land to which this clause applies unless:

- (a) the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and

Comment:

The proposed development is supported by a geotechnical risk assessment and stormwater management plans that demonstrate waste water, stormwater and drainage are suitably managed on site. The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent.

- (b) the consent authority is satisfied that:

- (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development, or
- (ii) if that risk or impact cannot be reasonably avoided - the development is designed, sited and will be managed to minimise that risk or impact, or
- (iii) if that risk or impact cannot be minimised - the development will be managed to mitigate that risk or impact.

Comment:

The application has been reviewed by Council's Development Engineer, who is supportive of the proposal, subject to conditions of consent. As such, Council can be satisfied that the proposed development has been designed, sited, and will be managed to avoid any geotechnical risk and significant adverse impact on the development and the land surrounding the development.

**Pittwater 21 Development Control Plan**

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	22m	N/A	Yes
Rear building line	6.5m	10.4m - 13.6m	N/A	Yes
Side building line	2.5m	3.5m	N/A	Yes
	1m	10.3m	N/A	Yes
Building envelope	3.5m	Within	N/A	Yes
	3.5m	Within	N/A	Yes
Landscaped area	60%	77%	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5.15 Stormwater	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.11 Secondary Dwellings and Rural Worker's Dwellings	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	Yes	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	Yes	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D10.15 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes

#### Detailed Assessment

#### **A4.10 Newport Locality**

The relevant parts of the Newport Desired Future Character are as follows:

*"The Newport locality will remain primarily a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape. Secondary Dwellings can be established in conjunction with another dwelling to encourage additional opportunities for more compact and affordable housing with minimal environmental impact in appropriate locations.*

*Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport.*

*Future development will maintain a building height limit below the tree canopy and minimise bulk and scale. Existing and new native vegetation, including canopy trees, will be integrated with the development. Contemporary buildings will utilise facade modulation and/or incorporate shade elements, such as pergolas, verandahs and the like. Building colours and materials will harmonise with the natural environment. Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance. Development will be designed to be safe from hazards.*

*A balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land. As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors."*

The proposal has responded to the desired future character in the following ways:

- The building does not exceed two stories, in fact it is only 1 storey with the connecting stair being the only connecting element;
- The building will be situated well below the canopy level and will integrate into the landform and landscape when viewed from a short or long distance;
- The DFC specifically mentions secondary dwelling as providing for compact and affordable housing. The fact the proposal does not require any tree removal and no excavation (apart from footings) means it has minimal environmental impact, consistent with the DFC.
- Although the 5.5m height is exceeded, the dwelling has minimised bulk and scale by stepping down the site and being single storey at any point.
- The colours and materials chosen are dark and recessive tones to blend into the environment.

- The tree canopy is retained in full with no tree removal. The secondary dwelling has been sited in the location on the site that is best suited to achieve this, despite the height breach.

Overall, the proposal is an appropriate response to the DFC as stated within the Pittwater DCP and upon viewing the site and surrounding properties.

### **B6.3 Off-Street Vehicle Parking Requirements**

The DCP sets out the following in terms of parking for a secondary dwelling:

*"For a Secondary Dwelling a minimum of 1 space is required in addition to existing requirement for the principal dwelling (based on number of bedrooms in principal dwelling)".*

The existing dwelling has two (2) parking spaces within the garage. A further two (2) spaces are 'informally' available on the driveway in front of the garage.

Including the dwelling and proposed secondary dwelling, 3 spaces are required to comply with the DCP.

The DCP makes the following variation for secondary dwelling:

*"A reduction in the car parking requirements for a secondary dwelling or dual occupancy to a minimum of 2 spaces per allotment may be considered on merit."*

The site provides two (2) formal parking spaces within the allotment boundary (within the garage), with two (2) further informal spaces in front of the garage on the driveway. Although the proposal does not provide a third additional space within the site boundary, the proposal is supported on merit as the site would be unable to provide further parking without having to demolish the existing garage (which is attached to the house) or expend the width of the parking area which would require the removal of a significant tree. Either of these solutions are considered onerous to cater for a secondary dwelling which if located in a standard residential zone, would not require any parking in accordance with State legislation.

The reality is, that vehicles appear to be parked in front of the garage which provides the necessary additional spaces (albeit within the road reserve), however this does not compromise the use of the footpath, as shown in the below site photo:



The proposal is accepted based on the fact two (2) formal parking spaces are available within the garage (within the lot boundary). Any use of the parking spaces within the road reserve is a compliance matter. However, a review of the surrounding properties reveal that it is not uncommon for cars to be parked within the part of the driveway which also occupies the road reserve given the difficult topography of the area.

### **B8.6 Construction and Demolition - Traffic Management Plan**

Given the nature of Grandview Drive that has limited on-street parking and verge available, a condition has been recommended for a

'Construction Traffic Management Plan' to be prepared, prior to the issue of any construction certificate. This is to ensure reasonable amenity and safety of the public road is maintained during construction.

#### **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 2022**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$2,829 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$282,925.

#### **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 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater 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 the Applicant's written request under Clause 4.6 of the Pittwater Local Environment Plan 2014 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

#### **PLANNING CONCLUSION**

This proposal, for a secondary dwelling has been referred to the Development Determination Panel (DDP) due to the exceedance of the building height development standard for a secondary dwelling under the PLEP 2014. In this case, the variation is 60%.

The concerns raised in the objections have been addressed within the report and the proposal is not considered to have an unreasonable impact in terms of privacy given the spatial separation to the boundary exceeds 10m.

The critical assessment issues include the height breach, envelope breach and landscape area which have all been addressed in detail within this report.

The Clause 4.6 variation is considered to be well-founded and is supported.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment.

The proposal has therefore been recommended for approval.

#### **REASON FOR DETERMINATION**

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

#### RECOMMENDATION

That Northern Beaches Council, as the consent authority, vary the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the Pittwater Local Environmental Plan 2014 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2023/1538 for Construction of a secondary dwelling on land at Lot 1 DP 718681, 75 Grandview Drive, NEWPORT, subject to the conditions printed below:

#### Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

#### GENERAL CONDITIONS

##### 1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
Sheet 1	E	Site and Roof Plan	RK Designs	12/12/2023
Sheet 2	E	Lower Floor Plan	RK Designs	12/12/2023
Sheet 3	E	Ground Floor Plan	RK Design	12/12/2023
Sheet 4	E	Elevations	RK Design	12/12/2023
Sheet 5	E	Sections	RK Design	12/12/2023
-	-	External Material and Colour Schedule	RK Design	22/01/2024
STW001	C	Title Page	Modular Engineers	04/10/2023
STW002	C	Stormwater Floor Plans	Modular Engineers	04/10/2023
STW003	C	Stormwater Floor Plans	Modular Engineers	04/10/2023
STW004	C	Stormwater Details	Modular Engineers	04/10/2023
STW005	C	Stormwater Details 2	Modular Engineers	04/10/2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Flood Study P3129-01	A	Copa Consulting	20/01/2024
Waste Management Plan Ref 22-109	-	RK Designs	19/09/2023
Arboricultural Impact Assessment Report Ref No 8723	-	Rain Tree Consulting	12/08/2023
Geotechnical Report No J5104	-	White Geotechnical Report	01/09/2023
BASIX Certificate No 1414910S	-	RKDesigns	13/09/2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	05/12/2023

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's

website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

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

**3. Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifier 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 Certifier 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 Certifier 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 an 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 following is required:

- i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% 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.
- ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
- iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following:
 

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

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

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

#### **FEES / CHARGES / CONTRIBUTIONS**

##### **5. Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$2,829.25 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 (as amended).

The monetary contribution is based on a development cost of \$282,925.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).



Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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 Certifier 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.

**BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

**7. Footing Design Near Trees to be Retained**

a) footing structural layout plans for the secondary dwelling works shall be developed in co-ordination with an Arborist with AQF minimum Level 5 qualifications in arboriculture, and a qualified Structural Engineer, following a non-destructive tree root investigation, complying with clause 3.3.4 of AS 4970-2009 Protection of trees on development sites, near existing tree(s) 5, 6, 7, and 8 (or any other tree identified by the Arborist), to locate critical tree roots and recommend footing design and locations for the construction works.

b) the Arborist shall review, comment, recommend design revision as required and approve the footing layout, to ensure the locations of footings will be manageable in terms of tree protection measures.

c) the Arborist shall submit certification to the Certifier, that the locations of the footings are accepted.

d) the agreed footing structural layout plans shall be submitted to the Certifier for approval prior to the issue of a Construction Certificate.

Reason: Tree protection.

**8. No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation.

**9. On-Site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Modular Engineers, project number STW158-2023, dated 12.09.2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

**10. Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG), indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to an existing channel.

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

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

**11. Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 01.09.2023 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **Flood Study Recommendations have been incorporated into the design**

The recommendations of the Flood Study by Copa Consulting dated 20.01.2023 are to be incorporated into the design. A minimum of 150mm clearance from the underside of dwelling to existing ground level is to be provided. The proposed development shall not block, interfere with or divert overland flows.

Reason: Protection of development and adjoining dwellings

13. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

14. **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 Certifier prior to the issue of the Construction Certificate.

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

15. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) 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 Certifier 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.

16. **Construction Traffic Management Plan**

A Construction Traffic Management Plan (CTMP) and report shall be prepared by a Transport for NSW accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

The CTMP must address following:

- (a) The proposed phases of construction works on the site, and the expected duration of each construction phase.
- (b) The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
- (c) Make provision for all construction materials to be stored on site, at all times.
- (d) The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- (e) The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed.
- (f) Where access is required across private property not in the direct ownership of the proponent, such as a private road/driveway, community title road or right of way, the CTMP is to include:
  - (i) Evidence of the legal right and terms to use the access route or provide owners consent from the owners/strata/community association.
  - (ii) Demonstrate that direct access from a public space/road is not viable for each stage of works.
  - (iii) An assessment to be carried out of the physical constraints of the Right of Carriageway to determine the maximum size of vehicle that may access the site via the Right of Carriageway during construction.
  - (iv) Unless owner/strata/community associations consent is obtained, vehicles are not to exceed 24 tonnes or 7.5 metres in length (an assessment must be undertaken that the surface is capable of supporting up to 24 tonnes, otherwise the weight limit should be reduced in the CTMP). If consent is obtained, a copy must be included in the CTMP.
  - (v) No construction vehicles, materials or plant are to be located or parked in the private road/driveway, community title road or right of way.

- (vi) How any disruption to other users of the private road/driveway, community title road or right of way will be minimised and all users kept informed of likely disruption where the access will be closed or blocked for any given time.
- (vii) If trees are located within or overhang the access route, a tree protection plan prepared by an Arborist with minimum AQF Level 5 in arboriculture demonstrating how any trees within the Right of Carriageway will be protected from damage by construction vehicles. Should any tree protection measures be required on private land in accordance with AS4970-2009 Protection of trees on development sites, owner's consent must be obtained.
- (viii) A Dilapidation report, including photographic surveys, of the private road/driveway/right of way must be included prior to any works commencing on the site. The report must detail the physical condition of the private road/driveway/right of way, and any other adjacent private property assets (including trees) or adjacent public property that may be adversely affected by vehicles servicing the development site to undertake works or activity during site works.
- (ix) A requirement for Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, to be submitted after the completion of works and prior to the Occupation certificate. The report must:
  - (i) Compare the post-construction report with the pre-construction report,
  - (ii) Clearly identify any recent damage or change to the private road/driveway/right of way and whether or not it is likely to be the result of the development works,
  - (iii) Should any damage have occurred, identify remediation actions taken.
  - (iv) Be submitted to Council with the Occupation Certificate.
- (g) The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site.
- (h) Make provision for parking onsite. All Staff and Contractors are to use any basement parking once available.
- (i) Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- (j) Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety.
- (k) The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- (l) Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- (m) Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- (n) The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site.
- (o) Specify that the public roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- (p) The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an appropriately qualified and practising Structural Engineer, or equivalent.
- (q) Proposed protection for Council and adjoining properties.
- (r) The location and operation of any on site crane.

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – "Manual of Uniform Traffic Control Devices", RMS' Manual – "Traffic Control at Work Sites".

All fees and charges associated with the review of this plan is to be in accordance with Council's Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

A copy of the approved CTMP must be kept on-site at all times while work is being carried out.

The development is to be undertaken in accordance with the Construction Traffic Management Plan approved by Northern Beaches Council Traffic Team.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems.

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

##### 17. Project Arborist

a) a Project Arborist with minimum AQF Level 5 in arboriculture shall be engaged prior to any commencement of works on site to provide tree protection measures in accordance with AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

b) the Project Arborist shall be in attendance and supervise all works as nominated in the Arboricultural Impact Assessment, and in particular:

i) tree protection measures and works under section Conclusions & Recommendations, and General Tree Protection Requirements.

c) All tree protection measures specified must:

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

d) the Project Arborist shall provide certification to the Certifier that all tree protection measures under AS 4970-2009 have been satisfied, and the recommendations listed for the protection of the existing tree(s) have been carried out satisfactorily to ensure no impact to the health of the tree(s). Photographic documentation of the condition of all trees to be retained shall be recorded, including at commencement, during the works and at completion.

Note: any potential impact to trees as assessed by the Project Arborist will require redesign of any approved component to ensure existing trees upon the subject site and adjoining properties are preserved and shall be the subject of a modification application where applicable.

Reason: Tree protection.

#### DURING BUILDING WORK

**18. Protection of Rock and Sites of Significance**

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

b) should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

**19. Tree and Vegetation Protection**

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

- i) all trees within the site not approved for removal, including trees and vegetation nominated for retention on the approved Plans,
- ii) all trees and vegetation located on adjoining properties,
- iii) all trees and vegetation within the road reserve.

b) tree protection shall be undertaken as follows:

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

c) the Principal Certifier must ensure that:

- i) If activated, the arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as complaint to AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

**20. Condition of Trees**

a) during the construction period the applicant is responsible for ensuring all existing trees required to be retained are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to, or by seeking arboricultural advice from an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture during the works. In this regard all protected trees shall not exhibit:

- i) a general decline in health and vigour,
- ii) damaged, crushed or dying roots due to poor pruning techniques,
- iii) more than 10% loss or dieback of roots, branches and foliage,
- iv) mechanical damage or bruising of bark and timber of roots, trunk and branches,

- v) yellowing of foliage or a thinning of the canopy untypical of its species,
  - vi) an increase in the amount of deadwood not associated with normal growth,
  - vii) an increase in kino or gum exudation,
  - viii) inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition,
  - ix) branch drop, torn branches and stripped bark not associated with natural climatic conditions.
- b) any mitigating measures and recommendations required by the Arborist/Project Arborist are to be implemented.
- c) the owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of trees.

21. **Wildlife Protection**  
If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.  
  
Reason: To protect native wildlife.
22. **Protection of Habitat Features**  
All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.  
  
Reason: To protect wildlife habitat.
23. **Geotechnical Requirements**  
All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.  
  
Reason: To ensure geotechnical risk is mitigated appropriately.
24. **Survey Certificate**  
A survey certificate prepared by a Registered Surveyor at the following stages of construction:  
  
(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.  
  
(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.  
  
(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.  
  
Details demonstrating compliance are to be submitted to the Principal Certifier.  
  
Reason: To determine the height of buildings under construction comply with levels shown on approved plans.
25. **Waste Management During Development**  
The reuse, recycling or disposal of waste during works must be done generally in accordance with the Waste Management Plan for this development.  
  
Details demonstrating compliance must be submitted to the Principal Certifier.  
  
Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.
26. **Property Boundary Levels**  
The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.  
  
Details demonstrating compliance are to be submitted to the Principal Certifier.  
  
Reason: To maintain the existing stormwater regime.
27. **No Site filling permitted**  
Site filling is not permitted.  
  
Reason: To ensure protection of adjacent properties from stormwater ingress
28. **Aboriginal Heritage**  
If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Planning and Environment.  
  
Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the Department of Planning and Environment.

Reason: Aboriginal Heritage Protection.

**BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**

**29. Required Screen Planting**

a) screen planting along the east, north and south elevations shall be planted in accordance with the following:  
i) the selected planting is to comprise of species capable of attaining a mature height to at least 1 metre below the appropriate FFL of the secondary dwelling, so that the undercroft areas are suitably screened,  
ii) plants are to be installed at minimum 1 metre intervals (or less) and be of a minimum container size of 200mm at planting in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch.

b) details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of any Occupation Certificate.

Reason: To maintain environmental amenity.

**30. Condition of Retained Vegetation**

a) prior to the issue of an Occupation Certificate, a report prepared by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall be submitted to the Principal Certifier, assessing the health and impact on all existing trees required to be retained on the approved Plans or as listed in the Arboricultural Impact Assessment, including the following information:  
i) compliance to any Arborist recommendations for tree protection generally and during excavation works,  
ii) extent of damage sustained by vegetation as a result of the construction works,  
iii) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

**31. Native Landscaping**

Any new landscaping is to incorporate a minimum 80% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the Pittwater Spotted Gum Forest Endangered Ecological Community.

Details demonstrating compliance are to be provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To ensure compliance with the requirement to retain and protect native planting on the site.

**32. No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

**33. Priority Weed Removal and Management**

All Priority weeds (as specified in the Northern Beaches Local Weed Management Plan) within the development footprint are to be removed using an appropriate control method.

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

Reason: To reduce the risk of site works contributing to spread of Priority weeds.

**34. 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 Certifier prior to the issue of an Occupation Certificate.

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

**35. Waste Management Confirmation**

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

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

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

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

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

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

37. **Geotechnical Certification Prior to Occupation Certificate**

The Applicant is to submit the completed Form 3 of the Geotechnical Risk Management Policy (Appendix 5 of P21 DCP) to the Principal Certifier prior to issue of the Occupation Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

38. **Minimum habitable levels and building clearance**

Minimum habitable floor levels and minimum clearance above ground level have been achieved in accordance with the recommendations of the Flood Study by Copa Consulting dated 20.01.2023. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Protection from stormwater ingress

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

39. **Landscape Maintenance**

a) if any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components.

b) shrubs required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

c) if any shrub required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with any conditions of consent.

d) the approved landscape planted areas, whether containing lawn, gardens or planters shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.

40. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation, soil and/or watercourses, are to remain undisturbed except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

41. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.





Architectural elevation drawing of a building facade. The drawing shows a ground floor with a central window and a side entrance. Dimensions are provided: a central window of 3010mm width and 1500mm height, and a side entrance of 1600mm width. The ground floor level (GFL) is marked at 88.33, and the finished floor level (FCL) is marked at 91.07. The total height of the building is 2740mm. The drawing includes a dashed line for the ground level and a solid line for the building's profile.

**GENERAL NOTES**

- . All dimensions are to be confirmed on site by the builder/subcontractor, any incongruencies must be reported to the Designer before commencement of any work.
- . No Survey has been made on the boundaries, all bearings, distances and areas have been taken from the contour survey plan. A Survey must be carried out to confirm the exact boundary locations.
- . No construction work shall commence until a site survey confirming the site boundaries has been completed. The contractor is to ensure that the boundary setbacks are confirmed and used, the boundary setbacks take precedence over all other dimensions. The Survey work must be performed by a registered Surveyor.
- . In the event of encountering any discrepancies on these drawings, specification or subsequent instructions issued, the Builder/Subcontractor shall contact the designer before proceeding further with any work.
- . All construction, control joints and expansion joints in the wall, floors, other locations shall be in strict accordance with the Structural Engineering details. No joints or breaks other than specified, are allowed without written permission from the Engineer.
- . Measurements for the fabrication of secondary components such as, windows, doors, internal frames, structural steel components and the like, are not to be taken from these documents. Measurements must be taken on site to suit the work as constructed.
- . All structural components shall be in strict accordance to details and specifications as prepared by a structural engineer.
- . All existing structures need to be examined for structural adequacy, and it is the Contractor's responsibility to ensure that a certificate of structural adequacy is available prior to the start of any work.

drawn	date	issue	description
LS	28/11/22	A	ISSUE FOR DA
EU	16/03/23	B	ISSUE FOR DA
EU	20/03/23	C	ISSUE FOR DA
EU	21/04/23	D	ISSUE FOR DA


Architectural section drawing of a building. The drawing shows a cross-section with a sloped roof on the left and a vertical wall on the right. Key dimensions and features include:

- Roof Slope:** Indicated as  $3.0^\circ$ .
- Ground Floor (FFL 88.33):** Contains a window with a width of 1200 and a height of 700. A door is located to the left of the window. A horizontal dimension of 450 is shown on either side of the window.
- Lower Floor (FFL 85.43):** Located 2900 units below the ground floor level.
- Overall Height:** The total height from the Lower Floor level to the Finished Ceiling Level (FCL) is 2740 units.
- Height Limit:** A label "5.5M HEIGHT LIMIT" is present near the roofline.
- Level Markers:**
  - FCL (Finished Ceiling Level) at 91.07
  - GROUND FLOOR (FFL 88.33)
  - LOWER FLOOR (FFL 85.43)

project  
PROPOSED CONSTRUCTION OF A GRANNY FLAT AT 75  
GRANDVIEW DRIVE, NEWPORT 2106 LOT 1 DP 718681.

client  
ROBERT BRONSKY

true north





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spaces designed for life

true north	drawing					
	ELEVATIONS					
	project no	date	sheet no.	scale @ A3	issue	checked
	22-109	28/11/23	4	1 : 100	D	2



**RK**  
DESIGNS

**Clause 4.6 Variation – Height of Buildings  
Pittwater Local Environmental Plan 2011**

**PROJECT  
CONSTRUCTION OF  
A SECONDARY DWELLING**

**PROPERTY  
75 GRANDVIEW DRIVE, NEWPORT**

**CLIENT  
ROBERT BRONSKY**

**JOB NO  
22-109**

**DATED  
18 January 2024**

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02 9633 4797





## REQUEST FOR A VARIATION TO DEVELOPMENT STANDARDS UNDER CLAUSE 4.6 PITTWATER COUNCIL LEP 2014

**APPLICANT NAME:** Robert Bronsky

**PROPERTY ADDRESS:** 75 Grandview Drive, Newport

**PROPOSED DEVELOPMENT:** Proposed construction of a secondary dwelling

**DATE:** 18 January 2024

**DEVELOPEMNT STANDARD:** Clause 4.3 of PLEP 2014 Height of Building  
We are seeking approval to vary Clause 4.3 Height of Buildings development standard of Pittwater Council Local Environmental Plan 2014.

### **1.0 INTRODUCTION**

This written request is made pursuant to the provisions of Clause 4.6 of Pittwater Local Environmental Plan 2014. In this regard, it is requested that Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Pittwater Local Environmental Plan 2014 (PLEP 2014).

### **2.0 BACKGROUND**

Clause 4.3 restricts the height of a building in this locality to a maximum of 5.5m for the secondary dwelling. This control is considered to be a development standard as defined by Section 1.4 of the Environmental Planning and Assessment Act.

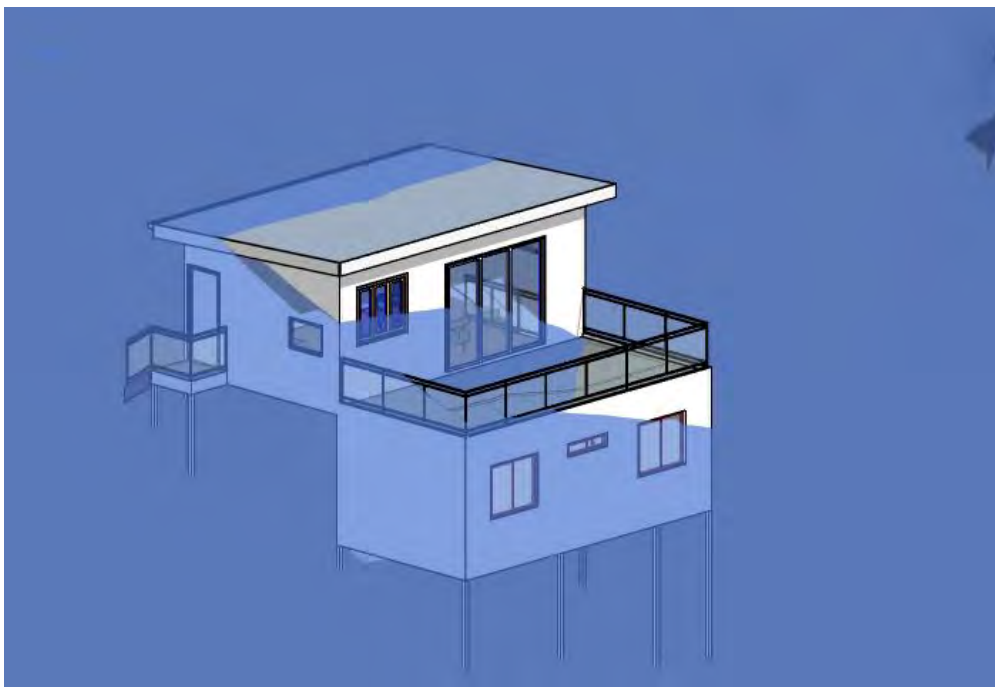
The definition of “development standard” in clause 1.4 of the EP&A Act mean standards fixed in respect of an aspect of a development and includes:

*“(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,”*

The proposed secondary dwelling, which as a result of the slope of the site will provide a height of up to 8.8m above natural ground level and which exceeds Council’s maximum building height.

From an analysis of the architectural plans and available survey information, and as indicated on the 3D height plane at Figure 1 and 2. We confirm that the development results in a building height breach of a maximum of 3m on the north end of the structure/roof and 1.5m on the south end of the structure/roof.

The height of the development is contextually appropriate and will not be perceived as inappropriate or jarring in its context.



*Image 1 and 2: 5.5m height on the 3D model.*

18 January 2024

Page 2

spaces designed for life



### **3.0 MATTERS REQUIRED TO BE DEMONSTRATED UNDER CLAUSE 4.6(3) OF THE LEP**

#### **1. Compliance with the development standard is unreasonable or unnecessary in this particular case**

Pursuant to Clause 4.6(3)(a) of the LEP, the variation to the height of buildings development standard is acceptable in the circumstances of this case and compliance with the development standard is considered unreasonable and unnecessary because the proposed work to the dwelling house are consistent with the *objectives of the C4 – Environmental Living zone* and the development meets the *objectives of the height of buildings standard*, notwithstanding non-compliance with the standard.

#### **Objectives of the C4 – Environmental Living Zone**

- To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.
- To ensure that residential development does not have an adverse effect on those values.
- To provide for residential development of a low density and scale integrated with the landform and landscape.
- To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.

The proposed structure meets the relevant objectives of the zone regardless that the development results in a variation to the building height development standard based on the following assessment:

- The proposal is a low impact development and does not have any impact on the ecological, scientific or aesthetic within the area. The building and it's setting will have a level of architectural design and finish which meets – and in many ways exceeds – the contribution of other buildings to the streetscape and landscape amenity.
- The form and scale of the proposed development is consistent with building forms in the immediate locality. The new dwelling will be situated in a low density zone which will provide 77% landscaped area and will allow the dwelling to be in harmony with the surrounding natural environment.
- The proposal retains and enhances riparian and foreshore vegetation and wildlife corridors.



**Objectives of clause 4.3 height of buildings are to**

- a) to ensure that any building, by virtue of its height and scale, is consistent with the desired character of the locality,
- b) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,
- c) to minimise any overshadowing of neighbouring properties,
- d) to allow for the reasonable sharing of views,
- e) to encourage buildings that are designed to respond sensitively to the natural topography,
- f) to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

The proposed structure meets the objectives of the height of buildings development standard (notwithstanding non-compliance with the standard) based on the following assessment:

**Objective (a)** - The proposed structure form is consistent with the built form in the locality noting the topography is significantly restricting a large floorplate design.

The surrounding area is predominantly characterised by one and two storey development, the form of which is influenced by the sloping terrain of the land. Therefore, with the very steep topography of the site, the noncompliance is quite understandable and reasonable. The height, bulk and scale of the development is consistent with the two-storey dwellings established by the proprietors of the neighbouring properties. It should be noted that the endeavour is to have no excavation as much as possible because the site is flood affected which helps to retain the existing natural landscape on the site.

**Objective (b)** – The height of the building is consistent with adjoining dwellings and will not present overbearing bulk and scale when viewed from dwellings. It should be noted that the height of the proposed structure to the highest point of the roof is less than the ridge height of the adjoining secondary dwelling at 77 Grandview Road as shown on the architectural drawings.

Therefore, the breaching elements do not in any quantitative or qualitative manner contribute to unacceptable bulk and scale with the overall height of the development.



**Objective (c)** – The extent of the proposed overshadowing can be considered as minor and it does not materially affect the primary living spaces and outdoor areas of neighbouring properties. Shadows cast from the sun will fall within the property's landscape area and not on the adjacent property considering that shadows already exist from the excessive trees located on the subject site.

Further, morning shadows will be cast with the rear setback way away from the neighboring properties and afternoon shadows will not have any noticeable effect as the secondary dwelling is at a considerably lower than the primary residence.

Therefore, the proposed structure has been located to ensure that there is minimal overshadowing resulting from the proposal as any overshadowing falls for the most on the subject properties roof space or within the existing shadow cast by the existing residence.

**Objective (d)** – The secondary dwelling will benefit from great views down along the property towards Newport Beach. The proposed secondary dwelling has been strategically placed to retain the cluster of existing trees on the subject site which provides great benefits such as shade, privacy and landscape amenity. This will ensure the private nature of the locality is not compromised by the proposal.

**Objective (e)** – The proposal provides for the secondary dwelling, follows the siting and design of the existing dwelling. As the primary outlook for the adjoining neighbours is retained, and the building will continue to present a compatible bulk and scale, the works are considered to respond sensitively to the natural topography.

To comply with the height, sufficient amount of excavation is inevitable that will affect natural topography and it is not possible given that that site is flood affected.

**Objective (f)** – The proposed works will not see any further site disturbance, and maintain a generous soft landscaped area. The site does not join any sites of heritage significance and the proposal is considered to be reasonable in this portion of Newport locality.





**2. There are sufficient environmental planning grounds to justify contravening the development standard**

Clause 4.6(3)(b) of PLEP requires the applicant to demonstrate that there are sufficient environmental planning grounds to contravene the development standard.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The variation in height is a direct result of the topography and characterisation of the development as a secondary dwelling. The proposed secondary dwelling and associated roof form have been designed to respond to the topography of the site and existing built form by recessing the levels as far as practicable.
- The variation is in part cause by an environment constraint, being the flood affectation of the site. This requires a minimum of 300mm above the natural ground level with no excavation. We respectfully submit that the flood affectation is an environmental constraint and a flood management report has been prepared and submitted along with the application.
- The proposal provides for an appropriate scale and form that reflects the desired future character for development in the area, commensurate to the large land area. The proposal will be generally hidden from the public domain as a result of the allotment characteristics and the significant canopy trees. However, where visible, will provide a high quality two storey dwelling which is consistent with the character of the locality. Importantly, it should be noted that the secondary dwelling is located to have access from the existing pathway and the more we push the secondary dwelling towards the eastern boundary, the more breach in height will occur. Hence, if the dwelling is visible from the beach, it will be perceived as a compatible, stepped residential dwelling that responds to the topography of the locality and has incorporated high quality elements to significantly improve the existing dwelling.
- The extent of the non-compliance creates no additional adverse overshadowing to adjoining properties which will create any adverse impacts. Specifically, the proposed development will retain solar access to the adjoining dwellings considering that shadows already exist from the excessive trees located on the subject site. As such, the overshadowing impact created by the non-compliant elements are insignificant or nil.
- The height breach does not result in any additional privacy impacts. Therefore, the height variation will have no greater impact on the privacy of adjoining properties.



- The proposed development will not result in any unreasonable loss of views or outlook when compared to a building with a compliant height. As discussed in this Statement, the non-compliant building height will not result in significant or unreasonable loss of primary views from the neighbouring properties.
- The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:
  - a) The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilised site for residential uses (1.3(c))
  - b) The proposed developed promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum building height control.

It is considered that these environmental planning grounds are particular to the circumstances of the site and support the proposed variation to the maximum building height standard. The proposal promotes good design and amenity and as such there is no planning purpose in strictly upholding the development standard. It is a better planning outcome to permit a variation to Clause 4.3 in this instance.

It is considered that enforcing compliance will lead to an environmental planning outcome that is sub-optimal when compared with the environmental planning outcome that would be secured by the adoption of the applicant's proposal.



#### **4.0 THE PROPOSED DEVELOPMENT IS IN THE PUBLIC INTEREST**

The proposed development is in the public interest as it is consistent with the objectives of the development standard and the C4 – Environmental Living Zone as clarified above in section 3, page 2 of this report.

Therefore, the proposal and the variation to height does not undermine the integrity of the building height development standard and its objectives, as well as the zoning objectives which have been adopted by Council as being in the public interest.

#### **5.0 THE CONCURRENCE OF THE SECRETARY**

The matters in clause 4.6(5) of the LEP should be considered when exercising the power to grant development consent for development that contravenes a development standard:

- 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 secretary before granting concurrence.

The proposal is not likely to raise any matter of significance for State or Regional Environmental Planning. As addressed above the non-compliance with the building height standard is considered to be in the public interest because the proposed development is consistent with the objectives of the height standard and the objectives of the C4 – Environmental Living Zone

The public benefit of maintaining the development standard is not considered significant because the building meets the 8.5m height standard. The variation to height is a result of the site topography and flood related issues. Thus, the proposed development is compatible with existing dwellings in the locality.

There are no other matters required to be taken into account by the secretary before granting concurrence.



## **6.0 CONCLUSION**

It is submitted that a variation to Pittwater Council LEP 2014 is warranted for this project. The non-conformity does not impact adjacent properties and complies with the standards objectives while providing better utilisation of the existing property for the changing demands of the occupant.

As demonstrated above, strict compliance with this standard is “unreasonable” to this Development Application as the proposed works comply with all the objectives of this height control and will have no impact on the amenity of surrounding neighbours in terms of view less, privacy or increased overshadowing.

We, therefore, request in light of the above information and the considered design that the variation to Clause 4.3 (Height of buildings) be granted in accordance with Clause 4.6 (Exceptions to development standards) in the Pittwater Council’s LEP for the proposed development in relation to proposed building height.

RK Designs

*admin@rkdesigns.com.au*  
(02) 9633 4797

<b>ITEM 3.3</b>	<b>DA2023/0735 - 26 THORNTON STREET FAIRLIGHT - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL</b>
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**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 floor space ratio.

**RECOMMENDATION**

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants 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.
- B. THAT Council as the consent authority **refuses** Development Consent to DA2023/0735 for alterations and additions to a dwelling house including a swimming pool on land at Lot A DP 442510, 26 Thornton Street FAIRLIGHT, for the reasons for refusal set out in the Assessment Report.

<b>REPORTING MANAGER</b>	Adam Richardson
<b>TRIM FILE REF</b>	2024/118570
<b>ATTACHMENTS</b>	<b>1</b> <a href="#">↓Assessment Report</a> <b>2</b> <a href="#">↓Site Plan and Elevations</a> <b>3</b> <a href="#">↓Clause 4.6</a>

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/0735
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<b>Responsible Officer:</b>	Phil Lane
<b>Land to be developed (Address):</b>	Lot A DP 442510, 26 Thornton Street FAIRLIGHT NSW 2094
<b>Proposed Development:</b>	Alterations and additions to a dwelling house including a swimming pool
<b>Zoning:</b>	Manly LEP2013 - Land zoned R1 General 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>	Peter James Hunter Sarah Elizabeth Hunter
<b>Applicant:</b>	Vaughan Patrick Milligan

<b>Application Lodged:</b>	13/06/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	20/06/2023 to 04/07/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	4
<b>Clause 4.6 Variation:</b>	4.4 Floor space ratio: 20.7%
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 1,161,360.00
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### EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a semi attached dwelling house.

The application is referred to the Development Determination Panel (DDP) due to a variation greater than 10% to Floor Space Ratio with the Manly Local Environment Plan 2014 (MLEP 2013). The application has been accompanied by a written Clause 4.6 variation request which has been assessed and considered to be supportable based on a merit assessment.

During the notification period four (4) submissions were received. Concerns raised in the submissions predominantly relate to stormwater, non-compliance with landscaping and total open space, acoustics, bulk and scale, wall height, number of storeys, setbacks, overshadowing, view loss, solar panels, overdevelopment, swimming pool, fire protection and the impact of the proposed development upon the party wall.

It is noted the development application suffers from a lack of Owners Consent from the adjoining site at 24 Thornton Street, as the extent of works includes works to the Party Wall which also extend over the boundary and into the adjoining site of 24 Thornton Street. The lack of Owners Consent forms the reason for refusal of the development application.

Other assessment issues included Section 8.3 Environmental Planning and Assessment Act 1979, 3.4.1 Sunlight access and overshadowing, 4.1.2 Height of buildings, 4.1.4 Setbacks, 4.1.5 Open space and landscaping, 4.1.6 Parking, vehicular access and loading.

While it is considered that the proposed development satisfies the relevant controls within the MDCP and MLEP 2013 and represents an acceptable built form, it is inconsistent with subclause (1)(b) of Clause 23 of the Environmental Planning and Assessment Regulations 2021, which requires owner's consent of the owner of the land. The assessment finds that there is insufficient information / detail with the absence of owners consent from 24 Thornton Street inhibits the development from being supported, despite its merits.

This report concludes with a recommendation that the DDP refuse the development application.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposed works include additions and alterations to the existing dwelling house as follows:-

### ***"Garage Level***

- *Provision of a hard stand parking area, storeroom and workshop*

### ***First Floor***

- *Reconfiguration and minor extension to level 1 to provide an open plan kitchen/living/dining area*
- *New ensuite in existing Bedroom 1*
- *Pantry*
- *WC & laundry cupboard*
- *Internal stairs to proposed second floor*

### ***Second Floor***

- *Construction of a new second floor to provide for two bedrooms, bathroom, and media/library room.*

### ***External***

- *Construction of a new inground swimming pool*
- *Replacement of existing patio and patio awning*
- *New concrete driveway*
- *New front and north-western side stairs*
- *Landscaping"*

## **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

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
 Manly Development Control Plan - 3.3.3 Footpath Tree Planting  
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing  
 Manly Development Control Plan - 3.4.3 Maintenance of Views  
 Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size  
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)  
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping  
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)  
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

#### SITE DESCRIPTION

<b>Property Description:</b>	Lot A DP 442510 , 26 Thornton Street FAIRLIGHT NSW 2094
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the eastern side of Thornton Street.</p> <p>The site is generally regular in shape with a frontage of 6.135m along Thornton Street and a depth of 33.475m. The site has a surveyed area of 204.9sqm.</p> <p>The site is located within the R1 General Residential zone of the MLEP 2013 and accommodates a semi-detached dwelling and shares a party wall and roof structure with 24 Thornton Street located to the south of the subject site.</p> <p>The site slopes from the front (east) up to the rear (west),</p>

	<p>with an approximate slope of 8% grade.</p> <p>The site contains a garden bed and grass at the front of the property, and some vegetation in the rear. There are no details of any threatened species on the subject site.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by semi-detached dwellings, dwelling houses and residential flat buildings.</p>
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Map:



## SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for residential purposes for an extended period of time.

## APPLICATION HISTORY

Following the preliminary assessment of the application, Council requested additional information on 26 October 2023 in relation to a request by Council's Development Engineer for additional information in relation to proposed parking under the existing verandah, as well as concurrence from the service authority for the relocation of a Telstra pit.

In the same correspondence, Landowner's consent was also sought regarding works involving the common party wall and boundary with 24 Thornton Street. An assessment of the submitted plans identified that the proposal involves the demolition of an existing roof structure that extends over the common boundary with 24 Thornton Street and that the existing roof structure has no existing party wall within the roof cavity. As such, the existing roof is a single structure built over both 24 & 26

Thornton Street and the cutting of roof timbers and supports will have structural impacts and implications on the resultant roof over 24 Thornton Street. Additionally, having a corrugated roof abutting a vertical wall will present waterproofing issues coupled with the potential problems during the construction phase, necessitating works on 24 Thornton Street.

As identified by the owners of 24 Thornton Street in their submission that the proposed new party wall and new fire rated parapet walls will need to be 'tie-in' into the existing party wall and therefore these works require the written owner's consent from the adjoining property owners (24 Thornton Street). Without such owners consent, it is not considered that the development is able to proceed.

Concerns have been identified owners of 24 Thornton Street over existing noise transmissions within the hallways and how this noise may increase due to the location of the staircase and upper floor additions to the subject dwelling. This was also reiterated by the existing tenant at the subject site (26 Thornton Street) during a recent site inspection (noise transmissions within the hallways/dwellings). Additionally, it is noted that any firewall also needs to be the full vertical height (i.e. basement through to the roof).

Additionally, issues were raised about the side setbacks in particular the ground floor additions to the rear which sought to extend the living and kitchen area to the northern boundary.

On 15 December 2023, the applicant submitted amended plans and an amended Clause 4.6 for FSR variation. An amended SEE and Clause 4.6 for FSR variation were submitted on 16 February 2024. It is noted that the owner's consent from 24 Thornton Street, Fairlight still has not been submitted to date.

The additional documentation did not alter the environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

On 17 January 2024, DA2024/0032 Alterations and additions to a semi-detached dwelling was lodged for 24 Thornton Street, Fairlight.





**Figure 1 & 2 - Montages lodged with current DA2024/0032 Alterations and additions to a semi-detached dwelling was lodged for 24 Thornton Street, Fairlight prepared by Actions Plans**

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

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

<b>Section 4.15 Matters for Consideration</b>	<b>Comments</b>
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly 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 2021 (EP&A Regulation 2021)	<p>Part 4, Division 2 of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters could be addressed via a condition of consent.</p> <p><u>Clause 23</u> of the EP&amp;A Regulation 2021 requires the written consent from the owner of the land to which development is proposed. Works are proposed on 24 Thornton Street and no land owners consent from the owners of that property has been submitted.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to internal referral from Council's Development Engineering Department, Landowner's Consent Clause 4.4 Floor Space Ratio &amp; Clause 4.6 Exceptions to Development Standard of the Manly Local Environmental Plan 2013, acoustic impacts, as well as in relation to Clause 4.1.4.2 Side setbacks and secondary street frontages of the Manly Development Control Plan. Subsequently, the applicant provided amended documentation to satisfy Council's internal referral body (Development Engineering), however the lack of owner's consent from 24 Thornton Street will form one of the reasons for refusal of this application.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter could be addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter could be addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter could be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b></p>

Section 4.15 Matters for Consideration	Comments
and economic impacts in the locality	The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.  (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.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is not 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	The matter raised over adjoining property owner's consent from 24 Thornton Street is the only matter that has 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 application has been publicly exhibited from 20/06/2023 to 04/07/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Mrs Suzanne Johnson	24 Thornton Street FAIRLIGHT NSW 2094
Mr David Johnson	24 Thornton Street FAIRLIGHT NSW 2094
Mr Alan Godfrey Martin Mrs Edith Nora Martin	17 Crescent Street FAIRLIGHT NSW 2094
Ms Judy Maeve Therese Berenger Mr Timothy Theodore Southerden	28 Thornton Street FAIRLIGHT NSW 2094

The following issues were raised in the submissions:



- Stormwater/overflow
- Non-compliance with the required Total Open Space (insufficient landscaped areas)
- Floor space ratio
- Bulk and scale
- Selection of tree species in the back yard (*Elaeocarpus Reticulatus*)
- View loss
- Overdevelopment
- Swimming pool (non-compliances with MDCP and pool safety)
- Building height, wall height and number of storeys
- Solar access (both 17 Crescent Street and 24 Thornton Street including skylights and future solar energy)
- Height of boundary fence (2m)
- Fire safety (non access down the northern side boundary)
- Noise (swimming pool)
- Building over existing sewer line and stormwater line
- Solar panels (adding height, view loss and glare/reflection)
- Request for height poles
- Request for hydraulic plans
- Request for a dilapidation reports
- Proposed colours to the external walls of the dwelling and rear boundary wall
- Party wall (shared between 24 and 26 Thornton Street) and roof integrity (single structure) structural integrity of the roof and adjoining dwelling including proper water proofing
- New front stairs
- Fire protection integrity
- Acoustic mitigation

The above issues are addressed as follows:

- **Stormwater/overflow**

The submissions raised concerns that the proposed development will create increased stormwater and overflow issues to the adjoining neighbouring properties.

