

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 13 MARCH 2024

Ashleigh Sherry
Manager Business System and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 13 March 2024
via Teleconference
Commencing at 10:00 AM**

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3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	DA2023/0846 - 11 CAPRI CLOSE AVALON BEACH - SUBDIVISION OF ONE LOT INTO TWO AND CONSTRUCTION OF A NEW DWELLING HOUSE
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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 DA2023/0846 for subdivision of one lot into two and construction of a new dwelling house on land at Lot 6 DP 262332, 11 Capri Close AVALON BEACH, subject to the conditions set out in the Assessment Report.

REPORTING MANAGER

TRIM FILE REF 2024/157219

ATTACHMENTS [↓](#)1 Assessment Report
[↓](#)2 Site Plan and Elevations



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0846
Responsible Officer:	DM Planning (independent planning consultant)
Land to be developed (Address):	Lot 6 DP 262332, 11 Capri Close AVALON BEACH NSW 2107
Proposed Development:	Subdivision of one lot into two and construction of a new dwelling house
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:	Andrew James Wallace
Applicant:	Hugh Halliwell
Application Lodged:	30/06/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	7/07/2023 to 21/07/2023 and, 17/11/2023 to 01/12/2023
Advertised:	Not Advertised
Submissions Received:	5
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$984,000.00

EXECUTIVE SUMMARY

This development application seeks consent for the subdivision of one lot into two and the construction of a dwelling house and driveway.

The application is referred to the Development Determination Panel (DDP) for determination as the notification of the application attracted five (5) submissions objecting to the proposal. Council's DDP charter mandates that applications with five (5) or more objections must be determined by the Panel.

The site has been inspected and the application assessed having regard to the provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979 (EP&A Act), the provisions relevant Environmental Planning Instruments including Pittwater Local Environment Plan 2014 (PLEP), Pittwater



21 Development Control Plan 2014 (P21DCP), and the relevant codes and policies of Council. In consideration of the proposal and the merit consideration the development proposal is:

- 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 EPI's
- Consistent with the objects specified in Section 1.3 of the EP&A Act

The proposed development has been publicly exhibited twice resulting in five (5) submissions. The issues raised in the submissions are addressed in the "Public Notification" section of this report.

The proposal does not result in any variations to the principal development standards under PLEP 2014. There are two variations sought to the building envelope and subdivision (maximum slope) provisions under P21DCP.

The application has been amended to reduce building bulk, increase landscaped area and amend the works in the road reserve. Subject to conditions, the application is supported by internal and external referrals.

Based on a detailed assessment of the proposal against the applicable planning controls, the proposal (as amended) is a suitable and appropriate development for the subject site, for the reasons outlined in this report.

Accordingly, it is recommended that the application be **approved** subject to the attached conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for the subdivision of 1 lot into 2 lots and the construction of 1 dwelling house, with an integrated garage, driveway with turning area, and associated landscape works.

In detail, the proposal involves the following:

- Subdivision of the existing lot into the following two (2) Torrens title lots:
 - Proposed Lot 61: 11 Capri Close (eastern lot) – proposed site area 700.2m²
 - Proposed Lot 62: Riverview Road (western lot) – proposed site area 937.5m²
- Retention of the existing three-storey dwelling house on proposed Lot 61, being 11 Capri Close, Avalon Beach.
- Construction of a dwelling house on proposed Lot 62, comprising of:

Parking level (RL59.101)	Two parking spaces, turning area, stairs to dwelling house
Lower level (RL62):	Rumpus room, bathroom, laundry, study/bedroom with deck
Ground floor level (lower RL65):	Open plan kitchen, dining and living area with cantilevered timber deck
Ground floor level (upper RL 66.15):	Three bedrooms, bathroom.
First floor plan (RL68.95):	Bedroom, ensuite, walk-in robe, study, north-facing timber deck

- Construction of a concrete driveway and turning area, with vehicular access from Riverview Road
- The removal of six (6) trees



- Landscaping works including additional plantings

Amended Plans

On 22 August 2023, Council issued a Request for Information (RFI) letter to the applicant requesting that issues relating to subdivision, built form, landscaping, access, stormwater, traffic, parking, biodiversity and aboriginal heritage be addressed.

On 7 and 9 November 2023, amended plans (Revision F) and supporting documentation were provided to Council.

While Council's Community Participation Plan (CPP) does not necessitate re-notification of amended plans of a lesser environmental impact, however, Council re-notified the amended plans due to the number of submissions previously received.

Upon review of the amended plans (Revision F), Council Engineers observed that some issues identified in the RFI (relating to the driveway crossing, levels and alignment), remained outstanding.

Consequently, refinements were made to the driveway design and a further set of amended plans (Revision H) were submitted to Council on 15 December 2023.

The Revision H plans have a lesser environmental impact on adjoining properties when compared to the original proposal. Therefore, formal re-notification was not required under the Northern Beaches Council 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

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 - A4.1 Avalon Beach Locality

Pittwater 21 Development Control Plan – B2.2 Subdivision – Low Density Residential Areas

Pittwater 21 Development Control Plan - B6.1 Access driveways and Works on the Public Road Reserve

Pittwater 21 Development Control Plan - D1.11 Building envelope



SITE DESCRIPTION

Property Description:	Lot 6 DP 262332, 11 Capri Close AVALON BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) allotment located between Capri Close and Riverview Road.</p> <p>The site is irregular in shape with frontages of 17.965m to Capri Close (east) and 5.41m to Riverview Road (west). The site has a surveyed area of 1,637.7m².</p> <p>The site is located within the C4 Environmental Living zone and accommodates a dwelling house and driveway towards the Capri Close frontage.</p> <p>The site is steeply sloping from the eastern boundary to the western boundary with a fall of approximately 35m and an average gradient of 53.5% (measured along the southern boundary).</p> <p>The site is heavily vegetated including multiple canopy trees. The site is located within the Pittwater Spotted Gum Forest.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low density residential development on steep densely vegetated sites.</p>



Map:



SITE HISTORY

The eastern portion of the site has been used for residential purposes and the western portion of the site has been vacant for an extended period of time.

A search of Council's records has revealed the following relevant history:

- On 13 October 1993, Development Application W30/0004/93 for the subdivision of two lots into four lots was refused by Council.
- On 6 November 2019, Development application DA2019/1060 for the construction of a dwelling house was lodged with Council. On 6 November 2019, the application was withdrawn by the applicant.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Northern Beaches Community Participation Plan 2019.

As a result of the public exhibition process council is in receipt of five (5) submissions from:

Name:	Address:
Mr Rodney Dereck Halstead Miss Ruth Ellen Owen	10 Capri Close AVALON BEACH NSW 2107
Avalon Preservation Trust Incorporated as Avalon Preservation Association	PO Box 1 AVALON BEACH NSW 2107
Mr Robert John Vickers	80 Riverview Road AVALON BEACH NSW 2107
Boston Blyth Fleming Pty Ltd	1 / 9 Narabang Way BELROSE NSW 2085



Mr Anthony James McLenaghan	79 Riverview Road AVALON BEACH NSW 2107
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The following issues were raised in the submissions:

- Driveway and traffic safety
- Work in the road reserve
- Non-compliance with subdivision control (maximum site slope)
- The bulk and scale of the proposed dwelling house
- Tree removal and biodiversity impacts
- Excavation and geotechnical instability
- **New driveway crossing and traffic safety**
Objectors' concerns relate to the location of the vehicle crossing from Riverview Road which is partially located in the road reserve in front of 10 Capri Close. Concerns are also raised relating to the dangerous traffic conditions on Riverview Road.

Comment:

The proposed development is accompanied by detailed driveway plans and swept paths. Council's Development Engineers have reviewed this application and raised no concern with regards to the proposed driveway access and internal driveway. Council's Development Engineer has recommended relevant conditions relating to the provision of a Traffic Management Plan.

The proposed development includes the provision of an off-street turning area which will allow vehicles to exit the site in a forward-facing direction.

- **Potential common layback with 80 Riverview Road**
The owner of 80 Riverview Road seeks to clarify that their property does not adjoin the site. Rather, there is a land handle belonging to 78A Riverview Road that is located between the two properties. They reject the Council's Engineers' suggestion that a common layback be investigated and raise concerns that the works in the road reserve will disturb utility services infrastructure for both 78A Riverview Rd and 80 Riverview Rd

Comment:

The proposed development is within the site boundaries with the driveway is partly located in the public road reserve. Council's Development Engineering team do not require a combined driveway crossing and the recommended consent conditions do not propose any common layback. It was raised as a possibility to explore. Any impacts on the services to the adjoining properties will be assessed in detail when the Roads Act Application for Civil Works in the Public Road is submitted to and approved by Council, before the issue of the Construction Certificate.

Access driveways located in front of adjoining properties are permitted on merit (refer to the P21DCP section of this report).

- **The proposed lots do not comply with the maximum slope specified in Part B2.2 of the P21DCP**
The objectors point out the non-compliance with the maximum slope provisions in the P21DCP and claim that the site is not suitable for further development.

Comment:

Both the proposed lots and the existing lot fail to comply with the maximum slope provision of the P21DCP. It is noted the proposal complies with all other subdivision controls (i.e. depth, width and buildable area and also satisfies, the outcomes for the subdivision controls. For these reasons, the proposed subdivision is assessed as reasonable. Refer to the P21DCP section of this report.



- **The bulk and scale of the proposed development**

Objectors state that the proposed dwelling represents an overdevelopment of the site and points to non-compliance with the building envelope control.

Comment:

While the amended plans have reduced the non-compliance with the building envelope control, a minor breach remains at the southwestern corner of the proposed dwelling house. As the breach will have no adverse amenity, sunlight access or view impacts, it is found to be reasonable. The breach to the building envelope is assessed in detail in the P21DCP section of this report.

- **Preservation of Trees and Bushland Vegetation**

Objectors' concerns relate to the removal of multiple canopy trees and biodiversity impacts. Questions are raised about whether trees 17, 18 and 19 (adjacent to the proposed driveway) can be retained given the required excavation.

Comment:

The amended design retains additional trees, resulting in the removal of six (6) trees. Council's Landscape Officer and Biodiversity Officer have reviewed the application and raised no concerns with tree removal or potential impacts on trees proposed to be retained (including trees 17, 18 and 19) subject to conditions. This has been addressed within their comments which can be found in the 'Referrals' section of this report. Relevant conditions have been imposed by Council's Landscape Officer and Biodiversity Officer.

- **Excessive site excavation**

Objectors' concerns refer to potential site instability arising from the proposed excavation. Several objectors' concerns refer to a previous 'Geo physical report' prepared by J Coffey that found the lower portions of 9, 10 and 11 Capri Close were unstable and unsuitable for any building.

Comment:

The proposal is accompanied by two Geotechnical Reports (prepared by White Geotechnical Group Pty Ltd, dated 30.9.2017 and 6.6.2023) which support the proposed development. Council's Development Engineer has reviewed the application and raise no concerns with regard to the proposed excavation required to facilitate the built form. Subject to conditions, the proposal is considered to be satisfactory.

- **Stormwater**

The objector raises concerns regarding the impact of the proposed dwelling and driveway on the existing stormwater infrastructure.

Comment:

Council's Development Engineer has reviewed this application and raised no concern with regards to the proposed stormwater management works required to facilitate the proposal. Subject to conditions, the proposal is assessed as satisfactory with regard to impacts on existing stormwater assets.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p><i>Supported, subject to conditions</i></p> <p>Amended plans and reports are submitted to address previous concerns. The updated comments from Council's Bushland & Biodiversity Referral team are noted.</p> <p>The updated Landscape Plans raise no concerns and provide a</p>



Internal Referral Body	Comments
	<p>coordinated approach consistent with the Vegetation Management Plan and include additional native tree planting and other mixed native planting. All landscape works shall be confined to within the legal property boundaries.</p> <p>The addendum to the Arboricultural Impact Assessment (AIA) identifies existing trees 3, 9, 14 and 15 for retention with tree sensitive construction methods to be utilised in proximity, and additionally identifies existing trees 7, 8, 11, 12, 13, 17, 18 and 19 for retention, and conditions are able to be imposed for arboricultural intervention as identified in the AIA report and addendum report. It is noted that proposed dwelling realignment has resulted in removal of a previous concern related to the extent of canopy reduction to tree 8.</p>
NECC (Biodiversity)	<p><i>Supported, subject to conditions</i></p> <p><u>AMENDED COMMENTS:</u> Amended plans and documents have been submitted including and not limited to:</p> <ul style="list-style-type: none"> • Amended Master Plans • Amended Biodiversity Impact Assessment • Amended arborist report • Amended landscape plan <p>The amended documentation effectively demonstrates how the proposal has avoided and minimised impacts, and the residual impacts have resulted in credit generation.</p> <p>The submitted BDAR (Land Eco Consulting) has been updated in accordance with the amended design, and the new 8inimizat credit report shows that the residual impacts result in the generation of fewer credits. The BDAR confirms the presence of Pittwater Spotted Gum Forest Endangered Ecological Community (in the form of PCT 1214: Spotted Gum – Grey Ironbark open forest). In accordance with the BDAR a total of 0.06 Ha of PWSGF EEC would be cleared if the proposal is approved in its current form. This represents a reduction of 0.03 Ha in relation to the previously submitted plans. The assessed residual impacts of the development result in the following offset requirements under the Biodiversity Offsets Scheme:</p> <ul style="list-style-type: none"> • Retirement of two Ecosystem Credit for Pittwater and Wagstaffe Spotted Gum Forest EEC (PCT 1214). <p>The retirement of offsets will be conditioned as part of the consent.</p> <p>The addendum to the arborist report (All Arbor Solutions, October 2023) has confirmed that the retention of trees 3, 9, 14 and 15 will be possible if tree sensitive methods are used. It is assumed that as per the tree schedule on "Appendix 1: Schedule of the impacts of design amendments" tree 7 will also</p>



Internal Referral Body	Comments
	<p>be retained. Therefore, a total of 6 trees will need to be removed for the development to take place in its current form (1, 2, 5, 6, 10 and 16). It is noted that tree 4 has been removed due to failure after a storm event. It is also noted that the proposed realignment of the building will allow retention of Tree 8, but pruning is still being recommended. This matter is deferred to the Landscape Referrals department.</p> <p>The amended landscape plan (Site Design +Studios, September 2023) has adequately identified species and planting ratios for planting in each of the established management zones in the submitted VMP. A total of 11 trees are proposed for planting in the resulting subdivided lot and include: 3 <i>Eucalyptus botryoides</i>, 2 <i>Corymbia gummifera</i>, 2 <i>Elaeocarpus reticulatus</i>, 2 <i>Eucalyptus 9inimizati</i>, 1 <i>Eucalyptus umbra</i> and 1 <i>Glochidion ferdinandi</i>. Additionally, more trees, shrubs, ground covers and grasses have been proposed for planting in both of the lots resulting from the proposed subdivision. Species and quantities are found to be compliant with the provisions of PDCP B4.7 and no objections are raised in relation to the amended landscape plan which is found to be consistent with the originally submitted Vegetation Management Plan (Kingfisher, January 2023).</p> <p><u>ORIGINAL COMMENTS:</u></p> <p>The proposal seeks approval for the subdivision of one lot into two and construction of a new dwelling.</p> <p>The comments in this referral relate to the following applicable controls and provisions:</p> <ul style="list-style-type: none"> • NSW Biodiversity Conservation Act 2016 • NSW Biodiversity Conservation Regulation 2017 Pittwater LEP – Clause 7.6 Biodiversity Protection • Pittwater DCP – Clause B4.7 Pittwater Spotted Gum Forest – • Endangered Ecological Community <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>A BDAR prepared by Land Eco Consulting (June 2023) has been submitted with the application. The BDAR confirms the presence of Pittwater and Wagstaffe Spotted Gum Forest, which is listed as an Endangered Ecological Community (EEC) under the NSW Biodiversity Conservation (BC) Act 2016. In accordance with the BDAR, the proposed impacts to biodiversity include the removal of a total of 0.09ha of PWSGF EEC including a total of 10 trees that are representative of the EEC. The assessed residual impacts of the development result in the</p>



Internal Referral Body	Comments
	<p>following offset requirements under the Biodiversity Offsets Scheme:</p> <ul style="list-style-type: none"> • Retirement of three Ecosystem Credits for Pittwater and Wagstaffe Spotted Gum Forest EEC (PCT 1214). <p>The submitted arborist report (Plateau Trees, December 2022) assessed a total of 19 trees and recommended the removal of 11 trees (1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 16). It is noted that trees 1, 2, 8, 13, 17, 18 and 19 are found outside of the site boundary for the lot resulting from the proposed subdivision. Trees 14, 15 have also been identified for removal in the submitted architectural plans.</p> <p>A Landscape Plan has been submitted with the application (Banksia Design Group, February 2018). It is noted that the Landscape Plan is the same document submitted as part of the previously withdrawn DA2019/1060 and the document has not been updated to reflect the current proposal including integration with the submitted Vegetation Management Plan (VMP). The landscape proposal includes a substantial planting schedule that includes a range of trees, shrubs and groundcovers that are inconsistent with Pittwater Spotted Gum Forest EEC. Moreover, most of the proposed planting appears to take place in an area found outside of the newly subdivided lot. The areas left for landscaping in the new lot would be unlikely to support the planting densities proposed therefore, would be unable to comply with the requirements of B4.7 PDCP.</p> <p>The VMP (Kingfisher, January 2023) submitted with the application, recommends the establishment of two separate Managements Zones (MZ1 and MZ2). The proposed schedule of works considers a 5 year plan that includes primary weeding, secondary weeding and planting among other activities. These proposed activities are concurred with and no objections are raised.</p> <p>Multiple objections are raised in relation to the information submitted with the application:</p> <ul style="list-style-type: none"> • Inconsistencies between the different submitted documents have been identified including and not limited to trees identified for removal in Architectural Plans, Arborist Report and Landscape Plan. • The total number of trees to be removed is unclear as different plans are shown on the landscape plan, BDAR and arborist report. • The current landscape plan does not allow for quantification of canopy retention within the proposed lot resulting from the subdivision in order to ensure compliance with PDCP B4.7 The proposed works on • Tree 8 would require owner's consent as it is found in a neighbouring lot • Trees 1 and 2 are found on the road reserve and this matter is deferred to the Landscape referral team



Internal Referral Body	Comments
	<ul style="list-style-type: none"> Two separate planting proposals are currently presented as the submitted VMP and the Landscape proposals differ from one another The proposed footprint of the development is unlikely to allow for landscape areas to be supportive of the planting densities proposed in the landscape plan. Planted trees would be unlikely to reach maturity and therefore, compliance with PDCP B4.7 would not be achieved. <p>The application is substantially the same that was previously withdrawn and has not addressed the issues raised in the previous Biodiversity referral with the only significant difference being the inclusion of a BDAR. Furthermore, the previous Natural Environment Referral Response – Biodiversity, as well as the Landscape Referral Response, suggested that alternative designs should be investigated Namely, the Biodiversity Referral stated:</p> <p>“Council’s Natural Environment – Biodiversity Section cannot support the application due to non-compliance’s with applicable LEP/DCP controls and the BC Act 2016. The applicant is encouraged to consider a design which avoids and minimises impacts to the biodiversity values on the site. One example would be to re-locate the proposed dwelling house within the eastern portion of the property, which contains already disturbed vegetation and driveway access. The applicant is also encouraged to consider other measures to further avoid and minimise impacts to threatened entities and their potential habitat, including any hollow-bearing trees.”</p> <p>At this stage, Council’s Natural Environment – Biodiversity is unable to support the application in its current form for the following reasons:</p> <ul style="list-style-type: none"> The application is found to be inconsistent with applicable LEP and PDCP controls and provisions. The application fails to demonstrate the principles of avoid and minimise and the submitted documentation is found to be inconsistent to adequately assess the total impacts to the natural environment. The Biodiversity Offsets Scheme is based on the principle of “avoid, minimise, offset” hierarchy. This principal is based on the process of avoidance and 11imization of impacts first, and where impacts cannot be avoided the residual impact is offset through the retirement of credits. This process has not been demonstrated even with alternatives having been proposed within the previous Biodiversity and Landscape referrals for the withdrawn application.