Comment: Council's Senior Development Engineer has completed a review of the proposal and including suitable condition(s) (if the proposal were to be approved by the panel) to ensure adequate stormwater disposal which will be gravity feed to Thornton Street.

- **Non-compliance with the required Total Open Space (insufficient landscaped areas)**

The submissions raised concerns that the proposal demonstrated insufficient landscaped areas and total open space.

Comment: A detailed assessment under Manly Development Control Plan (Part 4.1.5 - Open Space and Landscaping) has been completed and it is considered that the proposal is consistent with the objectives of this control and is supported, in particular instance.

- **Floor space ratio**

The submissions raised concerns that the proposed floor space ratio is non-compliant with the Manly Local Environment Plan 2013 (Part 4.4 Floor space ratio (FSR)).

Comment: The proposed development has clearly identified a variation to FSR under the relevant control of both the MLEP 2013 and MDCP and this has been shown on the architectural plans, within the amended Statement of Environmental Effects (SEE) and the amended Clause 4.6 variation submitted with this development application.

A detailed assessment has been included within the relevant parts of this assessment report and it is noted that under Part 4.1.3 FSR that the site is an 'undersized allotment' as defined under this control, noting that the 0.6:1 FSR standard within the locality is based off an average allotment of 250m<sup>2</sup>. The site is an undersized allotment, being 204.9m<sup>2</sup> in area. When applying a gross floor area to an average site area of 250m<sup>2</sup>, the proposed FSR would be 0.599:1, which complies with the 0.6:1 requirement.

Given the above it is considered that the variation to the FSR control under the MLEP is supportable noting the proposal complies with this MDCP exemption provision and is generally consistent with other similar variations granted to this control within this area.

- **Bulk and scale**

The submissions raised concerns over the bulk and scale of the proposed alterations and additions to the dwelling and impacts on adjoining properties and the streetscape.

Comment: The proposed building height complies with the MLEP 2013 requirement of 8.5m. The proposed roof form and wall height is considered consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality. In short, Two/three-storey dwelling houses of this size and scale are characteristic of the area. The proposal has been assessed against the requirements and underlying objectives of the MLEP and MDCP and is not considered to result in a dwelling excessive in terms of bulk and scale.

- **Selection of tree species in the back yard (*Elaeocarpus Reticulatus*)**

The submissions raised concerns over the size of these proposed blueberry ash trees that could grow up to 3 - 10 metres in height.

Comment: Suitable conditions could be included (if the proposal were to be approved) for these trees to be replaced with trees of a less height ensuring reasonable amenity for 24 Thornton Street.

- **Overdevelopment**

The submissions raised concerns that the proposed development was an overdevelopment.

Comment: As stated within the relevant parts of this assessment report and within this section (submissions) it has been considered that the size and nature of the proposal is not inconsistent with existing housing within the area. Variations to the relevant parts of the MLEP (FSR) and MDCP (wall height, storey, side setbacks, landscaping (including TOS) have been also been addressed and supportable in this instance.

- **Swimming pool (non-compliances with MDCP and pool safety)**

The submissions raised concerns issues with non-compliances with the Part 4.1.9 Swimming

Pools, Spas and Water Features and pool safety.

Comment: A detailed assessment has been completed under Part 4.1.9 Swimming Pools, Spas and Water Features of the MDCP and is supportable in this instance. Additionally, pool safety could be suitably addressed with conditions (if the proposal were to be recommended for approval by the panel).

- **Building height, wall height and number of storeys**

The submissions raised concerns over the building height, wall height and number of storeys.

Comment: A detailed assessment has been completed and determined the overall height of the proposal is compliant with Part 4.3 Height of buildings of the MLEP 2013. A detailed assessment under Part 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) has considered the variations to wall height and number of storeys and it is considered that both variations are supportable in this instance.

Additionally, it is noted that two/three-storey dwelling houses of this size and scale are characteristic of the area. The proposal has been assessed against the requirements and underlying objectives of the MLEP and MDCP and is not considered to result in a dwelling excessive in terms of bulk and scale.

- **Overshadowing**

The submissions raised concerns that the proposal will give rise to unacceptable overshadowing impacts.

Comment: An assessment of the application against Clause 3.4.2 Sunlight Access and Overshadowing of the Manly DCP reveals that the application is acceptable with the requisite provisions for solar access and does not unreasonably overshadow adjoining properties. In addition, it is considered that the development has been sufficiently modulated to minimise overshadowing impacts to the concerned properties are evident within the amended proposal's design, as the works sit well below the maximum allowable height and provides acceptable setbacks.

This matter does not warrant the refusal of this application.

- **Height of boundary fence (2m)**

The submissions raised concerns that over the height of the rear boundary fence (2m)

Comment: The proposed rear boundary wall will form part of the swimming pool safety fencing required for the proposed swimming pool. It is noted that 17 Crescent Street (property to the rear) is slightly elevated above the subject site and therefore the requirement of the addition height of the fence is considered reasonable to ensure compliance with the Australian Standards AS1926 - Swimming Pool Safety, Swimming Pools Act 1992 (Amendment Act 2009) and Swimming Pools Regulation 2018.

- **Fire safety (non access down the northern side boundary)**

The submissions raised concerns over loss of the side access down the northern side boundary and fire safety concerns.

Comment: The proposed alterations to the dwelling will alter the access down the northern side of the dwelling, however it is noted that the proposal will include two (2) entry/exit points from the dwelling house (one (1) existing and one (1) new) which will ensure adequate points of egress from the building. Notwithstanding this, these are matters for the Construction Certificate, in the event that the development is approved.

- **Noise (swimming pool)**

The submissions raised concerns over noise generated from pool pumps and filtration system(s).

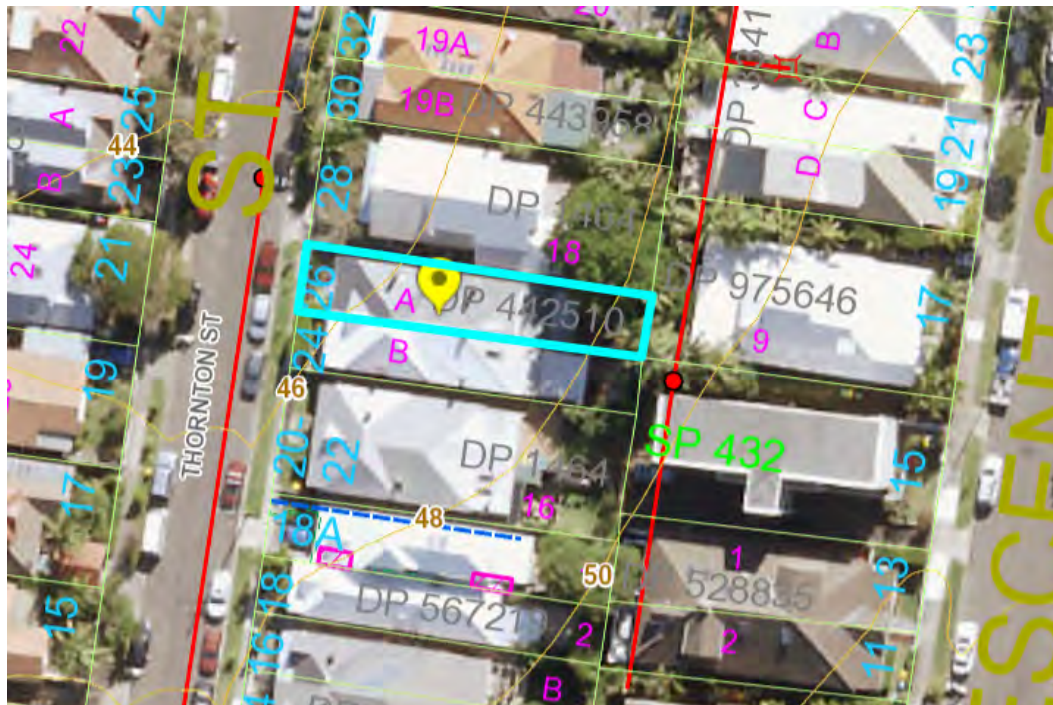
Comment: Should the proposal be recommended for approval by the panel the swimming pool / spa motor/filtration could be suitable conditions to ensure reasonable amenity levels are maintained to adjoining and surrounding properties.

- **Building over existing sewer line and stormwater line**

The submissions raised concerns that the proposed would impact or building over the existing sewer and stormwater lines.

Comment: A review of Council's GIS system identifies the sewer mains running along Thornton Street (south/north) out the front of the subject site and through the properties in Crescent Street to the rear (south/north see aerial photo below). If approval were to be granted, suitable conditions would be included for a Sydney Water 'Tap In' service to ensure the development will not affect any Sydney Water assets and/or easements prior to works commencing.

Additionally, a review of Council's Stormwater Infrastructure is not located within the vicinity of the subject (please see aerial photo below).



**Figure 3 - Aerial photo from SEA - Sydney Water sewer lines are indicated by the red lines (running south/north)**

- Solar panels (adding height, view loss and glare/reflection)

The submissions raised concerns that the proposed solar panels on the roof will add to the overall height of the building, contribute to view loss and create glare and reflection to surrounding properties/dwellings

Comment: The proposed alterations and additions to the dwelling has fifteen (15) solar panels which are centrally located on the new roof. The panels add marginal additional height to the building, which are generally mounted (0.1m - 0.3m) above the roof, which is considered not to be excessive. This additional height has been considered under Part 3.4.3 Maintenance of Views of the MDCP and as stated within the view assessment it was considered that view loss to 17 Crescent Street was considered to be minor.

The solar panels are designed to absorb sunlight rather than reflect it and it is considered given the orientation of the panels in a northerly direction, central location of the proposed roof and distance from 17 Crescent Street that the likelihood of glare/reflection is minimal.

- **Request for height poles**

Comment: A site inspection from 17 Crescent Street was undertaken by Council's Planner in relation to view loss and it was determined that height poles were not warranted on this occasion.

- **Request for hydraulic plans**

Comment: A review by Council's Senior Development Engineer has deemed that stormwater can be adequately catered and directed via gravity to Thornton Street via the inclusion of subject conditions, in the event that the development is approved.

- **Request for a dilapidation reports**

Comment: If the proposal were to be recommended for approval by the panel then suitable conditions could be included for pre-dilapidation and post-dilapidation reports for adjoining properties/dwellings.

- **Proposed colours to the external walls of the dwelling and rear boundary wall**

Comment: The schedule of finishes on the front page of the amended plans states that the external walls will be coloured 'Surf Mist'. Should the proposal be approved by the panel a suitable condition could be included for the colour of the rear boundary wall.

- **Party wall (shared between 24 and 26 Thornton Street) and roof integrity (single structure) structural integrity of the roof and adjoining dwelling including proper waterproofing**

The submissions raised concerns over the proposed works by the adjoining and attached dwelling to the south (24 Thornton Street) in particular the party wall and the existing roof over the both dwellings is a single structure.

Comment: A site inspection has verified that the proposed roof is a single structure which

spans over the both 24 and 26 Thornton Street (attached dwellings). The party wall due to its age of the building is in disrepair with bricks been easily moved and it is noted that the party wall does not conform to the National Construction Code (BCA).

The roof structure over 24 and 26 Thornton Street is a single structure and therefore any cutting off timbers will have dramatic impact on the structural integrity of the roof over 24 Thornton Street and possible impact on the dwelling below (walls and foundations). Concerns over proper waterproofing are also valid given the way that the roof over 24 Thornton Street will now be separated and unsupported. It is noted that consent from 24 Thornton Street has not been granted and as such it is deemed that issue will be a reason for refusal.











**Figure 4 - Photo of party wall in disrepair from 24 Thornton Street roof attic**

- **New front stairs**

The submissions raised concerns over the new front stairs.

Comment: The new stairs are been altered to allow for the new carparking space within the front setback and also the readjustment of the front balcony which needs to be lifted to cater for this car space. It is considered that new arrangement of the stairs will have a dramatic impact on the streetscape. It is noted that the stairs for 24 Thornton Street will be altered in the same manner via the current development application (DA2024/0032 Alterations and additions to a semi-detached dwelling was lodged for 24 Thornton Street, Fairlight).

- **Fire protection integrity**

The submissions raised concerns that over works been tied in for new party wall which will reduce the integrity of the existing structural wall and reducing the competence of the fire separation barrier. The use of different materials (Hardies fire wall 60/60/60) on the party wall will not allow for maintenance of the system. The introduction of a lithium battery charging station within the envelope of the dwelling will increase fire risk.

Comment: As stated above concerns are raised over works on, into and adjoining the existing party wall. As noted consent from the owners from 24 Thornton Street has not been granted and therefore any works on and into the party wall cannot be approved with this consent.

The introduction of the lithium battery charging station and solar battery are deemed acceptable, subject to the correct installation.

However, as stated above the concerns over no owners consent for works on and into the party wall are deemed sufficient grounds for refusal.

- **Acoustic mitigation**

The submissions raised concerns over the existing floating floor system can be remediated to eliminate or reduce the acoustic transmission of footfalls, the provision of an acoustic report modelling the acoustic pathways within the new upper storey and the provision of plans showing how the noise from the car parking area and pool pump can be minimised.

Comment: Issues raised in relation to acoustic mitigation could be suitable conditioned if approved by the panel. It is noted that the proposed new party wall on the first floor level is to be located 0.11m - 0.147m from the southern boundary which will assist with the acoustic mitigation as would reduced noise from this level and the stairs leading up from the ground floor level.

The proposed carparking area is deemed to associated with any residential dwelling and it is considered that no specific conditions are required in this instance. Additionally, the pool pump could be suitable conditioned if approved by the panel to ensure reasonable acoustic amenity is maintained to adjoining properties/dwellings.

## REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<p>The proposal includes the construction of a hardstand area forward of the building line for a proposed parking space. The parking space is partially under the the existing verandah which obscures the parking space and the required 2.2 metres of clearance is not achieved. It is considered that the verandah must be removed as part of the proposal to achieve the required clearance for the parking space. Also there is an existing communications pit in the footpath area in the position of the proposed driveway crossing. Concurrence from the service authority is required for the relocation or upgrading of this pit to permit the crossing to be constructed.</p> <p>The proposal does not require OSD and connection of stormwater to the kerb in Thornton St is acceptable.</p> <p>Development Engineering cannot support the proposal due to insufficient information to address parking in accordance with clause 4.1.6 of the DCP.</p> <p><b>Amended plans submitted 15/12/23</b></p> <p>The amended plans have provided the required clearance for the parking space as requested. The plans have not provided a finished</p>



Internal Referral Body	Comments
	level for the altered verandah which will need to be raised to suit. It is considered that this issue must be addressed by Planning to ensure the design can accommodate the required level difference.  Development Engineering support the proposal, subject to conditions as recommended.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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

All, Environmental Planning Instruments (SEPPs 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 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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A484357\_02, dated 2 May 2023).

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

##### SEPP (Transport and Infrastructure) 2021

###### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.

- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

**SEPP (Resilience and Hazards) 2021**

**Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

**Manly Local Environmental Plan 2013**

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.9m	-	Yes
Floor Space Ratio	FSR: 0.6:1 (122.9m <sup>2</sup> )	FSR: 0.73:1 (149.8m <sup>2</sup> )	21.9% (26.9m <sup>2</sup> )	<b>No</b>

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
1.9A Suspension of covenants, agreements and instruments	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes

Clause	Compliance with Requirements
4.6 Exceptions to development standards	Yes
Part 6 Additional local provisions	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes
6.15 Tourist and visitor accommodation	Yes

#### Detailed Assessment

#### **4.6 Exceptions to development standards**

#### **Floor Space Ratio Development Standard**

#### Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (122.9m <sup>2</sup> )
Proposed:	0.73:1 (149.8m <sup>2</sup> )
Percentage variation to requirement:	21.9%

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

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement 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 4.4 - Floor space ratio 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 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 development complies with the relevant objectives of the R1 General Residential of the MLEP 2013.
- The development complies with the relevant objectives of the FSR development standard of the MLEP 2013, notwithstanding the non-compliance.
- The new works to the existing dwelling on the site will maintain a dwelling on the subject site that will be generally consistent with the adjoining residential development, in regard to size and configuration.
- The first floor additions is located to the rear of the existing property and is set behind and below the existing roof line, reducing its visual appearance to the street.
- The proposed works provide a more efficient and orderly development on the land that is of high-quality architectural design which maximises the sites development potential along with providing appropriate housing stock within the locality.
- Although the bulk & scale of the building is slightly increased, the overall size & bulk in relation to the surrounding neighbourhood is not unreasonable, particularly considering development on the adjoining sites.
- The proposed works do not create adverse amenity impacts (view loss, overshadowing, privacy) to adjoining properties.

The arguments provided by the applicant are considered reasonable and acceptable. It should be noted that the lot is undersized, with a site area of 204.9m<sup>2</sup> within an area with a minimum lot size control of 250m<sup>2</sup> as specified in the DCP. When calculated against this required lot size (250m<sup>2</sup>), the permissible floor area is 150m<sup>2</sup>. and therefore the proposed development which presents a total floor area of 149.8m<sup>2</sup> or an FSR of 0.599:1, would be compliant with the prescribed FSR control of 0.6:1

when assessed against the minimum lot size in the locality. The front façade is maintained and the proposed additions are located behind and below the existing roof line, reducing visual appearance from the street. Furthermore, the proposal does not create any adverse amenity impacts (view loss, overshadowing, privacy) to adjoining properties.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, 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 Floor Space Ratio development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

**Objectives of development standard**

The underlying objectives of the standard, pursuant to Clause 4.4 – 'Floor space ratio' of the MLEP 2013 are:

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

*a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Comment:

The proposal is considered to be compatible with the height, bulk and scale of surrounding and nearby development. The front facade is maintained and the proposed additions are located behind and below the existing roof line, reducing visual appearance from the street. It is not considered that the development presents unreasonable bulk or scale. The proposed development is considered to maintain the existing and desired streetscape, whilst providing for improvements to the housing stock to benefit current and future occupants of the dwelling.

*b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

Comment:

The development does not obscure important landscape and townscape features, being located located behind and below the existing roof line.

*c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Comment:

Given the points discussed above, the proposed alterations and additions are considered to maintain an appropriate visual relationship between new development and the existing character of the area. Landscaped area is not proposed to be changed by the proposal, which is entirely located within the footprint of the existing building.

*d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Comment:

The proposal does not create any adverse amenity impacts (view loss, overshadowing, privacy) to adjoining properties, adjoining land or the public domain.

*e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Comment:

The proposal is not located on industrial, employment or commercially zoned land and is proposing alterations and additions to a semi-detached dwelling. As such, this objective is not relevant in this case.

**Zone objectives**

The underlying objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*

Comment:

The proposal is for alterations and additions to a semi-detached dwelling. The proposal provides for the housing needs of the community, in providing for the housing needs of the occupants and future occupants through alterations and additions to the existing development.

- *To provide for a variety of housing types and densities.*

Comment:

The proposal is for alterations and additions to a semi-detached dwelling. In this regard, it is facilitating the alteration of a type of housing, which is one of many types within the locality.

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

Comment:

Non-residential land uses are not proposed on the subject site. However, the proposal provides for the residential needs of current and future occupants.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the Floor Space Ratio development standard and the objectives of the R1 General 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 PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, 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 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Floor space ratio Development Standard associated with a Class 1 building.

**Manly Development Control Plan**

Built Form Controls

<b>Built Form Controls - Site Area: 204.9m<sup>2</sup></b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
4.1.1.1 Residential Density and Dwelling Size	Dwelling Size: 95m <sup>2</sup> (3 bedrooms, 2 bathrooms)	149.8m <sup>2</sup>	-	Yes
4.1.2.1 Wall Height	N: 6.8m (based on gradient 1:20)	7.5m (northern elevation) 7.3m (southern elevation)	10.3% 7.4%	<b>No</b> <b>No</b>
4.1.2.2 Number of Storeys	2	2/3	50%	<b>No</b>
4.1.2.3 Roof Height	Height: 2.5m	0.4m	-	Yes
	Pitch: maximum 35 degrees	3 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	3.484m (Ground Floor - existing) 10.084m first floor setback, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 2.5m (based on wall height 7.5m)	0.15m - 1.159m (Ground Floor) 1.4m - 1.8 (First Floor)	53.6% - 94% (1.341m - 2.35m) 28% - 44% (0.7m - 1.1m)	<b>No</b> <b>No</b>
	S: 2.5m (based on wall height 7.3m)	Nil (Lower and Ground Floors)	100% 98% - 98.5%	<b>No</b> <b>No</b>

		0.11m - 0.147m (First Floor)		
	No new windows within 3m of a side boundary	9 new windows proposed within 3m of a side boundary, closest 1.009m	66.4% (1.991m)	<b>No</b>
4.1.4.4 Rear Setbacks	8m	9.8m (dwelling) 6.7m (Awning over patio)	- 16.25% (1.3m)	Yes <b>No</b>
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% (112.7m <sup>2</sup> ) of site area	33.7% (69m <sup>2</sup> )	42.9% (43.7m <sup>2</sup> )	<b>No</b>
	No more than 25% (28.2m <sup>2</sup> ) total open space above ground	(Nil)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (39.4m <sup>2</sup> ) of open space	29.3% (33m <sup>2</sup> )	16.2% (6.4m <sup>2</sup> )	<b>No</b>
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	1 space	50%	<b>No</b>

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3 Landscaping	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	No	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	No	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4 Other Development (all LEP Zones)	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

#### Detailed Assessment

#### **3.3.3 Footpath Tree Planting**

A native tree of suitable size and species could be imposed on the development in the event that it is approved by the panel.

#### **3.4.1 Sunlight Access and Overshadowing**

##### Merit Assessment

Clause 3.4.1.1 Overshadowing Adjoining Open Space stipulates that new development must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June).

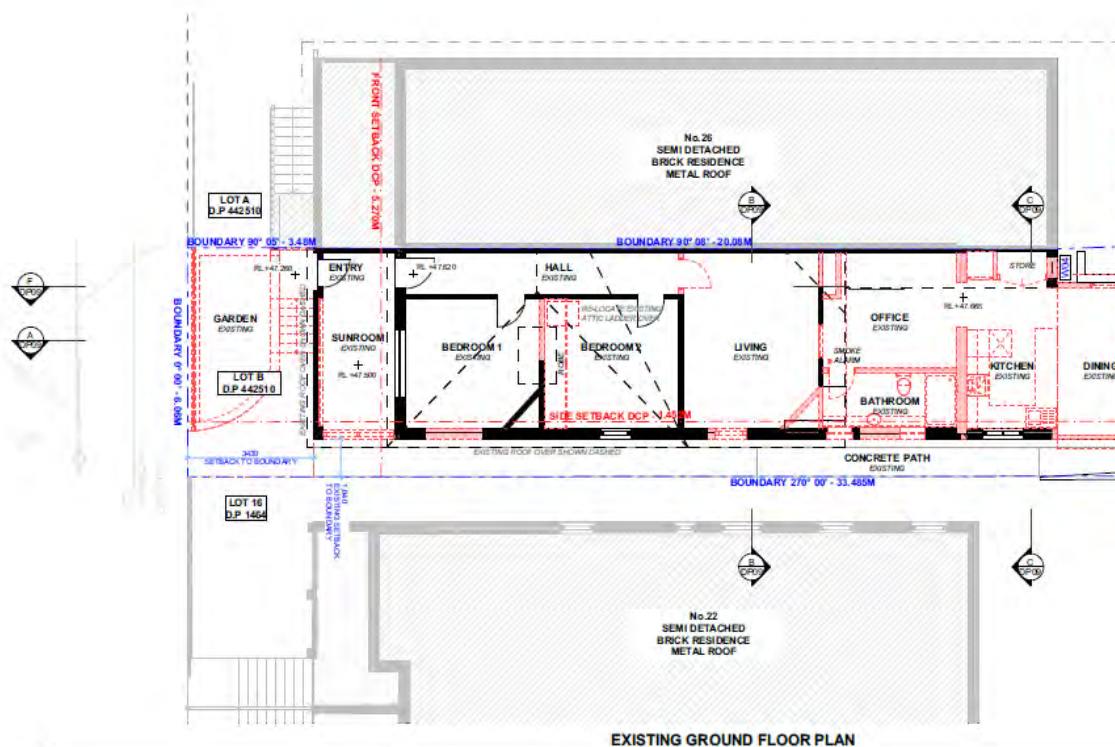
The private open space on the southern adjacent site (24 Thornton Street) is located within the rear yard and entertaining space. The quantifying amount of sunlight eliminated by the proposed development, on June 21 between 9am and 3pm is noted below:

- **9am 21st June:** No significant impact to solar access to rear yard, will remain relatively the same as existing.
- **12pm 21st June:** Additional shadow to part of rear yard. Will not result in an elimination of more than one third of sunlight.

- **3pm 21st June:** Shadowing will increase over the roof and rear yard which will be almost completely in shadow.

The above is considered to be compliant with the requirements.

Clause 3.4.1.2 Maintaining Solar Access into Living Rooms of Adjacent Properties stipulates that for adjacent buildings with an east-west orientation, the level of solar access presently enjoyed must be maintained to windows or glazed doors to living rooms for a period of at least 2 hours from 9am to 3pm on the winter solstice (21 June). No. 24 Thornton Street currently does not obtain direct solar access to the the living room and kitchen windows due to the orientation of these windows facing directly south. Solar access to the northern dining room window and back eastern facing doors will be unaffected by the development at 9am, however there will be a loss of solar access to the northern facing dining room at 12pm and 3pm and this is considered vulnerable due its proximity to the subject site and a reasonable expectation of future development on 26 Thornton Street.



**Diagram 5 - Plan of existing ground floor plan prepared by Action Plans (lodged with current DA2024/0032 - 24 Thornton Street)**

The solar access to the main private open space area is considered to be compliant with the numerical requirements of the clause.

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



**Objective 1) To provide equitable access to light and sunshine.**

Comment

The properties within Thornton Street are considered to be vulnerable in terms of solar access impacts due to the east-west orientation of the buildings. Majority of buildings will be burdened by overshadowing along their northern elevations, but are considered to obtain acceptable solar access to their main private open space areas. In light of this, it can be considered that equitable access to light has been achieved, despite the non-compliance.

**Objective 2) To allow adequate sunlight to penetrate:**

- **private open spaces within the development site; and**
- **private open spaces and windows to the living spaces/ habitable rooms of both the development and the adjoining properties.**

Comment

Acceptable sunlight access will also be provided to the main private open space area to the rear of 24 Thornton Street currently does not obtain direct solar access to the the living room and kitchen windows due to the orientation of these windows facing directly south. Solar access to the northern dining room window and back eastern facing doors will be unaffected by the development at 9am, however there will be a loss of solar access to the northern facing dining room at 12pm and 3pm and this is considered vulnerable due its proximity to the subject site and there been a reasonable expectation of future development on 26 Thornton Street.

**Objective 3) To maximise the penetration of sunlight including mid-winter sunlight to the windows, living rooms and to principal outdoor areas by:**

- **encouraging modulation of building bulk to facilitate sunlight penetration into the development site and adjacent properties; and**
- **maximising setbacks on the southern side of developments to encourage solar penetration into properties to the south.**

Comment

The overall building height is compliant in regards to the southern elevation. The proposal overall provides for acceptable articulation.

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

### **3.4.3 Maintenance of Views**

Merit consideration:

The development is considered against the Objectives of the Control:

*Objective 1) To provide for view sharing for both existing and proposed development and existing and future Manly residents.*

*Objective 2) To minimise disruption to views from adjacent and nearby development and views to and from public spaces including views to the city, harbour, ocean, bushland, open space and recognised*

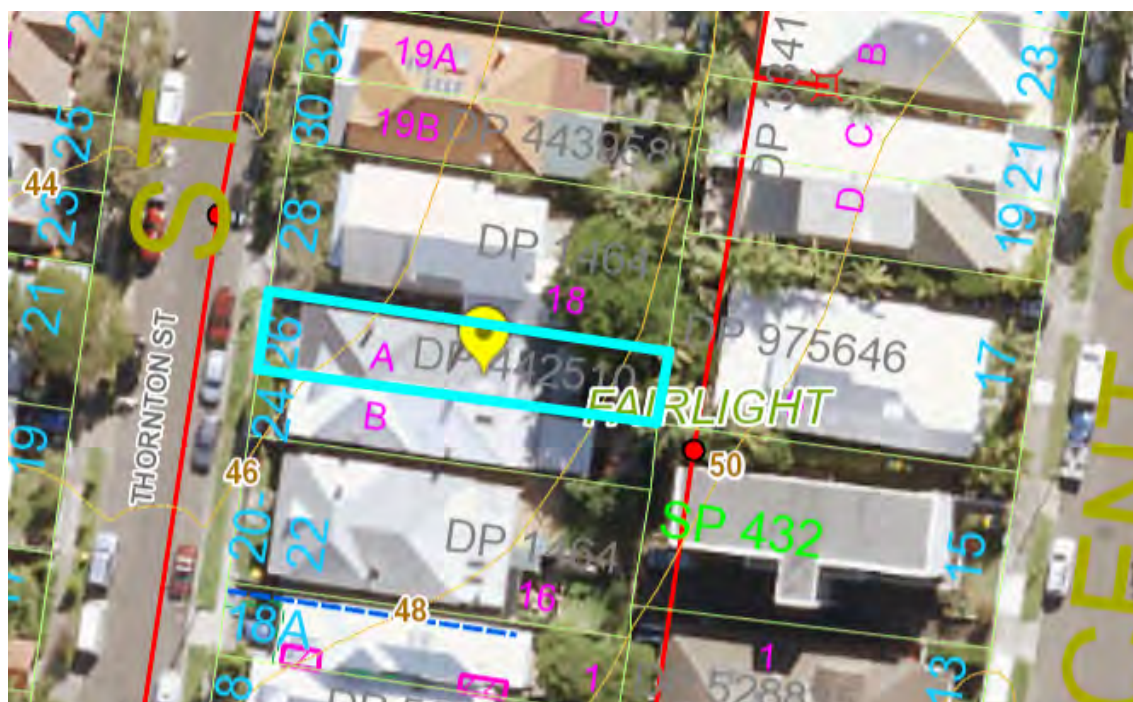
landmarks or buildings from both private property and public places (including roads and footpaths).  
Objective 3) To minimise loss of views, including accumulated view loss 'view creep' whilst recognising development may take place in accordance with the other provisions of this Plan.

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

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

Comment:

Issue was raised by the adjoining neighbour (17 Crescent Street, Fairlight) to the rear of the subject site. It is noted that this property (17 Crescent Street) shares only a partial rear boundary with the subject site (see aerial photo below).



**Figure 6 - Aerial photo from Council SEA system noting 17 Crescent Street shares a partial rear boundary with the subject site.**

*The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*

Comment:

Views are obtained from the rear balcony and living area of the dwelling at 17 Crescent Street over the rear western boundary.

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

Comment:

The view loss would be considered as minor given the view is partially obscured by vegetation within the foreground and background of the subject site and proposed development. Additionally noting the view corridor is over a portion of the rear western boundary.





**Figure 7 - Photo taken from rear balcony at 17 Crescent Street, Fairlight from a standing position.**

*The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more*

*planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

Comment:

The proposed development is compliant with the building height for this area including the installation of solar panels on the roof. It is noted that a variation to the floor space ratio has been considered under the relevant sections of this report and a clause 4.6 variation has been submitted by the applicant which has been considered to be satisfactory. Variations to the wall height, number of storeys, side setbacks and landscaping has also been considered within the relevant sections of this assessment report and it has been considered that the development overall has a satisfactory built form.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

**4.1.1.1 Residential Density and Dwelling Size**

Pursuant to Section 4.1.1.1 of the Manly Development Control Plan 2013, the minimum residential density for the D3 area is 250m<sup>2</sup> of site area per dwelling.

The proposed development has a site area of 204.9m<sup>2</sup> and therefore presents a technical non-compliance with the minimum residential density control.

It is important to note that the dwelling house on the site is existing and the proposal does not seek to increase the number of dwellings on the site.

As such, it is considered that the variation to the minimum residential density control is acceptable on this basis and a detailed assessment is not required in this instance.

**4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)**

**Merit consideration**

**Description of non-compliance**

Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height) stipulates that walls are not to exceed:

The proposal present a non-compliant wall height on the northern elevation of 7.5m, representing a maximum variation of 10.3% to the control.

The proposal present a non-compliant wall height on the southern elevation of 7.3m, representing a maximum variation of 7.4% to the control.

**Merit consideration**

There are no underlying objectives of this control under which to consider the merits of this variation. This clause instead relies on the objectives for the Height of Buildings at clause 4.3 in the Manly LEP 2013. An assessment against these objectives is as follows:

*(a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*

Comment:

The proposed building height complies with the MLEP 2013 requirement of 8.5m. The proposed roof form and wall height is considered consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality.

*(b) to control the bulk and scale of buildings,*

Comment:

Two/three-storey dwelling houses of this size and scale are characteristic of the area. The proposal has been assessed against the requirements and underlying objectives of the MLEP and MDCP and is not considered to result in a dwelling excessive in terms of bulk and scale.

*(c) to minimise disruption to the following—*

*(i) views to nearby residential development from public spaces (including the harbour and foreshores),*

*(ii) views from nearby residential development to public spaces (including the harbour and foreshores),*

*(iii) views between public spaces (including the harbour and foreshores),*

Comment:

The proposal will not have any unreasonable impact on views.

*(d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*

Comment:

The proposal will not cause unreasonable overshadowing of adjoining properties or the public domain.

*(e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Comment:

The development is not within a recreation or environmental protection zone.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **4.1.2.2 Number of Storeys**

This control stipulates the following requires:

*a) Buildings must not exceed 2 storeys, except on land in areas 'L' and 'N1' on the LEP Height of*

*Building Map and notwithstanding the wall and roof height controls in this plan.*

*b) Buildings on land in areas 'L' and 'N1' on the LEP Height of Building Map Buildings must not exceed 3 storeys notwithstanding the wall and roof height controls in this plan.*

*c) Variation to the maximum number of storeys may be considered:*

*i) where specific physical site constraints warrant an exception to this requirement. In these circumstances the development must still fully comply with other numeric height controls and development standards; and ii*

*ii) to allow an additional understorey where that storey satisfies the meaning of the basements in the LEP.*

### **Merit consideration**

There are no underlying objectives of this control under which to consider the merits of this variation. This control instead relies on the objectives for the Height of Buildings at clause 4.3 in the MLEP 2013. The proposal demonstrates compliance with built form control and these objectives and is addressed above in this report. In summary, the proposed development is considered acceptable and can be supported on its merits.

#### **4.1.3 Floor Space Ratio (FSR)**

A detailed assessment of the FSR variation has been undertaken within the section of this report relating to Clause 4.6 of the Manly LEP 2013. In conclusion, the applicant has adequately justified that compliance with the FSR Development Standard is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify the variation.

It is noted that the site is an 'undersized allotment' as defined under this control, noting that the 0.6:1 FSR standard within the locality is based off an average allotment of 250m<sup>2</sup>. The site is an undersized allotment, being 204.9m<sup>2</sup> in area. When applying a gross floor area to an average site area of 250m<sup>2</sup>, the proposed FSR would be 0.599:1, which complies with the 0.6:1 requirement.

The proposal therefore complies with this DCP exemption provision.

#### **4.1.4 Setbacks (front, side and rear) and Building Separation**

##### **Description of non-compliance**

Clause 4.1.4.1 Street Front Setbacks stipulates that proposed front setbacks must relate to the front building line of neighboring properties and the prevailing building lines in the immediate vicinity, or 6m where a pattern is not established. The proposed open hardstand parking space will have a nil setback from the front boundary, however the existing ground floor level (3.484m) and the proposed first floor setback of 10.084m, which itself is behind the existing ground floor building setback, and consistent with the prevailing street setbacks.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages stipulates that the setbacks between any part of a building and the side boundary must not be less than one third of the wall height. The southern elevation of the proposal has a nil setback on the lower ground and ground floor levels and 0.21m on the proposed first floor shared boundary with 24 Thornton Street, which is acceptable and appropriate, given the development is a semi-detached dwelling connected at this wall. On the northern elevation the dwelling requires a 2.5m side setback, based on a wall height of 7.5m. The setback along the northern elevation of the proposed ground floor is 0.15m - 1.159m and 1.4m - 1.8m on



the first floor which demonstrates a non-compliance to this control.

Clause 4.1.4.4 Rear Setbacks stipulates that the rear setback must be 8m. The dwelling is located 9.8m from the rear boundary and the proposed awning over the patio is located 6.7m from the rear boundary which demonstrates a non compliance with this control.

Clause 4.1.4.2 Side Setbacks and Secondary Street Frontages also requires that no new windows be located within 3m of side boundaries. The proposal includes nine (9) new windows within this setback area. It should be noted that these windows are designed with consideration of privacy. As such, it is not considered to be a sensitive area in terms of privacy.

### **Merit consideration**

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

*Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.*

#### **Comment:**

The streetscape is not considered to be adversely impacted. Front, side and rear setbacks are compliant. Windows on the side elevations do not compromise the desired streetscape and the built form is similar to that of surrounding development.

*Objective 2) To ensure and enhance local amenity by:*

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

#### **Comment:**

The revised proposal is considered to meet the requirements of relevant clauses of the MDCP relating to amenity. The development is not considered to create unreasonable overshadowing on public or private spaces, or to unreasonably impact views from or to public or private spaces. The proposal is also considered to maintain the existing streetscape characteristic and not to detrimentally impact on traffic conditions or the privacy of surrounding dwellings.

*Objective 3) To promote flexibility in the siting of buildings.*

#### **Comment:**

The proposed development provides for flexibility on the site by including varied setbacks with portions

that are not compliant and portions that are set back much further than required by the control. The result of which is a well-designed development that minimises bulk, while allowing suitable amenity for occupants of the subject site and adjoining sites, without any unreasonable impacts.

Objective 4) To enhance and maintain natural features by:

- accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;
- ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and
- ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.

Comment:

Refer to the section of this report on MDCP Clause 4.1.5 Open Space and Landscaping for comments on landscaped area and landscaping. The proposed development includes landscaped area and deep soil zones in both the front and rear yards. The development maximises landscaping where it can, given the narrow width of the site. The proposed development is well under the building height allowable for the site, which demonstrates that the development is not excessive, despite the non-compliance with the setback controls. The proposed development is not located within close vicinity of any open space land, National Park land, or urban bushland.

Objective 5) To assist in appropriate bush fire asset protection zones.

Comment:

The site is not classified as bush fire prone land.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **4.1.5 Open Space and Landscaping**

The subject site is located within Residential Open Space Area OS3, which requires at least 55% (112.7m<sup>2</sup>) of the site to be open space. In addition, at least 35% (39.4m<sup>2</sup>) of the proposed total open space is to be landscaped area. Furthermore, no more than 25% (28.2m<sup>2</sup>) of total open space can be provided above ground level.

The subject site exhibits 33.7% (69m<sup>2</sup>) total open space, representing a variation of 42.9% (43.7m<sup>2</sup>) to the control. Landscaped area makes up 29.3% (33m<sup>2</sup>) of total open space, representing a variation 16.2% (6.4m<sup>2</sup>) to the control. Total open space above ground level is compliant at less than 25% of total open space.

The development is considered against the underlying objectives of the control as follows:

*Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.*

Comment:

The proposed development includes suitable landscaped open space and planting to support native flora and fauna, as demonstrated by the submitted landscape plan.

*Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.*

Comment:

The proposed development includes soft open space at the ground floor level. The proposed open space and landscaping is consistent with the character of the street. The development maximises open space where it can, given the narrow width of the site. The proposed development is well under the building height allowable for the site, which demonstrates that the development is not excessive, despite the total open space non-compliance.

*Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.*

Comment:

The proposed development is designed and sited to provide a suitable amenity outcome for occupants of the subject site and adjoining sites. The proposed development allows for adequate access to light, sunshine and air for the subject site and adjoining sites, as detailed in the section of this report relating to Clause 3.4.1 Sunlight Access and Overshadowing of the Manly Development Control Plan. The proposed development is compliant with the privacy requirements of Clause 3.4.2 Privacy and Security and Clause 3.4.3 Maintenance of Views of the Manly Development Control Plan.

*Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.*

Comment:

The proposed development includes a suitable amount of porous land to assist with water infiltration on site, and is supported by sufficient stormwater management measures, as demonstrated by the supporting stormwater plans.

*Objective 5) To minimise the spread of weeds and the degradation of private and public open space.*

Comment:

The proposed development is supported by a landscape plan that includes suitable planting species, so as to minimise the spread of weeds.

*Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.*

Comment:

The subject site is not classified as a wildlife corridor. However, the site includes suitable landscaping to support local wildlife.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)**

The proposed development includes one (1) hardstand car space in the front setback area, where two (2) parking spaces are required by Schedule 3 of the Manly Development Control Plan. The

development is considered against the underlying objectives of the control as follows:

*Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).*

Comment:

The proposed parking space is level on the ground with sufficient dimensions to allow for consideration of disabled access.

*Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.*

Comment:

The proposed driveway is designed such that a carparking will be retained on the street in front of the dwelling, while also providing one (1) off-street parking space, resulting in a net increase in compliant parking.

*Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.*

Comment:

The proposed hardstand space is surrounded by landscaping and vegetation, so as to reduce its visual impact. The proposed parking space is located immediately at the front boundary so as to provide clear sight lines for vehicle ingress and egress, and allow for pedestrian and vehicular safety.

*Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.*

Comment:

The proposed single hardstand parking space does not require substantial excavation, so does not impact upon site instability or interruption to ground water flows.

*Objective 5) To ensure the width and number of footpath crossings is minimised.*

Comment:

The proposed development includes one single-width driveway crossover of the minimum dimensions.

*Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.*

Comment:

The proposed hardstand space is surrounded by landscaping and vegetation, so as to reduce its visual impact and minimise onsite impervious area.

*Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.*

Comment:

The subject site is not located in a centre but is within close walking distance of bus services. The proposal allows for off-street parking for one (1) car, thereby allowing a suitable balance of car and public transport use.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### 4.1.9 Swimming Pools, Spas and Water Features

The proposed pool is located immediately beside the south side and eastern rear boundaries where setbacks of 1m to the coping and 1.5m to the water are required.

The proposed pool coping is 0.5m and 1m to the water from the southern side boundary and pool coping is 0.3m and 1m to the water from the eastern rear boundary therefore demonstrating a non-compliance with these controls.

The development is considered against the objectives of the control as follows.

*Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;*

Comment:

The proposed swimming pool is designed as a 'plunge pool' being 4 metres long and 3 metres wide, so is not a place of intense recreation. The proposed pool is suitably located for the purpose of acoustic and visual privacy as it is located south-east corner of the property. A new 1.8m boundary fence is proposed adjoining the pool, so as to further reduce the privacy impact of the pool. Filter noise can be controlled by way of location (if recommended for approval).

*Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;*

Comment:

The proposed pool is located such that it is not visible from the street, so will not impact upon streetscape or character of the locality.

*Objective 3) To integrate landscaping; and*

Comment:

The proposed development includes adequate landscaping, including in the rear yard around the pool area.

*Objective 4) To become an emergency water resource in bush fire prone areas.*

Comment:

Not applicable. The subject site is not classified as bush fire prone land.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MLEP 2013 / MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly 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 2022

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$11,614 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,161,360.

## 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 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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 Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio 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.

## PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to Development Determination Panel (DDP) due to a variation greater than 10% to Floor Space Ratio within the Manly Local Environment Plan 2013 (MLEP 2013).

The concerns raised in the objections have been addressed within the assessment report. The proposal is considered to be unacceptable due to insufficient information relating to the lack of owners consent from the adjoining and attached dwelling to the south (24 Thornton Street).