Internal Referral Body	Comments
NECC (Development Engineering)	<p>Supported, subject to conditions</p> <p>19/12/2023: Amended plans are provided, internal ref: TRIM 2023/802063 and 2023/795832, No objections to approval subject to conditions as recommended.</p> <p>23/11/2023: Amended architectural plans, stormwater plans, and vehicle swept path analyses for all the vehicles entering and exiting site in a forward direction are provided.</p> <p>Swept paths for B99 vehicle entering and exiting the site are provided but as advised in Development Engineering's previous assessment, these movements to be wholly along frontage of site and not along neighboring property No. 10 Capri Close. A common layback with No 80 Riverview Road should be explored as driveway of No 80 at present also slightly encroaches the frontage of No 11 Capri Close. A common layback and driveway realignment along No 80 Riverview Road can avoid taking frontage of No 10 Capri Close as shown in the current proposal.</p> <p>Submitted plans do not provide any information on the driveway levels as provided in the original architect plans. Applicant to provide longitudinal section (L-section) of driveway alignment from street gutter to internal parking space showing existing and proposed levels, grades. Plan and L-section to also include details of portion of Council stormwater easement underneath the driveway and proposed butterfly pit on the layback. Plan to include neighboring property boundaries as well.</p> <p>The proposed retaining wall adjacent to the driveway to be at least 1.5m behind the back of street kerb. Retaining wall plans to show level information as well.</p> <p>For planner: Proposal is to construct retaining wall within public road reserve, please seek feedback from Council's Roads Team.</p> <p>16/08/2023: Development Application is for subdivision of one lot into two and the construction of a single dwelling with external double garage.</p> <p><u>Access</u></p> <ul style="list-style-type: none"> Proposed driveway requires retaining structure over Council Easement, which is not supported by Council's Stormwater Asset Team Proposed driveway is along frontage of rear boundary of No10 Capri Close, this is an encroachment. In addition, owners of No 10 have objected such kinda driveway proposal on their frontage. Driveway to be designed perpendicular to the site and engineer to demonstrate that it works. Swept path for all the parking spaces are required.



Internal Referral Body	Comments
	<p>Engineer to demonstrate that all the vehicles can enter and exit from each parking space in forward direction and independently.</p> <p><u>Stormwater</u></p> <ul style="list-style-type: none"> • Council's records indicate that the subject property is burdened by Council and private stormwater pipelines. Both Council drainage easement and private drainage easement are shown on the survey plan. Applicant shall demonstrate compliance with Council's Water Management for Development Policy. This consists of accurately locating, confirming dimensions including depth and plotting stormwater pipelines and associated infrastructure to scale on the DA plans in accordance with Council's Water Management for Development Policy. • Site is affected by overland flow path, a Flood Analyses Report by Hydro Civil Engineers, Dated 19th May 2023 is provided. Applicant is requested to provide plans showing exact path and extent of overland flow. • Proposed retaining structure (Gabions) supporting driveway over Council Easement are not supported by Council's Stormwater Asset Team. Consultant Engineer to provide an alternative design approach. • Proposed hardstand area is greater than 50sqm, an On-site Stormwater Detention (OSD) under the driveway is proposed. On the plans it shows that this OSD is discharging to a pit, this pit is not stormwater rather it's a TELSTRA pit, clarification is required. • Stormwater plans by GZ Consulting Engineers also shows subsoil drainage discharge to street kerb and gutter, which is not allowed. • Stormwater Plans also suggests lowering existing Council drainage pipe, more details to be provided showing extent and impact on the rest of the pipe length. • Engineer to make sure that all structures are to be located clear of any Council pipeline, pit or easement and comply with minimum vertical and horizontal clearances. • Applicant to provide stormwater plans for the proposed lot A (existing dwelling) The subdivision plan, prepared by a registered surveyor, is to show all proposed lot boundaries, areas, right of ways and easements only with no reference to any features or contours etc. <p><u>Geotech</u></p> <p>The site is mapped on Geotechnical Hazard map as hazard H1. Geotechnical Report by White Geotechnical Group, Ref: J1480A, Dated 30th Sept 2017 and Letter dated 6th June 2023 with form 1 and 1A is provided.</p>



Internal Referral Body	Comments
	<p>For Planner: As per Clause B2.2 of Pittwater DCP, B2.2 Subdivision -Low Density Residential Area A person shall not subdivide land if the allotment(s) intended to be created have a slope in excess of 16.7 degrees (30%), measured between the highest and lowest points on any such allotment(s).</p>
NECC (Flooding)	The property at 11 Capri Close, Avalon is not identified as flood affected.
NECC (Water Management)	<p>Supported, subject to conditions</p> <p>The proposal includes construction, and subdivision of one lot into two lots. The post development impervious area of the subdivided lot is not in excess of 40%, refer Northern Beaches Water Management for Development Policy (WM Policy) table 1.</p> <p>Rainwater tank as per Basix Certificate, 3000 liters minimum per dwellings.</p> <p>A water treatment chain has been proposed that includes rainwater tanks and on-site detention, silts arrestor pit will be required.</p>
Roads and Assets	<p>Supported, without conditions</p> <p>There are no impacts in existing road infrastructure. Development Engineering to ensure appropriate design of driveway and associated structures are submitted to Council for approval.</p>
Traffic Engineer	<p>Supported, subject to conditions</p> <p>Referral comments 15/11/23: A swept path analysis using a B99 vehicle has been provided on plans showing the northern property boundary with No.12 Capri Close and the subject sections of Riverview Road.</p> <p>The analysis demonstrates that a vehicle can enter and exit the driveway in a forward direction and that access to the proposed parking spaces is possible.</p> <p>The proposal can therefore be supported subject to the recommended Conditions.</p> <p>Referral comments 26/7/23: This application is for the subdivision of one lot into two and the construction of a single dwelling with external double garage.</p>



Internal Referral Body	Comments
	<p><u>Access and Parking Design</u></p> <p>The development proposes a driveway off Riverview Road with a width of 4m at the property boundary. The car parking spaces provided are a minimum 2.4m wide with a length of 5.4m.</p> <p>The car park and driveway certification prepared by ML Traffic Engineers, included a swept path analysis for the proposed driveway access using a B85 Design Vehicle. The swept paths provided are incomplete and do not clearly demonstrate access to the proposed parking area. Swept paths have only been provided for access to the car park space situated closest to the new dwelling. However, the critical manoeuvres apply to the northernmost car park space located adjacent to the property boundary, and additional swept paths are required to demonstrate that the vehicle can enter and exit the car park space in a forward direction.</p> <p>Swept paths are required for all access points and should include entry from both northern and southern approaches from Riverview Road and exiting in the northbound and southbound directions. The swept path analysis must show the complete travel path from Riverview Road to each car park space and is to be undertaken on a plan which includes both sides of the kerbline of Riverview Road and the northern property boundary with No.12 Capri Close. Full swept paths for a B99 vehicle are to be used in the design of access driveways. Adequate turning areas are to be provided where possible to ensure that vehicles enter and exit the access driveway in a forward direction, however the provision of a mechanical turntable could be accepted noting the site constraints.</p> <p>The proposal is not acceptable in its current and it is requested that the additional swept path analysis be undertaken for further review.</p>



External Referral Body	Comments
Aboriginal Heritage Office	<p><i>Supported, subject to conditions</i></p> <p>An Aboriginal Heritage Due Diligence Assessment was undertaken by Talking Walls Heritage in February 2024. The following recommendations were made:</p> <ul style="list-style-type: none"> • Implement procedures to ensure all employees and subcontractors maintain high caution to mitigate any adverse impact on unexpected finds; • Should any uncover any potential Aboriginal objects or bones, they must cease in that area immediately to prevent further disturbance or movement of objects. The project heritage consultant will need to be notified immediately. The project heritage consultant will liaise with the Aboriginal Heritage Office. If the project heritage consultant is unavailable, the Aboriginal Heritage Office and Heritage NSW Environment Line will be notified. <p>To limit liability:</p> <ul style="list-style-type: none"> • Protect the sandstone platform and overhang, with geotextile designed with a suitable amount of padding to protect the stone surface from, and withstand, unintentional adverse impacts associated with construction. The area should be cordoned off with high-visibility construction-grade barrier mesh. All staff and contractors entering the construction site must be notified about why such protections have been implemented and their importance. • All employees and subcontractors must complete a site induction addressing Aboriginal Heritage issues before commencing work. It should stipulate the statutory obligations of all working on-site concerning the National Parks and Wildlife Act 1974. An Aboriginal heritage consultant, the Aboriginal Heritage Office, or a Local Aboriginal Land Council must make induction. 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.