The critical assessment issues include Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, 3.4.1 Sunlight access and overshadowing, 4.1.2 Height of buildings, 4.1.4 Setbacks, 4.1.5 Open space and landscaping and 4.1.6 Parking, vehicular access and loading.

While it is considered that the proposed development satisfies the relevant controls within the MDCP and MLEP 2013, it is inconsistent with subclause (1)(b) of Clause 23 of the Environmental Planning and Assessment Regulations 2021, which requires owner's consent of the land. As there is an issue surrounding works that may impact upon the party wall, the lack of owner's consent from the owner's of 24 Thornton Street means the DDP must refuse this development application.

The proposal has therefore been recommended for refusal.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

#### **RECOMMENDATION**

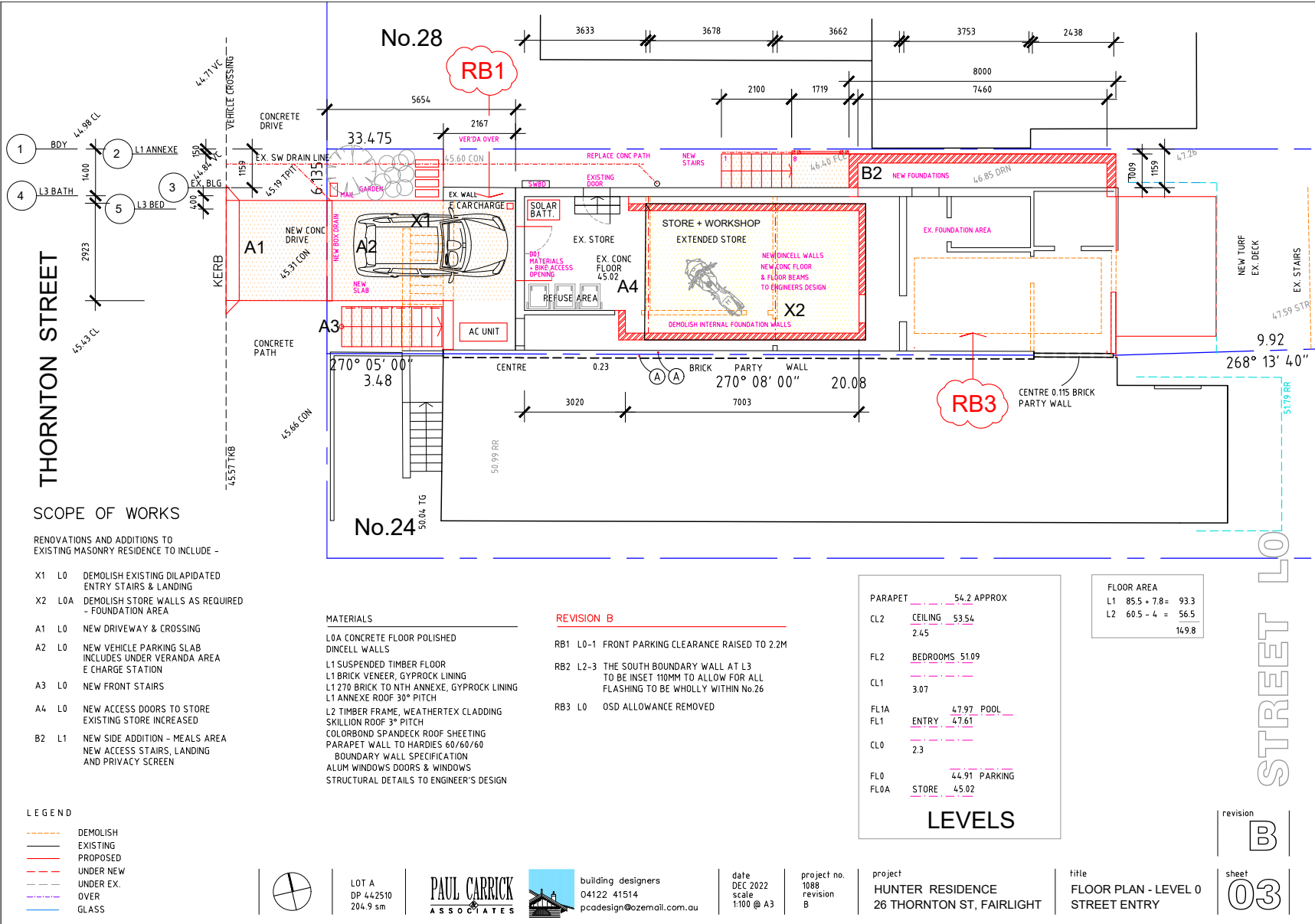
THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2023/0735 for the Alterations and additions to a dwelling house including a swimming pool on land at Lot A DP 442510, 26 Thornton Street, FAIRLIGHT, for the reasons outlined as follows:

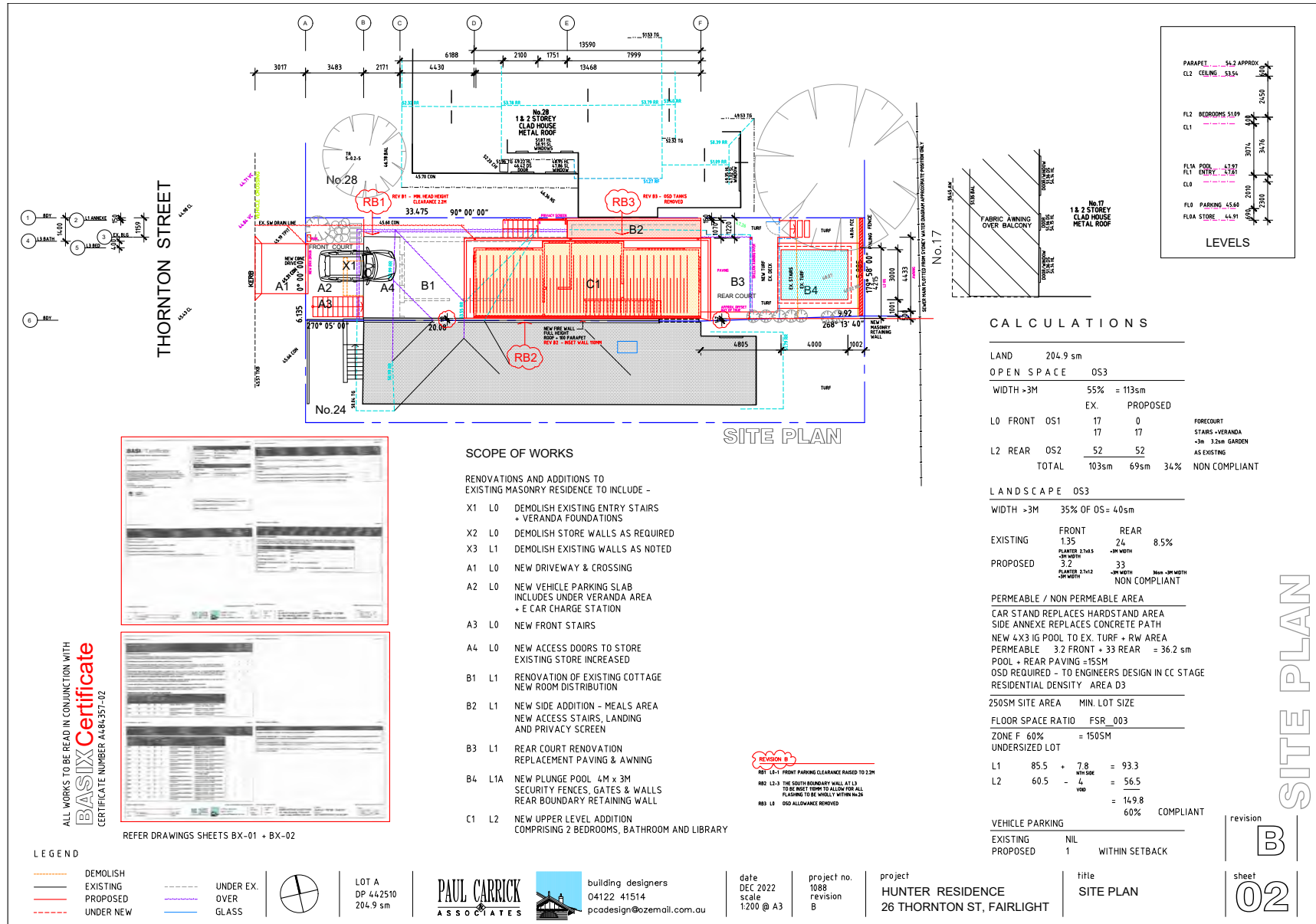
1. **Pursuant to Section 4.15(1)(a)(iv) of the of the Environmental Planning and Assessment Act 1979, the application has not been accompanied by the required information for a Development Application.**

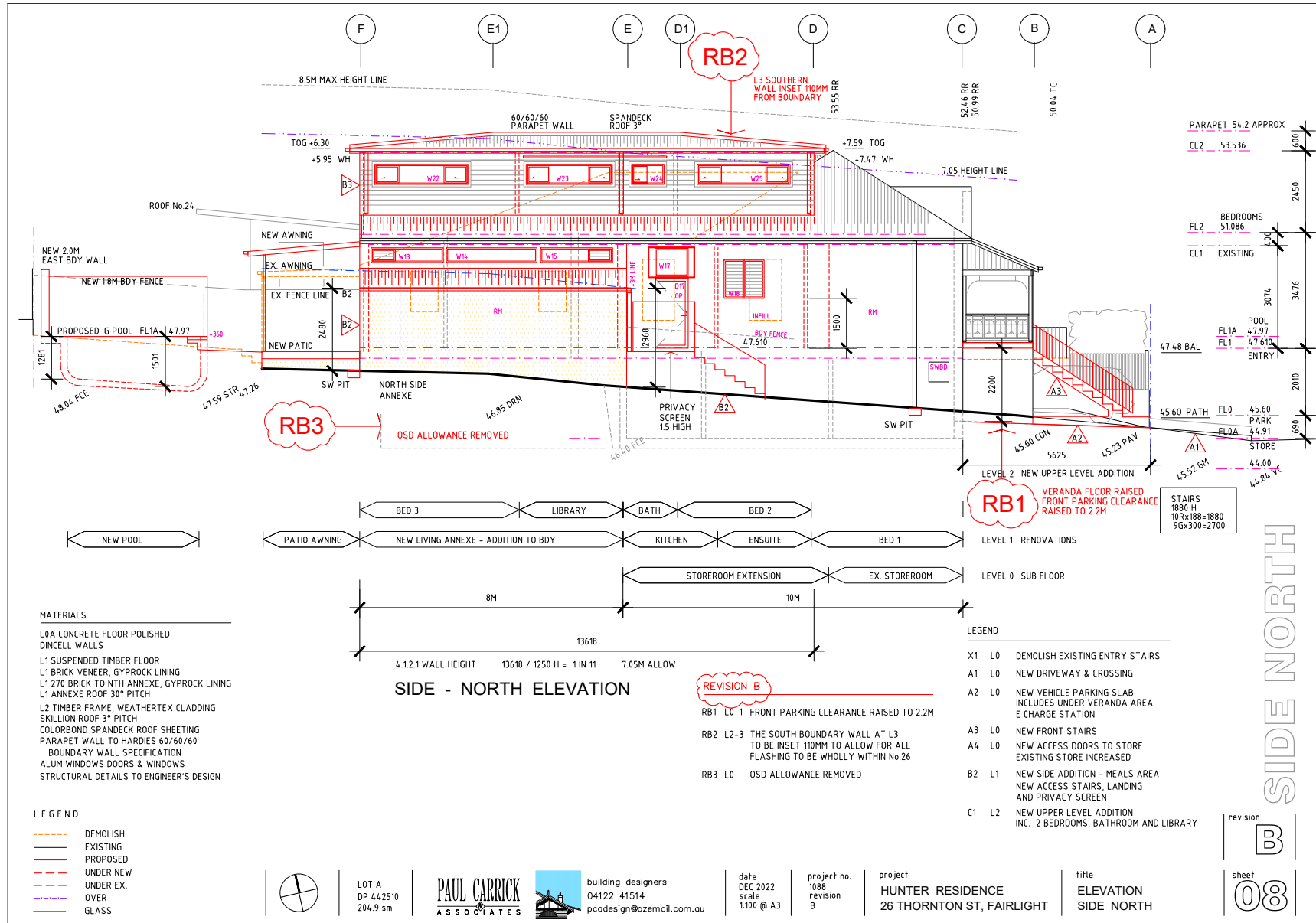
Particulars:

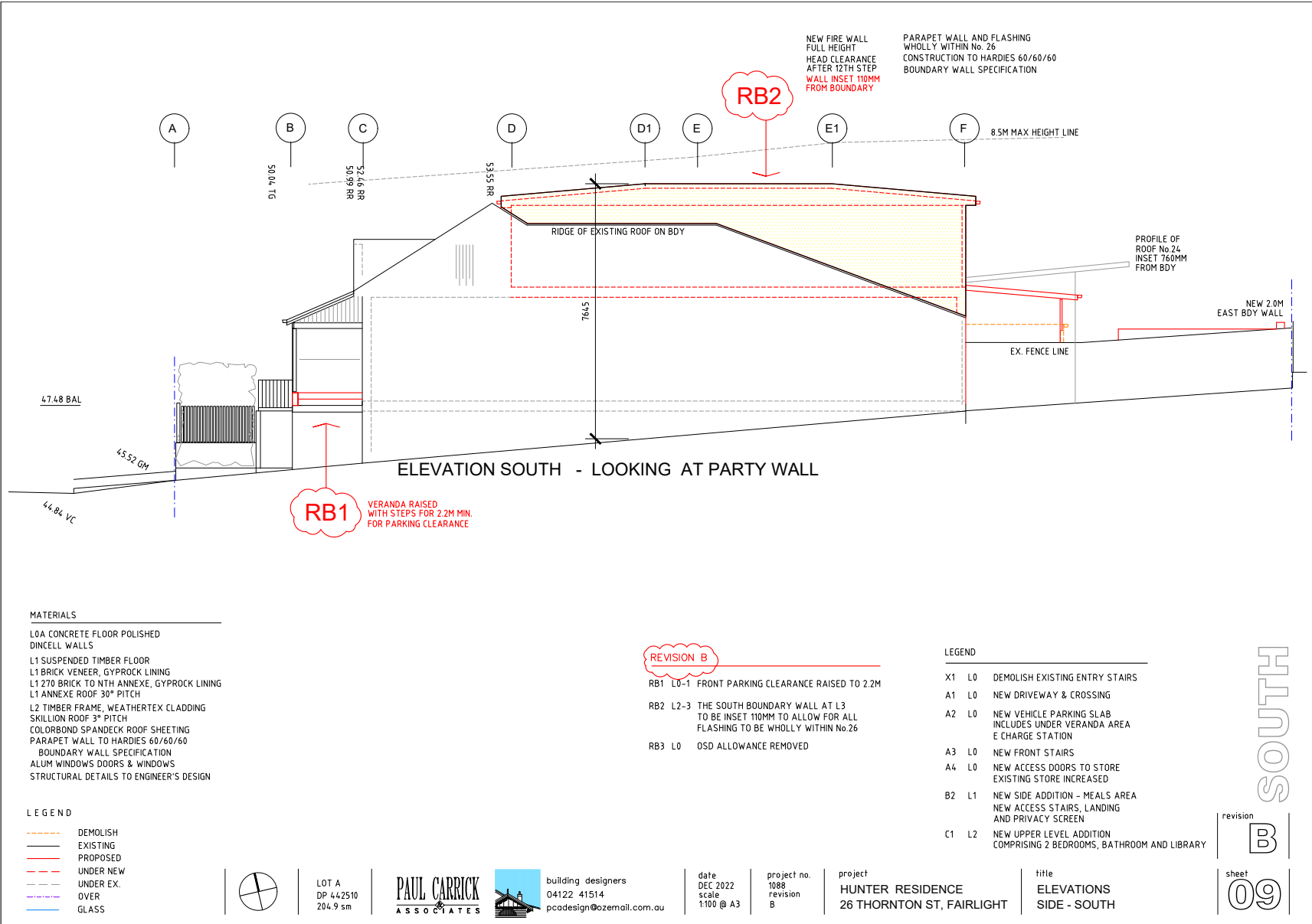
- i. The application has not been accompanied by Land Owners Consent from 24 Thornton Street, Fairlight. The development application proposes works to a party wall which travels the boundary with 24 Thornton Street and also extending over that boundary into 24 Thornton Street. As such, the development application does not contain all the information and documents required by Clause 24(1)(b) of the Environmental Planning and Assessment Regulation 2021 and the development application has not been made with the consent of the owner of 24 Thornton Street, Fairlight as required by Clause 23(1)(b) Environmental Planning and Assessment Regulation 2021.











*Vaughan Milligan Development Consulting Pty Ltd*

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**APPENDIX 1**  
**CLAUSE 4.6 – FLOOR SPACE RATIO**  
**(As revised December 2023)**

Vaughan Milligan Development Consulting Pty Ltd

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**WRITTEN SUBMISSION PURSUANT TO CLAUSE 4.6 OF  
MANLY LOCAL ENVIRONMENTAL PLAN 2013**

**26 THORNTON STREET, FAIRLIGHT**

**FOR THE PROPOSED CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO  
AN EXISTING DWELLING INCLUDING NEW SWIMMING POOL**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM FLOOR SPACE RATIO  
AS DETAILED IN CLAUSE 4.4 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013**

**For:** Proposed construction of alterations and additions to an existing dwelling  
including new swimming pool  
**At:** 26 Thornton Street, Fairlight  
**Owner:** Sarah & Peter Hunter  
**Applicant:** Sarah & Peter Hunter

## **1.0 Introduction**

This written request is made pursuant to the provisions of Clause 4.6 of Manly Local Environmental Plan 2013. In this regard, it is requested Council support a variation with respect to compliance with the maximum floor space ratio development standard as described in Clause 4.4 of the Manly Local Environmental Plan 2013 (MLEP 2013).

This revised submission considers revised architectural plans, Issue B dated December 2023.

## **2.0 Background**

Clause 4.4 restricts the maximum floor space area control within this area of the Clontarf locality and refers to the floor space ratio noted within the "*Floor Space Ratio Map*."

The relevant maximum floor space control in this locality is 0.6:1 or for this site with an area of 204.9m<sup>2</sup>, the maximum gross floor area is 122.94m<sup>2</sup> and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed development will see additions and alterations to the existing dwelling, which will result in an increase to the total gross floor area to 149.8m<sup>2</sup> or 0.731:1, and therefore the extent of the variation from the control will be 26.86m<sup>2</sup> or 21.8%.

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26 Thornton Street, Fairlight

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The controls of Clause 4.4 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

It is noted that the Council's Manly Development Control Plan 2013 Amendment 14 and in particular Clause 4.1.3.1 provides exceptions to the FSR control where the lot is less than minimum required lot size under Council's LEP Lot Size Map and the development satisfied the LEP Objectives and the DCP provisions.

In this instance the required minimum lot size in the locality is 250m<sup>2</sup>, with the DCP permitting a variation to a minimum lot size of 250m<sup>2</sup> and when calculated against this required lot size, the permissible floor area is 150m<sup>2</sup>. The proposed development will present a total floor area of 149.8m<sup>2</sup> or an FSR of 0.599:1, which complies with the prescribed FSR control of 0.6:1 when assessed against the minimum lot size in the locality.

**Is clause 4.4 of MLEP a development standard?**

- (a) The definition of "development standard" in clause 1.4 of the EP&A Act means standard is fixed in respect of an aspect of a development and include:

*"(d) the cubic content of floor space of a building."*

- (b) Clause 4.4 relates to floor space of a building. Accordingly, clause 4.4 is a development standard.

**3.0 Purpose of Clause 4.6**

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

There is recent judicial guidance on how variations under Clause 4.6 of the Standard Instrument should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council* [2018] NSWLEC 118 have been relied on in this request for a variation to the development standard.



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#### 4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

*Initial Action* involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

*“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”*

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of MLEP provides:

- (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.*

Clause 4.4 (the FSR development standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of MLEP.

Clause 4.6(3) of MLEP provides:

- (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:*

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*(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.*

The proposed development does not comply with the FSR development standard pursuant to clause 4.4 of MLEP which specifies an FSR of 0.6:1, however as the lot is undersized and proposed first floor, which contributes to additional GFA is not unreasonable in bulk and scale, achieving compliance is considered impracticable, therefore strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard. The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

*(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.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest **because** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Planning Secretary (of the Department of Planning and the Environment) has been obtained.

Under cl 55 of the *Environmental Planning and Assessment Regulation 2021*, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6, subject to the conditions in the table in the notice.

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Clause 4.6(5) of MLEP provides:

- (5) *In deciding whether to grant concurrence, the 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 Secretary before granting concurrence.*

Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), and should consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP from the operation of clause 4.6.

The specific objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for the construction of alterations and additions to an existing dwelling, which is consistent with the stated Objectives of the R1 General Residential Zone, which are noted as:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal will provide for the construction of alterations and additions to an existing dwelling to provide for increased amenity for the site's occupants, together with a swimming pool to further improve the residential amenity.

The new works maintain a bulk and scale which is in keeping with the extent of surrounding development, with a consistent palette of materials and finishes, in order to provide for high quality development that will enhance and complement the locality.

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The proposal will not exceed the maximum permitted building height control and remain consistent with the surrounding building height.

Notwithstanding the non-compliance with the maximum floor space ratio, the new works will provide attractive alterations and additions to a residential development that will add positively to the character and function of the local residential neighbourhood. It is noted that the proposal will maintain a consistent character with the built form of nearby properties.

The proposed alterations and additions will not see any adverse impacts on the views enjoyed by neighbouring properties.

The works will not see any adverse impacts on the solar access enjoyed by adjoining dwellings.

The general bulk and scale of the dwelling as viewed from the public areas in Thornton Street from the surrounding private properties will be largely maintained.

#### **5.0 The Nature and Extent of the Variation**

- 5.1 This request seeks a variation to the FSR development standard contained in clause 4.4 of MLEP.
- 5.2 Clause 4.4 of MLEP specifies an allowable gross floor area for a site in this part of Fairlight of 0.6:1 or for this site, the allowable gross floor area is 122.64m<sup>2</sup>.
- 5.3 The subject site has an area of 204.9m<sup>2</sup>.
- 5.4 The proposal has a calculable gross floor area of 149.8m<sup>2</sup> or FSR of 0.731:1.
- 5.5 The total non-compliance with the FSR control is 26.86m<sup>2</sup> or 21.86%, which is a breach to the control.
- 5.6 When assessed against a minimum lot area of 250m<sup>2</sup>, the proposal presents an FSR of 0.599:1, which complies with the control.

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## 6.0 Relevant Caselaw

6.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council (2007) 156 LGERA 446; [2007] NSWLEC 827* continue to apply as follows:

17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are*

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*applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

6.2 The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.4 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
  - (a) compliance is unreasonable or unnecessary; and
  - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.4 and the objectives for development for in the R1 zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of MLEP?

#### 7.0. Request for Variation

#### 7.1 Is compliance with clause 4.4 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) Each objective of the FSR standard and reasoning why compliance is unreasonable or unnecessary is set out below:

***(a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,***

The objective of Clause 4.4(1)(a) seeks to ensure buildings, by virtue of their height and scale are consistent with the desired future streetscape character of the locality.

The proposal provides for alterations and additions to an existing dwelling which are intended to provide for a development outcome that benefits the surrounding neighbours by maintaining existing view sharing opportunities.

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The contemporary building form with a low profile roof and earthy external finishes are considered to suitably reduce the visual bulk of the dwelling.

Further, the modulation of the front façade, together with the retention of the existing side setbacks and complementary external finishes will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

The proposal will be consistent with and complement the existing style of single dwelling housing within the locality and as such, will not be a visually dominant element in the area.

***(b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,***

The proposal will not see the loss of any significant vegetation. The built footprint of the existing dwelling remains largely unchanged other than a slight increase at the ground floor level, and is therefore not considered to result in any adverse effects on the scenic qualities of the foreshore.

***(c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,***

The site is considered to be sufficient to provide for the proposed works, with the dimensions of the lot to be unchanged.

The proposal will retain an appropriate area of soft landscaping, and the site will maintain an appropriate balance between the landscaping and the built form.

On the basis that the proposal maintains an acceptable level of landscaped area, the site is considered to maintain an appropriate balance between the site's landscaping and the built form.

***(d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,***

The proposed works are wholly contained within the site and will not result in any adverse impacts for any adjoining land.

***(e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.***

The site is not located within a business zone and by providing for the construction of alterations and additions to an existing dwelling, is not contrary to the viability of any local business activity.



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## 7.2 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *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.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31]*

There are sufficient environmental planning grounds to justify contravening the development standard.

The low pitch roof form further introduces modulation and architectural relief to the building’s facade, which further distributes any sense of visual bulk.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposed alterations and additions introduce modulation and architectural relief to the building’s facade, without seeing any substantial change to the building’s bulk, which promotes good design and improves the amenity of the built environment (1.3(g)).
- The proposed addition will maintain the general bulk and scale of the existing surrounding dwellings and maintains architectural consistency with the prevailing development pattern which promotes the orderly & economic use of the land (cl 1.3(c)).

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- Similarly, the proposed additional floor area will provide for improved amenity within a built form which is compatible with the streetscape of Thornton Street which also promotes the orderly and economic use of the land (cl 1.3(c)).
- The proposed new works which exceed the gross floor area control and FSR standard of 0.6:1 is considered to promote good design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act.
- The alterations demonstrate good design and improves the amenity of the built environment by creating improved and functional living area and also maintains the amenity of the existing dwelling house and neighbours in terms of views by maintaining a consistent ridge height, together with providing for internal lift access to improve the ability for the occupants to access the levels within the dwelling. (cl 1.3(g)).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants and manages the bulk and scale and maintains views over and past the building from the public and private domain.

These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the floor space ratio control.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

*87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

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**7.3 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the R1 General Residential zone?**

- (a) Section 4.2 of this written request suggests the 1<sup>st</sup> test in Wehbe is made good by the development.
- (b) Each of the objectives of the R1 General Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

I have had regard for the principles established by Preston CJ in *Nessdee Pty Limited v Orange City Council* [2017] NSWLEC 158 where it was found at paragraph 18 that the first objective of the zone established the range of principal values to be considered in the zone.

Preston CJ found also that *"The second objective is declaratory: the limited range of development that is permitted without or with consent in the Land Use Table is taken to be development that does not have an adverse effect on the values, including the aesthetic values, of the area. That is to say, the limited range of development specified is not inherently incompatible with the objectives of the zone"*.

In response to *Nessdee*, I have provided the following review of the zone objectives:

It is considered that notwithstanding the compatible form of the proposed additions which see a minor reduction in the total gross floor area, the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the R1 General Residential Zone for the following reasons:

- ***To provide for the housing needs of the community***

As found in *Nessdee*, this objective is considered to establish the principal values to be considered in the zone.

Dwelling houses are a permissible form within the Land Use table and is considered to be specified development that is not inherently incompatible with the objectives of the zone.

The R1 General Residential Zone contemplates low density residential uses on the land. The housing needs of the community are appropriately provided for in this instance through the proposed alterations and additions to an existing dwelling which will provide for an appropriate level of amenity and in a form, and respect the predominant bulk and scale of the surrounding dwellings.

The development will observe Council's overall building height of 8m.

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The proposal will improve the amenity for the buildings' owners by providing new living spaces and bedrooms in a form which complements the architectural style and scale of the surrounding development.

The compatible form and scale of the alterations and additions will meet the housing needs of the community within a single dwelling house which is a permissible use in this residential zone.

- ***To provide for a variety of housing types and densities.***

The subject proposal continues to provide for a semi-detached dwelling that is consistent with the dominant housing typology in the area and along Thornton Street. The density is no inconsistent with the Fairlight locality.

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

The proposal will continue to provide a dwelling that will meet the day to day needs of the occupants by providing greater space and an increased level of amenity.

#### **7.4 Has council obtained the concurrence of the Director-General?**

The Council can assume the concurrence of the Director-General with regards to this clause 4.6 variation.

#### **7.5 Has the Council considered the matters in clause 4.6(5) of MLEP?**

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed additions to the dwelling house for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

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## **8.0 Conclusion**

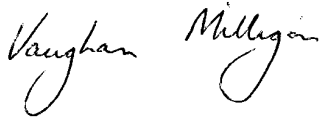
This development proposes a departure from the maximum floor space ratio control for this locality of 0.6:1, with the proposed additions to the existing dwelling to provide a maximum floor space ratio of 0.731:1.

As discussed, it is noted that the Council's Manly Development Control Plan 2013 Amendment 14 and in particular Clause 4.1.3.1 provides exceptions to the FSR control where the lot is undersized and is less than minimum required lot size under Council's LEP Lot Size Map and the development satisfied the LEP Objectives and the DCP provisions.

In this instance the required minimum lot size in the locality is 250m<sup>2</sup> and when calculated against this required lot size, the development prescribes a FSR of 0.599:1, which presents a compliant development when considered against the FSR control.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

In summary, the proposal satisfies all of the requirements of clause 4.6 of MLEP 2013 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



**VAUGHAN MILLIGAN**  
*Town Planner*

<b>ITEM 3.4</b>	<b>REV2023/0026 - 7 NEW STREET BALGOWLAH HEIGHTS - REVIEW OF DETERMINATION OF APPLICATION DA2023/0689 FOR DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE</b>
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**PURPOSE**

To refer the attached application for determination as required under adopted delegations of the Charter.

**RECOMMENDATION**

THAT Council as the consent authority **approves** Development Consent to REV2023/0026 for review of Determination of Application DA2023/0689 for Demolition works and construction of a dwelling house on land at Lot 10 DP 9561, 7 New Street BALGOWLAH HEIGHTS, subject to the conditions set out in the Assessment Report.

<b>REPORTING MANAGER</b>	Rodney Piggott
<b>TRIM FILE REF</b>	2024/121026
<b>ATTACHMENTS</b>	<b>1</b> <a href="#">↓</a> <b>Assessment Report</b> <b>2</b> <a href="#">↓</a> <b>Site Plan and Elevations</b>



## REVIEW OF DETERMINATION ASSESSMENT REPORT

<b>Application Number:</b>	REV2023/0026
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<b>Responsible Officer:</b>	Reeve Cocks
<b>Land to be developed (Address):</b>	Lot 10 DP 9561, 7 New Street BALGOWLAH HEIGHTS NSW 2093
<b>Proposed Development:</b>	Review of Determination of Application DA2023/0689 for Demolition works and construction of a dwelling house
<b>Zoning:</b>	Manly LEP2013 - 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>	Frederick Edward Pentecost Helen Diana Pentecost
<b>Applicant:</b>	Planning Approvals

<b>Application Lodged:</b>	09/01/2024
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	16/01/2024 to 30/01/2024
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 1,020,739.00
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### EXECUTIVE SUMMARY

This development application seeks consent for the demolition of an existing dwelling house and the construction of a new single storey dwelling house.

The application is referred to the Development Determination Panel (DDP) due to the application being a review of a Council determination under Section 8.2 (*"any Review of Determination under Section 8.2 for a development previously determined by the DDP, its previous equivalent panel, or by a Manager."*)



Councils original determination refused application DA2023/0689 due to the applicant failing to amend the stormwater management plans to be consistent with Councils requirements. Specifically the application was refused on the following grounds;

1. The Stormwater Plans submitted (Revision C, dated 18 August 2023) do not comply with Section 9.3.3 of Northern Beaches Council's Water Management for Development Policy.
2. Council is not satisfied that the proposed Stormwater design will reasonably avoid adverse impacts of stormwater runoff on adjoining properties, or native bushland.

Under this Rev the applicant has amended the stormwater plans to be consistent with Councils requests and is supported by Councils development engineers subject to conditions. No other changes were made to the proposal as submitted under the DA.

This report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions.

## PROPOSED DEVELOPMENT IN DETAIL

This development seeks consent for the demolition of an existing dwelling house and detached garage and the construction of a single storey dwelling house and attached garage.

Specifically, the works comprise of the following:

- Demolition of existing dwelling house and detached garage;
- Removal of vegetation, driveway, and pathways, and part of rear retaining wall;
- Construction of single storey dwelling house including attached garage;
- New internal driveway;
- Addition of alfresco with retractable shade cover;
- Addition of rear patio with open pergola; and
- Associated landscaping works.

## 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

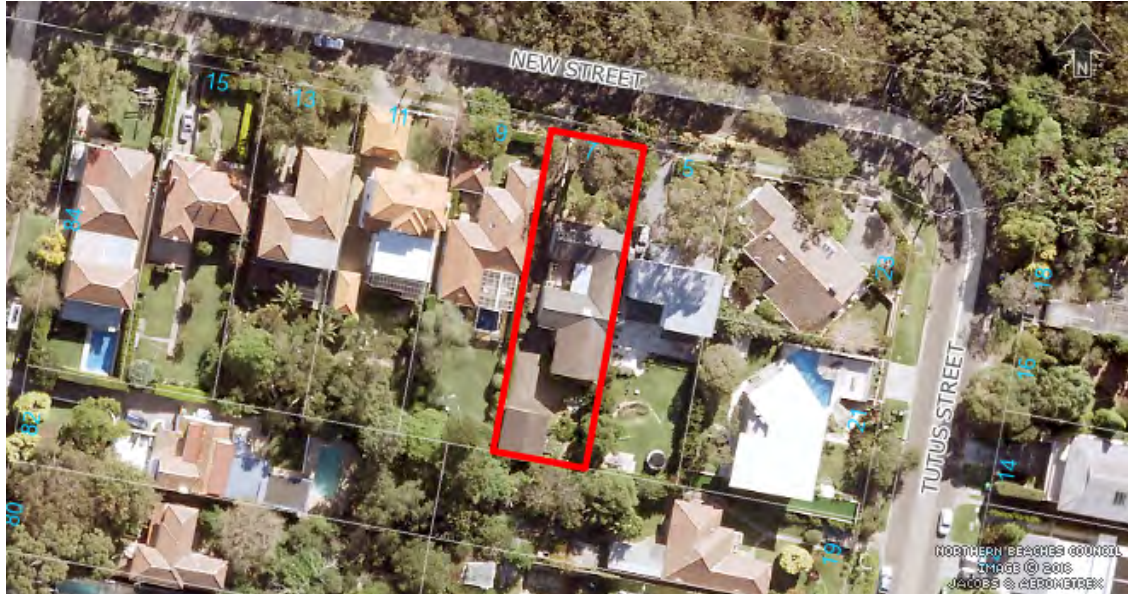
Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3  
 Assessment - SEPP (Sustainable Buildings) 2022  
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area  
 Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping  
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

### SITE DESCRIPTION

<b>Property Description:</b>	Lot 10 DP 9561 , 7 New Street BALGOWLAH HEIGHTS NSW 2093
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the southern side of New Street.</p> <p>The site is regular in shape with a frontage of 15.24m along New Street and a depth of 51.99m. The site has a surveyed area of 790.4m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone from MLEP 2013 and accommodates single storey dwelling house, and detached garage currently on the site.</p> <p>The site slopes from the front north-western corner upwards to the rear south-eastern corner over approximately 3 metres.</p> <p>The site contains lawn areas, trees, garden beds, and shrubs. There are no details of any threatened species on the subject site.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by one and two storey dwelling houses to the east, south, and west. To the north is a reserve known as Wellings Reserve.</p>



Map:



#### **SITE HISTORY**

A search of Council's records has revealed that there are no recent or relevant applications for this site (with exception to DA2023/0689, the subject application of this review).

The land has been used for residential purposes for an extended period of time.

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

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

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 31/08/2023 and the notice of determination was issued on 01/09/2023. The review was lodged on 09/01/2024 and is to be considered by Development Determination Panel on 28th of February 2024, which is within 6 months of the date of determination.

Section 8.3 (3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal relate to the stormwater disposal system only and no other changes were made to the proposal.



A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act

### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

### BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Australian Bushfire Consulting Services, dated 31 March 2023) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent.

### NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 16/01/2024 to 30/01/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Michael Adam Crebar	5 New Street BALGOWLAH HEIGHTS NSW 2093

The following issues were raised in the submissions:

- Privacy
- Excavation
- Retaining Walls
- Boundary Fence
- Window Setback
- Side Setback
- Solar Panels
- Air Conditioning Unit
- Private Power Pole
- Conditions of Consent for No.5 New Street

The above issues are addressed as follows:



- **Privacy**

The submissions raised concerns that the proposed alfresco area will result in privacy impacts to the adjoining site to the west, and east.

Comment:

An independent assessment and review of the recommended conditions outlined in the original application satisfy Council that the proposal will provide acceptable privacy for the subject site and adjoining sites. Council has conditioned that the bathroom windows (Windows 23 and 24) be glazed up to 1.65 metres. Council notes that the applicant has located bedrooms and bathrooms to be parallel with that of No. 5 New Street reducing the impacts on privacy, both visual and acoustic as these areas are not considered to be loud noise generating spaces.

No further action is required.

- **Excavation**

The submissions raised concerns that the proposal will change ground levels between the boundary between the subject site and No.5 New Street.

Comment:

A review of the excavation plan provided within the Master Set reasonably satisfies that the excavation to the subject site will not alter the levels of the adjoining site.

No further action is required.

- **Retaining Walls**

The submissions raised concerns that the plans do not detail the retaining walls along the boundary.

Comment:

As noted in the original assessment, the proposal is to retain the retaining walls along the boundary. No further action is required.

- **Boundary Fence**

The submissions raised concerns that the excavation will impact upon the boundary fence.

Comment:

As noted in the original assessment, under Clause 4.1.10 Fencing of the Manly Development Control Plan 2013, owners consent is required for works on a shared boundary fence. As the applicant has not submitted any consent no changes to the boundary fence are to be proposed under this application.



- **Window Setback**

The submissions raised concerns that the proposed windows along the eastern facade are non-compliant with the control.

Comment:

As noted in the original assessment windows W23 and W24 present the potential to create privacy concerns. Council has recommended a condition of consent to treat the subject windows with obscure glazing to mitigate any potential privacy impacts. It is considered that the proposed windows will not result in any unacceptable amenity and privacy impacts.

A condition of consent has been included. No further action is required.

- **Side Setbacks**

The submissions raised concerns that there is limited articulation along the eastern elevation.

Comment:

As noted in the original assessment, the proposal is compliant with the side setback control, that requires the building to be setback 1/3 of the adjoining wall height. As detailed in the Built Form Control table, the proposal is compliant with all side setback requirements.

No further action is required.

- **Solar Panels**

The submissions raised concerns that the proposed solar panels may result in glare to the adjoining site.

Comment:

As noted in the original assessment, under Clause 2.41(4) of State Environmental Planning Policy (Transport and Infrastructure) 2021 solar energy systems are exempt development. Notwithstanding, the proposed solar panels are not likely to result in any unacceptable glare impacts.

No further action is required.

- **Air Conditioning Unit**

The submissions raised concerns that the proposed air conditioning unit is at close proximity to the eastern side boundary.



Comment:

Council has included a condition of consent to limit the acoustic impact of the air conditioning unit.

A condition of consent has been included. No further action is required.

- **Works in Council Road Reserve**

The submissions raised concerns that the works in Council's road reserve and the management of erosion.

Comment:

As noted in the original assessment the proposal has the potential to cause erosion damages to Council's road reserve. A condition of consent has been included to require a Erosion and Sediment Control Plan to be prepared prior to a Construction Certificate. A condition for the Installation and Maintenance of Sediment Control during works to ensure the appropriate management of soils and erosion has been recommended also.

A condition of consent has been included. No further action is required.

- **Private Power Pole**

The submissions raised concerns surrounding a private pole to be shared between the subject site, and No.7 New Street.

Comment:

As noted in the original assessment the concerns surrounding the private power pole are a civil matter, and not relevant to the assessment of the current application.

No further action is required.

Concluding Comments

The concerns raised have been reviewed, and where necessary, conditions of consent have been included to mitigate any unreasonable outcomes. The concerns do not warrant the refusal of the proposed application, subject to conditions being complied with.

## REFERRALS



Internal Referral Body	Comments
Landscape Officer	<p>The proposal is supported with regard to landscape issues.</p> <p>Council's Landscape Referral section have considered the application against the Manly Local Environment Plan (MLEP), and the following Manly Development Control Plan 2013 (MDCP) controls (but not limited to):</p> <ul style="list-style-type: none"> <li>• 3.3.1 Landscaping Design</li> <li>• 3.3.2 Preservation of Trees or Bushland Vegetation</li> <li>• 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings</li> </ul> <p>No concerns are raised with the proposed removal of exempt vegetation (under 5 metres in height) which can be managed or removed at the discretion of the applicant without consent. All trees and vegetation in neighbouring properties must be protected during works, including trees and vegetation in the road reserve.</p> <p>Three native trees are proposed which satisfies the relevant MDCP controls. All proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent and in consideration of any bushfire requirements.</p>
NECC (Development Engineering)	No objections to approval subject to conditions as recommended.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

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

All, Environmental Planning Instruments (SEPPs 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 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 (Transport and Infrastructure) 2021

Ausgrid





Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

**SEPP (Resilience and Hazards) 2021**

**Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

**Manly Local Environmental Plan 2013**

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	6.4m	N/A	Yes
Floor Space Ratio	FSR: 0.4:1	FSR: 0.29:1 (229.5m <sup>2</sup> )	N/A	Yes

Compliance Assessment





Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

#### Detailed Assessment

#### **6.9 Foreshore scenic protection area**

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) measures to protect and improve scenic qualities of the coastline,*
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment: The proposed development will not have an adverse impact on the visual amenity of harbour or coastal foreshore. The development is well below the maximum height control and is considered acceptable in bulk and scale. The proposed type and design is consistent with the objectives of the R2 zone and will not result in a potential for conflict between land-based and water-based coastal activities.

#### **6.10 Limited development on foreshore area**

Under Clause 6.10 Limited Development on Foreshore Area, development consent must not be granted for development on land in the foreshore area except for the following purposes:

- the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,*
- the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,*
- boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

Comment:



The proposed development is for the erection of a building in the foreshore area, where the levels, depth or other exceptional features of the site make it appropriate to do so.

Development consent must not be granted under this clause unless the consent authority is satisfied that:

- *the development will contribute to achieving the objectives for the zone in which the land is located, and*
- *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- *the development will not cause environmental harm such as:*
  - *pollution or siltation of the waterway, or*
  - *an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
  - *an adverse effect on drainage patterns, and*
- *the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- *opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- *any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- *in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- *sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.*

Comment:

The proposed development is consistent with the objectives of the R2 Low Density Residential zone. The appearance of the proposed development is compatible with the surrounding area. The proposed development will not cause environmental harm in relation to pollution, siltation, surrounding uses, marine habitat, wetland areas, flora or fauna habitats or drainage patterns. The proposed development will not cause congestion or generate conflict between people using the adjacent open space or waterway. The proposed development retains public access along the foreshore. The proposed development will not result in adverse impacts to any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land. The proposed development will not have an adverse impact on the amenity or aesthetic appearance of the foreshore. The proposed development will not impact upon sea level rise, coastal erosion or recession, or change flooding patterns.

In satisfying itself about a matter mentioned in subclause (3) (e), the consent authority must give consideration to the following—

- *continuous public access to and along the foreshore through or adjacent to the proposed development,*
- *public access to link with existing or proposed open space,*
- *public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- *public access to be located above mean high water mark,*
- *the reinforcing of the foreshore character and respect for existing environmental conditions.*



Comment:

The proposed development will retain continuous public access to and along the foreshore. The proposed development does not impact upon any public access. The proposed development is acceptable in relation to the foreshore character and the existing environmental conditions.