Ausgrid	<p>Supported, subject to conditions</p> <p>Ausgrid Overhead Powerlines and Underground Cables are in the vicinity of the proposed development.</p> <p>Ausgrid has no objection to this development application, however the design submission must comply with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical assets.</p> <p>The “as constructed” minimum clearances to Ausgrid’s infrastructure must not be encroached by the building development. It also remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.</p>
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ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

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 regulations	<p><u>Part 4, Division 2</u> of the EP&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&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&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to subdivision controls, bulk and scale, landscaping and traffic and parking.</p>



Section 4.15 'Matters for Consideration'	Comments
	<p>Clause 61 of the EP&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&A Regulation 2021 require 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&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&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>(1) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) façade – the suitability of the site for the development	The site is considered unsuitable 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) façade – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the assessment,



many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

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

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPS) AND STATE REGIONAL ENVIRONMENTAL PLANS (SREPS)

SEPP (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. A preliminary site investigation has been undertaken by White Geotechnical to address the requirements of the SEPP. 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 proposed residential development.

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 901593M_03). The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	41
Thermal Comfort	Pass	Pass
Energy	50	53

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.



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	Complies
Minimum subdivision lot size	700sqm	Lot 61: 700.2m ²	Yes
		Lot 62: 937.5m ²	Yes
Height of buildings	8.5m (new dwelling)	8.4m	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.1 Minimum subdivision lot size	Yes
4.3 Height of buildings	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

7.6 Biodiversity Protection

Under Clause 7.6 Biodiversity Protection of PLEP 2014, 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
- façade if that impact cannot be minimised – the development will be managed to mitigate that impact.

Comment:

Council's Biodiversity Officer has reviewed this application and raise no issues with regard to the proposed development against the abovementioned objectives of this clause within PLEP 2014, subject to conditions. Council, as the consent authority, can be satisfied that the proposed development achieves compliance with the abovementioned objectives of this Clause.

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards of PLEP 2014, 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

(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:

Council's Development Engineer has reviewed this application and raised no concern with regards to the proposed management of wastewater, stormwater and drainage across the land. Council's Development Engineer has imposed relevant conditions to satisfy appropriate stormwater discharge from the site. Further, Geotechnical Assessment Reports have been provided with this application. These reports have been prepared by a suitably qualified Geotechnical Engineer under the Council's Geotechnical Risk Management Policy for Pittwater. The report concludes that the geotechnical risk associated with the proposed development is acceptable, subject to compliance with recommendations outlined within the report, prepared by White Geotechnical Group (dated 30 September 2017 and updated 6 June 2023).

An updated Stormwater Management Plan (drawing no. D01 - D04 [inclusive] Issue A, prepared by NB Consulting Engineers, dated October 2023) was provided to Council and reviewed by Council's Development Engineer who raised no issues with the updated Stormwater Management Plan. Council, as the consent authority, can be satisfied that the proposed development will achieve compliance with the abovementioned objectives.

PITTWATER DEVELOPMENT CONTROL PLAN

Built Form Controls

Built Form Control – new dwelling on Lot 62	Requirement	Proposed	Complies
Front building line	6.5m	10.3m	Yes
Rear building line	6.5m	10.5m	Yes
Side building line	1m	3.1m (to south boundary)	Yes
	2.5m	10.2m (to northwest boundary)	Yes
Building envelope	South – 3.5m	Outside envelope (minor breach at southwest corner)	No
	Northwest – 3.5m	Within envelope	Yes
Landscaped Area	60%	61% (572.2sqm)	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B1.3 Heritage Conservation – General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes



B2.2 Subdivision	No	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest – Endangered Ecological Community	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	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
B8.5 Construction and Demolition – Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition – Traffic Management Plan	Yes	Yes
C1.1 Landscaping	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
C1.10 Building Facades	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
C1.24 Public Road Reserve – Landscaping and Infrastructure	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C4.1 Subdivision – Protection from Hazards	Yes	Yes
C4.2 Subdivision – Access Driveways and Off-Street Parking Facilities	Yes	Yes
C4.3 Subdivision – Transport and Traffic Management	Yes	Yes
C4.4 Subdivision – Public Roads, Footpath and Streetscape	Yes	Yes
C4.5 Subdivision – Utility Services	Yes	Yes
C4.7 Subdivision – Amenity and Design	Yes	Yes
C4.8 Subdivision – Landscaping on the Existing and proposed public road reserve frontage to subdivision lots	Yes	Yes
D1.1 Character as viewed from a public place	Yes	Yes
D1.4 Scenic Protection – General	Yes	Yes
D1.5 Building colours and materials	Yes	Yes



D1.8 Front building line	Yes	Yes
D1.9 Side and rear building line	Yes	Yes
D1.11 Building Envelope	No	Yes
D1.14 Landscaped Area – Environmentally sensitive land	Yes	Yes
D1.16 Fences – Flora and Fauna Conservation Areas	Yes	Yes
D1.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

A4.1 Avalon Beach Locality

The proposed development is consistent with the desired character statement of the Avalon Beach Locality.

The proposal provides a building height limit below the tree canopy, with the dwelling design utilising a split levels to step down the slope and minimising bulk and scale. While the development necessitates the removal of six (6) trees, the existing and proposed native vegetation, including canopy trees, will assist to integrate the dwelling house with the surrounding environment.

The proposed dwelling is a contemporary design which incorporates appropriate façade modulation, a folded roof form, numerous decks and shade elements. A condition of consent will require that building colours and materials harmonise with the natural environment.

The proposed development achieves an appropriate balance between maintaining the landforms, landscape and other features of the natural environment. The proposal retains a large proportion of, the native tree canopy to assist development blending to the natural environment, to provide feed trees and undergrowth for koalas and other animals, and to enhance wildlife corridors.

On balance, the proposal is considered consistent with the desired future character of the Avalon Beach locality.

Clause B2.2 Subdivision Low Density Residential Area

Description of non-compliance

Clause B2.2 of Pittwater 21 Development Control Plan (P21DCP), B2.2 Subdivision - Low Density Residential Area, requires that subdivision not result in allotments that have a slope greater than 16.7 degrees (30%).

The proposed allotments do not comply with this requirement having approximate slopes of 44% (proposed Lot 61) and 33.6% (proposed Lot 62).

The amended proposal has satisfactorily addressed issues identified with the original scheme relating to landscaped area, stormwater, vehicular access and biodiversity. In addition, the proposed dwelling on Lot 62 has been reduced to comply with the built form controls (with the exception of a minor breach to the side building envelope – discussed below).

Notwithstanding the variations to the maximum slope requirement, the proposed lots are capable of accommodating suitably designed and accessible dwellings. This is demonstrated by the existing dwelling house on Lot 61 which sits comfortably in the landscape and confirms that constructing a dwelling on steep terrain is not unreasonable or unachievable.

The proposed dwelling for Lot 62 demonstrates a uniquely designed dwelling that responds to the steep topography and densely vegetated setting.



Given that biodiversity and vehicular access issues raised in response to the original submission have been satisfactorily resolved, the proposal (as amended) now satisfies the outcomes of the subdivision controls in that:

- The proposal is consistent with the desired future character of the locality.
- The proposal does not have any unacceptable impacts on the existing environment.
- The proposal has a built form that is complimentary to the natural setting.

For the reasons outlined above, the proposed breach to the maximum slope specified in clause B2.2 of P21 DCP is supported in this instance.

B6.1 Access driveways and Works on the Public Road Reserve

Clause B6.1 of P21DCP, states that access driveways located in front of adjoining properties will be considered on merit, based on Council's consideration of the site constraints.

The proposed driveway is located partially in the road reserve adjacent to 10 Capri Close. It is noted that this is their rear boundary and that vehicular access to the site is currently gained from Capri Close.

Council's Development Engineer have reviewed the proposed vehicular access and, subject to conditions including the submission of an application for civil works in the public reserve, support the proposal.

The proposed access driveway satisfies the outcomes for the control, including providing safe and convenient access, minimising visual impacts and providing an effective road drainage system.

D1.11 Building envelope

Description of non-compliance

The amended proposal includes a minor breach to the building envelope. As shown in Figure 1 below, the breach is limited to the front southwestern corner of the proposed dwelling house.

The amended plans have reduced the extent of the breach by increasing the setback to the southern boundary. The encroachment is predominately the roof structure above the ground floor deck. The area of encroachment is relatively minor with the majority of the proposed dwelling house sitting comfortably within the building envelope.

Figure 1 below shows the location and extent of the non-compliance.