**Manly Development Control Plan**

Built Form Controls

<b>Built Form Controls - Site Area: 790.4m<sup>2</sup></b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
4.1.1.1 Residential Density and Dwelling Size	Density: 750m <sup>2</sup> of site are required per dwelling	790.4m <sup>2</sup> of site area per dwelling	-	Yes
4.1.2.1 Wall Height	E: 6.5m (based on no gradient)	2.6m	-	Yes
	W: 6.5m (based on no gradient)	2.9m	-	Yes
4.1.2.2 Number of Storeys	2	1	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	3.1m	-	No
	Pitch: maximum 35 degrees	27 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	7.5m, consistent with prevailing setback	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 0.87m (based on 1/3 wall height)	1.09-1.54m	-	Yes
	W: 0.97m (based on 1/3 wall height)	1.49m	-	Yes
	Windows: 3m	1.09m	63.67% (1.19m)	No
4.1.4.4 Rear Setbacks	8m	7.15m (Pergola)	10.63% (0.85m)	No
		12.35m (Dwelling House)	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area (474.24m <sup>2</sup> )	40.09% (316.9m <sup>2</sup> )	33.18% (157.34m <sup>2</sup> )	No
	Open space above ground 25% of total open space	0%	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space (126.76m <sup>2</sup> )	84.63% (268.2m <sup>2</sup> )	-	Yes
	3 native trees	0 trees	100% (3 native trees)	No
4.1.5.3 Private Open Space	18sqm	>18sqm	-	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports	Maximum 50% of frontage up to	6.5m	4.84% (0.3m)	No



or Hardstand Areas	maximum 6.2m			
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

#### Detailed Assessment

#### **4.1.4 Setbacks (front, side and rear) and Building Separation**

##### Description of non-compliance

##### Original Assessment

*Under Clause 4.1.4.2 of MDCP 2013, the requirements for all new windows that face the side boundary are to be setback at least 3m from side boundaries. The proposal presents new windows that are located 1.09m-1.54m along the eastern side boundary, and windows located 1.5m from the western side boundary. Therefore, the proposal presents a maximum variation of 63.67% (1.91m). It is important to note, that the windows are located on the ground floor of a single storey dwelling house, and are adjacent to an existing boundary fence. Furthermore, the proposal presents an increased setback to the existing dwelling house on site. It is important to note, that the proposed windows are double glazed, and also include fixed windows for W19 & W20 to mitigate any unacceptable acoustic impacts from the kitchen. A suitable condition may be recommended to ensure windows W23 & W24 are obscure glazed, if the development were to be approved. Therefore, it is considered that the location of the windows will not result in any unacceptable visual, acoustic, or amenity impact to adjoining sites.*

*Under Clause 4.1.4.4 of MDCP 2013, the rear setback requirements state that the distance between any part of a building and the rear boundary must not be less than 8 metres. The proposed pergola is located 7.15m from the rear boundary line, presenting a variation of 10.63% (0.85m). It is important to note, the dwelling house is more than compliant with a setback of 12.35m. The variations to the window setback requirements, and rear setback requirements are supportable in this circumstance as the objectives of the control have been met as outlined below.*

##### Review Assessment

Council concurs with the original assessment. Additionally, it is important to note that the provided window setbacks are consistent with the setbacks of adjoining properties windows at 9 and 5 New Street and generally consistent with the setback in the locality. A rear setback non-compliance of 10.63% (0.85m) is also proposed. This minor non-compliance is due to the proposed pergola structure. The pergola is lightweight, open sided and will have minimal impact to the objectives of the control. The proposed dwelling house has a setback of 12.347m and is compliant with the control.

##### Merit consideration:

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

*Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.*



Comment:

The proposal is compliant with the front boundary setback control and will have no adverse impacts to the existing streetscape. The proposal includes landscaping works that will provide for an enhanced streetscape more consistent with the desired outcomes and objectives of the control.

The objective is therefore satisfied.

*Objective 2) To ensure and enhance local amenity by:*

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposed windows are located at ground level and are adjacent to an existing boundary fence. The provided shadow diagrams reasonably satisfy Council that the development will provide for equitable access to light, sunshine and air movement. The proposal will have minimal impacts on existing view corridors, facilitates view sharing, and provides for adequate separation of buildings.

The objective is therefore satisfied.

*Objective 3) To promote flexibility in the siting of buildings.*

Comment:

Flexibility is afforded in this circumstance, as the siting of the buildings is considered appropriate, and will not result in any unacceptable amenity impacts.

The objective is therefore satisfied.

*Objective 4) To enhance and maintain natural features by:*

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposed development is compliant with the MDCP landscaped area control and provides ample opportunity for plantings and enhancement of vegetation. The development does not unduly detract



from the context of the site and satisfies the provisions of *State Environmental Planning Policy No 19 - Urban Bushland*.

The objective is therefore satisfied.

*Objective 5) To assist in appropriate bush fire asset protection zones.*

Comment:

The proposal is accompanied by a Bushfire Report that details compliance with the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bushfire Report have been included as conditions of consent.

The objective is therefore satisfied.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **4.1.5 Open Space and Landscaping**

Description of non-compliance

Original Assessment

*The subject site is located within Residential Open Space Area 4. As such, at least 60% of the site is to be open space and at least 40% of the open space to be landscaped area.*

*The proposal presents a total of 40.09% (316.9m<sup>2</sup>) of open space, and 84.63% (268.2m<sup>2</sup>) of landscaped area.*

*The proposal is numerically non-compliant with the total open space requirements, presenting a variation of 33.18% (157.34m<sup>2</sup>). The proposal presents a vast improvement to the existing site that currently presents a total of 34.29% (217m<sup>2</sup>) total open space. It is important to note that the proposal presents a more than compliant landscaped area, that is double the required landscaped area. In addition it is a single storey dwelling with an acceptable footprint, despite the non-compliant total open space.*

*The subject site requires three (3) native trees, and whilst the proposal provides more than 3 trees, the species selected are not native trees in accordance with Manly DCP Schedule 4 - Part B - Native Tree Selection, Northern Beaches Council's Native Plant Species Guide - Manly Ward, or Council's Tree Guide. Council's Landscape Officer has reviewed the proposal, and has recommended a condition for an Amended Landscape Plan to include three (3) native trees in accordance with Council's requirements to ensure the trees selected are native, if the development were to be approved.*

*In this instance, the variation to the total open space is considered to be supportable as the objectives of the control have been met as outlined below.*

Review Assessment

Council concurs with the original assessment justification. The proposed dwelling house presents a



significant improvement to what is currently existing on site. Although numerically non-compliant, the proposed total open space is mostly landscaped area (268.2m<sup>2</sup> or 84.63%). The development therefore presents a significant improvement to what is existing, provides for double the required landscaped area, and is designed appropriately to allow for a balanced distribution of open space throughout the site.

Merit consideration:

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

*Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.*

Comment:

The proposal does not result the removal of any important landscape features, or vegetation including any significant native flora and fauna.

The objective is therefore satisfied.

*Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.*

Comment:

The proposal maximises soft landscaped areas providing a more than compliant area of soft landscaping. Furthermore, Council's Landscape Officer has reviewed the proposal, and is supportive of the application subject to recommended conditions.

The objective is therefore satisfied.

*Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.*

Comment:

The proposal does not result in any unreasonable impacts to amenity including sunlight, privacy, and views. The proposal is consistent with the surrounding area and streetscape character.

The objective is therefore satisfied.

*Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.*

Comment:

The proposed development provides soft open spaces for the purpose of onsite water infiltration, and stormwater is minimised. The amended stormwater plan satisfies Council's concerns regarding capture and disposal.

The objective is therefore satisfied.





*Objective 5) To minimise the spread of weeds and the degradation of private and public open space.*

Comment:

The proposed development is not likely to lead to the significant spread of weeds, or degradation of private open space.

The objective is therefore satisfied.

*Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.*

Comment:

The proposed development is not likely to affect any existing wildlife habitat, or wildlife corridors. Council's Bushland and Biodiversity Officer has reviewed the proposal, and is supportable of the proposal subject to recommended conditions.

The objective is therefore satisfied.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)**

Description of non-compliance

Under Clause 4.1.6.1 the following applies:

c) the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.

The applicants proposed garage does not exceed 50% of the frontage, however proposes a garage width of 6.5m facing north (to the street). This creates a non-compliance of 0.3m or a variation of 4.84%.

The proposed garage is setback 7.5m from the front boundary line and will not result in any unacceptable visual impact or amenity concerns.

Merit consideration:

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

*Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).*

Comment:



The proposed garage will provide 2 car parking spaces in accordance with Schedule 3 of the Manly DCP. The submitted swept path report demonstrates adequate accessibility to the provided parking and consistency with the controls.

The objective is therefore satisfied.

*Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.*

Comment:

The applicant is compliant with on site parking and will not exacerbate the availability of on-street parking.

The objective is therefore satisfied.

*Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.*

Comment:

The proposed garage is adequately setback from the front boundary line. The front boundary setback is clear of structures and will have adequate landscaping to minimise the visual impact of the development. The swept path report satisfies Council that the design of the driveway, parking spaces and other vehicular access areas are efficient, safe and convenient.

The objective is therefore satisfied.

*Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.*

Comment:

The proposal is compliant with the landscaped area control and provides for adequate ground water flows.

The objective is therefore satisfied.

*Objective 5) To ensure the width and number of footpath crossings is minimised.*

Comment:

The applicant is proposing one footpath crossing which has been tapered to width of 3.5m.

The objective is therefore satisfied.

*Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.*

Comment:



The applicant provides adequate landscaping within the front setback to provide screening of internal accesses from public views.

The objective is therefore satisfied.

*Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.*

Comment:

The subject site is located in a R2 Low Density Residential zone and not located in a major or local centre.

The objective is therefore satisfied.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

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

The proposal will not significantly 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 2022**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$10,207 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,020,739.

## **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 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly 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

### **PLANNING CONCLUSION**

This proposal, for the demolition of an existing dwelling house and the construction of a new single storey dwelling house with an attached double garage and associated landscaping works has been referred to the Development Determination Panel (DDP) due to the subject application being a review.

The concerns raised in the objections have been addressed and resolved by conditions of consent where necessary.

The reasons for refusal under DA2023/0689

- The Stormwater Plans submitted (Revision C, dated 18 August 2023) do not comply with Section 9.3.3 of Northern Beaches Council's Water Management for Development Policy.
- Council is not satisfied that the proposed Stormwater design will reasonably avoid adverse impacts of stormwater runoff on adjoining properties, or native bushland.

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

### **REASON FOR DETERMINATION**

The applicant has submitted amended stormwater plans which resolve Council's previous concerns and reasons for refusal (as listed above).

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 REV2023/0026 for Review of Determination of Application DA2023/0689 for Demolition works and construction of a dwelling house



on land at Lot 10 DP 9561, 7 New Street, BALGOWLAH HEIGHTS, subject to the conditions printed below:

### Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

### GENERAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans			
Plan Number	Revision Number	Plan Title	Draw
Page No. 2 of 14	F	Site Plan	Atria I
Page No. 3 of 14	F	Compliance Plan	Atria I
Page No. 4 of 14	F	Ground Floor Plan	Atria I
Page No. 5 of 14	F	Elevations (eastern/northern)	Atria I
Page No. 6 of 14	F	Elevations (southern/western)	Atria I
Page No. 7 of 14	F	Sections	Atria I
Page No. 8 of 14	F	Demolition Plan	Atria I
Page No. 9 of 14	F	Site Management Plan	Atria I
Page No. 10 of 14	F	Site Analysis Plan	Atria I
Page No. 12 of 14	F	Roof Plan	Atria I
Page No. 13 of 14	F	Excavation Plan	Atria I
Dwg No. C2	Issue 01	Stormwater Management Plan	ACOF
Dwg No. C3	Issue 01	Stormwater Managment Details Sheet No. 1	ACOF
Dwg No. C4	Issue 01	On Site Detention Drains Summary	ACOF
Dwg No. C5	Issue 01	Erosion & Sediment Control Plan	ACOF
Dwg No. C6	Issue 01	Erosion & Sediment Control Notes & Details	ACOF
Dwg No. C7	Issue 01	Site Catchment Plan	ACOF



Approved Reports and Documentation	
Document Title	Version Number
Swept Path Analysis	
Basix Certificate	Certificate number 13616
Waste Management Plan	
Bush Fire Assessment Report	
NatHERS Certificate	Certificate number 00085

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	24/01/2024

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

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

**3. Prescribed conditions (Demolition):**

- (a) 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 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
  - (ii) 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.

- (b) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier 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 Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (c) 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.

Reason: Legislative Requirement.

#### 4. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifier 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 Certifier 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 Certifier 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.

## 5. General Requirements

- (a) Unless authorised by Council:
 

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

  - 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) 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 an 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 following is required:
  - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% 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.
  - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
  - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the



- development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
  - (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
  - (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
    - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

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

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

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

## FEES / CHARGES / CONTRIBUTIONS

### 6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$10,207.39 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 (as amended).



The monetary contribution is based on a development cost of \$1,020,739.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

#### 7. **Security Bond**

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

### **BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

#### 8. **On-Site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Acor Consulting, project number CC230039, drawing number C1 to C4, dated 15/12/2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

Reason: To ensure appropriate provision for the disposal of stormwater and stormwater



management arising from the development.

9. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.5 metres wide in accordance with Northern Beaches Council Standard Drawing Normal High in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

A Council approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

10. **Stormwater Drainage Disposal**

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

11. **Amendments to the approved plans**

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

- Privacy screening is to be included on the western elevation of windows labelled W23 and W24 up to 1.6m from finished floor level, or, the windows are to be constructed of opaque glass and/or treated for glazing (up to 1.6m from finished floor level).

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.



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

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

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 ensure no substance other than rainwater enters the stormwater system and waterways.

**13. Compliance with standards (Demolition):**

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 Council prior to the commencement of demolition works.

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

**14. 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 Certifier prior to the issue of the Construction Certificate.

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

**15. Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifier demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- o "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- o Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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



## DURING BUILDING WORK

### 16. Tree and Vegetation Protection

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

c) the Principal Certifier must ensure that:

- i) If activated, the arboricultural works listed in a) and b) are undertaken and certified by an Arborist/Project Arborist as compliant to AS 4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.

### 17. 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.

**18. Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

**19. Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

**BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**

**20. Landscape Completion**

a) landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawing 1 by Anthea Dunlop dated 24/05/23), and inclusive of the following conditions:

i) landscape works are to be contained within the legal property boundaries,  
ii) planting shall be installed as indicated on the approved Landscape Plan(s) unless otherwise imposed by any conditions,

iii) all tree planting shall meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; installed at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,

iv) in addition to the above, all native tree planting shall be a minimum pre-ordered planting size of 75 litres or as otherwise scheduled if greater in size, and shall be located at least 3.0 metres from buildings and other trees or more,

v) mass planting shall be installed in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch,

vi) all proposed tree planting shall be positioned in locations to minimise significant impacts on neighbours in terms of blocking winter sunlight to living rooms, private open space and where the proposed location of trees may otherwise be positioned to minimise any significant loss of views from neighbouring and nearby dwellings and from public spaces,

vii) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

b) prior to the issue of an Occupation Certificate, details (from a landscape architect, landscape designer or qualified horticulturalist) shall be submitted to the Principal Certifier, certifying that the landscape works have been completed in accordance with any conditions of consent.





Reason: Environmental amenity.

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

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

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

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

22. **House / Building Number**

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

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Proper identification of buildings.

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

23. **Landscape Maintenance**

a) if any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components.

b) trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting.

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

d) the approved landscape planted areas, whether containing lawn, gardens or planters shall in perpetuity remain as planting under the development consent, and shall not be replaced with any hard paved surfaces or structures.

Reason: To maintain local environmental amenity.





24. **Air Conditioning Unit/s Noise**

The air conditioning unit/s shall not produce noise levels that exceed 5dBA above the background noise when measured from the nearest property boundary.

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

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

**Signed**

A handwritten signature in black ink, appearing to read "Rodney Piggott", written over a light grey rectangular background.

**Rodney Piggott, Manager Development Assessments**

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

**Maxwell Duncan, Acting Development Assessment Manager**

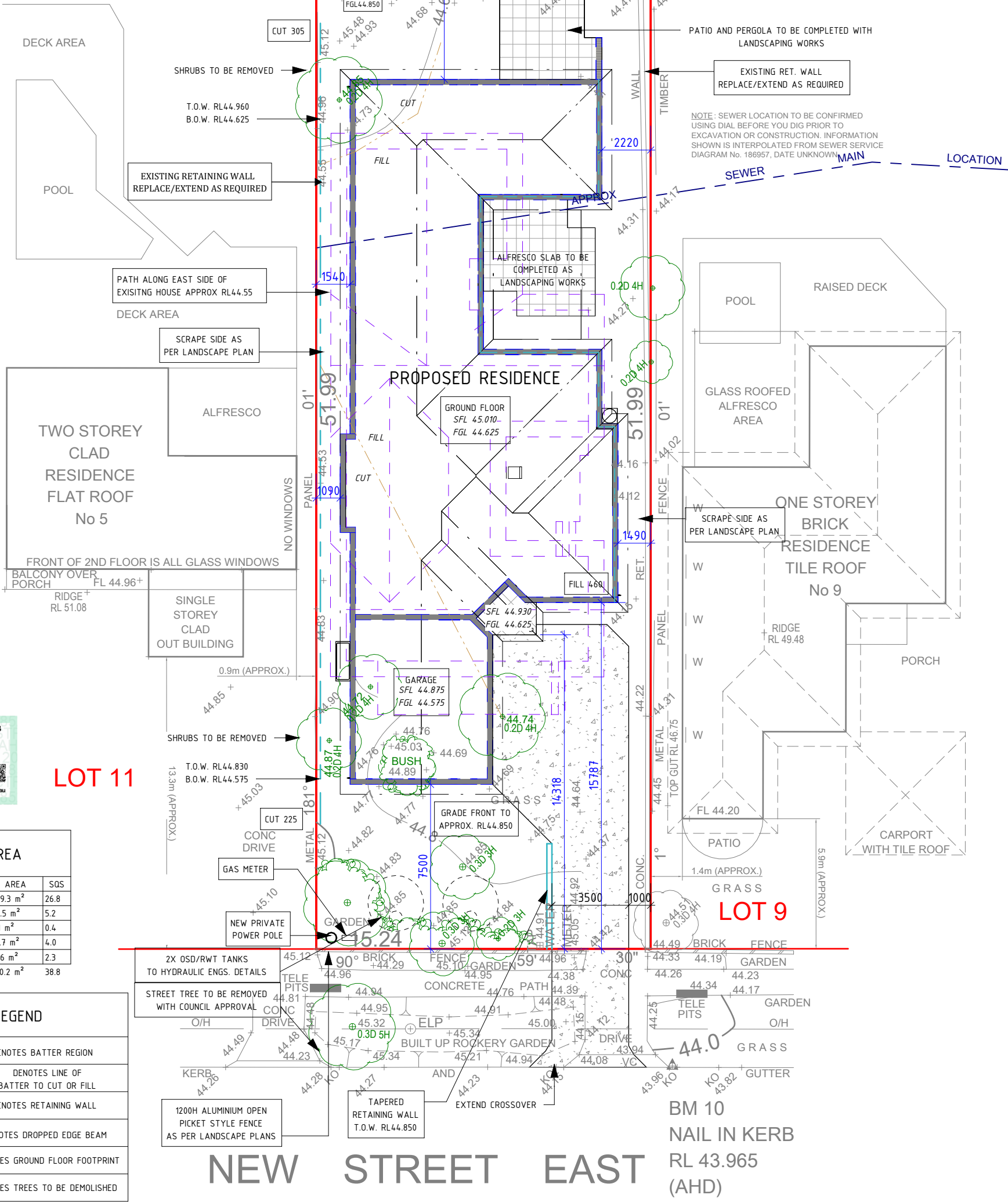
NOTES:

- FULL CIVIL PLANS DETAILS WILL BE PROVIDED AT C.C STAGE.
- FULL LANDSCAPE DETAILS WILL BE PROVIDED AT C.C STAGE.
- FINAL SETBACKS, ROOM SIZES, FLOOR AREA & SITE DATA TO VERIFIED AT C.C STAGE.
- MIN 160MM FROM SFL OF DWELLINGS TO FGL UNLESS NOTED OTHERWISE.
- GARBAGE & RECYCLE BINS TO BE STORED BEHIND GARAGE AND PLACED OUT FOR COLLECTION ON KERB & GUTTER ON COLLECTION NIGHT ONLY

REFER TO HYDRAULICS ENGINEERS PLAN FOR FULL DETAILS. SITE PLANS TO BE CROSS REFERENCED WITH HYDRAULIC PLANS. ANY DISCREPANCIES ARE TO BE VERIFIED BEFORE PROCEEDING.

BAL 19 CONSTRUCTION TO THE SOUTHERN ELEVATION  
BAL 29 CONSTRUCTION TO THE REMAINDER OF THE DWELLING  
REFER TO BUSHFIRE REPORT REFERENCE 22-602-3

BAL 19/29



TOTAL FLOOR AREA		
NAME	AREA	SQS
GROUND FLOOR AREA	249.3 m <sup>2</sup>	26.8
GARAGE AREA	48.5 m <sup>2</sup>	5.2
PORCH AREA	4.1 m <sup>2</sup>	0.4
ALFRESCO AREA	36.7 m <sup>2</sup>	4.0
PATIO AREA	21.6 m <sup>2</sup>	2.3
TOTAL FLOOR AREA & SQS	360.2 m <sup>2</sup>	38.8

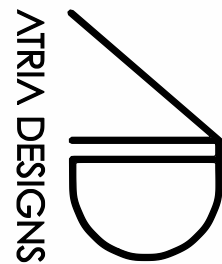
SITE PLAN LEGEND	
	DENOTES BATTER REGION
	DENOTES LINE OF BATTER TO CUT OR FILL
	DENOTES RETAINING WALL
	DENOTES DROPPED EDGE BEAM
	DENOTES GROUND FLOOR FOOTPRINT
	DENOTES TREES TO BE DEMOLISHED



BUILDING DESIGN & DRAFTING  
INFO@ATRIADESIGNS.COM.AU  
1300 028 742  
ATRIADESIGNS.COM.AU

FOR MR & MRS PENTECOST	PAGE SIZE A3	DWG NO. J1797	PAGE NO. 2 OF 14	ISSUE D	DATE 02-05-23	REVISION AMEND DA PLANS	DRAWN CL
AT LOT.10, No.7, NEW STREET EAST, BALGOWLAH HEIGHTS			DP NO. 9561	E	19-05-23	AMEND DA PLANS	IZ
				F	25-05-23	AMEND DA PLANS	CL

D.A. PLANS



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FOR	PAGE SIZE	DWG NO.	PAGE NO.	ISSUE	DATE	REVISION	DRAWN
MR & MRS PENTECOST	A3	J1797	5 OF 14	D	02-05-23	AMEND DA PLANS	CL
AT			DP NO.	E	19-05-23	AMEND DA PLANS	IZ
LOT 10, No 7, NEW STREET EAST, BALGOWLAH HEIGHTS			9561	F	25-05-23	AMEND DA PLANS	CL

D.A. PLANS

EXTERNAL FINISHES	
BRICK	AUSTRAL BRICKS, SCULPTURED SANDS (GRANITE)
ROOF TILES	LUTUM SHINGLE (SLATE, SATIN)
GUTTERS AND FACIAS	COLORBOND BASALT
WINDOW FRAMES	COLORBOND MONUMENT
GARAGE DOOR	COLORBOND BASALT (GRANGE PROFILE)
CIRCULAR VENT	COLORBOND BASALT
COLUMNS	COLORBOND BASALT
LAUNDRY DOOR	COLORBOND BASALT



NORTHERN ELEVATION

BAL 29

1 : 100

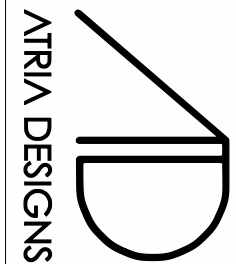


EASTERN ELEVATION

BAL 29

1 : 100



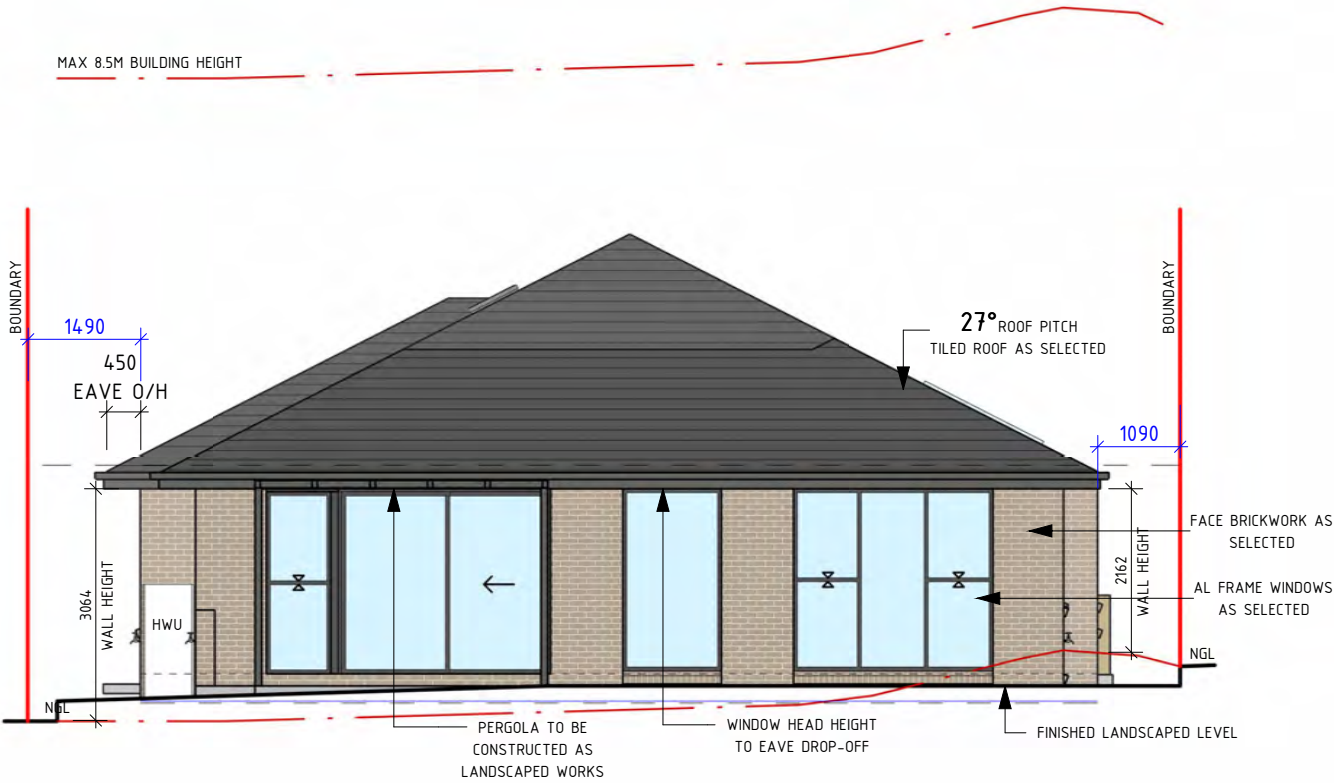


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LOT 10, No 7, NEW STREET EAST, BALGOWLAH HEIGHTS			9561	F	25-05-23	AMEND DA PLANS	CL

D.A. PLANS

EXTERNAL FINISHES	
BRICK	AUSTRAL BRICKS, SCULPTURED SANDS (GRANITE)
ROOF TILES	LUTUM SHINGLE (SLATE, SATIN)
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CIRCULAR VENT	COLORBOND BASALT
COLUMNS	COLORBOND BASALT
LAUNDRY DOOR	COLORBOND BASALT



SOUTHERN ELEVATION  
1 : 100  
BAL 19



WESTERN ELEVATION  
1 : 100  
BAL 29

<b>ITEM 3.5</b>	<b>DA2023/1203 - 10 REDMAN STREET SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE</b>
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## 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 floor space ratio.

## RECOMMENDATION

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants 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.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/1203 for alterations and additions to a dwelling house on land at Lot 81 DP 1088413, 10 Redman Street SEAFORTH, subject to the conditions set out in the Assessment Report.

<b>REPORTING MANAGER</b>	Rodney Piggott
<b>TRIM FILE REF</b>	2024/119320
<b>ATTACHMENTS</b>	<b>1</b> <a href="#">↓</a> <b>Assessment Report</b> <b>2</b> <a href="#">↓</a> <b>Site Plans and Elevations</b> <b>3</b> <a href="#">↓</a> <b>Clause 4.6</b>

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/1203
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<b>Responsible Officer:</b>	Adam Croft
<b>Land to be developed (Address):</b>	Lot 81 DP 1088413, 10 Redman Street SEAFORTH NSW 2092
<b>Proposed Development:</b>	Alterations and additions to a dwelling house
<b>Zoning:</b>	Manly LEP2013 - 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>	Michael Anthony McCluskey Christina Julia McCluskey
<b>Applicant:</b>	Nigel White

<b>Application Lodged:</b>	29/08/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	05/09/2023 to 19/09/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.4 Floor space ratio: 22.7%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 431,865.00
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### EXECUTIVE SUMMARY

This proposal seeks consent for alterations and additions to the existing dwelling, including a new first floor addition.

The application is referred to the Development Determination Panel (DDP) as it involves a 22.7% variation to the floor space ratio development standard.

The applicant has submitted a Clause 4.6 written request in support of the proposed variation to the floor space ratio development standard. As detailed in this report, it is considered that the applicant's written request to vary the standard is well-founded and adequately justifies the variation given the site

specific circumstances.

The primary justifications for the floor space ratio development standard are found to be the undersized nature of the lot and the compatibility of the proposed built form with the bulk and scale of surrounding development. In this regard, it is noted that the proposal would achieve compliance with the floor space ratio standard based on the minimum lot size of 500m<sup>2</sup>, in accordance with the provisions of MDCP 4.1.3.1.

The proposal also includes a breach of the rear setback control and a minor shortfall in total open space, both of which are considered acceptable on merit for the reasons discussed in this report. The proposal is otherwise compliant with the applicable built form controls.

No submissions were received in response to Council's exhibition of the application.

This report concludes with a recommendation that the DDP grant approval to the development application, subject to conditions.

## **PROPOSED DEVELOPMENT IN DETAIL**

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

Ground floor:

- Internal works to create an open plan living and dining room and a stair to the first floor addition
- Changes to doors and windows

First floor addition comprising:

- Living room
- Main bedroom with ensuite
- Beds 2, 3 & 4
- Bathroom

External

- New concrete driveway crossing and grass cell internal driveway
- Replacement of existing paved areas with landscaping

### Amendment of Application

Following lodgement, the application was amended to include a formalised driveway crossing and car parking. These amendments are not considered to result in any additional environmental impacts and did not require re-notification of the application, in accordance with the Northern Beaches Community Participation Plan.

## **ASSESSMENT INTRODUCTION**

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

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

#### SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing  
 Manly Development Control Plan - 3.4.2 Privacy and Security  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping  
 Manly Development Control Plan - 4.1.8 Development on Sloping Sites

#### SITE DESCRIPTION

<b>Property Description:</b>	Lot 81 DP 1088413 , 10 Redman Street SEAFORTH NSW 2092
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the south-eastern corner of Frenchs Forest Road and Redman Street.</p> <p>The site is regular in shape with a frontage of 15.09m along Frenchs Forest Road and a secondary frontage of 25.91m to Redman Street. The site has a surveyed area of 391.5m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a single-storey dwelling house.</p> <p>The site slopes approximately 2.3m from south-west to north-east.</p> <p>The site contains one significant tree within the northern setback in addition to a variety of smaller bushes and plants.</p> <p><b>Detailed Description of Adjoining/Surrounding</b></p>



	<p><b>Development</b></p> <p>Adjoining and surrounding development is characterised by low-density residential development interspersed with dual occupancy and multi-dwelling housing development.</p>
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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:

#### 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	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration	Comments
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 2021 (EP&A Regulation 2021)	<p>Part 4, Division 2 of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clause 29 of the EP&amp;A Regulation 2021 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>Clauses 36 and 94 of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p>Clause 61 of the EP&amp;A Regulation 2021 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>Clauses 62 and/or 64 of the EP&amp;A Regulation 2021 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>Clause 69 of the EP&amp;A Regulation 2021 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>Clause 69 of the EP&amp;A Regulation 2021 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, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly 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 Matters for Consideration	Comments
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 application has been publicly exhibited from 05/09/2023 to 19/09/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

#### REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<p>The proposal is for the first floor addition to an existing dwelling.</p> <p><u>Access and Parking</u> The existing access to the site appears to be Frenches Forest Road with no formalised vehicle crossing. The SEE report states that two vehicle parking is available in the driveway and hardstand area however, based on the survey plan the site does not appear to have a formal vehicular access/driveway. The proposed development intensifies the use and as such a formal vehicle crossing and parking facility shall be provided for the development in accordance with Manly DCP.</p> <p><u>Stormwater</u> The site is in Region 3 Zone 1 and as such OSD is required where the impervious area exceeds 60% of site area. No stormwater plan has been provided. However if the driveway area is included the impervious are exceeds 60% and OSD is required for the development. The Applicant shall provide a stormwater management plan in accordance with Section 9.3.3 of Council's Water Management for Development Policy.</p> <p><b>Additional Information Provided on 21/12/2023</b> The amended landscape plan showing a reduction in impervious</p>

Internal Referral Body	Comments
	area and a formal vehicular crossing off the exiting layback is acceptable. No objections to approval subject to conditions as recommended.

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Roads and Maritime Service - Roads Act 1993, s138 (Non-integrated)	TfNSW has reviewed the submitted application and provides concurrence under section 138 of the Roads Act 1993, for the proposed works within the Frenchs Forest Road corridor subject to Council's approval and the following requirements being included in any consent issued by Council.

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

All, Environmental Planning Instruments (SEPPs 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 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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A500904\_02 dated 4 July 2023).

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

##### SEPP (Transport and Infrastructure) 2021

###### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

**SEPP (Resilience and Hazards) 2021**

**Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

**Manly Local Environmental Plan 2013**

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	N/A	Yes
Floor Space Ratio	0.45:1 176.175m <sup>2</sup>	0.55:1 216.2m <sup>2</sup>	22.7%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes

Clause	Compliance with Requirements
6.12 Essential services	Yes

Detailed Assessment

**4.6 Exceptions to development standards**

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.45:1 (176.175m <sup>2</sup> )
Proposed:	0.55:1 (216.2m <sup>2</sup> )
Percentage variation to requirement:	22.7%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement 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 4.4 - Floor space ratio 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 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 subject site falls within Area I on the Lot Size Map. It is understood that the Manly DCP 2013 pursuant to clause 4.1.3.1 makes exceptions for FSR on undersized lots. Such an acknowledgement is important in this case pursuant to consideration of clause 4.6.3 of the Manly LEP 2013.*
- *The proposed built form will not be intrusive and will sit well within its site boundaries and context.*
- *In addition, there are no adverse amenity impacts arising, which affect existing residential properties or affect the environment. No trees require removal and the site is not flood prone. There are no sensitive land uses adjoining the site which will be adversely impacted by the additional FSR.*
- *In this case the variation to the floor space ratio control does not impact on the ability to accord reasonably with all other performance standards and controls."*

Comment:

The minimum lot size applicable to the site pursuant to the MLEP is 500m<sup>2</sup>, with the actual lot size being 391.5m<sup>2</sup>. Manly DCP 4.1.3.1 provides that Council may make exceptions to the maximum FSR on existing sites with an area less than the minimum lot size control where objectives of the FSR control are satisfied and the proposed FSR does not exceed that which could be achieved based on the minimum lot size (500m<sup>2</sup> site area in this case).

The proposal is found to be consistent with the objectives of the FSR development standard as assessed below, and the proposed GFA of 216.2m<sup>2</sup> is less than the maximum floor area of 225m<sup>2</sup> permitted for a 500m<sup>2</sup> site area. Further, the proposed development performs appropriately against the applicable built form controls and is compatible in terms of bulk and scale with surrounding developments within the locality. These grounds together are considered sufficient to justify the variation sought.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design and amenity, 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 Floor space ratio 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 4.4 – ‘Floor space ratio’ of the MLEP 2013 are:

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

*a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Comment:

The bulk and scale of the proposal remains compatible with the existing and desired streetscape character. Compliant setbacks are provided to the primary and secondary street frontages and the proposed dwelling height is consistent with those of surrounding developments.

*b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

Comment:

The proposed first floor addition will not obscure any important landscape or townscape features.

*c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Comment:

The proposal will maintain an appropriate visual relationship with surrounding developments, which are primarily two-storey dwellings in landscaped settings. The proposal complies with the building height standards, provides a compliant landscaped area and does not involve the removal of significant vegetation.

*d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Comment:

The proposed first floor addition is suitably located and set back, and will not adversely impact the use or enjoyment of adjoining properties or the public domain.

*e) to provide for the viability of Zone E1 and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

Comment:

N/A

**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 low density residential use of the site.

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 proposal maintains the existing residential use.

Conclusion:

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

It is considered on balance, that having regard to the particular circumstances, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

**Exception to Development Standards conclusion**

The submitted written Clause 4.6 variation request is considered to be well founded having regard to the circumstances of the proposal, those being the undersized nature of the subject site, the level of compliance with the applicable built form controls and the overall compatibility of the proposal with the surrounding locality. It is therefore considered appropriate that in this instance, flexibility in the application of the floor space ratio development standard be applied. In this context the proposal meets the Objects of the Environmental Planning and Assessment Act 1979, contained in Section 1.3, having considered the relevant provisions under s.4.15 of the Act. Consequently, the development is

considered to be in the public interest, subject to conditions.

**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 PS20-002 dated 5 May 2020, as issued by the NSW Department of Planning, 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 2 November 2021, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

**Manly Development Control Plan**

Built Form Controls

<b>Built Form Controls - Site Area: 391.5m<sup>2</sup></b>	<b>Requirement</b>	<b>Proposed</b>	<b>% Variation*</b>	<b>Complies</b>
4.1.2.1 Wall Height	East: 6.8m	FF: 6.8m	N/A	Yes
	West: 6.7m	FF: 6.4m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.9m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	FF: 8.1m	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	East (FF): 2.27m	Bed 3: 3.5m	N/A	Yes
		Bed 2, Living: 2.32m	N/A	Yes
		Ensuite: 4.7m	N/A	Yes
	West (FF): 2.13m	4.16m	N/A	Yes
4.1.4.4 Rear Setbacks	8m	3.5m	56.25%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area 215.3m <sup>2</sup>	53% 207.4m <sup>2</sup>	3.7%	No
4.1.5.2 Landscaped Area	Landscaped area 35% of open space 72.6m <sup>2</sup>	85.3% 177m <sup>2</sup>	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	3.7m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

#### Detailed Assessment

### **3.4.1 Sunlight Access and Overshadowing**

#### Compliance with control

At 9am the additional overshadowing impacts are limited to the north-facing garage window of 8 Redman Street. At 12pm there is further overshadowing of the garage window and minor impact to the northern side and eastern (rear) setbacks of 8 Redman Street. At 3pm there is minor overshadowing of the rear setback of 8 Redman Street and 82-84 Macmillan Street, in addition to moderate overshadowing of the rear setback of 113 Frenchs Forest Road. There is also impact to the rearmost western window of No. 113. It is noted that the existing covered rear deck of No. 113 overshadows much of its own rear setback throughout the day, minimising the additional impact of the proposal.

Based on the above, the proposal will maintain compliant levels of sunlight access to the windows and private open spaces of adjoining properties in accordance with the control.

### **3.4.2 Privacy and Security**

#### Compliance with control

The proposed first floor windows at the eastern and southern elevations are appropriately sized and

positioned for privacy based on the associated room uses and will not not cause any unreasonable privacy impacts.

#### **4.1.4 Setbacks (front, side and rear) and Building Separation**

##### Description of non-compliance

The proposed 3.5m rear setback is non-compliant with the 8m requirement.

##### Merit consideration:

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

*Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.*

##### Comment:

The proposed rear setback is not visible within the Frenchs Forest Road streetscape. The position of the proposed first floor is visually compatible with that of the adjoining dwelling to the south as viewed from Redman Street.

*Objective 2) To ensure and enhance local amenity by:*

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

##### Comment:

The proposed rear setback variation will not result in any adverse impacts in relation to privacy, sunlight access, views, streetscape character or traffic conditions.

*Objective 3) To promote flexibility in the siting of buildings.*

##### Comment:

Given the similar positioning of the first floor at 8 Redman Street and the absence of adverse visual and amenity impacts, it is considered reasonable to allow flexibility in the application of the rear setback control in this case.

*Objective 4) To enhance and maintain natural features by:*

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*

- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposed setback breach occurs at the first floor level and does not impact any trees or landscaped areas.

*Objective 5) To assist in appropriate bush fire asset protection zones.*

Comment:

N/A

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

#### **4.1.5 Open Space and Landscaping**

Description of non-compliance

The proposed total open space area of 53% is non-compliant with the 55% requirement.

Merit consideration:

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

*Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.*

*Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.*

*Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.*

*Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.*

*Objective 5) To minimise the spread of weeds and the degradation of private and public open space.*

*Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.*

Comment:

The proposal results in a minor shortfall in total open space of 7.9m<sup>2</sup>. The proposed dwelling additions are entirely within the existing building footprint and the minor variation to the control is a result of the provision of formalised car parking, which was a requirement of Council through the assessment process. Despite the 7.9m<sup>2</sup> shortfall, the proposal increases the existing landscaped area on the site, maintains the amenity and visual quality of the site and locality and maximises water infiltration. The proposal will not result in the spread of weeds or degradation of open spaces, nor will it impact wildlife habitat or corridors.

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

#### **4.1.8 Development on Sloping Sites**

The submitted Preliminary Geotechnical Report advises that no excavation or fill is proposed and concludes that no further geotechnical investigation is required.

#### **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 2022**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$4,319 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$431,865.

#### **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 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly 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 Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio 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.

## PLANNING CONCLUSION

This proposed development for alterations and additions is referred to the Development Determination Panel as it involves a 22.7% variation to the floor space ratio development standard.

Given the undersized nature of the lot and the compatibility of the proposal with surrounding development with regard to bulk and scale, the applicant's Clause 4.6 written request is found to sufficiently justify the variation sought.

The remaining breaches of the rear setback and total open space controls are also supported as discussed in this report.

No submissions were received in response to Council's exhibition of the application.

Overall, the proposal performs appropriately against the applicable controls and will not result in unreasonable impacts to surrounding properties or the natural environment. The proposal is therefore 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 permits a contravention of clause 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 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 DA2023/1203 for Alterations and additions to a dwelling house on land at Lot 81 DP 1088413, 10 Redman Street, SEAFORTH, subject to the conditions printed below:

## Terms and Reasons for Conditions



Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

### GENERAL CONDITIONS

**1. Approved Plans and Supporting Documentation**

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
3078 DA1	C	Plans, Elevations and Sections	Add-Style Home Additions	4 July 2023
3078 DA	A	Impervious and Natural Landscape Plan	Add-Style Home Additions	22 November 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate No. A500904_02	-	Add-Style Home Additions	4 July 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	13 September 2023
Transport for NSW	TfNSW Referral Response	31 January 2024

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

Reason: To ensure the work is carried out in accordance with the determination and the

statutory requirements of other departments, authorities or bodies.

3. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a dwelling house, in accordance with the Dictionary of the Manly Local Environmental Plan 2013, as follows:

***dwelling house*** means a building containing only one dwelling.

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.

4. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifier 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 Certifier 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 Certifier 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.

#### 5. General Requirements

- (a) Unless authorised by Council:
  - Building construction and delivery of material hours are restricted to:
    - 7.00 am to 5.00 pm inclusive Monday to Friday,
    - 8.00 am to 1.00 pm inclusive on Saturday,
    - No work on Sundays and Public Holidays.
  - Demolition and excavation works are restricted to:
    - 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) 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 an 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 following is required:
- i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% 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.
  - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
  - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
- i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished
- The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

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

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

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

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

## FEES / CHARGES / CONTRIBUTIONS

### 6. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$4,318.65 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 (as amended).

The monetary contribution is based on a development cost of \$431,865.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

**7. 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 Certifier 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.

**BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

**8. Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG), indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed to the existing site stormwater system.