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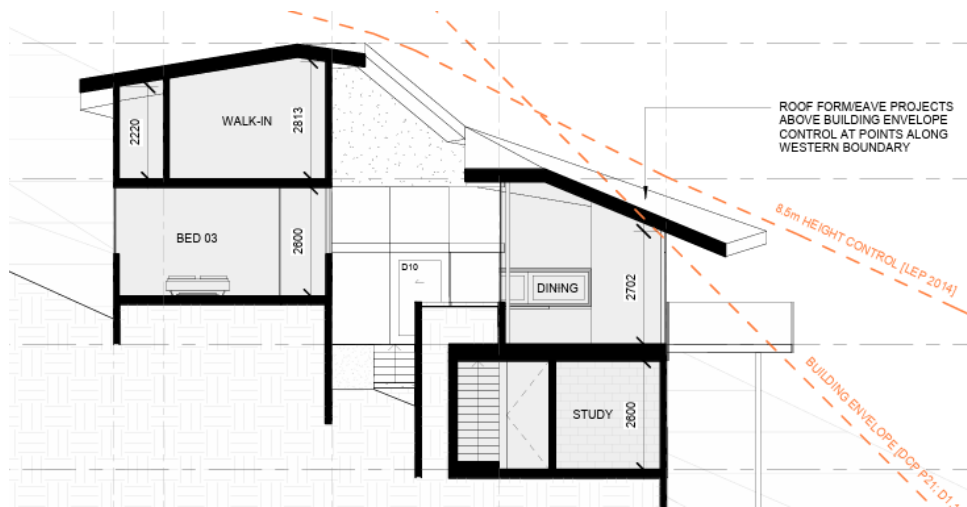


Figure 1. Extent of building envelope non-compliance on cross-section (source: Drew Heath Architects)

Clause D1.11 allows a variation to the control "where the building footprint is situated on a slope over 16.7 degrees (ie; 30%), variation to this control will be considered on a merits basis", such is the case here.

Consequently, an assessment of the proposed breach against the relevant outcomes of the control is provided below:

Merit Consideration

- To achieve the desired future character of the Locality.

Comment:

The area of encroachment demonstrates consistency with the desired future character of the locality with the siting of the proposed dwelling house maintaining the landform, landscape and other features of the natural environment. The amended proposal complies with this outcome.

- To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.

Comment:

The minor encroachment will not be perceptible from the public domain. The minor encroachment is satisfactory in regard to the design, scale, bulk and the height of the proposal. The resultant built form responds well to the natural landform of the site, with the encroachment area being below the tree canopy. The amended proposal complies with this outcome.

- To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.

Comment:

The facade of the dwelling on the western elevation is sufficiently modulated to respond to the aspect of the site and its steep slope. The resultant amended development is a sensitive design response that is compatible with the natural characteristics of the site, with the retention of existing canopy trees and the enhancement of landscaping. The amended proposal complies with this outcome.



- *The bulk and scale of the built form is minimised.*

Comment:

In light of the steep topography, the significant articulation along the facades and the folded roof structure ensures the bulk and scale of the proposed dwelling steps down the site. The resultant dwelling is of comparable building bulk and scale to surrounding developments in the locality.

The proposal includes adequate vegetation to screen the built form of the proposed development from the neighbouring sites and the Riverview Road frontage. The amended proposal complies with this outcome.

- *Equitable preservation of views and vistas to and/or from public/private places.*

Comment:

The proposed development will not result in any significant view loss that would warrant refusal of the application. The amended proposal complies with this outcome.

- *To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.*

Comment:

There will be no adverse amenity impact in regard to privacy or solar access as a result of the proposed breach of the building envelope. The amended proposal complies with this outcome.

- *Vegetation is retained and enhanced to visually reduce the built form.*

Comment:

The proposed dwelling is sited in a manner that will continue to retain the majority of significant vegetation on the site will support the viability of the vegetation community that exists on the site. The amended proposal complies with this outcome.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP 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.

7.12 CONTRIBUTIONS

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

A monetary contribution of \$9,840 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$984,000. A condition of consent is recommended to this effect.

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 21 Development Control Plan; and
- Codes and Policies of Council.



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

In summary, the application has been assessed under the relevant Pittwater LEP and P21 DCP controls which guide the future desired character of the site and locality.

The main issues in the assessment of this application are the steepness of the site, a minor breach to the building envelope and the proposed vehicular access arrangements from Riverview Road. In this regard, the amended design has satisfactorily addressed Council's initial concerns.

The minor breach to the building envelope control is supported given the steep slope of the site which is a reason for a variation under Clause D1.11 of the P21DCP. Given the constraints on the development by the steep topography and the presence of significant vegetation, flexibility in applying this control is warranted in the circumstances. There will not be any unreasonable amenity impacts on adjoining properties and the proposal is consistent with the vegetated character of Riverview Road and the broader locality.

Overall, the subdivision is consistent with the existing pattern of development and the proposed dwelling house is a unique, high-quality design that performs well against the relevant controls and responds to the environmental features of the site. The proposed development will not unreasonably impact surrounding properties or the natural environment.

The proposal is therefore recommended for **approval**.



RECOMMENDATION

THAT the Northern Beaches Development Determination Panel as the consent authority grant approval to Development Application DA2023/0846 for the subdivision of one lot into two lots and the construction of a new dwelling at Lot 6 DP 262332, 11 Capri Close, AVALON, 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
A-011	Rev H	Site Plan	Drew Heath Architecture	11.10.2023
A-012	Rev H	Driveway Plan	Drew Heath Architecture	11.10.2023
A-100	Rev H	Lower level plan	Drew Heath Architecture	11.10.2023
A-101	Rev H	Ground floor plan	Drew Heath Architecture	11.10.2023
A-102	Rev H	First floor plan	Drew Heath Architecture	11.10.2023
A-103	Rev H	Roof plan	Drew Heath Architecture	11.10.2023
A-300	Rev H	Northern elevation	Drew Heath Architecture	11.10.2023
A-301	Rev H	Eastern elevation	Drew Heath Architecture	11.10.2023
A-302	Rev H	Southern elevation	Drew Heath Architecture	11.10.2023
A-303	Rev H	Western elevation	Drew Heath Architecture	11.10.2023
A-400	Rev H	Longitudinal section	Drew Heath Architecture	11.10.2023
A-401	Rev H	Longitudinal section	Drew Heath Architecture	11.10.2023
A-402	Rev H	Cross section	Drew Heath Architecture	11.10.2023
A-022	Rev H	Stormwater	Drew Heath Architecture	11.10.2023
A-020	Rev H	Demolition and Construction	Drew Heath Architecture	11.10.2023



230285SUB	A	Subdivision Plan (2 sheets)	Terry Survey and Development Consulting	31.10.2023
C11	A	Existing and proposed flow path	Hydro Civil Engineers	1.10.2023
2310005, S01, S02, S03 and S04	A	Retaining Wall	NB Consulting Engineers	6.11.2023
2310005, D01 – D08 (8 sheets)	A	Stormwater Drainage Plans	NB Consulting Engineers	6.11.2023
D100 and D101	A	Site Major Stormwater Drainage	NB Consulting Engineers	6.11.2023
		Swept path analysis for B99 vehicle (8 sheets)	Not stated	Undated
		Pipe Location	Smartscan Locators Pty Ltd	Undated
64233001B	Rev B	Site boundary identification survey,	Hill and Blume Pty Ltd	31.08.2023
1492, L0-1	Issue C	Landscape concept plan	Site Design + Studios	2.11.2023
1492, L0-2	Issue C	Landscape concept plan	Site Design + Studios	2.11.2023
A-021	Rev H	Waste Management Plan	Drew Heath Architecture	11.10.2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Pipe Survey		Smart Scan Locators	19.10.2023
Statement of Environmental Effects		Western Sydney Planning	June 2023
Geotechnical Report Ref: J1480		White Geotechnical	30.09.2017
Geotechnical Addendum J1480A		White Geotechnical	6.06.2023
BASIX Certificate 901593M_03		Certified Energy	7.11.2023
Arboricultural Impact Assessment (AIA)		Plateau Tree Service	3.12.2022
Addendum to Arborist Report		All Arbor Solutions	12 October 2023
Vegetation Management Plan	Final	Kingfisher Urban Ecology and Wetlands	January 2023
Carpark and Driveway Certification	1b	ML Traffic Engineers	May 2023
Overland Flow Risk Assessment		GZ Engineers	7.12.2023



Biodiversity Development Assessment Report	Final	Land Eco Consulting	7.11.2023
Waste Management Plan Report		Drew Heath Architecture	June 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	Response Ausgrid Referral – Underground Cables	5 July 2023
Ausgrid	Response Ausgrid Referral – Overhead Powerlines	5 July 2023
Aboriginal Heritage Office	Referral – Aboriginal Heritage Office – 11 Capri Close	14 February 2024

Note: For a copy of the above referenced document/s, please see Application Tracking on Council's website 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 Pittwater Local Environmental Plan 2014, as follows:

dwelling house means a building containing only one dwelling.

Any variation to the approved land use 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**

- All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- 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);
- A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:



- (i) showing the name, address and telephone number of the Principal Certifying Authority for the work, and
- (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
- (iii) stating that unauthorised entry to the work site is prohibited.
Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

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

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

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



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

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

6. **Staff and Contractor Parking**

The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use on-site parking once available.

Reason: To ensure minimum impact of construction activity on local parking amenity.

7. **Traffic Management**

Traffic management procedures and systems must be in place and practised during the course of the project to ensure safety and minimise the effect on adjoining pedestrian and vehicular traffic systems. These procedures and systems must be in accordance with AS 1742.3 2009 Manual of Uniform Traffic Control Devices and Council's Development Control Plans.

Note: A plan of traffic management is to be submitted to and approved by Council.

Reason: To ensure pedestrian safety and continued efficient network operation.

FEES / CHARGES / CONTRIBUTIONS

8. **Policy Controls**

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$9,840.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2022. The monetary contribution is based on a development cost of \$984,000.00.

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

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



The Northern Beaches Section 7.12 Contributions Plan 2022 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

9. **Security Bond**

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

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

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

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

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

10. **Construction, Excavation and Associated Works Security Bond(s)**

The applicant is to lodge a bond with Council for the following:

Drainage Works

As security against any damage or failure to complete the construction of stormwater drainage works required as part of this consent a bond of \$42,000.

Reason: Protection of Council's infrastructure.

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

11. **Construction Certificate**

No Construction Certificate shall be issued for any of the building works on Lot 62 until the subdivision plan has been registered with the NSW Land Registry Services and a copy of the registered plan shall be provided to the Certifier.

Reason: To ensure the orderly development of land.

12. **Compliance with Ecologist's Recommendations – Pre-construction**

All impact mitigation measures specified in the approved Biodiversity Development Assessment Report (Land Eco Consulting, 2023) are to be implemented at the appropriate stage of development.

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.



13. **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.

14. **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, Ref: J1480A, Dated 30th Sept 2017 and Letter dated 6th June 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.

15. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**

The Applicant shall submit a suitably qualified Structural Engineer's certification that the completed footing works have been constructed in accordance with this consent, Northern Beaches Council's Water Management for Development Policy and the approved Construction Certificate plans. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure

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

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention for proposed **Lot No 62** in accordance with Northern Beaches Council's Water Management for Development Policy, and generally in accordance with the concept drainage plans prepared by NB Consulting Engineers, Job No 2310005, Drawing number D01,D02,D07, D08 Dated 02/11/2023 and D03 dated 31/10/2023, Rev A. 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. OSD to be provided in accordance with Clause 9.0 of Council's Water Management for Development Policy.
- ii. All discharge control devices and pits are to be located externally to all structures and buildings so that 24-hour access to the OSD system is possible and that overflows from the system can be safely directed away.
- iii. Discharge to kerb & gutter should be gravity fed.
- iv. OSD system should not be placed under any habitable floor.
- v. Detailed drainage plans, including engineering certification, are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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



17. 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 Certifier for approval prior to the issue of the Construction Certificate.

Reason: Protection of the receiving environment.

18. Stormwater Treatment Measures - Minor

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.

19. Car Parking Standards

The driveway/access ramp grades, access and car parking facilities must comply with the Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking. The dimensions of car parking bays and aisle widths in the car park are to comply with Australian/New Zealand Standard for Off-Street Parking AS/NZS 2890.1-2004.

Details demonstrating compliance with this condition are to be submitted to the Principal Certifier prior to the issue of a construction certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

20. Vehicular Swept Paths

Vehicular manoeuvring paths must be provided to demonstrate all vehicles can enter or depart the site in a forward direction without encroaching on required car parking spaces. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking.

Details demonstrating compliance with this condition must be submitted to the Principal Certifier prior to the issue of the construction Certificate.



Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

21. Construction Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by a TfNSW accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to issue of any Construction Certificate.

Truck movements must be agreed with Council's Traffic and Development Engineer prior to submission of the CTMP.

The CTMP must address following:

- The proposed phases of construction works on the site, and the expected duration of each construction phase
- 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
- Make provision for all construction materials to be stored on site, at all times
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period
- 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
- 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
- Make provision for parking onsite. All Staff and Contractors are to use the basement parking once available
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety
- 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
- 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
- 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
- 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
- The 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



- o 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
- o Proposed protection for Council and adjoining properties o 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.

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

22. Pedestrian sight distance at property boundary

A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas.

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

Reason: To maintain pedestrian safety.

23. 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.

24. Submission Roads Act Application for Civil Works in the Public Road

The Applicant is to submit an application for approval for infrastructure works on Council’s roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

Hydraulic design plans and an accompanying report detailing the Council drainage system upgrade are to be prepared by a Civil Engineer registered on the NER. The Hydraulic design plans are to be submitted with the Section 138A Application. Hydrological and Hydraulic technical guidelines as specified in Council’s Engineering Design Specification – AUS-PEC ONE are to be used in the preparation of the Hydraulic design plans and report.

The application is to include Civil Engineering plans for the design of the elevated driveway and new Council stormwater infrastructure which are to be generally in accordance with the Council’s



specification for engineering works - AUS-SPEC ONE. The design must include the following information:

As outlined in the:

- Concept Stormwater Drainage Plan prepared by NB Consulting Engineers, Job No 2310005, Dated 06/11/2023, Issue A Drawing No. D100 and D101 and,
 - the Driveway Section by Drew Heath Architects, Drawing No 13/22, Dated 30/11/2022
1. Structural Engineering details relating to the elevated driveway are to be submitted to Council prior to the release of the Construction Certificate. Each plan/sheet is to be signed by a qualified practicing Structural Engineer with corporate membership of the Institute of Engineers Australia (M.I.E) and has appropriate experience and competence in the related field.
 2. Vehicle crossing to be 3.0 metres wide at the kerb and the driveway profile to be in accordance with Northern Beaches Council's standard vehicle crossing profile
 3. At a minimum, the drawings must show the works in plan view, longitudinal sections and details at a relevant scale including all existing levels, any existing services/ infrastructure to be retained in the area of works.
 4. All driveways gradients and safe sight distances etc. shall be designed comply with AS2890.1:2004 (Off-street Parking Standards).
 5. Vehicular manoeuvring paths must be provided to demonstrate all vehicles can enter or depart the site in a forward direction without encroaching on required car parking spaces. The drawings must be compliant with Australian/New Zealand Standard AS/NZS 2890.1:2004 - Parking facilities - Off-street car parking
 6. A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas
 7. Driveway design to consider impacts and remedial measures on neighbouring driveway No 80 Riverview Road.
 8. Details of any retaining structure to support neighbouring driveway No 80 Riverview Road.
 9. During construction works in case driveway/layback of No 80 Riverview Road is disturbed, Applicant to reinstate all the disturbed sections at their cost and to Council's satisfaction
 10. The proposed development involves the construction of subsurface structures and excavation that has potential to adversely impact neighboring property if undertaken in an inappropriate manner. To ensure there are no adverse impacts arising from such works, the applicant must engage a suitably qualified and practicing Civil or Structural Engineer specialising in geotechnical and the hydrogeological field to design.
 11. Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted.
 12. Retaining structure within public road reserve supporting driveway to be 1.5m behind street kerb.
 13. Structural Engineer's certification of design of all retaining walls and driveway.



14. Provision of any safety barriers on side of the driveway slab/ retaining structure in accordance with AS2890.1-2004

An approval is to be submitted to the Principal Certifier prior to the issue of the Construction Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

25. **Pre-Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at: <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2>

The pre-construction / demolition Dilapidation Report must be submitted to Council for approval and the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

26. **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.

27. **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.sydneypwater.com.au for:

- o "Tap in" details - see <http://www.sydneypwater.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.

28. **Building Colours**

Details demonstrating that external colours are dark and earthy tones, as outlined in Clause D1.5 of the Pittwater 21 Development Control Plan, and that finishes are of a low reflectivity are to be submitted to the Certifier prior to issue of the Construction Certificate.

Reason: To ensure that the proposed built form harmonises with the natural environment



BEFORE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

29. Stormwater Drainage Application

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include Civil Engineering plans for the design of the:

Riverview Road Reserve

1. Drainage diversion works in road reserve Riverview Road.
2. Details of decommissioning and removal of Council's existing DN375mm stormwater pipeline traversing across subject site, Riverview Road roadway and through the neighboring site No: 80 Riverview Road.
3. Details of new 600X600 grated inlet pit with class D butterfly / v-grate proposed within subject site driveway layback.
4. Details of new DN375 pipe connection
 - o from proposed 900X900 sealed stormwater pit within Council easement to new 600X600 grated inlet pit with class D butterfly within layback
 - o from proposed butterfly pit within layback to existing pit along frontage of No 80 Riverview Road.

Lot 62

1. Drainage diversion works within Lot 62
2. Details of new 900X900 sealed stormwater pit within Council easement
3. Details of new DN375 pipe connection from existing pit within Council easement to proposed 900X900 sealed stormwater pit within Council easement.

Lot 61

1. Stormwater drainage connection of proposed Lot 61 to Council pipe within Council easement

Please Note:

1. Council's stormwater pipe within site shall be accurately located with confirmed dimensions including depth, and plot to scale. This should be carried out by a service locating contractor and registered surveyor (evidence of methodology used for locating stormwater system should be provided).
2. Council's stormwater pipeline and associated infrastructure to be shown on the survey and masterplans that outline the proposal.
3. Engineers design certificate for the site stormwater, new pits, pipe decommission and realignment works and further its connection to Council pit to be provided.
4. Engineer to also check the capacity of Council's existing stormwater system within site and within road frontage and consider for any upgrade if required.

Plans are to be generally in accordance with the concept plans by NB Consulting Engineers, Job No 2310005, Dated 06/11/2023, Issue A Drawing No. D100 and D101. The final plans shall be prepared by a suitably qualified Civil Engineer, who has membership to Engineers.

Australia, National Engineers Register (NER) and registered in the General Area of Practice for Civil Engineering with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at www.northernbeaches.nsw.gov.au > Council Forms > Stormwater Drainage Application Form.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges. Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Works Certificate.



Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

30. Utilities Services

Prior to the issue of the Subdivision Works Certificate, written evidence of the following service provider requirements must be provided to the Principal Certifier:

- a) a letter from Ausgrid demonstrating that satisfactory arrangements can be made for the installation and supply of electricity,
- b) a response from Sydney Water as to whether the proposed works subject to this consent would affect any Sydney Water infrastructure, and whether further requirements need to be met, and
- c) other relevant utilities or services - that the development as proposed to be carried out is satisfactory to those other service providers, or if it is not, the changes that are required to make the development satisfactory to them.