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

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

**9. Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.0 metres wide in accordance with Northern Beaches Council Standard Drawing Normal Low in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

The fee associated with the assessment and approval of the application is to be in accordance

with Council's Fee and Charges.

A Council approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

10. **Boundary Identification Survey**

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent.

Details demonstrating compliance are to be submitted to the Certifier prior to the issue of any Construction Certificate.

Reason: To ensure all approved works are constructed within the subject site and in a manner anticipated by the development consent.

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

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

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 ensure no substance other than rainwater enters the stormwater system and waterways.

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 Certifier 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.

### DURING BUILDING WORK

13. **Road Reserve**

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

Reason: Public safety.

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

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

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

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

15. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

16. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

### BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

17. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian



Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

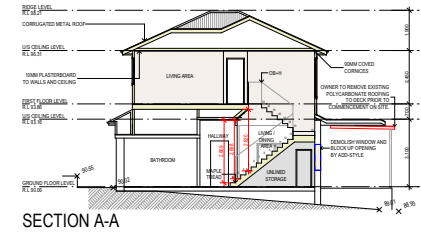
Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

18. **House / Building Number**

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

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: Proper identification of buildings.



LEGEND & GENERAL NOTES	
(VAR)	VARIATION
O/A	OWNER TO ADVISE BUILDER
B/O	BY OTHERS
SPP	30 x 30 FORMED POST
SL	SLOT LIGHT
SHW	SHOWER ENCLOSURE
V	VANITY UNIT
W/C	TOILET SUITE (WATER CLOSET)
B/C	BUILT IN CUPBOARD
ST	STORE
C/S	TO BE CHECKED ON SITE
OPTION	OPTION
OB/H	OPEN BALUSTRADE AND HANDRAIL
DO	DOORPINN
DP/S	DOORPINN AND SPREADER

ALL DIMENSIONS ARE SUBJECT TO AMENDMENT AFTER A CHECK MEASURE ON SITE.

SUBCONTRACTORS TO ENSURE THAT ALL CONSTRUCTION LEVELS MARKED ON PLAN TO BE STRICTLY COMPLYING WITH CC1 / CC2

SUBCONTRACTORS TO CONFIRM ON LEVEL IS IN COMPLIANCE WITH POLICE FIRE MANAGER BEFORE FINALISING FLOOR STRUCTURE

FRAMING NOTES.	
ROOF PITCH	NEW: 24" EXISTING 27" TO BE CHECKED
FRAME HEIGHT	2450mm
ROOFING	METAL
EAVE OVERHANGS	450mm
EXTERNAL DOOR AND WINDOW HEAD HEIGHT TO LINE UP	2130mm TO LINE UP
INTERNAL DOOR	2110mm
B.L.C DOOR OPENING HEAD HEIGHT	240mm BULKHEAD
DOOR AND WINDOW NBS	90mm MIN UNLESS OTHERWISE NOTED
FRAME AND TRUSS CENTRES	600mm
DOOR STUD OPENINGS	880mm WIDE UNLESS OTHERWISE NOTED

OPEN SPACE CALCULATIONS	
SITE AREA	391.5 acrs
GROSS FLOOR AREA	216.9 acrs
EXIST. IMPERVIOUS AREA	2312 acrs 50%
PROPOSED IMPERVIOUS AREA	2312 acrs 50%
EXIST. LANDSCAPED AREA	160.3 acrs 41%
PROPOSED LANDSCAPED AREA	160.3 acrs 41%
NO CHANGE TO EXISTING FOOTPRINT OR LANDSCAPE	
EXIST FLOOR SPACE	1192 acrs 0.30 : 1
PROPOSED FLOOR SPACE	2169 acrs 0.55 : 1

### BASIX REQUIREMENTS

40% NEW LIGHTING TO BE FLUORESCENT, COMPACT FLUORESCENT, OR LED.

BATHROOM FIXTURES TO BE 3 STAR OR GREATER WATER RATING.

EXTERNAL WALL TO HAVE R1.70 OR GREATER INSULATION.

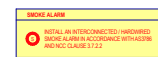
FLAT CEILING, PITCHED ROOF TO HAVE R0.45 OR GREATER, FOIL BACKED BLANKET (100mm).

ALL WINDOWS TO HAVE IMPROVED ALUMINUM WINDOWS

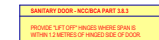
W1, W2, W7 AND W8 TO HAVE U-VALUE NO GREATER THAN 0.44 AND SHGC OF 0.75

W3, W4, W5, W6, W9, W10, W11 TO HAVE U-VALUE NO GREATER THAN 0.48 AND SHGC OF 0.45

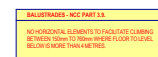
T2 TO HAVE U-VALUE NO GREATER THAN 0.5 AND SHGC OF 0.36



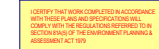
WEST ELEVATION



SOUTH ELEVATION



EAST ELEVATION



NORTH ELEVATION



ARTIST'S IMPRESSION

C	For Council	04/07/23	K9
B	For Plan Meeting	30/05/23	K9

JOB REVIEW 2	EMAIL DATE	00/00/00	A	For review	25/05/23	K9
JOB REVIEW 1	EMAIL DATE	30/05/23	NO	REVISION	DATE	BY
PROJECT TITLE:			DRAWN BY: KK		CHECKED BY: CW	
Proposed Additions at: 10 Redman Street, Seaford NSW 2092			SCALE: 1:100			
			TITLE: PLANS, ELEVATIONS AND SECTIONS			

	DRAWING NO.	3078 DA 1	ISSUE	C
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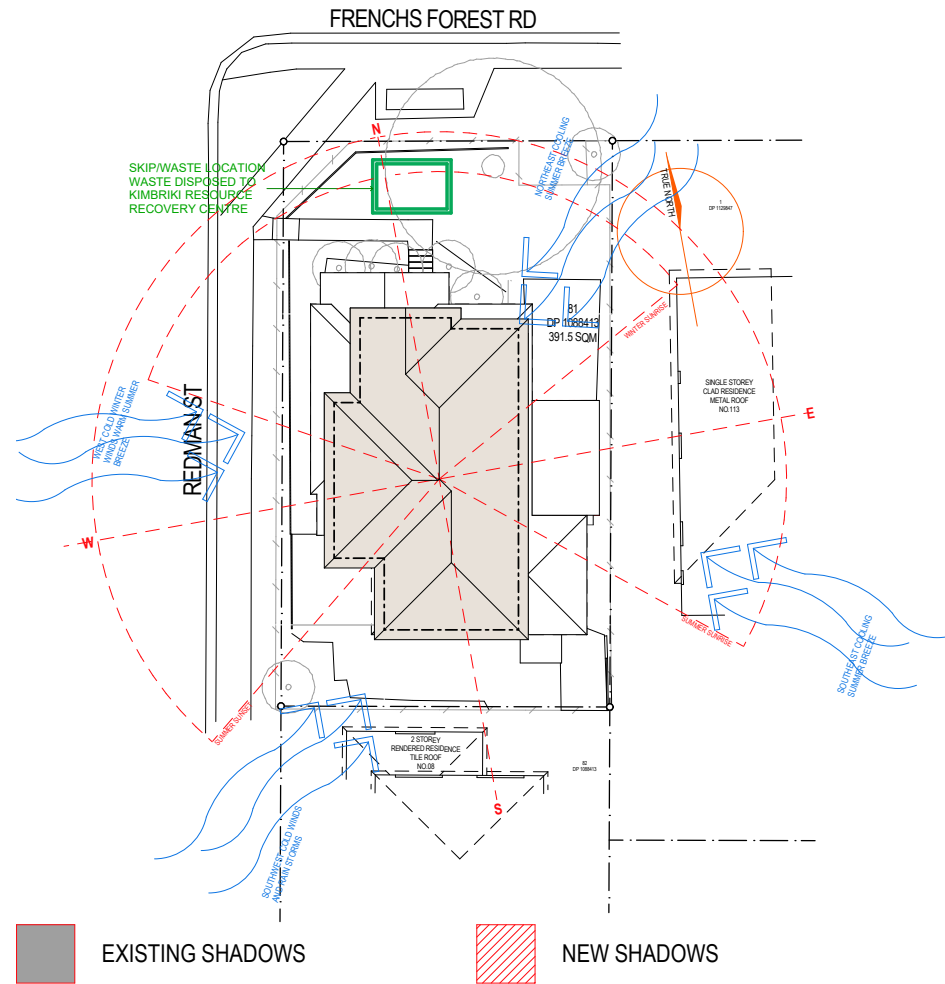
**ADD-STYLE**  
HOME ADDITIONS

Upstairs Specialists

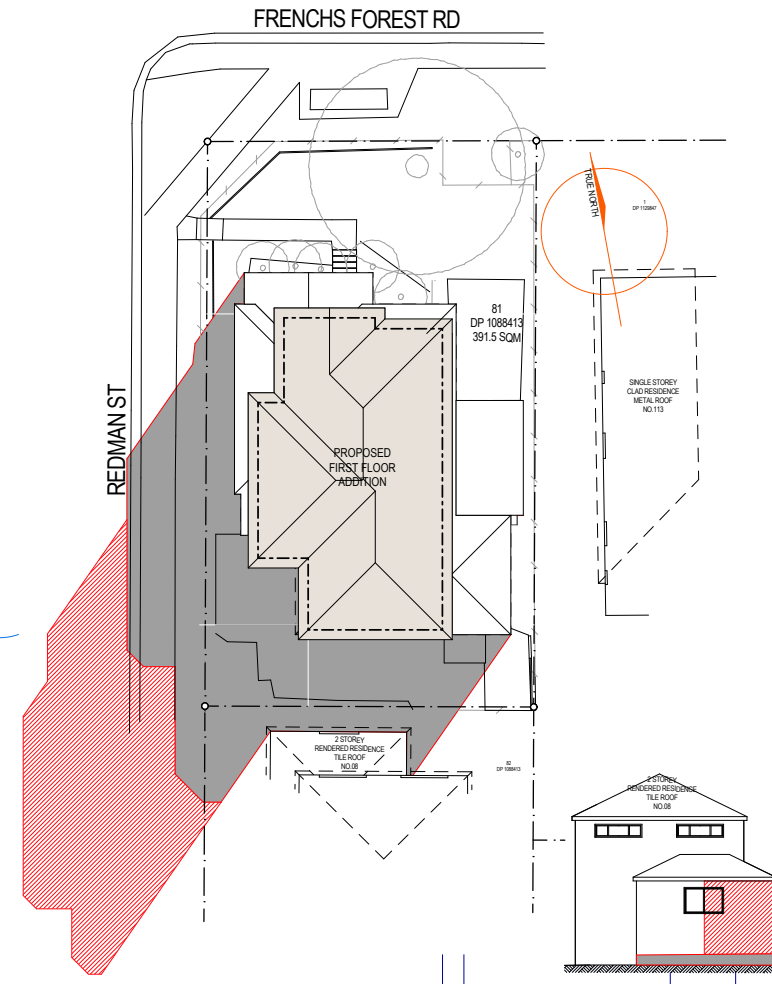
ADD-STYLE HOME ADDITIONS

629 CONSUMERS STREET VYLLING VILLE NSW  
PHONE: (02) 9677 9000  
EMAIL: info@addstyle.com.au

SITE ANALYSIS & WASTE MANAGEMENT PLAN



SHADOW DIAGRAM JUNE 21st AT 9am



**ADD-STYLE**  
HOME ADDITIONS  
Upstairs Specialists

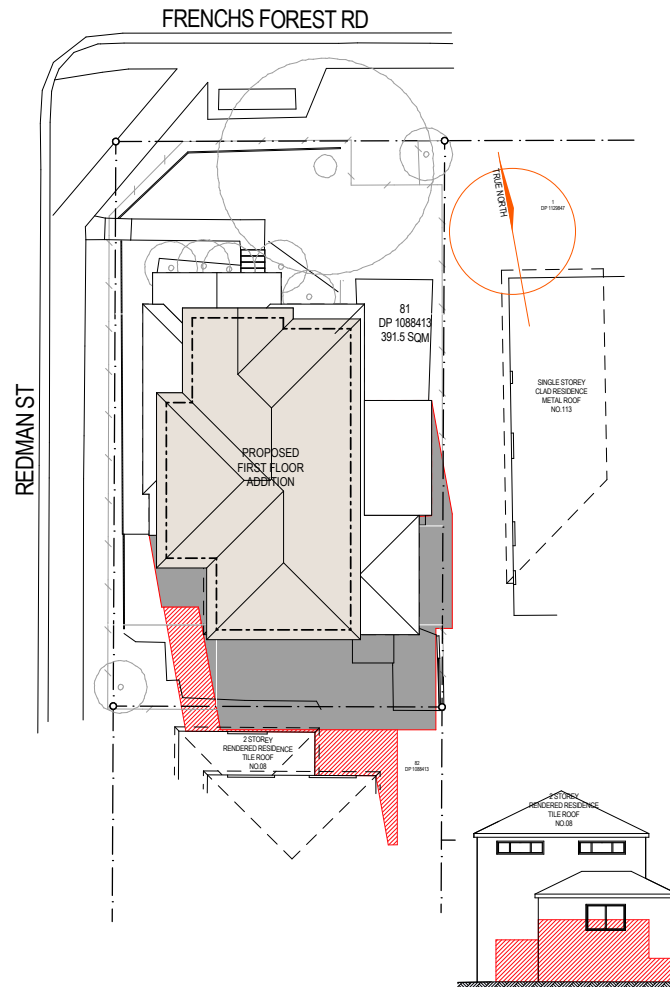
5/319 CONDOMINE ST MANLY VALE 2093 P: (02) 9907 9055 E: info@addstyle.com.au

Proposed Additions at:  
10 Redman Street, Seaforth NSW 2092

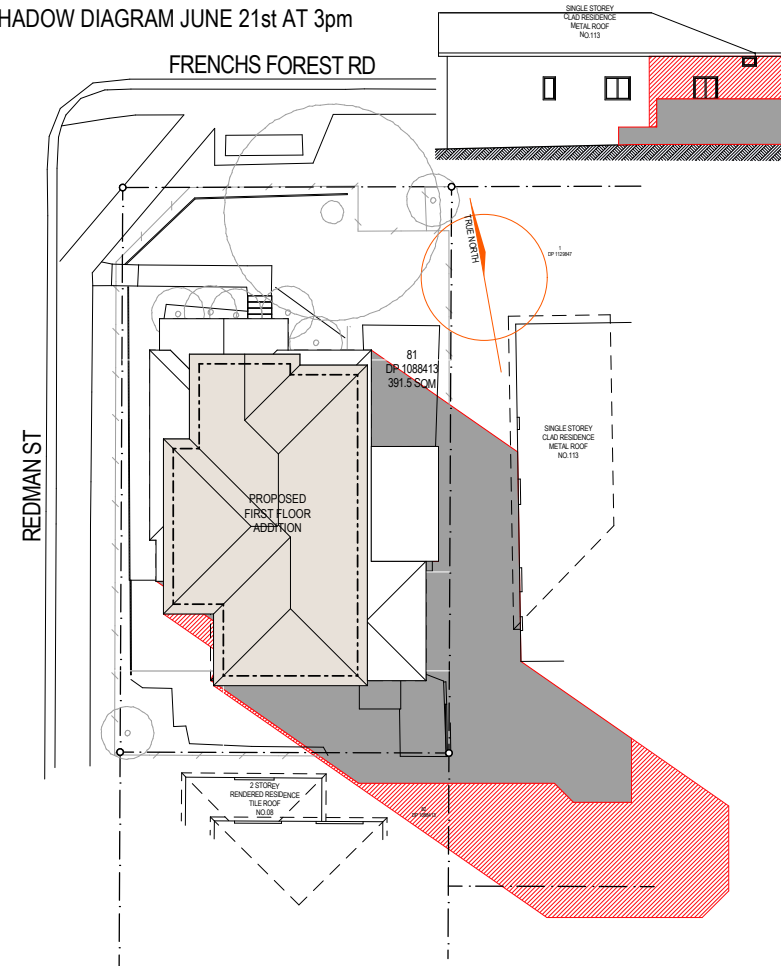
DRAWING TITLE	SITE ANALYSIS AND SHADOW DIAGRAMS	DRAWING NO.	3078 DA 1/2	ISSUE	C
SCALE	1:200	DRAWN BY	KK	CHECKED BY	CW

A	For Council	04/07/23	KK
NO.	REVISION	DATE	BY

SHADOW DIAGRAM JUNE 21st AT 12pm



SHADOW DIAGRAM JUNE 21st AT 3pm



**ADD-STYLE**  
HOME ADDITIONS  
Upstairs Specialists

5/319 CONDOMINE ST MANLY VALE 2093 P: (02) 9907 9055 E: info@addstyle.com.au

Proposed Additions at:  
10 Redman Street, Seaforth NSW 2092

DRAWING TITLE

SITE ANALYSIS AND SHADOW DIAGRAMS

DRAWING NO.

ISSUE

SCALE 1:200

DRAWN BY KK

CHECKED BY CW

3078 DA 2/2

C

A

For Council

04/07/23

KK

NO.

REVISION

DATE

BY

## Appendix A

### Clause 4.6 Justification

#### No 10 Redman Street Seaforth

##### Introduction - Content of the clause 4.6 request

The proposed development seeks approval for a minor variation from the FSR development standards pursuant to Manly LEP 2013. Clause 4.4 of the LEP relates to Floor Space Ratio. The maximum permissible floor space ratio for the subject site is 0.45:1. The subject site falls within Area I on the Lot Size Map. It is understood that the Manly DCP 2013 pursuant to clause 4.1.3.1 makes exceptions for FSR on undersized lots. Such an acknowledgement is important in this case pursuant to consideration of clause 4.6.3 of the Manly LEP 2013.

The proposed development provides for a total FSR of 0.55:1 being non-compliant with the maximum allowable floor space ratio for the subject site by approximately 40.7sqm or 10.4%. The subject dwelling inclusive of the proposed addition is not excessively large and the variation arises mainly due to the small allotment size.

Given the above non-compliance with Clause 4.4 of the LEP, consideration of the matter is given pursuant to the provisions of clause 4.6 of the LEP for completeness.

The objectives of clause 4.6 of the LEP 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.*

Clause 4.6 of the LEP notably is designed to provide **flexibility when applying development standards particularly when the variation of the standard enables a better development outcome.**

The variation to the floor space ratio control by approximately 40.7sqm arises do to the relatively small site area when compared to neighbouring properties. The proposed increase in floor space is modest and is reasonably contained within the footprint of the lower level of the

existing dwelling. The proposed upper level is to accommodate additional bedrooms, a bathroom and a small living area. The additional space assists in accommodating the expanding family.

A degree of flexibility to the application of the FSR development standard is warranted in this instance.

No adverse planning consequences (excess overshadowing, privacy, visual impact, urban design/streetscape, heritage, neighbourhood character) arise as a result of the variation. Rather, in this particular case the variation facilitates the provision of quality internal spaces and proportionate built form with a strong streetscape appeal.

The proposed development will sit comfortably in its context in terms of scale, massing and form given the existence of 2 storey buildings in the street and in particular the large dwelling situated immediately to the south of the subject property which sits on a similar sized allotment. The proposed variation to the floor space ratio standard will not be discernible to the casual observer from a streetscape perspective given that the proposed upper level addition is well setback from the street, is well articulated and partially screened by existing trees.

For reasons expressed in this submission the ‘flexibility’ provided by clause 4.6 of the LEP facilitates a design outcome that does not adversely impact on any adjoining property despite the proposed variation to the floor space ratio standard.

#### **Application of Clause 4.6**

*(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 4.6(2) of the LEP provides that development consent may be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this does not apply to a

development standard that is expressly excluded from the operation of this clause.

Clauses 4.4 of the LEP are not expressly excluded from the operation of clause 4.6 and thus Council would have the authority to grant consent to a breach of the specified development standard under clause 4.4 subject to being satisfied of other matters under clause 4.6.

### **Contravention of a Development Standard**

Clause 4.6(4)(a)(i) of the LEP provides that Council, as consent authority, must not grant development consent for a development that contravenes a development standard unless it is satisfied that a written request prepared by or for the applicant (as required under clause 4.6(3)) has adequately addressed the matters required to be demonstrated by clause 4.6(3).

The matters required to be demonstrated by clause 4.6(3) are considered below.

*(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.*

### **Clause 4.6(3)(a) - Unreasonable and Unnecessary**

Clause 4.6(3)(a) requires the applicant to provide a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

This, with clause 4.6(4)(a)(i) requires Council to consider the written request and to form an opinion that it satisfactorily demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances, rather than Council undertaking its own enquiry and forming a direct opinion of satisfaction on whether compliance with the development standard is unreasonable or unnecessary in the circumstances.

The term “unreasonable or unnecessary” is not defined in the relevant environmental planning instruments or in the Act. Preston CJ in *Wehbe v Pittwater Council* [2007] NSWLEC 827 at [42] – [49] identifies 5 ways by which strict compliance with a development standard may be unreasonable or unnecessary. This written request adopts the first way identified by Preston CJ.

*42..... The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

*The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”*

In *Initial Action Pty Ltd v Woollahra Council* [2018] NSWLEC 118, the Chief Judge of the Land and Environment Court stated that the commonly cited tests he set out in *Wehbe* remain relevant to a consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances under clause 4.6.

Justice Preston’s analysis requires the following questions to be answered.

1. What are the objectives of the development standard?
2. Does the development proffer an alternative means of achieving the objectives of the development? (unnecessary)
3. Would no purpose be served if strict compliance was required? (unreasonable)

Provided below is a commentary in relation to the above three considerations.

## **1 Objectives of development standard**

The objectives of clause 4.4 - FSR control are:

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*



- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

The proposed development does not undermine the objective to provide effective control of bulk over future development as the bulk of the building has been minimised through the recessing of the upper level and retention of floor space within the footprint of the existing dwelling.

The property is situated in an area characterised by allotments larger in size to the subject site which include larger dwellings. The proposed development inclusive of the proposed addition will be comparable in scale to other properties. It should be noted that the proposed development inclusive of the addition will only have a total floor space of 216.9sqm which is not considered excessive. The proposal will sit comfortably with existing buildings within the visual catchment.

There will be no disruption of views, loss of privacy or significant loss of solar access given the site context and orientation and design resolution.

There will be no erosion of bushland or scenic quality because of the increased FSR.

The additional floor space above the maximum permitted under clause 4.4 does not add any undesirable bulk to the building when viewed from the public domain.

### **Compliance unnecessary**

The development proffers alternative means of achieving the objective of the FSR standard by providing an acceptable residential character without comprising the amenity of the surrounding area in terms of visual impacts and solar access.

The proposed development complies with the maximum building height control and does not impact on the existing levels of open space on site. The upper level addition is centrally located above the lower level ensuring there will be a containment of impacts. The existing street setbacks and dual street frontage widths enables the retention of building proportions and the containment of impacts.

As the development proffers alternative means of achieving the objectives of clause 4.4 based on the site context, strict compliance is unnecessary.

### **Compliance unreasonable**

There would be no purpose served if strict compliance was required by the consent authority given that the proposed dwelling is consistent with the scale of nearby buildings.

As will be detailed in subsequent parts of this request the variation does not manifest in any adverse planning consequences in terms of streetscape, neighbourhood character or amenity (additional overshadowing and loss of privacy). There are no adverse 'flow on' adverse environmental impacts arising from the variation in this instance.

A compliant development in relation to the FSR would have a similar performance regarding overshadowing and bulk/scale.

No particular benefit would be derived from the strict application of the FSR standard in this instance, particularly in terms of streetscape considerations; strict compliance is therefore unreasonable.

Despite the floor space ratio variation, a compliant building height and consistent setbacks is achieved facilitating the orderly and economic development of the land.

No particular benefit would be derived from the strict application of the floor space ratio standard in this instance, particularly in terms of streetscape considerations; strict compliance is therefore unreasonable.

The proposed dwelling design represents a cost effective, orderly and economic outcome for the site.

**Clause 4.6(3)(b) - Sufficient Environmental planning grounds**

Clause 4.6(3)(b) requires the applicant's written request to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard.

This, with clause 4.6(4)(a)(i) requires Council to consider the written request and to form an opinion that it satisfactorily demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard, rather than Council undertaking its own enquiry and forming a direct opinion of satisfaction on whether there are sufficient environmental planning grounds to justify contravening the development standard.

The term "environmental planning grounds" is broad and encompasses wide environmental planning grounds beyond the mere absence of environmental harm or impacts : Tuor C in *Glenayr Avenue Pty Ltd v Waverley Council* [2013] NSWLEC 125 at [50].

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1008, Pearson C held at [60] that environmental planning grounds as identified in cl 4.6 must be particular to the circumstances of the proposed development on a site. This finding was not disturbed on appeal (Pain J in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 & Meaher JA; Leeming JA in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248.

Strict compliance with the FSR control in this instance would not achieve any additional architectural integrity or urban design merit of the development.

The proposed built form will not be intrusive and will sit well within its site boundaries and context.

In addition, there are no adverse amenity impacts arising, which affect existing residential properties or affect the environment. No trees require removal and the site is not flood prone. There are no sensitive land uses adjoining the site which will be adversely impacted by the additional FSR.

In this case the variation to the floor space ratio control does not impact on the ability to accord reasonably with all other performance standards and controls.

Strict compliance with the floor space ratio control in this instance would not achieve any additional architectural integrity or urban design merit of the development.

An attractive dwelling is proposed which can only benefit the neighbourhood.

Having regard to the above there are well founded environmental planning grounds to vary the development standard in this instance.

#### **Clause 4.6(4) Public Interest**

Clause 4.6(4)(a)(ii) of the LEP provides that Council, as consent authority, must not grant development consent for a development that contravenes a development standard unless it is satisfied that 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.

Unlike clause 4.6(4)(a)(i), this requires Council, as consent authority to form a direct opinion of satisfaction the proposed development will be in the public interest (rather than considering whether the applicant's written request demonstrates that the proposed development will be in the public interest).

A consideration of the public interest aspects of the development is provided in the following, to assist Council to form the requisite opinion of satisfaction.

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

With regards to the objectives for the FSR standard, it is noted that the scale and form of the building is consistent with surrounding built form.

The objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community.*

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

The proposed development is consistent with the objectives as follows:

The proposed development provides an appropriate infill development and contemporary construction.

Provides for the housing need of the community by permitting residentially zoned land to be used for residential purposes of an appropriate density and scale.

Is not inconsistent with, or incapable of, existing in harmony with other developments in the immediate locality.

The building height, scale and massing of the development is compatible with the evolving and desired built character of the area.

The FSR variation is of no consequence in respect of the zone objectives. Approval of the proposed development will have no impact on any other nearby development opportunities.

The FSR generated on-site because of the proposed development does not result in any significant view loss, loss of privacy and minimal additional overshadowing in the context of the site. There are no adverse heritage impacts associated with the proposed development. The height and scale of the development is typical within the residential context.

Standard floor to ceiling heights is proposed inclusive of a standard roof profile.

Having regard to the above the proposal is consistent with the objectives of the FSR standard and the objectives of the zone.

### **Concurrence of the Planning Secretary**

*(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.*

It is expected that the Council will obtain the concurrence of the Planning Secretary as required (possibly through delegation).

The variation to the FSR standard does not raise any matters of significance for State or regional environmental planning.

There is no public benefit that would be achieved by maintaining strict adherence with the development standard or compromised by approving the building.

It is contextually appropriate not to strictly apply the FSR development standard in this instance and it is not an abandonment of the standards.

### **Conclusion**

The proposed dwelling maintains a consistent built form with nearby buildings.

Amenity considerations has been reasonably resolved through design.

Strict compliance with the FSR development standard is therefore unnecessary and unreasonable given the circumstances of the site and design initiatives.

There are sufficient environmental grounds to justify the breach in this instance.

It is recommended that Council invoke its powers pursuant to clause 4.6 and approve the application.

It is noted that Acting Commissioner P Clay (SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112) in a recent consideration in relation to the consideration of clause 4.6, deemed that there is no numerical limitation to the extent of the variation sought. Such will be determined on merit.

In consideration of the merits of the application, the proposal is reasonable.

Should you require any further information please contact the undersigned.

Yours Faithfully

A handwritten signature in black ink that reads "Nigel White". The signature is written in a cursive style, with the first name "Nigel" and the last name "White" clearly legible.

Nigel White  
Bachelor of Applied Science (Environmental Planning)  
14<sup>th</sup> July 2023  
Amended on the 29<sup>th</sup> November 2023.

ITEM 3.6	<b>DA2023/1707 - 32 ORARA ROAD ALLAMBIE HEIGHTS - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE</b>
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**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.

**RECOMMENDATION**

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 pursuant to clause 4.6 of WLEP 2011 as the applicants 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.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/1707 for alterations and additions to a dwelling house on land at Lot E DP 22132, 32 Orara Road ALLAMBIE HEIGHTS, subject to the conditions set out in the Assessment Report.

<b>REPORTING MANAGER</b>	Adam Richardson
<b>TRIM FILE REF</b>	2024/118667
<b>ATTACHMENTS</b>	<b>1</b> <a href="#">↓ Assessment Report</a> <b>2</b> <a href="#">↓ Site Plan and Elevations</a> <b>3</b> <a href="#">↓ Clause 4.6</a>



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/1707
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<b>Responsible Officer:</b>	Megan Surtees
<b>Land to be developed (Address):</b>	Lot E DP 22132, 32 Orara Road ALLAMBIE HEIGHTS NSW 2100
<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>	Tristan Orlando Webb Kate Rebecca Louise Webb
<b>Applicant:</b>	Nigel White

<b>Application Lodged:</b>	22/11/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	29/11/2023 to 13/12/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 13.05%
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 394,198.00
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### EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house.

The application is referred to the Development Determination Panel (DDP) as the proposal seeks variation to the maximum building height of more than 10%. The variation to the maximum building height has been supported by a written Clause 4.6 variation. The written Clause 4.6 variation request argues that the site as existing as been partially excavated underneath, causing the height variation of 13.05% to the roof structure, when the proposed works are positioned above the existing dwelling and excavation. Based on extrapolated natural ground levels the height would be measured at a maximum

of 9.13m. The remainder of the building is sited comfortably under the 8.5m height. As such it is considered that the environmental planning grounds advanced by the applicant are sufficient.

During the notification period, 1 submission was received. Concerns raised in the submission predominantly relates to inconsistency between plans and documentation relating to whether a carport is proposed and, if a carport is proposed, it would be non-compliant with the front setback requirement and inconsistent with the existing streetscape.

The critical assessment issues Clause 4.3 height of buildings, Clause 4.6 Exceptions to development standards of the Warringah Local Environmental Plan 2011 (WLEP 2011); State Environmental Planning Policy (Sustainable Buildings) 2022; and controls B1 Wall Heights, B3 Side Boundary Envelope and D9 Building Bulk of the Warringah Development Control Plan (WDCP).

This report concludes with a recommendation that the DDP grant **approval** to the development application, subject to conditions.

### **PROPOSED DEVELOPMENT IN DETAIL**

This application seeks consent for alterations and additions, including a first floor addition, to a residential dwelling, comprising the following:

#### **Ground Floor Level**

- Reconfiguration of the ground floor level to accommodate an internal staircase
- Demolition of existing rear deck and construction of a new deck and rear yard access stairs

#### **First Floor Level**

- Two bedrooms, one with walk-in robe
- Bathroom
- Living room with access to deck along the eastern elevation, as well as a pantry and future wet bar

### **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  
 Assessment - SEPP (Sustainable Buildings) 2022  
 Warringah Development Control Plan - B1 Wall Heights  
 Warringah Development Control Plan - B3 Side Boundary Envelope  
 Warringah Development Control Plan - D9 Building Bulk

## SITE DESCRIPTION

<b>Property Description:</b>	Lot E DP 22132 , 32 Orara Road ALLAMBIE HEIGHTS NSW 2100
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the western side of Orara Road.</p> <p>The site is irregular in shape with a frontage of 14.175 metres along Orara Road and a maximum depth of 46.575 metres. The site has a surveyed area of 607.8m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone within the <i>Warringah Local Environmental Plan 2011</i> (WLEP 2011) and accommodates a one (1) and two (2) storey residential dwelling within a landscaped setting.</p> <p>The site has an easterly orientation and is located on a slope of approximately 7.85 metres (or 17.15%) falling from the south-western corner of the site toward the south-eastern corner.</p> <p>The site is not known to have any threatened species.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by residential properties to the south, east and west. Orara Reserve and The Beach School is located to the north of the subject site.</p>

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:

- **DA2009/0243.** This development application sought consent for the construction of a deck located on the first floor level. This development application was approved, subject to conditions, on 2 April 2009. A Construction Certificate (CC2009/0539) was provided to Council on 9 July 2009.

#### 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	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration	Comments
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 2021 (EP&A Regulation 2021)	<p>Part 4, Division 2 of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p>Clause 29 of the EP&amp;A Regulation 2021 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>Clauses 36 and 94 of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case. However, on 13 December 2023, the Applicant provided updated site analysis, shadow diagrams and sediment control plan which removed the carport from the plans. It must be noted that the pre-da form does not state a carport as part of the proposed works. This information was merged with the existing master set and released online on 18 January 2023 once the Applicant uploaded this information to the Planning Portal. This information does not require re-notification as the carport does not form part of the proposal.</p> <p>Clause 61 of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p>Clauses 62 and/or 64 of the EP&amp;A Regulation 2021 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>Clause 69 of the EP&amp;A Regulation 2021 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>Clause 69 of the EP&amp;A Regulation 2021 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, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> 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></p>

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

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

#### BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

#### NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 29/11/2023 to 13/12/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name:	Address:
Mr Graeme Robert Andrews	12 Fishbourne Road ALLAMBIE HEIGHTS NSW 2100

The following issues were raised in the submissions:

- No plans provided with notification
- Inconsistency between plans, particularly in relation to a carport

The above issues are addressed as follows:

- **No plans provided with notification**

*The submissions raised concern that the notification letter was not accompanied by plans. The submission has queried whether this is a new Council process.*

Comment:

Adjoining properties were notified, via letter, dated 23 November 2023. Detailed within this letter is the process to review the proposed plans on Council's website.

This issue does not warrant reason for refusal of this application.

- **Inconsistency between plans, particularly in relation to a carport**

*The submissions raised concerns that there are inconsistencies across the proposed master set plans, notification plan and shadow diagrams where a carport is shown on the notification plan and shadow diagrams but not shown on the proposed master set plans. The submission stated that if the proposal included a carport, it would be inconsistent with the Orara Road streetscape as it would be sited within the front setback, creating an unreasonable bulk and scale immediately adjoining Orara Road which is not commensurate with other properties along Orara Road.*

Comment:

This inconsistency is noted. The Statement of Environmental Effects, Pre-DA Form, and master set plans do not detail a carport as part of the proposed development. As such, should this application be approved, a condition will be recommended to ensure all approved documentation is consistent with the approved plans, and that nothing within the consent grants approval for a carport.

This issue does not warrant reason for refusal of this application.

## REFERRALS

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><b>Supported, subject to conditions</b></p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.</p>
Aboriginal Heritage Office	<p><b>Supported, subject to conditions</b></p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural</p>

External Referral Body	Comments
	Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

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

All, Environmental Planning Instruments (SEPPs 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 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 (Transport and Infrastructure) 2021**

##### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

##### Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

##### **SEPP (Sustainable Buildings) 2022**

A BASIX certificate has been submitted with the application (see Certificate No. A502927, dated 30 August 2023).

A condition has been included in the recommendation of this report requiring compliance with the



commitments indicated in the BASIX Certificate.

## SEPP (Resilience and Hazards) 2021

### Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

## 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	9.61m	13.05%	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
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

### Detailed Assessment

#### 4.6 Exceptions to development standards

The application seeks consent to vary a development standard as follows:

**Development standard:** Clause 4.3 Height of building

**Requirement:** 8.5 metres

**Proposed:** 9.61 metres

**Percentage of variation:** 13.05%



## SECTION B-B

Figure 1. Proposed Section B-B. Extent of height breach indicated in yellow shading.

With reference to Section 35B of the *Environmental Planning and Assessment Regulation 2021*, the development application is/is not accompanied by a document that sets out the grounds on which the Applicant seeks to demonstrate the matters set out in Clause 4.6(3)(a) and (b) of the WLEP 2011 (the 'Clause 4.6 Request').

Subclause (1) of this clause provides that:

(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.*

### Comment:

The objectives of this clause have been considered pursuant to Section 4.15(a)(i) of the *Environmental Planning and Assessment Act 1979*.

Subclause (2) of this clause provides that:

(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 is not expressly excluded from the operation of this clause.

Subclause (3) of this clause provides that:

(3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

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

Comment:

Council is satisfied that the Applicant has demonstrated that compliance with Clause 4.3 is unreasonable or unnecessary in the circumstances of this application for the following reasons:

- Slope of the land.
- Existing excavation of the lower ground level and the location of the upper level sited over the existing excavated lower ground level.

*(b) 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.'*

The Applicant's Clause 4.6 Request argues, in part:

- *'The proposed departure from the building height standard arrives owing to the change in ground levels along the allotment and the elevated nature of the ground floor which is built above a garage and storage area.*
- *...the variation does not result in excessive floor space ratio or development density.*
- *The variation does not manifest in an overdevelopment of the site.*
- *The location of the upper level as proposed is logical and appropriately relates to the street, rear yard and neighbouring properties.*
- *The proposed upper level has been recessed and includes street facing balcony to minimise the appearance of bulk when viewed from the street.*
- *It is noted that only a small portion of the front of the building roofline encroaches into the height plane.*
- *The proposed development has been architecturally designed to provide a well composed building that provides good amenity for future occupants, which respects the amenity of existing and future neighbouring development and which is compatible with the emerging character and development pattern of the locality.*
- *No adverse planning consequences (privacy, visual impact, urban design/streetscape, heritage, neighbourhood character) arise from the variation with the proposed development sitting comfortably on-site within the required setbacks. Rather, in this case the variation facilitates a good design outcome in terms of amenity, streetscape and built form.*
- *The provision of a flat roof profile can be provided to achieve numerical compliance however such would appear disjointed and lack architectural expression. Further a lower roof pitch would not comply with the relevant Australian Standard.*

- *The proposed departure from the building height relates to a small portion of the roof ridge only, which is located centrally on-site.*
- *The subject site is zoned to accommodate low density residential development and the immediate precinct does contain dwellings built on similar sized lots which contain similarly scaled 2 and 3 level dwellings. The proposed dwelling is proportionate with its site boundaries and will be consistent in this regard.*
- *The minor exceedance of the building height standard does not result in a building that is excessively bulky particularly as the proposed addition to the dwelling is recessed into the site.*
- *The proposed development achieves the desired residential character without comprising the amenity of the surrounding area in terms of visual impacts and solar access. A pitched roof is proposed in this instance and considered necessary.*
- *The proposed development proffers an alternative means of achieving the objective of the minimum building height standard. The surrounding precinct maintains sloping land and regular detached dwellings in the zone. Pitched roofs are common in the precinct. As the development proffers alternative means of achieving the objectives of clause 4.3 based on the site context, strict compliance is unnecessary.*
- *The containment of the proposed addition within the footprint of the dwelling is preferred relative to extending the dwelling into the green spaces/recreational area at the rear or into the front setback.*
- *There would be no purpose served if strict compliance was required by the consent authority.*
- *...the variation does not manifest in any adverse planning consequences in terms of streetscape, neighbourhood character or amenity (shadowing and privacy). There are no adverse 'flow on' non compliances or adverse environmental impacts arising from the variation in this instance.*
- *A compliant development (building height) would have a similar performance in regard to overshadowing and bulk/scale.*
- *No particular benefit would be derived from the application of the standard in this instance (rather compliance would result in negative urban design outcomes); strict compliance is therefore unreasonable.*
- *...the variation to the building height control does not impact on the ability of the proposal to accord with all other development standards and controls.*
- *The proposal represents the orderly and economic development of the land and does not give rise to adverse amenity issues to neighbours.*
- *The variation will promote good design and internal amenity by providing a conventional finish to the rear elevation. The variation will allow for the orderly and economic development of land and will promote ecologically sustainable development by integrating the built form within the immediate locality. There are no adverse economic, environmental or social impacts arising.*
- *The proposed development will be in the public interest because it is consistent with the objective of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*
- *The proposed development provides an appropriate low-density infill development and contemporary construction.'*

Council is satisfied that the Applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of Clause 4.3 for the following reasons:

It is considered the Applicant's written request to vary development standard Clause 4.3 Height of buildings of the Warringah Local Environmental Plan 2011 (WLEP 2011) is acceptable given the proposed resultant built form will be commensurate with surrounding and nearby residential developments and that the extent of existing excavation on the site, which has altered the existing ground level, distorts the extent of variation. In this instance, this establishes site constraints that

make strict compliance with this development standard unreasonable, given that the addition is consistent with the built form of the subject site. The site falls quite steeply, from the rear western boundary toward the front eastern boundary. The extent of the breach is sited along the eastern elevation, where the site is at its lowest.

As detailed in Figure 1 above, the extent of breach is located to the roof form over the proposed secondary living room and balcony, with the remainder of the proposed first floor addition sited comfortably beneath the 8.5 metre maximum building height development standard.

Based on the existing excavation of the site, the maximum building height has been measured in accordance with *Merman Investments Pty Ltd Woollahra v Municipal Council [2021] NSWLEC 1582*, which is to the existing ground level. From an extrapolated measurement, as done within *Bettar v Council of City of Sydney [2014] NSWLEC 1070*, the proposed development would continue to breach the maximum building height, with a height ranging between 8.6 metres and 9.13 metres. In accordance with *Bettar*, the extent of non-compliance would remain entirely to the roof form. The existing excavation is a sufficient environmental planning ground to warrant contravention of this development standard.

The proposed breach is setback from the front boundary line at a distance of 13.0 metres (at its closest point). This is a substantial setback where the minimum requirement is 6.5 metres. Further, the side setbacks to the northern and southern side boundaries are 2.03 metres - 2.98 metres and 2.7 metres - 4.23 metres, respectively. These are substantial side setback distances where the minimum requirement is 900 millimetres. Furthermore, the proposed roof form means that as the roof slopes toward the sides, the height decreases and, when viewed from the adjoining properties, the visual impact of the development will not be severe or unreasonable. Furthermore, the proposed development results in a high level of privacy between properties, and compliant solar access to the property to the south, being 30 Orara Road.

It is noted that the Applicant acknowledged compliance *could* be achieved with this development standard. However, it is agreed that a compliant scheme would not result in an increased or improved amenity upon the subject site or adjoining properties.

The proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, thereby satisfying objects 1.3(c) and (g) of the EPA Act.

#### **Public Interest:**

Matters relevant to public interest in respect of the development are considered in the relevant sections of this report as per Section 4.15(1)(e) of the EPA Act.

#### **Conclusion:**

Council is satisfied as to the matters set out in Clause 4.6 of the WLEP 2011.

It is considered on balance that, having regard to the particular circumstances of this proposed development, the proposed departure from the development standard is acceptable and it is reasonable that flexibility to the standard be applied.

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

##### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	<b>Northern Elevation</b> 6.27m - 8.25m	14.58%	No
		<b>Southern Elevation</b> 6.55m - 8.25m	14.58%	No
B3 Side Boundary Envelope	<b>Northern Elevation</b> 4m	Encroachment (for a length of 10.93m, and a maximum height of 1.67m)	N/A	No
	<b>Southern Elevation</b> 4m	Encroachment (for a length of 5.85m, and a maximum height of 1.33m)	N/A	No
B5 Side Boundary Setbacks	<b>Northern Boundary</b> 0.9m	<b>Ground floor</b> <i>Deck: 1.84m</i>	N/A	Yes
		<b>First floor</b> <i>Dwelling: 2.03m - 2.98m</i>	N/A	Yes
	<b>Southern Boundary</b> 0.9m	<b>Ground floor</b> <i>Dwelling: 1.58m - 1.82m</i> <i>Deck: 2.5m - 2.75m</i>	N/A N/A	Yes Yes
		<b>First floor</b> <i>Dwelling: 2.7m - 4.23m</i>	N/A	Yes
B7 Front Boundary Setbacks	6.5m	<i>First floor: 13.0m - 13.77m</i>	N/A	Yes
B9 Rear Boundary Setbacks	6m	<i>Ground floor: 20.05m - 20.85m</i> <i>First floor: 20.05m - 20.85m</i>	N/A N/A	Yes Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (243.12m <sup>2</sup> )	57.7% (351.1m <sup>2</sup> )	N/A	Yes

#### 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
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

### Detailed Assessment

## B1 Wall Heights

### Description of non-compliance

This control requires development to result in wall heights no greater than 7.2 metres. Due to the slope of the land, the proposed development extends beyond the maximum wall height along both the northern and southern elevations, as indicated in the figures below.