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

Reason: To ensure relevant utility and service providers' requirements are provided to the Principal Certifier.

31. Submission of Roads Act Application for Civil Works in the Public Road

The Applicant is to submit an application for approval for Infrastructure works on Councils roadway. Engineering plans for the new development works within the road reserve and this development consent are to be submitted to Council for approval under the provisions of Sections 138 and 139 of the Roads Act 1993.

The application is to include Civil Engineering plans for the design of vehicle crossing (layback) which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plans shall be prepared by a qualified Civil Engineer.

The design must include the following information:

1. Vehicle crossing to be 3.0 metres wide at the kerb and the driveway profile to be in accordance with Northern Beaches Council's standard vehicle crossing profile.
2. At a minimum, the drawings must show the works in plan view, longitudinal sections and details at a relevant scale including all existing levels, any existing services/ infrastructure to be retained in the area of works.
3. All driveways gradients and safe sight distances etc. shall be designed comply with AS2890.1:2004 (Off-street Parking Standards).
4. Details of the new grated inlet pit with class D butterfly / v-grate located within subject site driveway layback.

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

An approval is to be submitted to the Certifier prior to the issue of the Subdivision Works Certificate

Reason: To ensure engineering works are constructed in accordance with relevant standards and Council's specification.

32. Pre-Construction Stormwater Assets Dilapidation Report

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of



the asset prior to the commencement of works. Council's Guidelines are available at: <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2>

The pre-construction / demolition Dilapidation Report must be submitted to Council for approval and the Principal Certifier prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure.

33. Traffic Management and Control

The Applicant is to submit an application for Traffic Management Plan to Council for approval prior to issue of the Subdivision Works Certificate. The Traffic Management Plan shall be prepared to TfNSW standards by an appropriately certified person.

Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

34. Project Arborist

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 AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment.

The Project Arborist shall be in attendance and supervise all works, and in particular:

- a) excavation works near existing trees 3, 7, 8, 9, 15, 17, 18 and 19 as per the Addendum to the Arboricultural Impact Assessment dated 12 October 2023,
- b) generally guidance requirements under Attachment 7 of the Arboricultural Impact Assessment dated 3 December 2022.

All tree protection measures specified must:

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

The Project Arborist shall provide certification to the Certifier that all tree protection measures under AS4970-2009 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.

35. Tree Removal Within the Property

This consent approves the removal of existing trees on the subject site as identified in the Addendum to the Arboricultural Impact Assessment dated 12 October 2023, approved Plans, or as listed below:

- a) trees 4, 5, 6, 10 and 16.
- b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.



Reason: To enable authorised development works.

36. Tree Removal Within the Road Reserve

This consent approves the removal of existing trees within the road reserve as identified in the Addendum to the Arboricultural Impact Assessment dated 12 October 2023, or as listed below:

- a) tree 1 and tree 2,
- b) a qualified AQF level 5 Arborist shall identify these trees on site and tag or mark prior to removal.

Removal of the approved tree/s in the road reserve shall only be undertaken by a Council approved tree contractor, as engaged by the applicant. Details of currently approved tree contractors can be obtained from Northern Beaches Council's Trees Services business unit prior to removal.

Reason: Public liability.

37. Work Zones and Permits

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane.

Reason: To ensure Work zones are monitored and installed correctly.

38. Demolition Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

The DTMP must:-

- o Make provision for all construction materials to be stored on site, at all times. o The DTMP is to be adhered to at all times during the project.
- o Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- o Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- o Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- o Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures. o Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- o Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP 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. These communications must be documented and submitted to Council prior to work commencing on site.
- o Specify spoil management process and facilities to be used on site.



- o Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP 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 Demolition Traffic Management Plan is submitted.

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

DURING BUILDING WORK

39. 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, 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
 - viii) 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,
 - ix) 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,
 - x) 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,
 - xi) 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,
 - xii) 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 as complaint to AS4970-2009 Protection of trees on development sites, and any recommendations of an approved Arboricultural Impact Assessment and/or Project Arborist as applicable.

Reason: Tree and vegetation protection.

40. **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.

41. **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.

42. **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.

43. **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: Protection of the receiving environment.

44. **Implementation of Demolition Traffic Management Plan**

All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.



45. **Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

46. **Ongoing Management**

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

47. **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.

48. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with Transport for NSW (TfNSW) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works.

Reason: Public Safety.

BEFORE ISSUE OF THE OCCUPATION CERTIFICATE

49. **Landscape Completion**

Landscape works are to be implemented in accordance with the approved Landscape Plans, and inclusive of the following conditions:

- a) landscape works are to be contained within the legal property boundaries,
- b) tree, shrub and groundcover planting shall be installed as indicated on the approved Landscape Plans.



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.

50. **Condition of Retained Vegetation**

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:

- a) compliance to any Arborist recommendations for tree protection generally and during excavation works,
- b) extent of damage sustained by vegetation as a result of the construction works,
- c) any subsequent remedial works required to ensure the long term retention of the vegetation.

Reason: Tree and vegetation protection.

51. **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.

52. **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.

53. **Post-Construction Stormwater Assets Dilapidation Report (Council stormwater assets)**

The Applicant shall submit a post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's Guidelines are available at <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/preparingdilapidationsurveyforcouncilstormwaterassets.pdf>

The post-construction / demolition dilapidation report must be submitted to Council for review and approval. Any damage to Council's stormwater infrastructure is to be rectified prior to the release of any Drainage security bonds. Council's acceptance of the Dilapidation Survey is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure.

54. **Certification of Civil Works and Works as Executed Data on Council Land**

The Applicant shall submit certification by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) that the completed works have been constructed in accordance with this consent and the approved



Section 138 plans. Works as Executed data certified by a registered surveyor prepared in accordance with Council's 'Guideline for preparing Works as Executed data (details overdrawn on a copy of the approved civil plans) for Council Assets' in an approved format shall be submitted to Council for approval prior to the release of any security deposits.

Reason: To ensure compliance of works with Council's specification for engineering works.

55. **Certification of Structures Located Adjacent to Council Pipeline or Council Easement**

The Applicant shall submit a suitably qualified Structural Engineer's certification that the completed footing works have been constructed in accordance with this consent, Northern Beaches Council's Water Management for Development Policy and the approved Construction Certificate plans. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure

56. **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.

57. **Water conservation**

Water conservation: Installation of Rainwater Tanks

Rainwater tanks to be installed as per BASIX certificates requirements.

A certificate from a licenced plumber demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: To conserve potable water

58. **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.



59. **Positive Covenant for the access to Council's drainage line**

Creation of a Positive Covenant on the title, requiring any costs relating to the dismantling, removal, and subsequent re-assembling, re-installation, re-instatement of the retaining structure and associated concrete slab over Council's Easement for drainage to be borne by the property owner. The Positive Covenant is to be prepared by the Applicant using terms acceptable to Northern Beaches Council at the Applicant's expense. The Positive Covenant is to be endorsed by Council prior to its lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the party to release, vary or modify such covenant.

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

Reason: To ensure the future access to Council's drainage infrastructure within the site is maintained.

60. **Environmental Reports Certification**

Written certification from a suitably qualified person(s) shall submit to the Principal Certifier and Northern Beaches Council, stating that all the works/methods/procedures/control measures/recommendations approved by Council in the following reports have been completed:

- (d) Environmental Impact Statement No. (*), dated (*), prepared by (*).
- (e) Preliminary Hazard Analysis No. (*), dated (*), prepared by (*).
- (f) Statement of Environmental Effects No. (*), dated (*), prepared by (*).
- (g) Acoustic report No. (*), dated (*), prepared by (*).
- (h) Fire Safety Study Report No. (*), dated (*), prepared by (*).

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

Reason: To ensure compliance with standards.

61. **Compliance with approved Vegetation Management Plan**

The sites are to be managed in accordance with the approved vegetation management plan (VMP) (Kingfisher Urban Ecology and Wetlands, January 2023). The VMP is to be implemented for a period of 5 years from date of commencement. A bushland management contract is to be entered into prior to issue of any Occupation Certificate, which sets out the program of works specified in the VMP.

Evidence of bushland management contract engagement is to be certified by the Project Ecologist. Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation and enhance the natural environment.

62. **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

63. Landscape Maintenance

If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components. Trees, shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilised as required at the time of planting. If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plans and any conditions of consent.

The approved landscape area 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.

64. Compliance with Ecologist's Recommendations – Ongoing

All impact mitigation measures specified in the approved Biodiversity Development Assessment Report (Land Eco Consulting, June 2023) are to be implemented at the appropriate stage of development.

Successful establishment/initiation of ongoing biodiversity measures is to be certified by the Project Ecologist in writing to the Principal Certifier prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures.

65. 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.

66. Control of Domestic Dogs/Cats

Domestic dogs and cats are to be kept from entering wildlife habitat areas at all times.

Dogs and cats are to be kept in an enclosed area and/or inside the dwelling, or on a leash such that they cannot enter areas of wildlife habitat, bushland or foreshore unrestrained, on the site or on surrounding properties or reserves.

Reason: To protect native wildlife and habitat.

67. Maintenance of Stormwater Treatment Measures - Minor

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: Protection of the receiving environment.

68. Landscaping adjoining vehicular access

The applicant must ensure that the planting chosen for any land immediately adjacent to the driveway and adjacent to any driveway intersections must not exceed a height of 1,140mm.



Reason: To maintain unobstructed sight distance for motorists.