Figure 2. Wall height breach along the northern elevation. Breach indicated by pink shading.

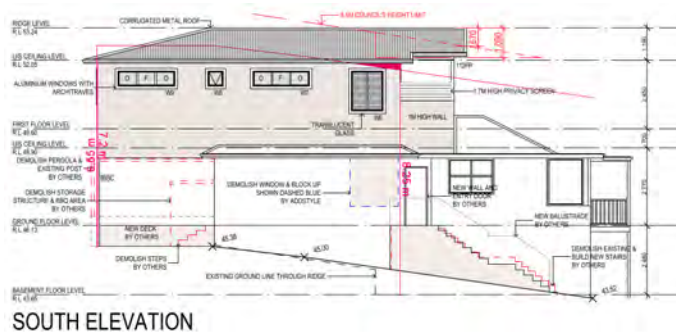


Figure 3. Wall height breach along the southern elevation. Breach indicated by pink shading.

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 exceedance of the wall height is sited at the front of the first floor addition as a result of the slope beneath the building footprint. The proposed first floor addition has significant side, front and rear setback distances. Further, the first floor addition does not align with the lower levels of the dwelling along the front eastern elevation, thus providing a high level of articulation to the front of the dwelling. However, and as detailed within section B3 Side Boundary Envelope within this report, the continuous wall plane along the northern and southern elevations will cause an unreasonable visual impact when viewed from adjoining properties, as well as contribute to an unreasonable breach to the side boundary envelope requirement. As such, a condition has been recommended to increase the side setbacks to both the northern and southern boundaries by 0.5 metres. Compliance with this condition will break-up the continuous wall plane and create visual relief of the built form. In this instance, and notwithstanding the breach to this control, the proposal does not cause unreasonable visual impacts when viewed from adjoining properties, or from Orara Reserve located to the north of the subject site.

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

Comment:

There is significant tree canopy within Orara Reserve, and the proposed development will remain well below this tree canopy. The subject site does not have a tree canopy.



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

Comment:

The extent of non-compliance to this control does not give rise to unreasonable view loss impacts to and from public and private properties.

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

Comment:

The greatest exceedance of this requirement is along the northern elevation, which is adjacent to Orara Reserve. Further, as detailed above, the proposed first floor addition provides significant side setbacks, which minimises the impact upon both public and private adjoining properties. The shadow diagrams, which include elevational shadow diagrams for the northern elevation of the dwelling at 30 Orara Road, indicate compliance with the solar access requirements as stipulated under D6 Access to Sunlight. No windows are proposed within the areas of non-compliance, and thus the breach does not cause unreasonable privacy issues to adjoining properties. In this instance, and notwithstanding the numeric non-compliance to this control along both the northern and southern elevations, the proposed development minimises the impact upon adjoining or nearby properties.

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

Comment:

The proposed development is sited over the existing building footprint and does not require extensive excavation or fill. In this instance, the natural landform of the site will remain.

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

Comment:

The proposed development seeks to alter the roof form to a pitched roof, thus creating visual interest of the built form.

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

This control requires development to be sited within a side boundary envelope, which is determined by projecting planes at 45 degrees from a height of 4.0 metres above the natural ground level along the northern and southern side elevation.

The proposed development extends beyond the prescribed side boundary envelopes along both the northern and southern elevations, as indicated in the figures below.



Figure 4. Northern side boundary envelope. Extent of breach indicated by green shading.

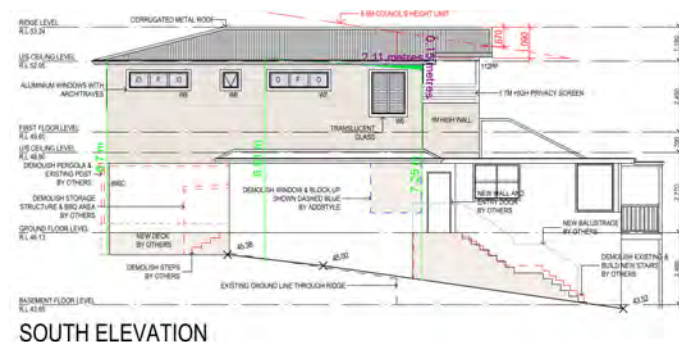


Figure 5. Southern side boundary envelope. Extent of breach indicated by green shading.

This control permits an exception where the addition of a second storey to an existing dwelling house that, to a minor extent, does not comply with the requirement of this control. The extent of the breach along the southern elevation is considered minor. However, the extent of the breach along the northern elevation is not considered minor. In this instance, the exception cannot be applied to the southern elevation.

A merit consideration of the proposal against the outcomes of this control is undertaken below.

#### Merit consideration

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

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

#### Comment:

The topography of the land beneath the building footprint makes strict compliance with this control difficult. The proposed first floor addition will align with the ground level along the northern and southern elevations which, as detailed elsewhere in this report, results in compliant side setback distances. Additionally, the proposal results in compliant front and rear setback distances. The proposed first floor addition provides articulation to the front eastern

elevation through the open-sided balcony and increased setback distances to the northern and southern boundary.

However, with consideration of the resultant building bulk (which will be addressed under section D9 Building Bulk of this report), the continuous wall plane (which exceeds the maximum wall height) will result in a development that, by virtue of its height and bulk, become visually dominant, notwithstanding the compliant setback distances. As such, a condition has been recommended to increase the side setbacks to both the northern and southern boundaries by 0.5 metres. Compliance with this condition would result in a compliant southern side boundary envelope, and a reduced northern side boundary envelope encroachment. In addition to this increase side setback, it is also recommended by Condition to reduce the span between the floors to 400mm, rather from the 700mm shown. As to be amended by recommended condition, the proposal will result in a development that is well-articulated and not visually dominant.

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

Comment:

Shadow diagrams have been provided with this application and the extent of non-compliance to this control does not give rise to any unreasonable overshadowing to the main private open space of 30 Orara Road, being the property to the south. The extent of non-compliance along the southern elevation does not cause unreasonable privacy impacts as the non-compliance is sited to a portion of wall between the top of a window and below the roof.

The extent of non-compliance along the northern elevation includes windows which could result in unreasonable privacy impacts. However, the land immediately to the north is Orara Reserve at the rear of The Beach School. As such, there is no unreasonable overlooking into private open space. The window with the largest encroachment (being W3) is sited to the secondary living room.

In this instance, and notwithstanding the numeric non-compliance to this control, the proposal provides a reasonable level of solar access and privacy to adjoining private properties.

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

Comment:

The proposed development is sited over the existing building footprint and does not require extensive excavation or fill. In this instance, the natural landform of the site will remain.

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.

**D9 Building Bulk**

#### Merit consideration

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

- *To encourage good design and innovative architecture to improve the urban environment.*

#### Comment:

As detailed elsewhere in this report, a condition will be recommended to increase the side setbacks of the first floor addition by 0.5 metres to create articulation and remove the continuous wall plane. As conditioned, the proposed development will result in a good design with innovative architecture that will improve the urban environment.

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

#### Comment:

As conditioned, the proposal will have a minimised visual impact when viewed from adjoining properties, streets, waterways and land zoned for public recreation.

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.

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

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

### **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 2022**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$3,942 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$394,198.

### **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 2021;
- 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 EPs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that the Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify variation of the development standard contained within Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

## PLANNING CONCLUSION

This proposal, for alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) as the proposal seeks a maximum building height variation greater than 10%.

The concerns raised in the objections have been addressed and resolved through relevant conditions ensuring consistency across the approved documentation and architectural plans.

The critical assessment issues Clause 4.3 height of buildings, Clause 4.6 Exceptions to development standards of the Warringah Local Environmental Plan 2011 (WLEP 2011); State Environmental Planning Policy (Sustainable Buildings) 2022; and controls B1 Wall Heights, B3 Side Boundary Envelope and D9 Building Bulk of the Warringah Development Control Plan (WDCP).

Overall, the development is a high quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been 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 the development standard contained within Clause 4.3 Height of Buildings, pursuant to Clause 4.6 of the Warringah Local Environmental Plan 2011 because the Applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) of Clause 4.6.

Accordingly Council as the consent authority grant Development Consent to DA2023/1707 for Alterations and additions to a dwelling house on land at Lot E DP 22132, 32 Orara Road, ALLAMBIE HEIGHTS, subject to the conditions printed below:

## Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

### GENERAL CONDITIONS

1. **No Approval for Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

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

2. **Approved Plans and Supporting Documentation**

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
3088 DA 1	F	Plans, elevations, and sections	Add-style Home Additions	20 October 2023
3088 DA 1/4	F	Site Analysis and Shadow Diagrams	Add-style Home Additions	30 August 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document

Drawing No. 3088 DA 1 Sediment and Erosion Control Plan	D	Add-style Home Additions	30 August 2023
BASIX Certificate A502927	N/A	Add-style Home Additions	30 August 2023
Preliminary Geotechnical Assessment (reference: J5221)	N/A	White Geotechnical Group	6 November 2023
Waste Management Plan	N/A	Not dated	Not signed

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

3. **Compliance with Other Department, Authority or Service Requirements**

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	Not dated

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

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

4. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a *Dwelling House*, in accordance with the Dictionary of the *Warringah Local Environmental Plan 2011*, as follows:

***dwelling house*** means a building containing only one dwelling.

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.

5. **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 Certifier 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 Certifier 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 Certifier 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.

## 6. 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 an 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 following is required:
- i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% 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.
  - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
  - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.

- (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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
- (ii) Swimming Pools Amendment Act 2009
- (iii) Swimming Pools Regulation 2018
- (iv) Australian Standard AS1926 Swimming Pool Safety
- (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
- (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.

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

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

## FEES / CHARGES / CONTRIBUTIONS

### 7. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$3,941.98 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 (as amended).

The monetary contribution is based on a development cost of \$394,198.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

### 8. 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 Certifier 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.

#### **BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

**9. Stormwater Drainage Disposal**

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

**10. Amendments to the approved plans**

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

- Nothing in this consent grants approval for a carport on the site. The approved site analysis plan (drawing no. 3088 DA 1/4 Issue F prepared by Add-Style Home Additions), and sediment and erosion control plan (drawing no. 3088 DA 1 Issue D prepared by Add-Style Home Additions) are to be amended to remove the carport outline.
- The first floor level is to be setback an additional 500 millimetres from the northern and southern side boundaries. For the southern side boundary, the setback distance for the extent of the internal staircase shall remain as approved at 3.06 metres to 3.25 metres.
- The span between the ground and first floor shall be reduced to 400mm from 700mm.
- The annotation of 'Future Wet Bar' and 'Pantry' shall be removed from the first floor level plan. Nothing in this consent grants, or implies, approval for an attached secondary dwelling or separate habitation.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

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

Prior to any works commencing on site, including demolition, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the Principal Certifier:

1. Council's relevant development control plan,
2. The guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) (as amended from time to time), and
3. The 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time).

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 ensure no substance other than rainwater enters the stormwater system and waterways.

**12. 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 Certifier prior to the issue of the Construction Certificate.

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

**13. External Finishes to Roof**

The external finish to the roof shall have a Solar Absorptance (SA) greater than 0.46 in accordance with the requirements of the BASIX Certificate to minimise solar reflections to neighbouring properties. Any roof with a metallic steel or reflective finish is not permitted.

Green roofs and areas where solar panels (PV) are installed are excluded from conforming to the SA range.

Details demonstrating compliance are to be submitted to the Certifier 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.

**14. Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifier demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- “Tap in” details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

## DURING BUILDING WORK

### 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:

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

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

### 16. Geotechnical Requirements

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

### 17. Demolition Works - Asbestos

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifier, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

18. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

19. **Waste Management During Development**

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

Details demonstrating compliance must be submitted to the Principal Certifier.

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

20. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Planning, Housing and Infrastructure.

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the Department of Planning, Housing and Infrastructure.

Reason: Aboriginal Heritage Protection.

**BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**

21. **Stormwater Drainage Disposal Certification**

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and

associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the authority to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure satisfactory management of stormwater.

22. **Removal of All Temporary Structures/Material and Construction Rubbish**

Once construction has been completed all silt and sediment fences, silt, rubbish, building debris, straw bales and temporary fences are to be removed from the site.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure bushland management.

23. **Waste Management Confirmation**

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

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

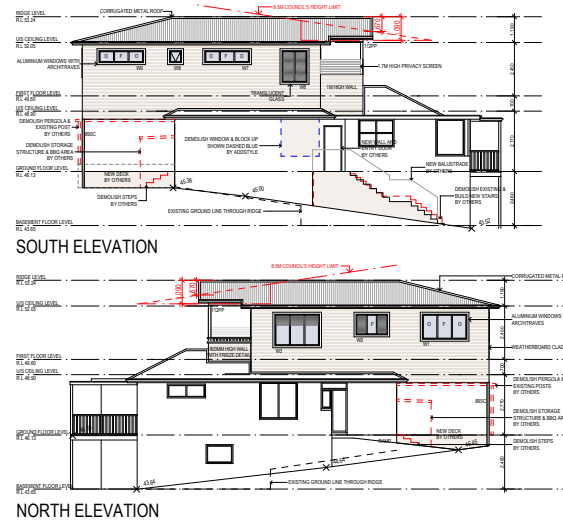
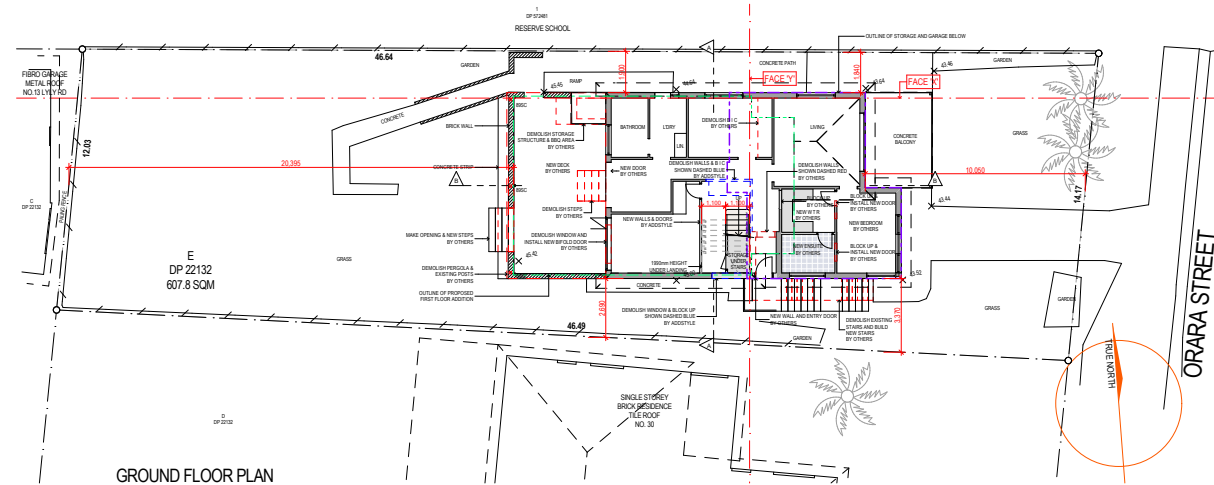
**ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES**

24. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.





**OPEN SPACE CALCULATIONS**

SITE AREA	607.8 sqm
COVERED FLOOR AREA	238.4 sqm
EXIST. SUPERFLOOR AREA	246.7 sqm 41%
PROPOSED SUPERFLOOR AREA	262.3 sqm 43%
EXIST. LANDSCAPED AREA	278.3 sqm 46%
PROPOSED LANDSCAPED AREA	282.3 sqm 46%
EXIST. FLOOR SPACE	147.9 sqm 24% 1
PROPOSED FLOOR SPACE	238.4 sqm 39% 1

**LEGEND & GENERAL NOTES**

(VAR)	VARIATION
C.T.A.	OWNER TO ADVISE BUILDER
S.O.	BY OTHERS
ISOP	1:12 & 1:12 FRAMED POST
S.L.	SKY LIGHT
SPH	SHOWERS ENCLOSURE
V.	VANITY UNIT
W.C.	TOILET SUITE (WATER CLOSET)
R.T.C.	BUILT IN CUPBOARD
ST	STONE
C.O.B.	TO BE CHECKED ON SITE
OPT. &	OPTION
CHUT	OPEN BALUSTRADE AND HANDRAIL
DP	DOWNPIPE
CHS	COMPACT AND SPREADER

ALL DIMENSIONS ARE SUBJECT TO AMENDMENT AFTER A CHECK MEASURE ON SITE.

SUBCONTRACTORS TO ENSURE THAT ALL CONSTRUCTION LEVELS MARKED ON PLAN TO BE STRICTLY COMPLYING WITH C.C. / C.C.

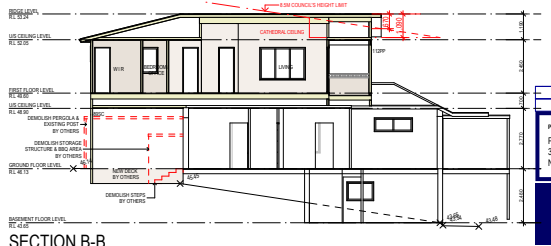
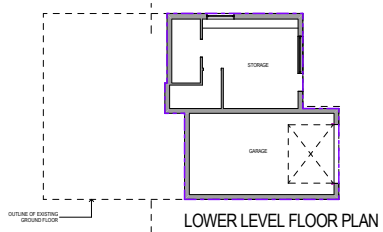
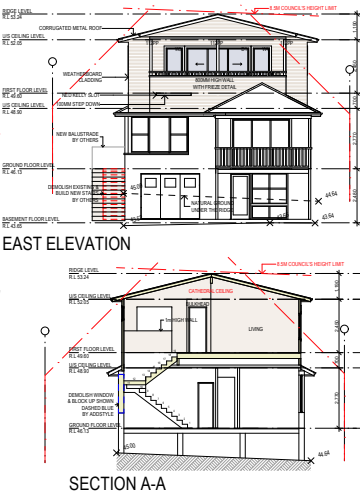
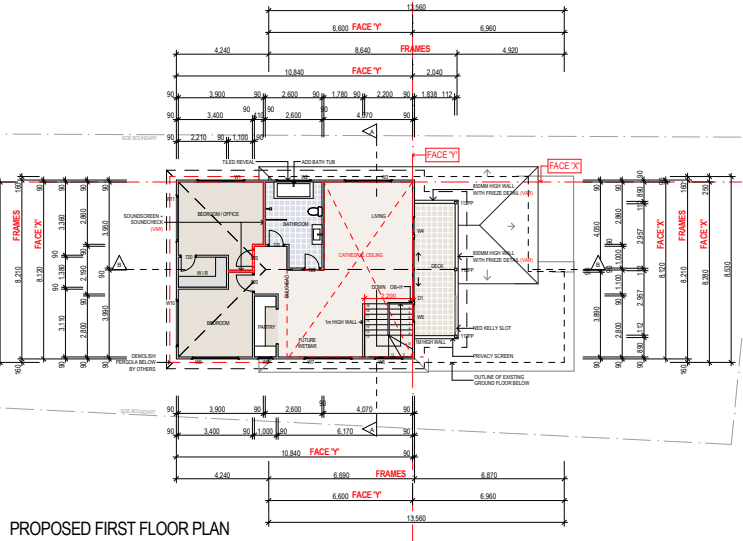
SUBCONTRACTORS TO CONFIRM DA LEVEL IS IN COMPLIANCE WITH PROJECT MANAGER BEFORE FINALISING FLOOR STRUCTURE.

**FRAMING NOTES.**

ROOF PITCH	NEW 12°
EXTENDING UP	TO BE CHECKED
FRAME HEIGHT	2400mm
ROOFING	METAL
EAVE OVERHANGS	850mm
EXTERNAL DOOR AND WINDOW HEAD UP HEIGHT TO LINE UP	2130mm TO LINE UP
INTERNAL DOOR	2130mm
B.L. DOOR OPENING HEAD HEIGHT	2050mm BULKHEAD
DOOR AND WINDOW	300mm MIN UNLESS OTHERWISE NOTED
FRAME AND TRUSS CENTRES	800mm
DOOR STUD	800mm WIDE UNLESS OTHERWISE NOTED

**BASIC REQUIREMENTS**

4% NEW LIGHTING TO BE FLUORESCENT, COMPACT FLUORESCENT, OR LED.
BATHROOM PARTIES TO BE 5 STAR OR GREATER WATER RATING.
EXTERNAL WALL TO HAVE R10 OR GREATER INSULATION.
FLAT CEILING, PITCHED ROOF TO HAVE R0.45 OR GREATER, FOL BACKED BLANKET (100mm).
RAISED CEILING TO HAVE R0.74 OR GREATER, FOL BACKED BLANKET (100mm).
ALL WINDOWS TO HAVE IMPROVED ALUMINIUM WINDOWS
W1, W2, W3, W4 AND W5 TO HAVE U-VALUE NO GREATER THAN 4.48 AND SHGC OF 0.46
W6, W7, W8, W9 AND D1 TO HAVE U-VALUE NO GREATER THAN 6.44 AND SHGC OF 0.75



**ARTIST'S IMPRESSION**

FOR ILLUSTRATION PURPOSES ONLY  
NOT TO BE USED AS A WORKING DRAWING

FOR COUNCIL APPROVAL	20/02/24	W
FOR COUNCIL	05/02/24	W
FOR REVIEW APPROVAL	21/02/24	W
FOR REVIEW APPROVAL	16/02/24	W
FOR REVIEW	28/01/24	W
FOR FINALISING	11/01/24	W

JOB REVIEW 2	EMAIL DATE	05/02/24	NO	REVISION	DATE	BY
JOB REVIEW 1	EMAIL DATE	05/02/24	NO	REVISION	DATE	BY

PROJECT TITLE:  
Proposed Additions at:  
32 Orara Road Allambie Heights,  
NSW 2100

SCALE: 1:100

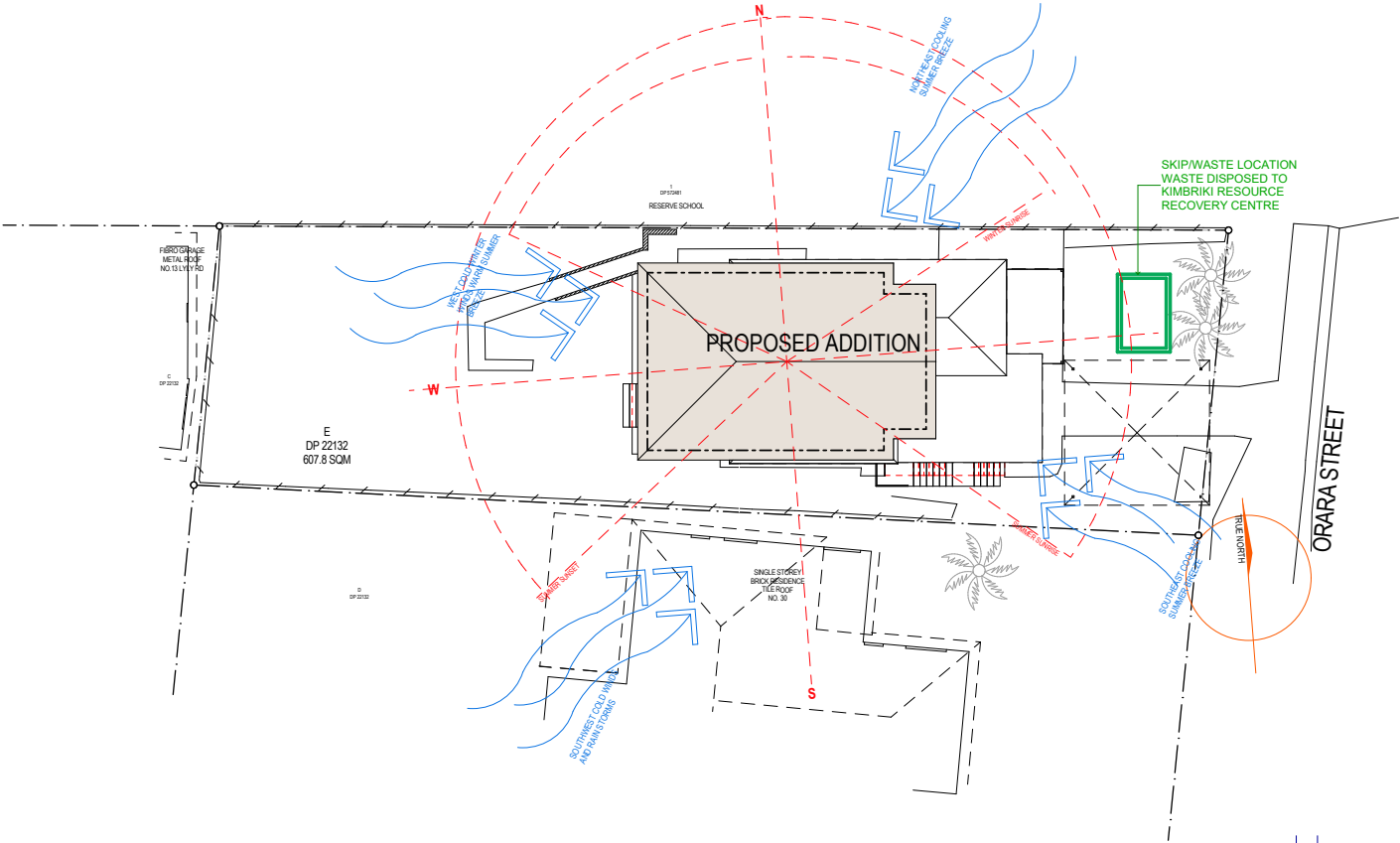
DRAWN BY: EK CHECKED BY: JH

TITLE: PLANS, ELEVATIONS AND SECTIONS


DRAWING NO: 3088 DAY ISSUE: F

**ADD-STYLE**  
HOMES ADDITIONS  
Upstairs Specialists

ADD-STYLE HOME ADDITIONS  
18/11/2023 17:11 PM  
PHONE: 02 9451 1000  
EMAIL: info@addstyle.com.au



SITE ANALYSIS & WASTE MANAGEMENT PLAN

 <div>ADD-STYLE HOME ADDITIONS Upstairs Specialists</div> <div>5/319 CONDOMINE ST MANLY VALE 2093 P: (02) 9907 9055 E: info@addstyle.com.au</div>	Proposed Additions at: 32 Orara Road Allambie Heights, NSW 2100		DRAWING TITLE	SITE ANALYSIS AND SHADOW DIAGRAMS	DRAWING NO.	ISSUE			
	SCALE 1:200	DRAWN BY KK	CHECKED BY CW	3088 DA 1/4	F	A	For Council	30/08/23	KK
							NO.	REVISION	DATE

## Appendix A

### Clause 4.6 Justification

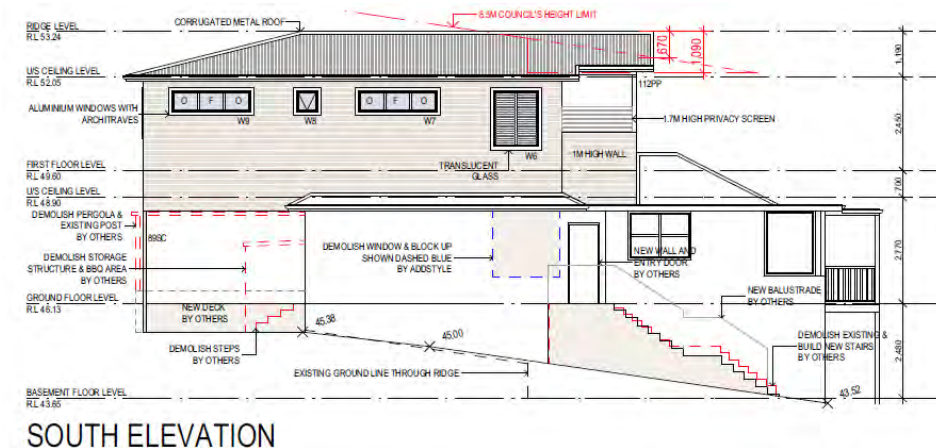
#### No 32 Orara Road, Allambie Heights

##### Introduction - Content of the clause 4.6 request

Clause 4.3 of the Warringah LEP 2011 relates to Building height. The maximum permissible building height for the subject site is 8.5m.

The proposed development has a maximum building height of 9.59m for a small part of the ridge line being non-compliant with the maximum allowable building height for the subject site by 1.09m or 12.8%.

Given the above non-compliance with clause 4.3 of the LEP, consideration of the matter is given pursuant to the provisions of clause 4.6 of the LEP. The variation to the height control occurs primarily due to the fall in the land and the existence of an excavated lower ground parking level of the dwelling.



The objectives of clause 4.6 of the LEP 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.

Clause 4.6 of the LEP notably is designed to provide **flexibility when applying development standards particularly when the variation of the standard enables a better development outcome.**

The proposed departure from the building height standard arrives owing to the change in ground levels along the allotment and the elevated nature of the ground floor which is built above a garage and storage area. A recent L&E Court case, *Merman Investments Pty Ltd v Woollahra Municipal Council [2021] NSWLEC 1582* states that *the existing ground level on a brownfield site must be taken from the excavated ground level below the previous natural contours of the site.* Accordingly, an exaggerated building height eventuates. The extent of non-compliance when considered against the existing external ground line is 0.67m or 7.9%.

A degree of flexibility to the application of the building height development standard is warranted in this instance.

It is significant to note that the variation does not result in excessive floor space ratio or development density. The variation does not manifest in an overdevelopment of the site. The existing dwelling is structurally sound and retains quality floor space worthy of retention. The location of the upper level as proposed is logical and appropriately relates to the street, rear yard and neighbouring properties. The proposed upper level has been recessed and includes street facing balcony to minimise the appearance of bulk when viewed from the street. It is noted that only a small portion of the front of the building roofline encroaches into the height plane.

Clause 4.6 of the instrument provides flexibility when applying development standards.

The proposed development has been architecturally designed to provide a well composed building that provides good amenity for future occupants, which respects the amenity of existing and future neighbouring development and which is compatible with the emerging character and development pattern of the locality.

No adverse planning consequences (privacy, visual impact, urban design/streetscape, heritage, neighbourhood character) arise from the variation with the proposed development sitting comfortably on-site within the required setbacks. Rather, in this case the variation facilitates a good design outcome in terms of amenity, streetscape and built form.

The provision of a flat roof profile can be provided to achieve numerical compliance however such would appear disjointed and lack architectural expression. Further a lower roof pitch would not comply with the relevant Australian Standard.

The proposed departure from the building height relates to a small portion of the roof ridge only, which is located centrally on-site.

For reasons expressed in this submission the ‘flexibility’ provided by clause 4.6 of the LEP facilitates design outcome that does not impact on any adjoining property despite the proposed variation to the building height standard.

*(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:

The height development standard is not expressly excluded from the operation of clause 4.6.

*(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.*

### **Objectives of development standard**

The objectives of the height control development standard are:

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah’s coastal and bush environments,*

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

The subject site is zoned to accommodate low density residential development and the immediate precinct does contain dwellings built on similar sized lots which contain similarly scaled 2 and 3 level dwellings. The proposed dwelling is proportionate with its site boundaries and will be consistent in this regard.

There will be no disruption of views, loss of privacy or significant loss of solar access given the site context and the design initiatives that have been incorporated into the upper level.

There will be no erosion of bushland or scenic quality.

#### **Compliance unnecessary**

The proposed development proffers an alternative means of achieving the objective of the minimum building height standard. The surrounding precinct maintains sloping land and regular detached dwellings in the zone. Pitched roofs are common in the precinct.

The proposed development achieves the desired residential character without comprising the amenity of the surrounding area in terms of visual impacts and solar access. A pitched roof is proposed in this instance and considered necessary.

The minor exceedance of the building height standard does not result in a building that is excessively bulky particularly as the proposed addition to the dwelling is recessed into the site.

The containment of the proposed addition within the footprint of the dwelling is preferred relative to extending the dwelling into the green spaces/recreational area at the rear or into the front setback.

The non-compliance will not give rise to adverse impacts, which would affect neighbouring dwellings.

As the development proffers alternative means of achieving the objectives of clause 4.3 based on the site context, strict compliance is unnecessary.

**Compliance unreasonable**

There would be no purpose served if strict compliance was required by the consent authority.

As will be detailed in subsequent parts of this request the variation does not manifest in any adverse planning consequences in terms of streetscape, neighbourhood character or amenity (shadowing and privacy). There are no adverse ‘flow on’ non compliances or adverse environmental impacts arising from the variation in this instance.

A compliant development (building height) would have a similar performance in regard to overshadowing and bulk/scale. A flat roof profile could be provided to achieve compliance with the standard. Such would appear disjointed with the lower roof profile and is not the preferred outcome from an architectural perspective.

Despite the building height variation, a standard floor space ratio is achieved facilitating the orderly and economic development of the land.

No particular benefit would be derived from the application of the standard in this instance (rather compliance would result in negative urban design outcomes); strict compliance is therefore unreasonable.

**Environmental planning grounds**

A written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

The term “environmental planning grounds” is broad and encompasses wide environmental planning grounds beyond the mere absence of environmental harm or impacts : Tuor C in *Glenayr Avenue Pty Ltd v Waverley Council* [2013] NSWLEC 125 at [50].

In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1008, Pearson C held at [60] that environmental planning grounds as identified in cl 4.6 must be particular to the circumstances of the proposed development on a site. This finding was not disturbed on appeal (Pain J in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 & Meagher JA; Leeming JA in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248.

*Such grounds include matters that 'relate to (the) subject matter, scope and purpose of the Act, including the objects in s 1.3.'<sup>[14]</sup> This leaves developers with a wide range of grounds on which they can rely to justify a 4.6 request, including, for example, that the variation will promote good design and amenity, will allow for the orderly and economic development of land or that it will promote ecologically sustainable development by integrating relevant economic, environmental and social considerations.*

In this case the variation to the building height control does not impact on the ability of the proposal to accord with all other development standards and controls.

Compliance with the building height control in this instance would not achieve any additional architectural integrity or urban design merit of the development, as previously discussed.

Indeed, a lower roof pitch would result in an inferior design. The proposal represents the orderly and economic development of the land and does not give rise to adverse amenity issues to neighbours.

The ground level of the dwelling is elevated to address the fall in the land. The extent of the building height non-compliance is minor given the dwelling is well setback on-site and will be consistent in scale to other existing dwellings nearby.

The variation will promote good design and internal amenity by providing a conventional finish to the rear elevation. The variation will allow for the orderly and economic development of land and will promote ecologically sustainable development by integrating the built form within the immediate locality. There are no adverse economic, environmental or social impacts arising.

Having regard to the above there are well founded environmental planning grounds to vary the development standard in this instance.

*(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.*

The objectives of the R2 low density zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that low density residential environments are characterised by landscaped settings that are in harmony with the natural environment of Warringah.*

Comment:

The matters required to be demonstrated by subclause (3) have been adequately addressed.

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

The proposed development is consistent with the objectives as follows:

The proposed development provides for the construction of a standard and well-proportioned upper level addition. The development has been site specifically designed and will positively contribute to the respective streetscape and enhance the streetscape relative to the existing built form on the site. A general upgrade of the existing built form will also occur.

The proposed development assists in establishing the desired future character for the locality. The proposed development is well contained on-site and will not result in significant adverse amenity impacts on adjoining properties.

The proposed development provides an appropriate low-density infill development and contemporary construction.

There has been a progressive change in the built character of the locality with a few older style dwellings being replaced with new contemporary

two and three level dwellings. The height mass and scale of the development is compatible with that of other development in the locality.

The design solution respects the development pattern of the locality (the spatial arrangement of buildings having regard to side, rear and street building setbacks) maintaining the rhythm of the street.

The proposed height variation is of no consequence in respect of this objective. Approval of the proposed development will have no adverse impact on any other nearby development opportunities.

It is expected that the Council will obtain the concurrence of the Director-General as required (possibly through delegation).

The proposed height encroachment does not result in any significant view loss, loss of privacy or overshadowing in the context of the site.

There are no adverse heritage impacts associated with the proposed development. The height and scale of the development is typical within the residential context.

Standard floor to ceiling height is proposed over two levels inclusive of a standard roof pitch. Having regard to the above the proposal is consistent with the objectives of the height control and the objectives of the zone.

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

Comment:

It is expected that the Council will obtain the concurrence of the Director-General as required (possibly through delegation).

*(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.*

Comment:

The proposed variation does not raise any matter of significance for State or regional environmental planning.

There is no public benefit that would be achieved by maintaining the development standard or compromised by approving the building as proposed.

**Conclusion**

No adverse matters arise in respect of the above considerations.

In view of the above, the proposed variation from the development standard is reasonable in this instance. A typical pitched roof profile is proposed maintaining a consistent built form with other dwellings in the vicinity and appropriately addressing site circumstances.

A handwritten signature in black ink, appearing to read 'Nigel White', with a stylized flourish at the end.

Prepared by: Nigel White  
Bachelor of Applied Science (Environmental Planning)

September 2023

<b>ITEM 3.7</b>	<b>MOD2023/0553 - 19 BOWER STREET MANLY - MODIFICATION OF DEVELOPMENT CONSENT DA2020/1249 GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL</b>
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**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 floor space ratio.

**RECOMMENDATION**

- A. That Council as the consent authority, vary the Floor Space Ratio Development Standard of Clause 4.4 pursuant to clause 4.6 of MLEP 2013 as the applicants 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.
- B. THAT Council as the consent authority **approves** Development Consent to Mod2023/0553 for Modification of Development Consent DA2020/1249 granted for Alterations and additions to a dwelling house including a swimming pool on land at Lot 46 DP 8075, 19 Bower Street MANLY, subject to the conditions set out in the Assessment Report.

<b>REPORTING MANAGER</b>	Adam Richardson
<b>TRIM FILE REF</b>	2024/118744
<b>ATTACHMENTS</b>	<b>1</b> <a href="#">↓ Assessment Report</a> <b>2</b> <a href="#">↓ Site Plan and Elevations</a>

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2023/0553
<b>Responsible Officer:</b>	Anaiis Sarkissian
<b>Land to be developed (Address):</b>	Lot 46 DP 8075, 19 Bower Street MANLY NSW 2095
<b>Proposed Development:</b>	Modification of Development Consent DA2020/1249 granted for Alterations and additions to a dwelling house including a swimming pool
<b>Zoning:</b>	Manly LEP2013 - Land zoned C3 Environmental Management
<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>	The Trustees Of The Roman Catholic Church For The Archdiocese Of Sydney
<b>Applicant:</b>	Emma Margaret Maas
<b>Application Lodged:</b>	16/10/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	20/10/2023 to 03/11/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	4.4 Floor space ratio: 38%
<b>Recommendation:</b>	Approval

### EXECUTIVE SUMMARY

This section 4.55(2) modification application seeks to modify development consent DA2020/1249 granted for alterations and additions to a dwelling house, including a swimming pool.

The application is referred to the Development Determination Panel (DDP) due to a proposed modifications to the proposed development resulting in a 38% variation to the maximum floor space

ratio (FSR) standard of 0.45:1 under the Manly Local Environmental Plan 2013 (MLEP 2013) at 0.62:1.

No submissions were received in relation to this application and therefore no objections or concerns have been raised.

The 38% variation arises from a technical non-compliance with the FSR standard, however the real non-compliance is far less of a variation. The originally approved development has a stated FSR of 0.48:1. Due to miscalculation of the gross floor area (GFA) in the original assessment, the true FSR of the approved development was 0.57:1. As such, the development as modified presents an FSR that is only an 8.8% variation to the true FSR of the approved development. The majority of the proposed additional floor space is attributed to the retention of the existing rear bedroom and the extension of the garage out towards Bower Street. In accordance with the definition of GFA contained within the MLEP 2013, garage space beyond the minimum requirement has been included as floorspace in the GFA calculation. The expansion and extension of the garage closer to the boundary is considered acceptable given this new front building line aligns far more consistently with the immediate streetscape along Bower Street. Additionally, the proposed development has an FSR that is commensurate with #9 and #17 Bower Street, and as such, the bulk and scale of the development is not inconsistent with other properties in the immediate vicinity.

Being a section 4.55(2) modification application, the application does not strictly need to address the requirements of Clause 4.6.

Strict compliance with the FSR standard is considered unreasonable in this circumstance as the GFA of the original development was incorrectly calculated and the proposal does not create any negative amenity impacts or result in foreshore view loss for adjoining properties, nor unacceptable impacts on the streetscape. The proposal will provide for a more positive built form outcome that better aligns with the streetscape along Bower Street.

This report concludes with a recommendation that the DDP grant approval to the section 4.55(2) modification application, subject to modified conditions.

## **PROPOSED DEVELOPMENT IN DETAIL**

The proposed modification works comprise the following amendments:

- Extension of new garage to the north, with extension of external steps on either side
- Extension of ground floor terrace to the front with pool above new garage
- Retainment of existing rear bedroom, roof and deck
- New lightweight operable roof cantilevered off first floor terrace for ground floor terrace
- Updated driveway and vehicle crossover

## **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

Manly Local Environmental Plan 2013 - 4.4 Floor space ratio  
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
 Manly Local Environmental Plan 2013 - 6.2 Earthworks  
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management  
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity  
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk  
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area  
 Manly Local Environmental Plan 2013 - 6.10 Limited development on foreshore area  
 Manly Local Environmental Plan 2013 - 6.12 Essential services  
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping  
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

#### SITE DESCRIPTION

<b>Property Description:</b>	Lot 46 DP 8075 , 19 Bower Street MANLY NSW 2095
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the south-eastern side of Bower Street.</p> <p>The site is regular in shape with a frontage of 15.24m along Bower Street and a depth of 45.72m. The site has a surveyed area of 696.7m<sup>2</sup>.</p> <p>The site is located within the C3 Environmental Management zone and accommodates a 3-storey dwelling house.</p> <p>The site slopes from the southern corner of the site down towards the northern corner over approximately 7 metres.</p> <p>The site contains lawn areas, trees and shrubs. The site contains areas of potential habitat for the long-nosed bandicoot, which is a threatened species.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p>

Adjoining and surrounding development is characterised by predominantly 3 storey dwelling houses of varying architectural style and design.

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:

##### **DA5426/1992**

Development Application for alterations and additions to a dwelling house.  
Approved on 11 September 1992.

##### **DA0555/2001**

Development Application for alterations and additions, double garage, front deck and terrace.  
Approved on 19 March 2002

##### **DA2020/1249**

Development Application for alterations and additions to a dwelling house including a swimming pool.  
Approved on 22 January 2021.

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

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

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 and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated



- regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2020/1249, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted under DA2020/1249 for the following reasons:</p> <ul style="list-style-type: none"> <li>• The proposal does not change the overall form and function of the dwelling house</li> <li>• The proposal does not result in a further increase to the approved building height</li> <li>• The proposal does not create any adverse additional impacts in relation to amenity, views, streetscape and solar access</li> <li>• The proposal retains the approved use of the building as a residential dwelling house</li> <li>• The proposal seeks a modest 8.8% increase to the true FSR of the originally approved development</li> <li>• The proposed modifications relate predominantly to the extension of the garage and retention of the rear bedroom, which are approved or existing components of the dwelling</li> <li>• The proposal is found to be essentially and materially the same as the approved development</li> </ul>
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister,	Development Application DA2020/1249 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	
(c) it has notified the application in accordance with:  (i) the regulations, if the regulations so require,  or  (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

#### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 (2) the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of 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	There are no current draft environmental planning instruments.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly 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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 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 29</u> of the EP&amp;A Regulation 2021 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 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested on 13 November in relation to floor space and built form, tree removal and landscaping.</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 2001: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 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 69</u> of the EP&amp;A Regulation 2021 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, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly 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></p>

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

### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

### BUSHFIRE PRONE LAND

The site is classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Australian Bushfire Consulting Services, dated 9 July 2023) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent. The modified development is considered to satisfy Section 4.14 of the Act.

### NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 20/10/2023 to 03/11/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

### REFERRALS

Internal Referral Body	Comments
Landscape Officer	The application is for modification to development consent DA2020/1249 as described in reports and as illustrated in plans. Landscape Plans are issued as part of the modification application and these remain unaltered from the development consent approval, thus no concerns are raised by Landscape Referral.
NECC (Bushland and Biodiversity)	Amended Comments (29/01/2024) Amended documentation has been submitted as requested. The Landscape Plan (Utz Sanby Architects, September 2023) provides a mix of native and exotic shrubs and grasses that will provide habitat

Internal Referral Body	Comments
	<p>for Long-Nosed Bandicoots. The Ecologist has confirmed that <i>"there should be no significant effect on the North-Head Long-nosed Bandicoot population by the proposed amended alterations and additions to the existing building"</i>.</p> <p>No objections from a biodiversity perspective, subject to existing conditions.</p> <p>Original Comments (6/11/2023) The application seeks modifications to Development Consent DA2020/1249.</p> <p>The modifications include extensions to the front and rear of the dwelling and result in a reduction of open landscaped areas by approximately 41m<sup>2</sup> referenced from the Master Plans (Utz Sanby Architects 2023 Rev 4.55(2)-A).</p> <p>An addendum letter to the original Flora and Fauna Assessment (ACS Environmental, 2020) has been provided to support the proposed modifications (ACS Environmental, 2023). The Ecologist has identified that the proposed modifications will incur a slight decrease in the extent of foraging area as had been approved by about a 2m<sup>2</sup> reduction in grassed area at the front of the property. This calculation is not consistent with the plans and as such is required to be amended.</p> <p>An amended Landscape Plan is to be included in the plans. In accordance with Manly DCP cl. 3.3.1a(iv) in areas of habitat for the long-nosed bandicoot landscape design must include native plant species to provide new and/or improved low dense clumping habitat to provide for potential foraging and nesting. The planting schedule should comprise species such as Lomandra sp., Dianella sp., Banksia spinulosa., Caustis sp., Xanthorrhoea sp., Isolepis sp., Juncus sp., Adiantum sp., Calochlaena sp., Callistemon sp., Grevillea juniperina., Cheichenia sp., Grevillea 'Robyn Gordon' and tussocky native grasses (e.g. Kangaroo Grass).</p> <p>It is noted that the Bushfire Assessment Report (Australian Bushfire Consulting Services, July 2023) has identified that all land not built upon within the subject site is continued to be maintained as an Asset Protection Zone in accordance with Planning for Bushfire Protection 2019. The APZ is existing and no tree removal or vegetation modification is required to establish it.</p> <p>Upon receipt of the required amendments, Council's Biodiversity referrals team will recommence assessment of the application.</p>
NECC (Development Engineering)	I have reviewed the submitted Statement of Modification, Architectural Plans and Stormwater Management plans. I have no objections to the proposed development subject to the removal of

Internal Referral Body	Comments
	Conditions 8 & 23 - Stormwater Disposal, the retention of all other engineering conditions of consent and the addition of the following engineering conditions of consent.
Strategic and Place Planning (Development Contributions)	<p><b>INTRODUCTION</b> On 16 October 2023, Strategic and Place Planning received a referral request for application (Mod2023/0553) for modification of Development Consent DA2020/1249 granted for Alterations and additions to a dwelling house including a swimming pool.</p> <p><b>SUBJECT SITE</b> The subject site comprises of 19 Bower Street Manly (Lot 46 DP 8075). It is rectangular in shape with a total site area of 696.7m<sup>2</sup> and a dwelling currently exists on site. The subject site fronts and has vehicular access onto Bower Street at the front. A residential allotment is located on either side with an existing dwelling on each allotment. The Roman Catholic Church estate is located on the rear boundary of the subject site. The subject site is zoned C3 Environmental Management under Manly LEP2013.</p> <p><b>PROPOSED DEVELOPMENT</b> The modification application seeks to make design changes to the works approved under DA2020/1249 including:  <ul style="list-style-type: none"> <li>• Removal of several lightweight additions to the front, rear and tiled roof structure;</li> <li>• Removal of existing bedroom on lower ground floor level to make way for plant rooms, surfboard storage and waste store;</li> <li>• Extension of a new garage north of site;</li> <li>• Extension of terrace to the front of pool above the new garage on ground floor;</li> <li>• Reconfiguration of rooms and entry to create open plan living;</li> <li>• Extension of deck to the rear yard;</li> <li>• Construction of new level off existing brick wall connected with new staircase and lift; and</li> <li>• Addition of long planters to create a privacy buffer and to soften the edges of the terraces.</li> </ul> <ul style="list-style-type: none"> <li>• Due to design modifications, the cost of works has now changed from \$1,430,000.00 to \$2,529,450.00.</li> </ul> </p> <p><b>ASSESSMENT OF DA</b> On 25 January 2021, Council issued a Notice of Determination for DA2020/1249 for alterations and additions to a dwelling house including a swimming pool. Condition 5 of the consent levied a contribution condition based on the cost of works for the works proposed under DA2020/1249 and states:  <b>5. Policy Controls</b>  <i>Northern Beaches 7.12 Contributions Plan 2019</i>  <i>A monetary contribution of \$14,300.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning &amp; Assessment Act 1979 and the Northern Beaches Section 7.12</i></p>

Internal Referral Body	Comments
	<p><i>Contributions Plan 2019. The monetary contribution is based on a development cost of \$1,430,000.00.</i></p> <p><i>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.</i></p> <p><i>The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.</i></p> <p><i>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 <a href="http://www.northernbeaches.nsw.gov.au">www.northernbeaches.nsw.gov.au</a></i></p> <p><i>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.</i></p> <p><i>Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.</i></p> <p><i>Since Northern Beaches Section 7.12 Contributions Plan 2019 applied at the time of approval of DA2020/1249, it applies to this modification application and levies contribution based on Cost of Works for the development.</i></p> <p><i>No CC has been issued for works approved under DA2020/1249 and contribution has not been paid.</i></p> <p><i>If this application is recommended for approval by the Assessing Officer, the contribution condition is to be modified to reflect the change in cost of works.</i></p> <p><b>RECOMMENDATION</b></p> <p><i>A. If the application is being recommended for approval by the Assessing Officer, Condition 5 of the consent is to be modified as below:</i></p> <p><i>5. Policy Controls</i></p> <p><i>Northern Beaches 7.12 Contributions Plan 2019</i></p> <p><i>A monetary contribution of \$25,294.50 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning &amp; Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$2,529,450.00.</i></p> <p><i>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</i></p>

Internal Referral Body	Comments
	<p><i>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.</i></p> <p><i>The proponent shall provide to the Certifying Authority written evidence (receipt/s) from Council that the total monetary contribution has been paid.</i></p> <p><i>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 <a href="http://www.northernbeaches.nsw.gov.au">www.northernbeaches.nsw.gov.au</a></i></p> <p><i>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.</i></p> <p><i>Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.</i></p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.
Rural Fire Service - Local Branch - EP&A Act, s4.14	The proposal was referred to NSW Rural Fire Service who provided a response stating that the proposal is acceptable subject to compliance with the recommended conditions in relation to asset protection zones, construction standards, water and utility services and landscaping. These recommendations will be included as a condition of consent.

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

All, Environmental Planning Instruments (SEPPs 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 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 (Building Sustainability Index: BASIX) 2004



A BASIX certificate has been submitted with the application (see Certificate No. A389308\_02 dated 16 August 2023).

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

## **SEPP (Transport and Infrastructure) 2021**

### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

### Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

## **SEPP (Resilience and Hazards) 2021**

### Chapter 2 – Coastal Management

The site is subject to Chapter 2 of the SEPP. Accordingly, an assessment under Chapter 2 has been carried out as follows:

#### **Division 1 Coastal Wetlands and littoral rainforest area**

##### **2.7 Development on certain land within coastal wetlands and littoral rainforests area**

- 1) The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:
  - a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,
  - b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,
  - c) the carrying out of any of the following:
    - i) earthworks (including the depositing of material on land),
    - ii) constructing a levee,
    - iii) draining the land,
    - iv) environmental protection works,

- d) any other development

Comment:

The site is not identified as 'coastal wetlands' or 'littoral rainforests', and therefore this clause is not applicable.

**2.8 Development on land in proximity to coastal wetlands or littoral rainforest**

- 1) Development consent must not be granted to development on land identified as “proximity area for coastal wetlands” or “proximity area for littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:
  - a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
  - b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

Comment:

The site not identified as a 'proximity area for coastal wetlands' or 'proximity area for littoral rainforest', and therefore this clause is not applicable.

**Division 2 Coastal Vulnerability Area**

**2.9 Development on land within the coastal vulnerability area**

Development consent must not be granted to development on land that is within the area identified as “coastal vulnerability area” on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and
- b) the proposed development:
  - i) is not likely to alter coastal processes to the detriment of the natural environment or
  - ii) other land, and
  - iii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and
- c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.

Comment:

The site is not identified as a 'coastal vulnerability area' and therefore this clause is not applicable.

**Division 3 Coastal environment area**

**2.10 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 site is not identified as a 'coastal environment area' and therefore this clause is not applicable.

- 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 subsection (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 site is not identified as a 'coastal environment area' and therefore this clause is not applicable.

**Division 4 Coastal use area**

**2.11 Development on land within the coastal use area**

- 1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:
  - a) has considered whether the proposed development is likely to cause an adverse impact on the following:
    - i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
    - ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
    - iv) foreshores,
    - v) the visual amenity and scenic qualities of the coast, including coastal headlands, Aboriginal cultural heritage, practices and places, cultural and built environment heritage, and
  - b) is satisfied that:
    - i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
    - ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or

- if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The site is identified within the 'coastal use area'; however, consent has already been granted for development on the land. Notwithstanding, the proposed modifications do not seek major changes to the form and function of the approved development. Furthermore, the application is supported by Council's Natural Environment Unit officers, subject to conditions. Therefore, the proposal is considered to comply with the requirements of this clause.

**Division 5 General**

**2.12 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:

Consent has already been granted for development on the land. Notwithstanding, the proposed modifications do not seek major changes to the form and function of the approved development. Furthermore, the site is not identified as a 'proximity area for coastal wetlands' or 'proximity area for littoral rainforest', nor is it identified as a 'coastal environment area'. As such, the proposal is unlikely to cause increased risk of coastal hazards on the subject land or other land.

**2.13 Development in coastal zone generally—coastal management programs to be considered**

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Comment:

Development consent has already been granted to development on the land.

As such, it is considered that the application complies with the requirements of Chapter 2 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

**Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

**Manly Local Environmental Plan 2013**

Is the development permissible?	Yes
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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	Approved	Proposed	% Variation	Complies
Height of Buildings	8.5m	9.34m	Unaltered	N/A	Yes
Floor Space Ratio	0.45:1	0.48:1	0.62:1 (433.6m <sup>2</sup> )	38% (0.17:1, 120.1m <sup>2</sup> )	No

#### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	N/A
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	N/A
6.12 Essential services	Yes

#### Detailed Assessment

##### 4.4 Floor space ratio

##### Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.45 to 1
Proposed:	0.62 to 1
Percentage variation to requirement:	38%

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

While the modification application will result in a floor space ratio that exceeds the maximum permitted by Clause 4.4 of the Manly LEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the Environmental Planning and Assessment (EPA) Act 1979, which is a free standing provision that in itself authorises the development to be approved notwithstanding any breach of development standards. Section 4.55 is subject to its own

stand-alone tests (such as the substantially the same test and consideration of all relevant Section 4.15 matters) and does not rely upon having a Clause 4.6 variation in order to determine the modification application.

Clause 4.6 regulates whether development consent may be granted, not whether an existing consent may be modified, and therefore does not apply to Section 4.55 modification applications. As such, the applicant is not required to submit a written request adequately addressing the matters required to be demonstrated by cl 4.6(3).

Notwithstanding that Clause 4.6 does not apply to Section 4.55 modification applications, the merits of the variation have been assessed with regard to the objectives of the floor space ratio development standard and the underlying objectives of the C3 Environmental Management zone.

Notwithstanding that Clause 4.6 does not strictly apply, the assessment has also taken into consideration the relevant tests of the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

**Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,**

Comment:

Strict compliance with the FSR standard is considered unreasonable in this circumstance as the gross floor area of the original development was incorrectly calculated and approved with an FSR of 0.48:1, which is far lower than what was proposed at 0.57:1. It is important to note that this error, whilst erroneous has the effect of providing a consent for the development land for a scope of development which was beyond that contemplated by the original assessment. While the development as modified proposes an FSR of 0.62:1, which presents a 38% variation to the maximum standard of 0.45:1, the development as modified has an FSR that presents only a modest 8.8% variation with respect to the true FSR of the approved development. Therefore, in this specific instance, it is considered reasonable to allow a minor increase in floor space, particularly as the majority of additional floorspace is attributed to the garage extension and retention of the existing rear bedroom.

It is considered unreasonable to require the garage to be set back further on floor space ratio grounds as, by extending the garage further towards the front boundary, the development better aligns with the form and character of dwellings along the streetscape.

It is also unnecessary to require removal of the rear bedroom as this component of the dwelling is existing and does not create any privacy impacts for adjoining properties, as shown in the site photo below.



**Figure 1 - existing bedroom to be partially retained by the proposed works**

Strict compliance with the FSR standard is considered unreasonable if the objectives of the standard and land use zone have been met, as outlined below. In this particular circumstance, the bulk and scale of the proposed development is consistent with other development along the streetscape. Additionally, the proposed development is compliant with the required landscaped area for the site. In this way, the development does not present a visually dominant building or an unnecessary level of built form. Therefore, given the proposed development is consistent with the objectives of the FSR standard and C3 zone, it is unreasonable to enforce strict compliance with the development standard.

**There are sufficient environmental planning grounds to justify contravening the development standard,**

**Comment:**

The development as modified proposes an FSR of 0.62:1, which presents a 38% variation to the maximum standard. The approved development has an FSR of 0.48:1; however, due to miscalculation, the true FSR of the approved development is 0.57:1. As such, the development as modified presents an FSR that is only an 8.8% variation to the true FSR of the approved development.

The majority of this proposed additional floor space is from the retention of the existing rear bedroom

and the extension of the garage out towards Bower Street. The FSR for the proposed development has been calculated in accordance with the definition of gross floor area (GFA), as defined by the Manly Local Environmental Plan 2013, which only excludes *car parking to meet any requirements of the consent authority*. As such, garage space beyond the minimum requirement has been included as floorspace in the GFA calculation. This is the correct approach to calculating GFA in terms of garages, irrespective of past instances where GFA may have been calculated incorrectly. The expansion and extension of the garage closer to the boundary is acceptable given this new front building line aligns more consistently with the other properties along Bower Street.

Consideration has been given to the bulk and scale of other properties along Bower Street, as set out in the table below:

Address:	Floor space ratio:
9 Bower Street	0.63:1
11 Bower Street	0.58:1
13 Bower Street	0.47:1
17 Bower Street	0.62:1
21 Bower Street	0.26:1
23 Bower Street	0.45:1

As evident from the table above, the properties along Bower Street have varying levels of floor space, with #19 having one of the greatest amounts of floor space on the street. However, the proposed development has an FSR that is commensurate with #9 and #17, and as such, the bulk and scale of the development is not inconsistent with other properties in the immediate vicinity.

It is for the specific reasons discussed above that the variation is supportable and the modified development satisfactory. The majority of the justification advanced by the applicant in support of the variation is either of no relevance to the assessment or arguments that hold little weight.

**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.**

#### 4.4 Floor space ratio

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

*a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*

Comment:

The bulk and scale of the proposed development is not inconsistent with the existing and desired streetscape character of Bower Street. The adjoining property at #17 has the same FSR of 0.62:1, as well as the same front building setback of 1.4m.

*b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

Comment:



The proposed development does not obscure important landscape and townscape features, and allows for view sharing, particularly for #21, by retaining ocean views.

*c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*

Comment:

The proposed development improves the visual relationship with the existing character and landscape of the area by better aligning the building line with that of other properties along Bower Street.

*d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*

Comment:

Consent has already been granted for development on the land. The proposed modifications do not affect the use or enjoyment of adjoining land and the public domain.

*e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres,*

Comment:

The site is not located within a business zone and is therefore not applicable to this development.

Zone objectives

The underlying objectives of the C3 Environmental Management zone are:

- ***To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.***

Comment:

The proposed development does not affect the special ecological, scientific, cultural or aesthetic values of the area. The proposal is compliant with the minimum required area of open space and is supported by Council's Landscape and Biodiversity Officers, subject to conditions.

- ***To provide for a limited range of development that does not have an adverse effect on those values.***

Comment:

The proposed development retains the approved use of the land for residential purposes. The site currently contains a dwelling house and this is not proposed to change. The development is

consistent with the other dwelling houses along the streetscape and therefore will not have an adverse effect on the above values.

- ***To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.***

Comment:

The proposed development does not dominate the natural scenic qualities of the foreshore as it does not impact sightlines to the foreshore and does not create any additional adverse impact. The proposal seeks the removal of one tree; Council's Landscape and Biodiversity officers have reviewed the application and supported the proposal, subject to conditions.

- ***To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.***

Comment:

The proposed garage extension towards the front boundary does not negatively impact on nearby foreshores, significant geological features and bushland as the existing area is a concrete driveway. Council's Landscape and Biodiversity officers have reviewed the application and are supportive of the proposal, subject to conditions.

- ***To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.***

Comment:

The subject site is not located in the immediate foreshore and the bulk of the additional floor space is attributed to the garage extension, which is sited in an area that is an existing concrete driveway. As such, there is minimal change to the hard surfaces. Council's Development Engineer has reviewed the application in relation to stormwater management and is supportive of the proposal, subject to conditions of consent. It can therefore be satisfied that the proposed modifications to the approved dwelling will not impact significantly on the ecological characteristics of the locality, including water quality.

- ***To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.***

Comment:

The proposed development does not seek to increase the approved height of the dwelling. The bulk of the development has had regard to the surrounding development and land uses, which are dwelling houses with garages built close the front boundary.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C3 Environmental Management 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.

Comment:

The subject application is made under Section 4.55 of the EPA Act. As such, Clause 4.6 does not strictly apply and the concurrence of the Secretary is not required to be obtained.

**4.6 Exceptions to development standards**

Whilst the modification will result in a gross floor area that contravenes the maximum permitted by Clause 4.4 of the MLEP 2013, the application does not strictly need to address the requirements of Clause 4.6.

The application has been made under Section 4.55 of the *Environmental Planning and Assessment Act 1979*, which authorises the development for which consent was granted to be modified, notwithstanding any breach of development standards. As such, no document pursuant to Section 35B of the *Environmental Planning and Assessment Regulation 2021* or Clause 4.6 is required.

The matters set out in Section 4.55(3) are addressed in the relevant sections of this report.

**6.2 Earthworks**

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) to allow earthworks of a minor nature without requiring separate development consent.*

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

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

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

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

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

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition of the existing approval requires any fill to be of a suitable quality.

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

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions on the existing approval limit impacts during excavation/construction.

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

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition of the existing approval requires any fill to be of a suitable quality.

*(f) the likelihood of disturbing relics*

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

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

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

*(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment: Conditions are included in the recommendation of this report that will minimise the impacts of the development.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

#### **6.4 Stormwater management**

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

*(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and*

Comment: The development will provide a suitable amount of permeable surfaces given the zoning of the land and the proposed use. In this regard, it is considered that the design will maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water.

*(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and*

Comment: On-site stormwater retention has been incorporated into the development.

*(c) avoids any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if that impact cannot be reasonably avoided, minimises and mitigates the impact.*

Comment: The proposal has been assessed by Council's Development Engineers who have raised no objections to approval, subject to conditions. In this regard, it is considered that the development will minimise any significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters.

## 6.5 Terrestrial biodiversity

The objective of this clause is to maintain terrestrial biodiversity by:

- (a) protecting native fauna and flora, and*
- (b) protecting the ecological processes necessary for their continued existence, and*
- (c) encouraging the conservation and recovery of native fauna and flora and their habitats.*

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider:

- (a) whether the development is likely to have:*
  - (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and*
  - (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and*
  - (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and*
  - (iv) any adverse impact on the habitat elements providing connectivity on the land, and*
- (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

Consent has already been granted for development on the land. Notwithstanding, Council's biodiversity officer has reviewed the application and is supportive of the proposal, subject to existing conditions. Therefore, the proposal is considered to comply with the requirements of this clause.

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

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
- (b) if that impact cannot be reasonably avoided by adopting feasible alternatives—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:

Development consent has already been granted to development on the land.

## 6.8 Landslide risk

The objectives of this clause are to ensure that development on land susceptible to landslide—

- (a) matches the underlying geotechnical conditions of the land, and*
- (b) is restricted on unsuitable land, and*
- (c) does not endanger life or property.*

In this regard, before determining a development application for development on land to which this clause applies, the consent authority must consider the following matters to decide whether or not the development takes into account the risk of landslide—

- (a) site layout, including access,*
- (b) the development's design and construction methods,*
- (c) the amount of cut and fill that will be required for the development,*
- (d) waste water management, stormwater and drainage across the land,*
- (e) the geotechnical constraints of the site,*
- (f) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

Comment:

Development consent has already been granted to development on the land. Notwithstanding, Council's Development Engineer has reviewed the application and is supportive of the proposal, subject to conditions. Therefore, the proposal is considered to satisfy the requirements of this clause.

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land, and that—

- (a) the development is designed, sited and will be managed to avoid any landslide risk or significant adverse impact on the development and the land surrounding the development, or*
- (b) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or*
- (c) if that risk or impact cannot be minimised—the development will be managed to mitigate that risk or impact.*

Comment:

Development consent has already been granted to development on the land.

#### **6.9 Foreshore scenic protection area**

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,*
- (b) measures to protect and improve scenic qualities of the coastline,*
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,*
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.*

Comment:

Consent has already been granted to development on this land. Nevertheless, the proposed modifications to the approved alterations and additions do not result in view loss from a public place to the foreshore and are unlikely to create a negative relationship between the land and the foreshore.

#### **6.10 Limited development on foreshore area**

The site is not located within the foreshore area and therefore this clause does not apply to this

development.

## 6.12 Essential services

Under this clause, development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- (a) the supply of water,
- (b) the supply of electricity,
- (c) the disposal and management of sewage,
- (d) stormwater drainage or on-site conservation,
- (e) suitable vehicular access.

### Comment:

The site contains an existing dwelling house and development consent has already been granted for alterations and additions to the dwelling house. Therefore, it can be satisfied that the above essential services are available for the development.

## Manly Development Control Plan

### Built Form Controls

Built Form Controls - Site Area: 696.7m <sup>2</sup>	Requirement	Approved	Proposed	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 500m <sup>2</sup> of site area	1 dwelling with 696.7m <sup>2</sup> of site area	Unaltered	Yes
	Dwelling Size: 146m <sup>2</sup>	334m <sup>2</sup>	433.6m <sup>2</sup>	Yes
4.1.2.1 Wall Height	South-west: 7.1m (rear bedroom), 7.7m (garage/pool)	5.4m - 7.7m	3.3m (rear bedroom) 5.6m (garage/pool)	Yes
	North-east: 7.5m	3.9m - 8.9m	3.8m	Yes
4.1.2.2 Number of Storeys	2	3	3	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.3m	Unaltered	Yes
	Pitch: maximum 35 degrees	<35 degrees	Unaltered	Yes
4.1.4.1 Street Front Setbacks	6m	7.1m	1.4m	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	South-west: 1.1m (rear bedroom), 2m (garage)	Nil - 1.4m	Nil (rear bedroom) 2.8m (garage)	No (rear bedroom)
	North-east: 1.3m	0.9m - 2m	4.3m	Yes
	Windows: 3m	Nil	5.5m	Yes
4.1.4.4 Rear Setbacks	8m	9m	4.1m	No
4.1.4.6 Setback for development adjacent to	8m (rear boundary)	9m	4.1m	No

LEP Zones RE1, RE2, E1 and E2				
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Total open space 55% of site area (383.2m <sup>2</sup> )	62.8% (437.5m <sup>2</sup> )	71.6% (498.6m <sup>2</sup> )	Yes
	Open space above ground 25% of total open space	27% (121m <sup>2</sup> )	35.5% (176.8m <sup>2</sup> )	No
4.1.5.2 Landscaped Area	Landscaped area 35% of total open space	65.6% (287.2m <sup>2</sup> )	44.4% (221.6m <sup>2</sup> )	Yes
	3 native trees	0 trees	Unaltered	Yes
4.1.5.3 Private Open Space	18m <sup>2</sup>	256m <sup>2</sup>	>18m <sup>2</sup>	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.8m	Unaltered	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	3.9m	4.2m	No
Schedule 3 Parking and Access	2 spaces	2 spaces	4 spaces	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
5.4.2 Threatened Species and Critical Habitat Lands	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

#### Detailed Assessment

#### **4.1.3 Floor Space Ratio (FSR)**

The proposal exceeds the maximum FSR development standard. Refer to detailed planning assessment under Clause 4.4 of MLEP 2013

#### **4.1.4 Setbacks (front, side and rear) and Building Separation**

##### Description of non-compliance

Pursuant to Section 4.1.4.1 of the MDCP 2013, street front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity. Where these street front building lines are variable, a minimum 6m front setback applies. The proposed garage extension sits 1.4m from the front boundary along Bower Street. Neighbouring properties have the following front setbacks to their garages:

- Garage at #21 Bower Street is setback 3.7m from Bower Street.
- Garage at #17 Bower Street is setback 1.4m from Bower Street.
- Garage at #23 Bower Street has a nil setback

The proposed setback of 1.4m is considered to be generally consistent with prevailing building lines in the immediate vicinity. The existing development on the site has a very large setback that is inconsistent with other properties along the streetscape. Therefore, extending the building line closer

to the front boundary would create a development that is more characteristic of the prevailing streetscape.



*Figure 2 - existing setbacks*





**Figure 3 - existing setbacks**

Pursuant to Section 4.1.4.2, the requirements for setbacks between any part of a building and the side boundary must not be less than one third of the height of the adjacent external wall of the proposed building. The required south-western side setback to the rear bedroom is 1.1m. The rear bedroom has a nil setback to the south-western side boundary.

Pursuant to Section 4.1.4.3, variations to the side setback may be considered in residential density areas D3 to D9 subject to satisfying several requirements. The site is located in density area D5 and the subject side elevation has the following features:

- the wall protruding into the minimum setback does not provide windows facing the side boundary
- a window is provided at 90 degrees to the boundary
- the average distance over the length of the side elevation is greater than the required setback
- the height of the subject wall is less than 3m
- the length of the subject wall is less than 35% of the adjoining site boundary

In accordance with Section 4.1.4.4, the distance between any part of a building and the rear boundary

must not be less than 8m. The rear bedroom has a setback of 4.1m from the rear boundary.

It is important to note that this rear bedroom is existing and the site does not adjoin any properties to the rear; the site backs on to bushland.

The variation to the side setback requirements is supportable in this circumstance as the objectives of the control have been met, as outlined below.

Merit consideration:

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

*Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.*

Comment:

The proposal enhances the existing streetscape by bringing the building line closer to the front boundary to align with the other properties in the immediate vicinity. Furthermore, the proposed landscaping to the front of the property and the planters above the garage maintain the landscape character of the street.

*Objective 2) To ensure and enhance local amenity by:*

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The existing rear bedroom does not contain any windows on the façade facing the south-western side boundary, nor does the development as a whole cast excessive shadows over adjoining properties. The proposal will provide adequate access to light, sunshine and air movement. The proposal adds character to the streetscape by better aligning with the other properties along Bower Street, creating a more consistent rhythm of spaces. The proposed garage extension and pool and terrace above does not detract from the ocean views enjoyed by the property at #21, and thus, the proposal allows for view sharing. The proposal will not result in any adverse changes to traffic conditions, including levels of visibility, and will not affect the level of traffic safety. In this way, the development as modified ensures and enhances local amenity.

*Objective 3) To promote flexibility in the siting of buildings.*

Comment:

Consent has already been granted to development on the land and the proposed modifications to the siting of the building is considered appropriate and will not result in any unacceptable amenity impacts.

*Objective 4) To enhance and maintain natural features by:*

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposed development results in a compliant landscaped area and open spaces that provide ample opportunities for planting, including native trees and vegetation. The proposed modifications do not detract from the context of the site, including the public open space areas on the opposite side of Bower Street.

*Objective 5) To assist in appropriate bush fire asset protection zones.*

Comment:

The proposal was referred to NSW Rural Fire Service who provided a response stating that the proposal is acceptable subject to compliance with the recommended conditions in relation to asset protection zones, construction standards, water and utility services and landscaping. These recommendations will be included as a condition of consent.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

#### **4.1.5 Open Space and Landscaping**

##### Description of non-compliance

Pursuant to Section 4.1.5.1 of the Manly Development Control Plan 2013 (MDCP), open space above ground is limited to no more than 25% of the total open space. The proposal provides 498.6m<sup>2</sup> of total open space, of which 176.8m<sup>2</sup> is above ground, representing 35.5% of the total open space, which is a 42% variation to the maximum standard.

##### Merit consideration:

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

***Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.***

Comment:

The proposal is more than compliant with the minimum required landscaped area. Furthermore, the landscape plan submitted with the application provides a mix of native and exotic shrubs and grasses that will provide habitat for the threatened long-nosed bandicoots. The application was reviewed by Council's Landscape and Biodiversity Officers, who have supported the proposal, subject to conditions. It is therefore considered that the proposed development will retain landscaping and augment native flora and fauna populations.

***Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.***

Comment:

The proposal is more than compliant with the minimum required landscaped area, providing large areas of soft landscaping at both the front and rear of the property that allows for the retention of existing tree planting and the maintenance of existing vegetation.

***Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.***

Comment:

The proposal will retain the amenity, including sunlight, privacy, and views of the site, and adjoining sites. Furthermore, the proposed garage extension will improve the amenity of the streetscape by better aligning with other dwellings along Bower Street.

***Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.***

Comment:

The proposal will maximise water infiltration on-site through the soft landscaped areas, and surfaces that will assist to minimise stormwater runoff.

***Objective 5) To minimise the spread of weeds and the degradation of private and public open space.***

Comment:

The original approval included a condition of consent prohibiting environmental weeds from being planted on the site. The proposed modifications are unlikely to result in the spread of weeds or the degradation of private and public open space.

***Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.***

Comment:

The landscape plan submitted with the application provides a mix of native and exotic shrubs and grasses that will provide habitat for the threatened long-nosed bandicoots.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in section 1.3(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in this particular circumstance.

#### 4.1.9 Swimming Pools, Spas and Water Features

##### Description of non-compliance

Pursuant to Section 4.1.9 of the Manly Development Control Plan 2013 (MDCP), swimming pools and spas must be built on or in the ground and not elevated more than 1m above natural ground level. The top of the proposed swimming pool sits 4.2m above natural ground level.

Consideration of any exception to exceed the height above ground must demonstrate that any swimming pools and their curtilage and/or concourse more than 1m above natural ground level:

- i) would not detract from the amenity or character of the neighbourhood; and
- ii) is a minimum distance from any side boundary equivalent to the height of the swimming pools and their curtilage and/or concourse at any point above existing ground level.

##### Description of non-compliance

With regard to the consideration for a variation, the development is considered against the abovementioned conditions as follows:

##### ***i) would not detract from the amenity or character of the neighbourhood; and***

##### Comment:

The proposed swimming pool has a built form that is consistent with the character of balconies along Bower Street. In particular, #17 has a swimming pool at the front of the property, the top of which sits 3.1m above natural ground level. The proposed swimming pool is not dissimilar to this adjoining pool and does not detract from the amenity of the neighbourhood as it does not negatively impact foreshore views or solar access.

##### ***ii) is a minimum distance from any side boundary equivalent to the height of the swimming pools and their curtilage and/or concourse at any point above existing ground level.***

##### Comment:

The proposed swimming pool is situated 3.8m from the south-western boundary and 4.8m from the north-eastern boundary. It is considered that these side setbacks are sufficient for the height of the pool as the sloped topography of Bower Street means that the pool sits lower than the balcony of the adjoining southern property.

Having regard to the above assessment, it is concluded that the proposed swimming pool is considered appropriate and does not create any adverse impacts.

#### **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 2022**

Section 7.12 contributions were levied on the Development 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 2021;
- All relevant and draft Environmental Planning Instruments;
- Manly Local Environment Plan;
- Manly 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

## **PLANNING CONCLUSION**

This proposal, for modification of development consent DA2020/1249 granted for alterations and additions to a dwelling house, including a swimming pool, has been referred to the Development Determination Panel (DDP) due to a proposed 38% variation to the maximum FSR standard under clause 4.4 of the MLEP 2013 at 0.62:1.

No objections have been received by this application and therefore no concerns have been raised.

The originally approved development has an FSR of 0.48:1; however, due to miscalculation of the GFA in the original assessment, the true FSR of the approved development is 0.57:1. As such, the proposed FSR of 0.62:1 presents a true variation of 8.8% to the approved development.

The development as modified is considered to be substantially the same as the originally approved development as the proposal does not change the overall form and function of the approved dwelling



house or seek to increase the approved building height. The modifications relate predominantly to the extension of the garage and retention of the rear bedroom, which are approved or existing components of the dwelling.

The proposed development has an FSR that is commensurate with #9 and #17 Bower Street, and as such, the bulk and scale of the development is not inconsistent with other properties in the immediate vicinity. Furthermore, the expansion and extension of the garage closer to the boundary is considered acceptable given this new front building line aligns far more consistently with the streetscape along Bower Street.

Overall, the proposed modifications to the approved dwelling create a development that provides a more positive outcome by aligning more consistently with the streetscape character of Bower Street, without resulting in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been recommended for approval.

**REASON FOR DETERMINATION**

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 approval to Modification Application No. Mod2023/0553 for Modification of Development Consent DA2020/1249 granted for Alterations and additions to a dwelling house including a swimming pool on land at Lot 46 DP 8075,19 Bower Street, MANLY, subject to the conditions printed below:

**Modification Summary**

The development consent is modified as follows:

**MODIFICATION SUMMARY TABLE**

Application Number	Determination Date	Modification description
PAN-374560 MOD2023/0553	The date of this notice of determination	Modification of Development Consent DA2020/1249 granted for alterations and additions to a dwelling house including a swimming pool.  Add Condition 1A - Modification of Consent - Approved plans and supporting documentation Modify Condition 2 - Compliance with Other Department, Authority or Service Requirements Modify Condition 5 - Policy Controls Delete Condition 8 - Stormwater Disposal Add Condition 12A - On-Site Stormwater Detention Details

		Add Condition 12B - Stormwater Disposal Add Condition 12C - Geotechnical Report recommendations have been incorporated into designs and structural plans Add Condition 12D - Vehicle Crossings Application Add Condition 12E - Adherence to Natural Environment Consent Conditions Delete Condition 23 - Stormwater Disposal Add Condition 26A - Reinstatement of Kerb Add Condition 26B - Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures Add Condition 26C - Stormwater Disposal
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### **Modified conditions**

#### **A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting documentation, to read as follows:**

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

<b>Approved Plans</b>				
<b>Plan Number</b>	<b>Revision Number</b>	<b>Plan Title</b>	<b>Drawn By</b>	<b>Date of Plan</b>
01	B	Site Plan	Utz Sanby Architects	5 December 2023
02	B	Floor Plans	Utz Sanby Architects	5 December 2023
03	B	Elevations	Utz Sanby Architects	5 December 2023
04	B	Sections	Utz Sanby Architects	5 December 2023
06	A	Demolition Plan	Utz Sanby Architects	1 September 2023
07	A	Excavation / Fill Plan	Utz Sanby Architects	1 September 2023
21	A	Driveway Section	Utz Sanby Architects	11 December 2023

<b>Approved Reports and Documentation</b>			
<b>Document Title</b>	<b>Version Number</b>	<b>Prepared By</b>	<b>Date of Document</b>
09 - Schedule of Colours and Materials	A	Utz Sanby Architects	1 September 2023
10 - Erosion & Sediment Control Plan	A	Utz Sanby Architects	1 September 2023

19 - Landscaping Plan	A	Utz Sanby Architects	1 September 2023
20 - Landscaping Plan	A	Utz Sanby Architects	1 September 2023
BASIX Certificate	A389308_02	BASIX Certificate Centre	16 August 2023
Bushfire Assessment Report	1 - 20-386	Australian Bushfire Consulting Services	9 July 2023
Terrestrial Biodiversity Report Addendum Letter	-	ACS Environmental Pty Ltd	16 November 2023
Geotechnical Assessment Report	0	Douglas Partners Pty Ltd	15 August 2023
Waste Management Plan	-	No author	n.d.
Stormwater Drainage Calculations	BM110	Clapham Design Services Pty Ltd	31 August 2023
H01 - Proposed Stormwater Drainage	1	Clapham Design Services Pty Ltd	13 July 2023
H02 - Proposed Stormwater Drainage	1	Clapham Design Services Pty Ltd	13 July 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

**B. Modify Condition 2 - Compliance with Other Department, Authority or Service Requirements to read as follows:**

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

Other Department, Authority or Service	EDM
Ausgrid	Ausg
RFS	NSW

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

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

**C. Modify Condition 5 - Policy Controls to read as follows:**  
Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$25,294.50 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 \$2,529,450.00.

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.

**D. Delete Condition 8 - 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 WATER MANAGEMENT FOR DEVELOPMENT POLICY. 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 specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.**

Deleted.

**E. Add Condition 12A - On-Site Stormwater Detention Details to read as follows:**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by Clapham Design Services, drawing number BM110-S4.55-H01 & BM110-S4.55-H02, dated 30.08.2023. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. The on-site detention system cannot be built under any habitable areas.
- ii. The water storage level in the on-site detention system and any overflow pipes, weirs or other overflow devices shall be a minimum of 300mm below habitable floor level.

Detailed drainage plans, including engineering certification, are to be submitted to the Certifier for approval prior to the issue of the Construction Certificate.

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

**F. Add Condition 12B - Stormwater Disposal to read as follows:**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG), indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the street with flows attenuated by an on-site detention system.

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

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

**G. Add Condition 12C - Geotechnical Report recommendations have been incorporated into designs and structural plans to read as follows:**

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

**H. Add Condition 12D - Vehicle Crossings Application to read as follows:**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 3.0 metres wide on the kerb and a maximum of 5.0 metres wide on the property boundary in accordance with Northern Beaches Council Standard Drawing A4 3330/1 N in accordance with Section 138 of the Roads Act 1993.

Note, driveways are to be in plain concrete only.

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

A Council approval is to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

**I. Add Condition 12E - Adherence to Natural Environment Consent Conditions to read as follows:**

All biodiversity-related conditions of consent under previous development applications are to be adhered to, including DA2020/1249, unless amended by these biodiversity-related conditions of consent.

Reason: To protect biodiversity values.

**J. Delete Condition 23 - The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.**

Deleted.

**K. Add Condition 26A - Reinstatement of Kerb to read as follows:**

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To facilitate the preservation of on street parking spaces.

**L. Add Condition 26B - Positive Covenant and Restriction as to User for On-site Stormwater Disposal Structures to read as follows:**

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

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

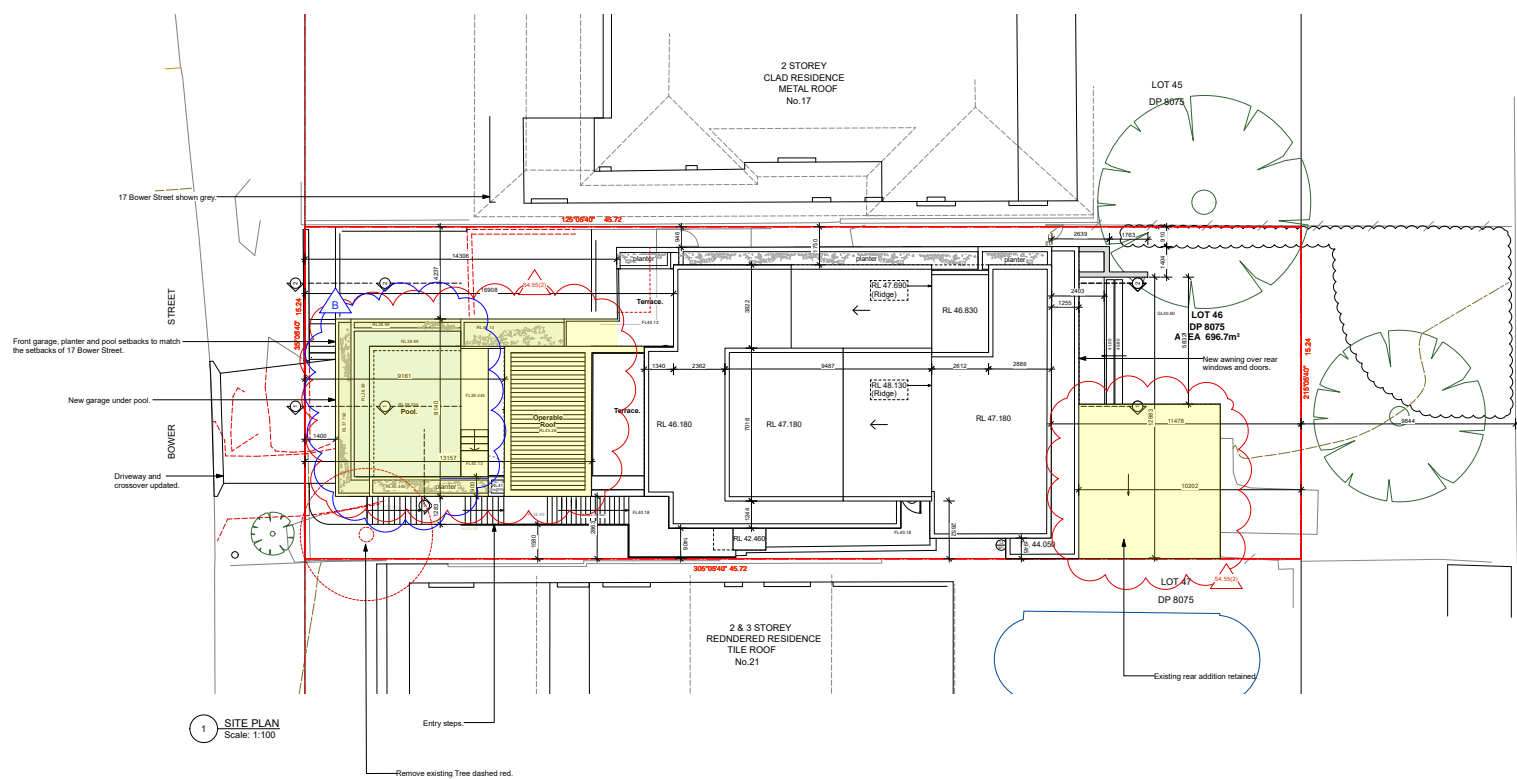
Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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

**M. Add Condition 26C - Stormwater Disposal to read as follows:**

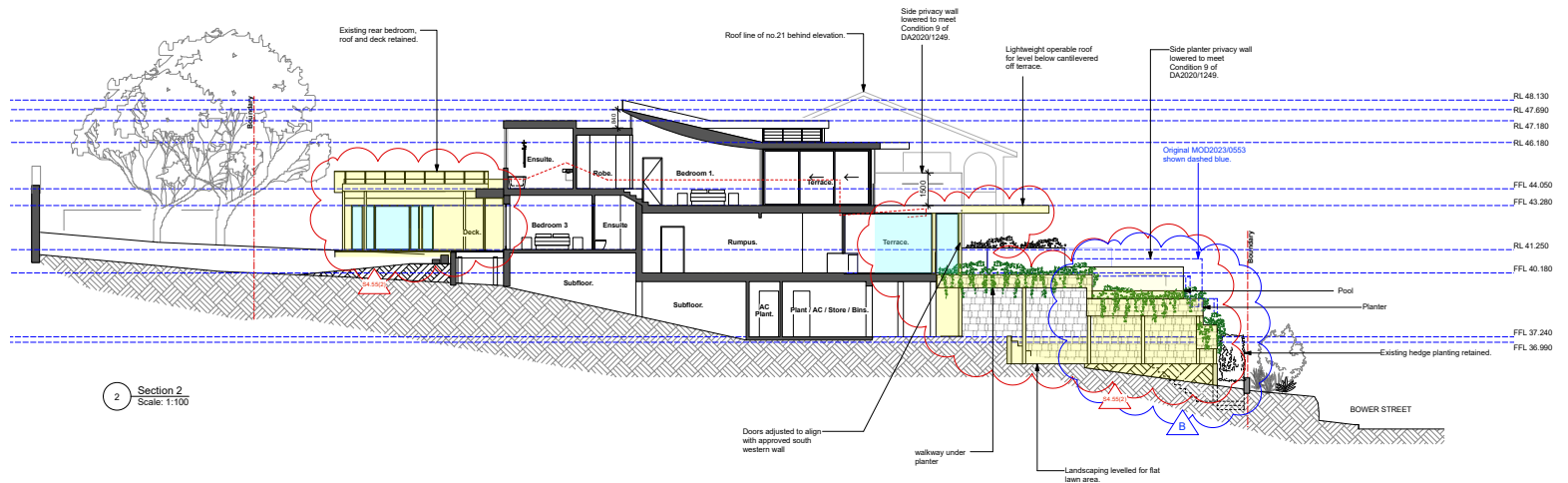
The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

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



1 SITE PLAN  
Scale: 1:100

<div>Rev</div> <div>Date</div> <div>Note</div>			<div>General Notes:</div> <div>1. BASIX (certificate no. A389308) has been assessed and found to be a suitable lot of at least 4100 sqm on the site. This lot is suitable for residential use, and the requirements of all applicable BASIX measures must be met.</div> <div>2. The proposed development must not exceed a height of 10.5m above the natural ground level.</div> <div>3. The proposed development must not exceed a height of 10.5m above the natural ground level.</div> <div>4. The proposed development must not exceed a height of 10.5m above the natural ground level.</div> <div>5. The proposed development must not exceed a height of 10.5m above the natural ground level.</div> <div>6. The proposed development must not exceed a height of 10.5m above the natural ground level.</div> <div>7. The proposed development must not exceed a height of 10.5m above the natural ground level.</div> <div>8. The proposed development must not exceed a height of 10.5m above the natural ground level.</div> <div>9. The proposed development must not exceed a height of 10.5m above the natural ground level.</div> <div>10. The proposed development must not exceed a height of 10.5m above the natural ground level.</div>			<div>LOT 46 DP 8075</div> <div>Copyright - This design and drawings are not to be used or reproduced wholly or in part without written permission of the Sanjay Architects. All dimensions are given in millimetres. All dimensions are to be checked on site by the Builder. Do not scale off the drawing. (Amended Architects) Sanjay Architects Pty. No. 4227</div>			<div>SITE PLAN</div> <div>Alterations &amp; Additions</div> <div>19 Bower Street, Manly NSW 2095</div> <div>Northern Beach Council-</div> <div>For Mr. Wes Maas</div>			<div>Suite 103, 103a Miller St PO Box 224, Cammeray NSW 1585 T 03 9463 2515 E architects@sanjay.com www.sanjay.com.au</div> <div>Project No. 2214</div> <div>Drawing No. 4.55(2)-01</div> <div>Rev No. 4.55(2)-B</div> <div>SCALE 1:100/8A1</div> <div>Drawn By JTD</div> <div>Check By JOC</div> <div>Design Date 1/11/2023</div> <div>Plot Date 1/11/2023</div>
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<b>ITEM 3.8</b> <b>DA2023/1439 - 89 WEARDEN ROAD FRENCHS FOREST - CONSTRUCTION OF A DWELLING HOUSE</b>
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**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 20 variation to housing density.

**RECOMMENDATION**

- A. That Council as the consent authority, vary the Housing Density standard pursuant to clause 20 of WLEP as the applicants 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.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/1439 for construction of a dwelling house on land at Lot C DP 334507, 89 Wearden Road FRENCHS FOREST, subject to the conditions set out in the Assessment Report.

<b>REPORTING MANAGER</b>	Adam Richardson
<b>TRIM FILE REF</b>	2024/118798
<b>ATTACHMENTS</b>	<b>1</b> <a href="#">↓ Assessment Report</a> <b>2</b> <a href="#">↓ Site Plan and Elevations</a>



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/1439
<b>Responsible Officer:</b>	Brittany Harrison
<b>Land to be developed (Address):</b>	Lot C DP 334507, 89 Wearden Road FRENCHS FOREST NSW 2086
<b>Proposed Development:</b>	Construction of a dwelling house
<b>Locality:</b>	B2 Oxford Falls Valley
<b>Category:</b>	Category 2 – Housing (and ancillary development)
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Paul David Grayson Vanessa Katherine Grayson
<b>Applicant:</b>	Bell River Homes Pty Ltd
<b>Application Lodged:</b>	12/10/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Single new detached dwelling
<b>Notified:</b>	18/10/2023 to 01/11/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 20 Variation:</b>	Yes – Housing Density
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 691,318.00

### EXECUTIVE SUMMARY

This development application seeks consent for the construction of a dwelling house.

The property is subject to Clause 1.3(1A) of the Warringah Local Environmental Plan 2011 and is classified as 'Deferred Land'. The development is therefore guided by the provisions of the Warringah Local Environment Plan 2000 and is located within the B2 Oxford Falls Valley locality.

The application is referred to the Development Determination Panel (DDP) as the proposed development fails to satisfy the B2 Oxford Falls Valley Locality's Housing Density Development Standard. The maximum housing density is one (1) dwelling per 20 ha of site area, this development standard includes exceptions to this requirement, however, are not applicable to the subject site. The subject site includes an existing dwelling which is to be



replaced by a new dwelling on a site area of 4976.0m<sup>2</sup>. Therefore, exhibiting a variation of 97.5% to the required housing density.

Notwithstanding this, the LEP provides that Consent may be granted for development that will contravene the housing density standard by more than 10 per cent, however only with the concurrence of the Secretary of the NSW Department of Planning, Industry and Environment (DPIE). By virtue of Planning Circular PS20-002, and letter from the Secretary dated 2 November 2021, Council has been provided with the requisite concurrence. Accordingly, the variation has assessed against the applicability of Clause 20(1).

The development application was notified for fourteen (14) days, as stated within Council's Community Participation Plan, with one (1) submission received. The concerns raised in this submission is addressed under the 'submissions' section of this report.

Based on a detailed assessment of the application, it is considered that, on balance the proposal is a suitable and an acceptable development for the subject site for the reasons outlined in this report.

This report concludes with a recommendation that the DDP grant **approval** to the development application, subject to recommended conditions.

#### **PROPOSED DEVELOPMENT IN DETAIL**

This application seeks development consent for the construction of a dwelling house.

Specifically, the works comprise of the following:

- Single storey dwelling to accommodate four (4) bedrooms, open style living/kitchen/dining room, study nook, multiple bathrooms, a rumps room and outside patio areas.

The existing garage on site, the clad studio and the vehicular access to the garage are proposed to be retained on site. Demolition of the existing dwelling is subject of a separate approval.

#### **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.

### SITE DESCRIPTION

The subject site consists of one (1) allotment located on the southern side of Wearden Road.

The site is regular in shape with a street frontage of 48.964m and a depth of 101.61m. The site has a surveyed area of 4976.0m<sup>2</sup>.

The site is located within the B2 Oxford Falls Valley Locality under the provisions of the Warringah Local Environmental Plan 2000, and accommodates an existing single storey house, multiple sheds, a driveway, and studio.

The site topography slopes downward from south-west to north-east by approximately 7.0m.

The property consists of large lawn areas and a pocket of bush area (trees and shrubs) to the northern-eastern corner. A DPE Hydroline creek crosses the site in the northeast corner.

### Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by a mix of low density and rural residential dwellings, low density commercial use and bushland and public reserves.

#### Map:



### SITE HISTORY

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



**CDC2023/0742:** Complying Development Certificate for the demolition of existing dwelling & ancillary structures.

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

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

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

#### Section 4.15 Assessment

The relevant matters for consideration under Section 4.15 of 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	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2000 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 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 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 29</u> of the EP&amp;A Regulation 2021 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>



Section 4.15 'Matters for Consideration'	Comments
	<p>Clauses 36 and 94 of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p>Clause 61 of the EP&amp;A Regulation 2021 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>Clauses 62 and/or 64 of the EP&amp;A Regulation 2021 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>Clause 69 of the EP&amp;A Regulation 2021 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>Clause 69 of the EP&amp;A Regulation 2021 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>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>i) The environmental impacts of the proposal on the natural and built environment are addressed under the General Principles of Development Control in this report. In summary, the proposal is satisfactory with conditions, having regard to environmental impacts.</p> <p>(ii) The proposal will not have a detrimental social impact on the locality considering the residential character of the proposal.</p> <p>(iii) The proposal will not have a detrimental economic impact on the locality considering the mixed semi-rural uses within the surrounding locality and the existing and ongoing use of the site for residential purposes.</p>





Section 4.15 'Matters for Consideration'	Comments
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 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 classified as bush fire prone land. Section 4.14 of the Environmental Planning and Assessment Act 1979 requires Council to be satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection.

A Bush Fire Report was submitted with the application that included a certificate (prepared by Bushfire Planning Services Pty Ltd, dated 7 March 2023) stating that the development conforms to the relevant specifications and requirements within Planning for Bush Fire Protection. The recommendations of the Bush Fire Report have been included as conditions of consent. It is considered that the proposed development is satisfactory with regards to the considerations of Section 4.14 of the Act.

### NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 18/10/2023 to 01/11/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

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

Name	Address
Unknown	Details Withheld

The following issues were raised in the submission:

- **Asbestos removal – strict guidelines for correct/safe removal.**

#### Comment

The demolition of the existing structures on site including the dwelling house does not form part of this application. The removal of such structures was determined under a Complying Development Certificate by an external Certifier not by Council. No further comment is required.





- **Septic tank in close proximity to creek line/riparian land area – potential adverse impacts and the request for a settlement control system during building works.**

Comment

Council's Environmental Health (Unsewered Lands), Development Engineer and Riparian Lands Officer have reviewed the proposal and has recommended conditions to be included to ensure no adverse impacts occur. These conditions will form part of this development consent.

**REFERRALS**

Internal Referral Body	Comments
Landscape Officer	<p><b><i>Supported, subject to conditions.</i></b></p> <p>The application seeks consent for the construction of a dwelling house.</p> <p>The architectural plans and Statement of Environmental Effects indicate that no significant landscape features are affected by the proposed works. No trees are to be removed.</p> <p>No objections are raised, regarding landscape issues subject to conditions.</p>
NECC (Bushland and Biodiversity)	<p><b><i>Supported, subject to conditions.</i></b></p> <p>The proposal seeks approval for the construction of a new dwelling.</p> <p>The comments in this referral relate to the following applicable controls:</p> <ul style="list-style-type: none"> <li>• Planning for Bushfire Protection 2019</li> <li>• Warringah DCP Clause E2 Prescribed Vegetation</li> <li>• Warringah DCP Clause E6 Retaining unique environmental features.</li> </ul> <p>The submitted Bushfire report has awarded the BAL-LOW level of risk to the site and therefore no high level of risk is posed by the vegetation onsite. However, the report has recommended that the site be treated as an Asset Protection Zone in perpetuity. No objections are raised as no impacts to native vegetation have been identified and no tree removal has been indicated on the submitted plans.</p> <p>A landscaping plan has indicated that a Syzygium cultivar hedge will be planted. No objections are raised in relation to the selection of species.</p>



Internal Referral Body	Comments
	No native vegetation or fauna habitat would be impacted, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.
NECC (Development Engineering)	<p><b>Supported, subject to conditions.</b></p> <p>The proposed dwelling is in Region 2. On-site detention is not required as the proposed impervious area of site is below 40.0%.</p> <p>A geotechnical report has been provided. Vehicle crossing construction is not proposed.</p>
NECC (Flooding)	<p><b>Supported, no conditions required.</b></p> <p>The proposed development is for the construction of a new dwelling.</p> <p>The property is within the identified Low Risk Flood Precinct. There are no flood related objections.</p>
Environmental Health (Unsewered Lands)	<p><b>Supported, subject to conditions.</b></p> <p><u>General Comments</u>  This application is seeking consent for the construction of a new 4-bedroom single story dwelling. There is an existing septic tank onsite which will be conditioned to be removed. The wastewater report submitted with this application has recommended an AWTS with sub surface irrigation. One major constraint has been identified - this relates to the land availability (Unable to maintain 100.0m from stream).</p> <p>The wastewater consultant has recommended:</p> <ul style="list-style-type: none"> <li>- Diversions mounds to reduce risk of runoff and seepage from upstream.</li> <li>- Sub-surface disposal options utilized to reduce potential runoff.</li> <li>- Advanced secondary treatment level required for all waste.</li> </ul> <p>Moderate limitations identified include:</p> <p>Landform, Fill and pH. The consultant has recommended the installation of disposal areas along contour lines to ensure system levelness and test hole extended for 1.0m depth of fill relatively consistent (300-400 depth) across tested site variance in permeability not expected and</p>



Internal Referral Body	Comments
	<p>optional soil treatment with the addition of lime &amp; organic matter to improve optimum plant growth.</p> <p>Page 15 of 2023/658070 identifies the approx. location of the AWTS and LAA.</p>
NECC (Riparian Lands and Creeks)	<p><b><i>Supported, subject to conditions.</i></b></p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>- Supplied plans and reports;</li> <li>- Coastal Management Act 2016;</li> <li>- State Environmental Planning Policy (Resilience and Hazards) 2021;</li> <li>- Relevant LEP and DCP clauses; and</li> <li>- Northern Beaches Council Water management for development policy.</li> </ul> <p><u>Riparian</u> A DPE Hydroline mapped creek crosses the site in the northeast corner. The proposed development is within 40m of the creek and is exempt from Controlled Activity Permit.</p> <p>The proposed development the proposed development must not significantly impact on the biophysical, hydrological, or ecological integrity of the creek or the quantity and quality of surface and ground water flows that it receives.</p> <p>Refer to Environmental Health referral for information on the wastewater management system.</p> <p><u>Stormwater Outlet</u> The stormwater outlet discharging directly to the waterway is permitted as per the Northern Beaches Council Water Management for Development Policy.</p> <p>The outlet structure design must comply with Guidelines for Outlet Structures on Waterfront land prepared by the NSW Office of Water and Council's Protection of Waterways and Riparian Land Policy for additional requirements.</p> <p>Current designs include the use of concrete in the apron of the outlet which DOES NOT comply with the Guidelines for Outlet Structures on Waterfront Land (see condition).</p> <p><u>Sediment Management</u> Sediment and erosion controls must be installed prior to</p>



Internal Referral Body	Comments
	<p>any disturbance of soil on site and maintained until all work is complete and groundcover re-established.</p> <p><u>Sediment Pit</u> As per the Water Management for Development policy, the applicant must install a filtration device that removes organic matter and coarse sediments from stormwater prior to discharge from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<p><b><i>Supported, subject to conditions.</i></b></p> <p>The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.</p> <p>These recommendations will be included as a condition of consent.</p>
Aboriginal Heritage Office	<p><b><i>Supported, subject to conditions.</i></b></p> <p>No sites are recorded in the current development area and the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds.</p> <p>Under Section 89a of the NPW Act should the objects be found to be Aboriginal Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p>

#### ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)



All Environmental Planning Instruments (SEPPs 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 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)

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No.1416023S dated 7 September 2023).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	51

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

### SEPP (Resilience and Hazards) 2021

#### Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 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 sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the residential land use.

### SEPP (Transport and Infrastructure) 2021

#### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.



- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

#### Comment

The proposal was referred to Ausgrid who raised no objections, subject to conditions.

#### **Warringah Local Environmental Plan 2011 (WLEP 2011)**

The Warringah Local Environmental Plan 2000 (WLEP 2000), B2 Oxford Falls Valley (which covers the land subject to this application) were proposed to be zoned E3 Environmental Management in the draft 2009 version of Warringah's standard instrument. This was based on a detailed translation methodology that was applied to all land within the former Warringah LGA.

In December 2011, the Minister for Planning and Infrastructure deferred land in the Oxford Falls Valley and Belrose North areas from the Warringah Local Environmental Plan 2011 (WLEP 2011) in response to stakeholder concern regarding the adequacy of consultation during the preparation of WLEP 2011.

Accordingly, WLEP 2011 and the current Warringah Development Control Plan 2011 do not apply to this application. In addition this this, the draft of the made LEP is not a matter for consideration, due to the way that the locality was excluded from the making of the LEP.

#### **Warringah Local Environment Plan 2000 (WLEP 2000)**

The property is subject to Clause 1.3(1A) of the Warringah Local Environmental Plan 2011 and is classified as 'Deferred Land'. The development is therefore guided by the provisions of the Warringah Local Environment Plan 2000 and is located within the B2 Oxford Falls Valley locality.

#### **B2 Oxford Falls Valley**

The Desired Future Character Statement for Locality B2 states:

*"The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.*

*Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.*

*The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services. Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.*



*A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.*

*Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained."*

#### Definition and Category of Development

The proposed development is defined as "housing" under the WLEP 2000 dictionary.

"Housing" is identified as Category 2 development in this locality.

Clause 12(3)(a) of WLEP 2000 requires the consent authority to be satisfied that the proposed development is consistent with the Locality's DFC statement.

#### Consideration of the development against the Desired Future Character statement (DFC)

Before granting consent, Clause 12(3)(b) of WLEP 2000 requires that the consent authority must consider the DFC described in the locality statement and the proposal being Category 2, must demonstrate consistency with the DFC statement. As such, the following provides consideration of the development against the various parts of the above DFC statement:

- ***The present character of the Oxford Falls Valley locality will remain unchanged except in circumstances specifically addressed as follows.***

#### Comment

The subject site consists of an existing dwelling house to be demolished with a new single storey dwelling house to be constructed, which in context will retain the existing character of the Oxford Falls Valley Locality and immediate area. The development is hence consistent with this requirement. It is noted that the demolition shall occur under a separate application.

- ***Future development will be limited to new detached style housing conforming with the housing density standards set out below and low intensity, low impact uses. There will be no new development on ridgetops or in places that will disrupt the skyline when viewed from Narrabeen Lagoon and the Wakehurst Parkway.***

#### Comment

The proposal includes the construction of a new detached dwelling house (single storey) to replace an existing dilapidated dwelling house. The proposal is not located on a ridge top and will not dominate any skylines. The dwelling will be of low impact subject to conditions. Refer to the 'Housing Density' section of the report for further detail.

- ***The natural landscape including landforms and vegetation will be protected and, where possible, enhanced. Buildings will be located and grouped in areas that will minimise disturbance of vegetation and landforms whether as a result of the buildings themselves or the associated works including access roads and services.***



Comment

No significant vegetation or landscape features is proposed for removal as part of this application and the proposal complies with Landscaped Open Space. The proposal has been reviewed by Council's Bushland & Biodiversity, Landscape and Riparian Lands Officers who have raised no objections (subject to conditions).

- ***Buildings which are designed to blend with the colours and textures of the natural landscape will be strongly encouraged.***

Comment

The proposal has utilised colours (i.e. grey, brown, and black) to aid in complementing the natural landscape in addition to white cladding.

- ***A dense bushland buffer will be retained or established along Forest Way and Wakehurst Parkway. Fencing is not to detract from the landscaped vista of the streetscape.***

Comment:

The subject site does not adjoin Forest Way or Wakehurst Parkway. Suitable landscaping will be retained on site, with no new fencing to be proposed.

- ***Development in the locality will not create siltation or pollution of Narrabeen Lagoon and its catchment and will ensure that ecological values of natural watercourses are maintained.***

Comment:

The subject site is not located in close proximity to Narrabeen Lagoon; therefore, this part of the DFC does not apply in this instance. However, Council's Environmental Health, Flooding and Riparian Lands Officers have included conditions to prevent unacceptable impact of any natural watercourses.

**Conclusion on the DFC**

Based upon the above considerations, the development is generally consistent with the DFC statement for the B2 Oxford Falls Valley locality.

**Built Form Controls for Locality B2 Oxford Falls Valley**

The following table outlines compliance with the Built Form Controls of the above locality statement:

Built Form Standard	Required	Proposed	Compliance
Housing Density	1 dwelling per 20ha	1 dwelling on less than 20ha (as existing).	No
Building Height	8.5m	5.5m	Yes
Front Building Line	20.0m	Approx. 61.2m	Yes
Side Building Setback	10.0m	East: 11.2m West: 13.0m	Yes Yes





Built Form Standard	Required	Proposed	Compliance
Rear Building Setback	10.0m	South: 23.7m	
Landscaped Open Space (LOS)	30.0% (1492.8m <sup>2</sup> )	> 30.0%	Yes

The proposed development fails to satisfy the B2 Oxford Falls Valley Locality's Housing Density Development Standard. Accordingly, further assessment is considered against the applicability of Clause 20(1).

**Clause 20(1) stipulates:**

*"Notwithstanding clause 12 (2) (b), consent may be granted to proposed development even if the development does not comply with one or more development standards, provided the resulting development is consistent with the General Principles of Development Control, the Desired Future Character of the locality and any relevant State Environmental Planning Policy."*

In determining whether the proposal qualifies for a variation under Clause 20(1) of WLEP 2000, consideration must be given to the following:

**(i) General Principles of Development Control**

The proposal is consistent with the General Principles of Development Control and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1). Refer to 'General Principles of Development Control' elsewhere in this report for a detailed assessment.

**(ii) Desired Future Character of the Locality**

The proposal is consistent with the B2 Oxford Falls Locality's DFC Statement and accordingly, qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1). Refer to 'Desired Future Character' elsewhere in this report for a detailed assessment.

**(iii) Relevant State Environmental Planning Policies**

The proposal has been considered to be consistent with the applicable State Environmental Planning Policies. Refer to 'State Environmental Planning Policies' elsewhere in this report.

Accordingly, the proposal qualifies to be considered for a variation to the development standards, under the provisions of Clause 20(1).

The non-compliance to the Housing Density Standard will be addressed in detail below:

**Housing Density**

Built Form Standard	Required	Proposed	Compliant
Housing Density	1 dwelling per 20 ha	1 dwelling per 4976.0m <sup>2</sup>	No



#### Merit Consideration

The Housing Density Standard of the B2 Oxford Falls Valley Locality is one (1) dwelling per 20 ha. The subject site currently consists of one (1) dwelling on a land area of 4976.0m<sup>2</sup>, therefore does not comply with the housing density requirement. The proposal seeks to construct a new dwelling house on site (the existing house will be demolished via a separate application).

The exceptions to this requirement are as follows:

*“(a) where this standard would prevent the erection of one dwelling on an existing parcel of land, being all adjacent or adjoining land held in the same ownership on 8 March 1974 and having a combined area of not less than 2 ha, and*

*(b) on Portions 199, 200, 985, 986, 1001, 1002, 1003, 1004, 1011, 1012, 1018 and 1019 Parish of Manly Cove and Lot 33 DP 870625 Pinduro Place, Cromer, where one dwelling may be erected provided the land exceeds 4,000m<sup>2</sup> in area and was lawfully created prior to 13 August 1982, or was otherwise lawfully created, and*

*(c) on land that adjoins a locality primarily used for urban purposes and on which a dwelling house is permissible, where there is no maximum housing density if the development is for the purpose of “housing for older people or people with a disability” and the development complies with the minimum standards set out in clause 29.”*

#### Comment

The above exceptions do not apply to the subject site. However, consent may be granted for development that will contravene the housing density standard by 10.0%, with the concurrence of the Secretary of DPIE.

Northern Beaches Council received the Secretary's concurrence to determine development applications for Class 1 buildings (dwelling houses) and Class 10 buildings where the development contravenes a numerical standard by greater than 10.0% for any built form control considered a development standard under the B2 and C8 Localities of Warringah LEP 2000. Such applications may be determined by Council staff under delegation in accordance with Council procedures.

The application therefore seeks to vary the Housing Density Standard with a variation of 97.5% to the requirement. As noted above in Clause 20(1) the proposed works are considered to be consistent with the General Principles of Development Control, the Desired Future Character of the locality and any relevant State Environmental Planning Policy. The variation to the Housing Standard is therefore considered to be acceptable based on the reasons outlined throughout this assessment report.

#### **General Principles of Development Control**

The following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed application:

General Principles	Applies	Comments	Complies
<b>CL38 Glare and reflections</b>	Yes	The proposal includes a roof tyle of a medium/dark colour scheme. Associated	Yes



General Principles	Applies	Comments	Complies
		Colourbond materials (gutter/fascia) are also of medium/dark colour scheme. A standard condition of consent is recommended to ensure that roof finishes incorporate a medium to dark range in order to minimise solar reflections to neighbouring properties.	
<b>CL42 Construction Sites</b>	Yes	Conditions are included to mitigate impacts of construction sites.	Yes
<b>CL43 Noise</b>	Yes	No adverse noise impacts shall occur.	Yes
<b>CL44 Pollutants</b>	Yes	No adverse pollutant impacts shall occur. Conditions are included to ensure acceptable measures are undertaken to ensure the protection of adjoining properties and the natural environment.	Yes
<b>CL47 Flood Affected Land</b>	Yes	The property is within the identified Low Risk Flood Precinct. There are no flood related objections from Council's Flooding Team.	Yes
<b>CL48 Potentially Contaminated Land and CL49 Remediation of Contaminated Land</b>	Yes	The site has been used for residential/rural purposes for a significant period of time and it is therefore considered that the site poses no risk of contamination.	Yes
<b>CL50 Safety and Security</b>	Yes	Development will maintain the safety and security of the locality.	Yes
<b>CL52 Development near parks, bushland reserves and other public open spaces</b>	No	Subject site is not adjacent to any parks, bushland reserves and other public open space.	Yes
<b>CL54 Provision and Location of Utility Services</b>	Yes	The proposal has been reviewed by Council's Environmental Health (Unsewered Lands), Development Engineer and Riparian Lands Officer who have raised no objections, subject to conditions. The subject site has services such as electricity, water and drainage etc.	Yes
<b>CL56 Retaining Unique Environmental Features on Site</b>	Yes	The proposal has been reviewed by Council's Bushland & Biodiversity, Landscaping and Riparian Lands Teams who have raised no objections, subject to conditions.	Yes



General Principles	Applies	Comments	Complies
<b>CL57 Development on Sloping Land</b>	Yes	No excessive landfill or excavation will occur on site to accommodate the dwelling house construction.	Yes
<b>CL58 Protection of Existing Flora</b>	Yes	The proposed development is in an area of acceptable distance from native/significant trees. Council's Landscaping and Biodiversity Officers have reviewed the proposal and is supportive, subject to conditions.	Yes
<b>CL60 Watercourses and Aquatic Habitats</b>	Yes	As mentioned above, Council's Environmental Health (Unsewered Lands) and Riparian Lands Officers have reviewed the proposal and provided relevant conditions.	Yes
<b>CL61 Views</b>	Yes	No objections were received from properties in relation to view loss. The dwelling is of single storey and is unlikely to disrupt any significant views in the area.	Yes
<b>CL62 Access to sunlight</b>	Yes	The works will not result in any unacceptable overshadowing.	Yes
<b>CL63 Landscaped Open Space</b>	Yes	The proposal is considered to achieve the requirements of this clause.	Yes
<b>CL63A Rear Building Setback</b>	Yes	The proposal is considered to achieve the requirements of this clause.	Yes
<b>CL64 Private open space</b>	Yes	The proposal is considered to achieve the requirements of this clause.	Yes
<b>CL65 Privacy</b>	Yes	The proposal is considered to achieve the requirements of this clause.	Yes
<b>CL66 Building bulk</b>	Yes	The proposal is considered to achieve the requirements of this clause.	Yes
<b>CL67 Roofs</b>	Yes	The proposal is considered to achieve the requirements of this clause.	Yes
<b>CL68 Conservation of energy and water</b>	Yes	The proposal is considered to achieve the requirements of this clause.	Yes
<b>CL70 Site facilities</b>	Yes	The proposal is considered to achieve the requirements of this clause.	Yes
<b>CL71 Parking facilities (visual impact)</b>	Yes	The proposal is considered to achieve the requirements of this clause.	Yes
<b>CL72 Traffic access and safety</b>	Yes	The proposal is considered to achieve the requirements of this clause.	Yes
<b>CL74 Provision of Carparking</b>	Yes	The existing garage (detached) will remain. The site will provide for two (2) spaces as required.	Yes



General Principles	Applies	Comments	Complies
<b>CL76 Management of Stormwater</b>	Yes	The proposal is considered to achieve the requirements of this clause. The proposal has been reviewed by Council's Development Engineer who has raised no objections, subject to conditions.	Yes
<b>CL77 Landfill</b>	Yes	The proposal is considered to achieve the requirements of this clause.	Yes
<b>CL78 Erosion and Sedimentation</b>	Yes	The proposal is considered to achieve the requirements of this clause.  Sediment and erosion controls must be installed prior to any disturbance of soil on site and maintained until all work is complete and groundcover re-established. This will be ensured via a condition.	Yes

#### Schedules

Schedule	Applies	Complies
<b>Schedule 5 State policies</b>	Yes	Yes
<b>Schedule 6 Preservation of bushland</b>	Yes	Yes
<b>Schedule 7 Matters for consideration in a subdivision of land</b>	No	N/A
<b>Schedule 8 Site analysis</b>	Yes	Yes
<b>Schedule 9 Notification requirements for remediation work</b>	No	N/A
<b>Schedule 10 Traffic generating development</b>	No	N/A
<b>Schedule 11 Koala feed tree species and plans of management</b>	No	N/A
<b>Schedule 12 Requirements for complying development</b>	No	N/A
<b>Schedule 13 Development guidelines for Collaroy/Narrabeen Beach</b>	No	N/A
<b>Schedule 14 Guiding principles for development near Middle Harbour</b>	No	N/A
<b>Schedule 15 Statement of environmental effects</b>	Yes	Yes
<b>Schedule 17 Carparking provision</b>	Yes	Yes

#### 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 2022**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$6,913 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$691,318.

## **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 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan 2000;
- Warringah Development Control Plan 2000; 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

## **PLANNING CONCLUSION**

This proposal, for the construction of a dwelling house has been referred to the Development Determination Panel (DDP) due to the proposed development failing to satisfy the B2 Oxford Falls Valley Locality's Housing Density Development Standard of the Warringah Local Environment Plan 2000 by more than 10%.

The development application was notified for fourteen (14) days, as stated within Council's Community Participation Plan, with one (1) submission received. The concerns raised in this submission have been addressed elsewhere within this report, and do not warrant refusal of the application.



The critical assessment issues relate primarily to the Clause 20(1) to vary the Housing Density Standard and the B2 Oxford Falls Valley Desired Future Charter Statement.

Overall, the development is a high-quality design that performs well against the relevant controls and will not result in unreasonable impacts on adjoining or nearby properties, or the natural environment. The proposal has therefore been 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 Council as the consent authority grant Development Consent to DA2023/0518 for Alterations and additions to a dwelling house, construction of a single garage and retaining walls, alterations to existing driveway and associated landscape works. on land at Lot 2637 DP 752038, 7 Morgan Road, BELROSE, subject to the conditions printed below:

### **Terms and Reasons for Conditions**

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.



## GENERAL CONDITIONS

**1. No Approval for Secondary Dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.

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

**2. Approved Plans and Supporting Documentation**

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
Sheet 2 of 9	Revision D	Locality Plan	Bellriver Homes	22 September 2023
Sheet 3 of 9	Revision D	Site Plan	Bellriver Homes	22 September 2023
Sheet 4 of 9	Revision D	Floor Plan	Bellriver Homes	22 September 2023
Sheet 6 of 9	Revision D	North Elevation + South Elevation	Bellriver Homes	22 September 2023
Sheet 7 of 9	Revision D	East Elevation + West Elevation + Section A-A	Bellriver Homes	22 September 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate (No. 1416023S)	-	Energi Assessors Pty Ltd	07 September 2023
NatHERS Certificate (No. 0008841546-01)	-	Energi Assessors Pty Ltd	07 September 2023
Bushfire Risk Assessment (Ref. 4275)	-	Bushfire Planning Services	07 March 2023
On-Site Effluent Disposal Management Report (Ref. 3.22.18153.3)	-	Structerre Consulting Engineers	07 August 2023
Geotechnical Assessment	-	Structerre Consulting	22 August





(Ref. 3.22.18153.4)		Engineers	2023
Waste Management Plan	-	-	-
Sheet 1 of 2, DA Landscape Concept	-	Monaco Designs P/L	14 July 2023

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

In the event of any inconsistency between the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

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

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

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	2 November 2023

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

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

### 4. Prescribed Conditions

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifier 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 Certifier 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 Certifier 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.

## 5. General Requirements

- (a) Unless authorised by Council:
  - Building construction and delivery of material hours are restricted to:
    - 7.00 am to 5.00 pm inclusive Monday to Friday,
    - 8.00 am to 1.00 pm inclusive on Saturday,
    - No work on Sundays and Public Holidays.
  - Demolition and excavation works are restricted to:
    - 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site).
- (b) 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 an 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 following is required:
  - i) Long Service Levy - Payment should be made to Service NSW (online or in person) or alternatively to Northern Beaches Council in person at a Customer Service Centre. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% 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.
  - ii) Section 7.11 or Section 7.12 Contributions Plan – Payment must be made to Northern Beaches Council. Where the subject land to which the development is proposed is subject to either a Section 7.11 or 7.12 Contributions Plan, any contribution to which the development is liable under the respective plan that applies is to be paid to Council. The outstanding contribution will be indexed at time of payment in accordance with the relevant Contributions Plan.
  - iii) Housing and Productivity Contribution - Payment must be made on the NSW Planning Portal for development to which this contribution applies. The amount payable is subject to indexation at the time of payment.
- (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.), on the land to be developed, or within adjoining properties, shall be removed or damaged during excavation or construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out



- v) For any work/s that is to be demolished  
The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;  
  
Relevant legislative requirements and relevant Australian Standards (including but not limited) to:
    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2018
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

**6. No approval for secondary dwelling**

No approval is granted or implied under this Development Consent for the use of any part of the dwelling house for the purpose of a secondary dwelling or separate occupancy. Built in cooking facilities are not permitted to be installed, other than those shown in the designated kitchen area.



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

## FEES / CHARGES / CONTRIBUTIONS

### 7. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$6,913.18 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 (as amended).

The monetary contribution is based on a development cost of \$691,318.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

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

### 8. 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 Certifier 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.

## BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE



9. **No Clearing of Vegetation**

Unless otherwise exempt, no vegetation is to be cleared prior to issue of a Construction Certificate.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation.

10. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this development consent in accordance with AS/NZS 3500 and Council's Water Management for Development Policy, prepared by an appropriately qualified and practicing Civil or Hydraulic Engineer who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) , indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to the creek with erosion control provided by an energy dissipator.

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

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

11. **Geotechnical Report Recommendations have been Incorporated into Designs and Structural Plans**

The recommendations identified in the Geotechnical Report referenced in Condition 1 of this consent are to be incorporated into the construction plans. Details demonstrating compliance are to be submitted to the Certifier prior to the issue of the construction certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

12. **Erosion and Sediment Control Plan**

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

- Site Boundaries and contours
- Approximate location of trees and other vegetation, showing items for removal or retention (consistent with any other plans attached to the application)
- Location of site access, proposed roads and other impervious areas (e.g. parking areas and site facilities)
- Existing and proposed drainage patterns with stormwater discharge points
- Locations and methods of all erosion and sediment controls that must include sediment fences, stabilised site access, materials and waste stockpiles locations, location of any stormwater pits on the site and how they are going to be protected.
- North point and scale.



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

Reason: To protect the receiving environment.

**13. Water Quality Management**

The applicant must install a filtration device (such as a sediment control pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

**14. Stormwater Outlet Structure to Creek**

Stormwater outlet structures to the creek must be designed in accordance with DPE Water's Guidelines for Outlet Structures on Waterfront land. Guidelines can be found on the DPE website.

No mortar or concrete is to be used on the outlet. Rocks must be placed using an interlocking system with varying rock sizes. The surface should be a textured finish to break up and dissipate sheet flows.

This design is to be submitted to the Principal Certifier prior to the release of the Construction Certificate.

Reason: To protect the surrounding creek bank from the effects of localised erosion.

**15. Amendments to the approved plans**

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

a) No fencing is to be approved under this consent. Any proposed fencing as indicated on the approved plans do not form part of this development consent. Reference to any new fencing is to be removed from approved plans prior to the issue of the construction certificate.

b) The bench and sink associated with the 'rumpus' room as noted on the approved plans shall be removed from the plans.

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

Reason: To require amendments to the plans endorsed by the consent authority following assessment of the development.

**16. 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 Certifier prior to the issue of the Construction Certificate.





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

**17. Sydney Water "Tap In"**

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifier demonstrating the works are in compliance with Sydney Water requirements.

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

**18. Demolition of existing dwelling**

Prior to the issue of any Construction Certificate, separate approval is to be obtained for the demolition of the existing dwelling. The demolition works are to be completed in accordance with that approval before a Construction Certificate may be issued.

Reason: To ensure the orderly development of land.

## DURING BUILDING WORK

**19. Wastewater disposal areas**

Proposed works shall not impact on any wastewater disposal (Land Application Areas) building materials and equipment shall not be stored within the wastewater disposal areas on site.

Reason: To protect land and infrastructure in the wastewater disposal area from damage and failure.

**20. Protection of Landscape Features and Sites of Significance**

All natural landscape features including natural rock outcrops, natural vegetation, soil and watercourses are to remain undisturbed during demolition, excavation and construction works except where affected by works detailed on approved plans.

Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office contacted to assess the finds.

Under Section 89a of the NPW Act should the objects be found to be Aboriginal, NSW Biodiversity and Conservation Division, Heritage NSW and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Preservation of significant environmental features.

**21. Tree and Vegetation Protection**

- a) Existing trees and vegetation shall be retained and protected, including:
  - i) all trees within the site including trees and vegetation nominated for retention on the approved Plans,
  - ii) all trees and vegetation located on adjoining properties,





- iii) all trees and vegetation within the road reserve.
- b) Tree protection shall be undertaken as follows:
  - i) tree protection shall be in accordance with AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment,
  - ii) existing ground levels shall be maintained within the tree protection zone of trees to be retained, unless authorised by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
  - iii) removal of existing tree roots at or >25mm (Ø) diameter is not permitted without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture,
  - iv) no excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of trees and other vegetation required to be retained,
  - v) structures are to bridge tree roots at or >25mm (Ø) diameter unless directed by an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture on site,
  - vi) excavation for stormwater lines and all other utility services is not permitted within the tree protection zone, without consultation with an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture including advice on root protection measures,
  - vii) should either or all of v) or vi) occur during site establishment and construction works, an Arborist/Project Arborist with minimum AQF Level 5 in arboriculture shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist/Project Arborist to the Principal Certifier,
  - viii) any temporary access to, or location of scaffolding within the tree protection zone of a protected tree or any other tree to be retained during the construction works is to be undertaken using the protection measures specified in sections 4.5.3 and 4.5.6 of AS4970-2009 Protection of trees on development sites,
  - ix) the activities listed in section 4.2 of AS4970-2009 Protection of trees on development sites, shall not occur within the tree protection zone of any tree on the lot or any tree on an adjoining site,
  - x) tree pruning from within the site to enable approved works shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2007 Pruning of amenity trees,
  - xi) the tree protection measures specified in this clause must: i) be in place before work commences on the site, and ii) be maintained in good condition during the construction period, and iii) remain in place for the duration of the construction works.

The Principal Certifier must ensure that:

- c) The arboricultural works listed in a) and b) are undertaken and complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

Reason: Tree and vegetation protection.



22. **Wildlife Protection**

If construction activity associated with this development results in injury or displacement of a native mammal, bird, reptile or amphibian, a licensed wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To protect native wildlife.

23. **Protection of Habitat Features**

All natural landscape features, including any rock outcrops, native vegetation and/or watercourses, are to remain undisturbed during the construction works, except where affected by necessary works detailed on approved plans.

Reason: To protect wildlife habitat.

24. **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.

25. **Installation and Maintenance of Sediment and Erosion Controls**

Council proactively regulates construction sites for sediment management.

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004) and the Erosion and Sediment Control Plan prior to commencement of any other works on site.

Erosion and sediment controls 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 vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

Reason: To protect the receiving environment.

26. **Geotechnical Requirements**

All recommendations (if any) included in the Geotechnical Report referenced in Condition 1 of this consent are required to be complied with during works.

Reason: To ensure geotechnical risk is mitigated appropriately.

27. **Survey Certificate**

A survey certificate prepared by a Registered Surveyor at the following stages of construction:

(a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.

(b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.

(c) At completion of the roof frame confirming the finished roof/ridge height is in accordance



with levels indicated on the approved plans.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans.

**28. Property Boundary Levels**

The Applicant is to maintain the property boundary levels. No approval is granted for any change to existing property alignment levels to accommodate the development.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To maintain the existing profile of the nature strip/road reserve.

**29. Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Planning and Environment.

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the Department of Planning and Environment.

Reason: Aboriginal Heritage Protection.

**BEFORE ISSUE OF THE OCCUPATION CERTIFICATE**

**30. Wastewater system compliance**

All recommendations and required works as contained within the report by Structerre Consulting Engineers dated 7 August 2023, job no. 3.22.18153.3 being implemented.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To ensure the wastewater disposal system is compliant and will not create a risk to public health.

**31. Existing septic tank to be decommissioned**

The existing septic tank is to be decommissioned in accordance with the requirements of NSW Health "Advisory Note 3 - Destruction, Removal or Reuse of Septic Tanks, Collection Wells, Aerated Wastewater Treatment Systems (AWTS) and other Sewage Management Facilities (SMF)".

Details confirming compliance with this requirement are to be supplied to the Principle Certifier.

Reason: To ensure removal of redundant systems and promote public health.

**32. Specification of wastewater system to be installed**

The NSW Health certificate of accreditation of the Aerated Wastewater Treatment System



(AWTS) to be installed must be provided to the Principal Certifier and Council for its records prior to the release of the Construction Certificate.

Reason: To ensure the wastewater system to be installed is accredited for domestic use.

**33. Native Landscaping**

Any new landscaping is to incorporate a minimum 60% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the relevant section of the Native Planting Guide available on Council's website.

Details demonstrating compliance are to be provided to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To ensure compliance with the requirement to retain and protect native planting on the site.

**34. No Weeds Imported On To The Site**

No Priority or environmental weeds (as specified in the Northern Beaches Local Weed Management Plan) are to be imported on to the site prior to or during construction works.

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

Reason: To reduce the risk of site works contributing to spread of Priority and environmental weeds.

**35. 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 Certifier prior to the issue of an Occupation Certificate.

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

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

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

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

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.



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

37. **Wastewater System**

Prior to the issuing of an Occupation Certificate, a copy of a s68 (Local Government Act 1993) approval to operate the wastewater system, and the wastewater system must be activated and effectively operating to the satisfaction of the Principal Certifier.

Details demonstrating compliance are to be submitted to the Principal Certifier.

Reason: To ensure the premises are maintained in an appropriate manner in perpetuity.

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

38. **Maintenance of Stormwater Treatment Measures**

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: To protect the receiving environment.

39. **Geotechnical Recommendations**

Any ongoing recommendations of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.