69. **Compliance with approved Vegetation Management Plan**

Owners are to manage the site in accordance to the approved Vegetation Management Plan (Kingfisher Urban Ecology and Wetlands, January 2023).

The VMP is to be implemented for a period of 5 years from date of commencement. Council is to be consulted in the initial review after 12 months on receiving the first annual report.

Reason: To protect native vegetation proposed for retention.

BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

70. **Subdivision Certificate**

The Subdivision Certificate shall not be issued by Council until all conditions that relate to the subdivision component of the development have been satisfied.

Reason: To ensure the orderly development of land.

71. **Compliance with approved Vegetation Management Plan**

The sites are to be managed in accordance with the approved vegetation management plan (VMP) (Kingfisher Urban Ecology and Wetlands, January 2023). The VMP is to be implemented for a period of 5 years from date of commencement. A bushland management contract is to be entered into prior to issue of any Occupation Certificate, which sets out the program of works specified in the VMP.

Evidence of bushland management contract engagement is to be certified by the Project Ecologist. Details demonstrating compliance are to be submitted to the Principal Certifier prior to issue of Construction Certificate.

Reason: To protect native vegetation and enhance the natural environment.

72. **Like for like credit retirement conditions - Ecosystem credit retirement conditions**

Prior to issue of the relevant subdivision works certificate the class and number of ecosystem credits in Table 42 must be retired to offset the impacts of the development.

The requirement to retire credits outlined in Table 42 may be satisfied by payment to the Biodiversity Conservation Fund of an amount equivalent to the class and number of ecosystem credits, as calculated by the Biodiversity Offsets Payment Calculator.

Evidence of the retirement of credits or payment to the Biodiversity Conservation Fund in satisfaction of Table 42 requirements must be provided to the Manager Bushland and Biodiversity of Northern Beaches Council and to the Principal Certifier prior to release subdivision works certificate.

Evidence will be in the form of:

- o A copy of the confirmation email (from the BOS Credits team) to show that the correct type and number of credits have been retired, and from a relevant IBRA sub-region as per the offset rules, or
- o If paid into the Biodiversity Conservation Fund, a copy of the section 6.33 statement.

Table 42 Ecosystem credits required to be retired – like for like

Impacted Plan Community Type	TEC	Number of ecosystem credits	Containing HBT
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PCT 1214 – Pittwater Spotted Gum Forest	Pittwater and Wagstaffe Spotted Gum Forest in the Sydney Basin Bioregion	2	No
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Reason: To offset the residual biodiversity impacts of the development in accordance with the NSW Biodiversity Offset Scheme.

73. Certification of Civil Works and Works as Executed Data in accordance with Road Act Approval

The Applicant shall submit a certification by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) that the completed works have been constructed in accordance with this consent and the approved Section 138 and/or Subdivision Works Certificate plans. Works as Executed data certified by a registered surveyor in relation to boundaries and/or relevant easements, prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Assets' in an approved format shall be submitted to the Principal Certifier for approval prior to the issue of the Subdivision Certificate.

Reason: To ensure compliance of works with Council's specification for engineering works.

74. Provision of Services for Subdivision

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision.

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

Reason: To ensure that utility services have been provided to the newly created lots.

75. Sydney Water Compliance Certification

The Applicant shall submit a Section 73 Compliance Certificate under the Sydney Water Act 1994 issued by Sydney Water Corporation. Application must be made through an authorised Water Servicing Co-ordinator. Please refer to the Building Developing and Plumbing section of the web site www.sydneywater.com.au <<http://www.sydneywater.com.au>> then refer to "Water Servicing Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and fees to be paid. Please make early contact with the coordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.

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

Reason: To ensure compliance with the statutory requirements of Sydney Water.

76. Subdivision Certificate Application

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at



least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

77. Certification of Civil Works and Works as Executed Data on Private Land

The Applicant shall submit a suitably qualified Civil Engineer's certification that the completed works have been constructed in accordance with this consent and the approved Subdivision Works Certificate plans. Works as Executed data certified by a registered surveyor in relation to boundaries and/or relevant easements, prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Assets' in an approved format shall be submitted to the Principal Certifying Authority for approval prior to the issue of the Subdivision Certificate.

Reason: To ensure compliance of works with Council's specification for engineering works.

78. Certification of Council Drainage Works and Works as Executed Data in accordance with Local Government S68 Approval

The Applicant shall submit certification by a suitably qualified Civil Engineer, who has membership to Engineers Australia, National Engineers Register (NER) or Professionals Australia (RPENG) that the completed works have been constructed in accordance with this consent and the approved Section 68 approved plans. Works as Executed data (details overdrawn on a copy of the approved drainage plan) certified by a registered surveyor in relation to boundaries and/or relevant easements prepared in accordance with Council's 'Guideline for preparing Works as Executed data for Council Stormwater Assets' within the subject site, shall be submitted to the Principal Certifier prior to the issue of the Occupation Certificate.

Reason: To ensure compliance of drainage works with Council's specification for engineering works.

79. Release of Subdivision Certificate

The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

80. Title Encumbrances

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

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

Reason: To ensure proper management of land.

FINAL DECLARATION

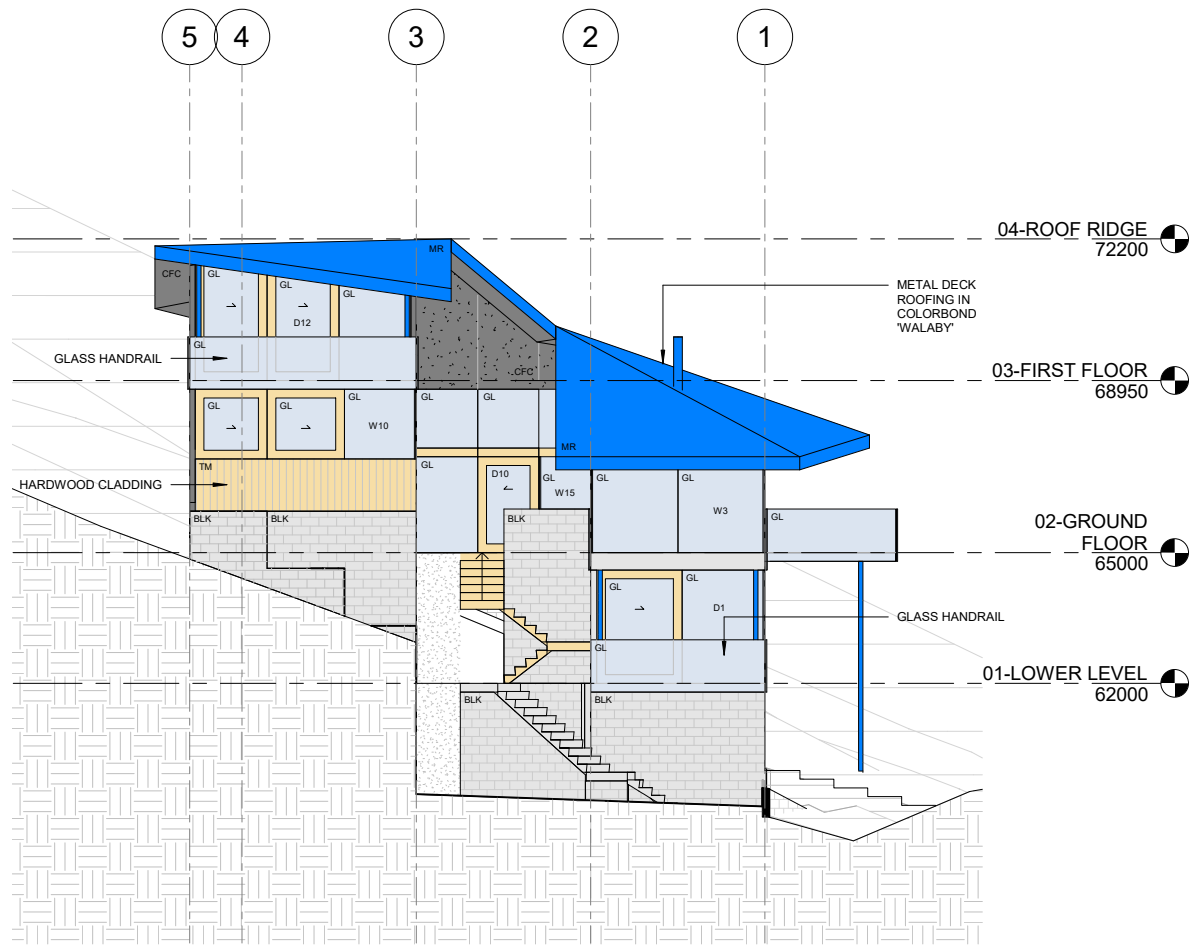
A handwritten signature in blue ink, appearing to read "Deegan".

Consultant Name: Danielle Deegan, DM Planning



In submitting this report to Council, I declare that I do not have a conflict of interest in making this recommendation.





NORTHERN ELEVATION 01
1:100 @ A3

REV.	ISSUE:	DATE:
F	DA RESUBMISSION	1/10/23
H	DA RESUBMISSION	11/10/23

- NOTES:
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GREW HEATH ARCHITECTURE ASSOCIATES
PH: 1 8454 481 270
DREW@GREWHEATHARCHITECT.COM
ABN 90 642 694 308 1 REG. NO. 8716

CLIENT:
Ms. LAUREN WALLACE & Mr. ANDREW WALLACE

ADDRESS:
LOT 6, DP 262332
11 CAPRI CLOSE
AVALON, NSW 2107
AUSTRALIA

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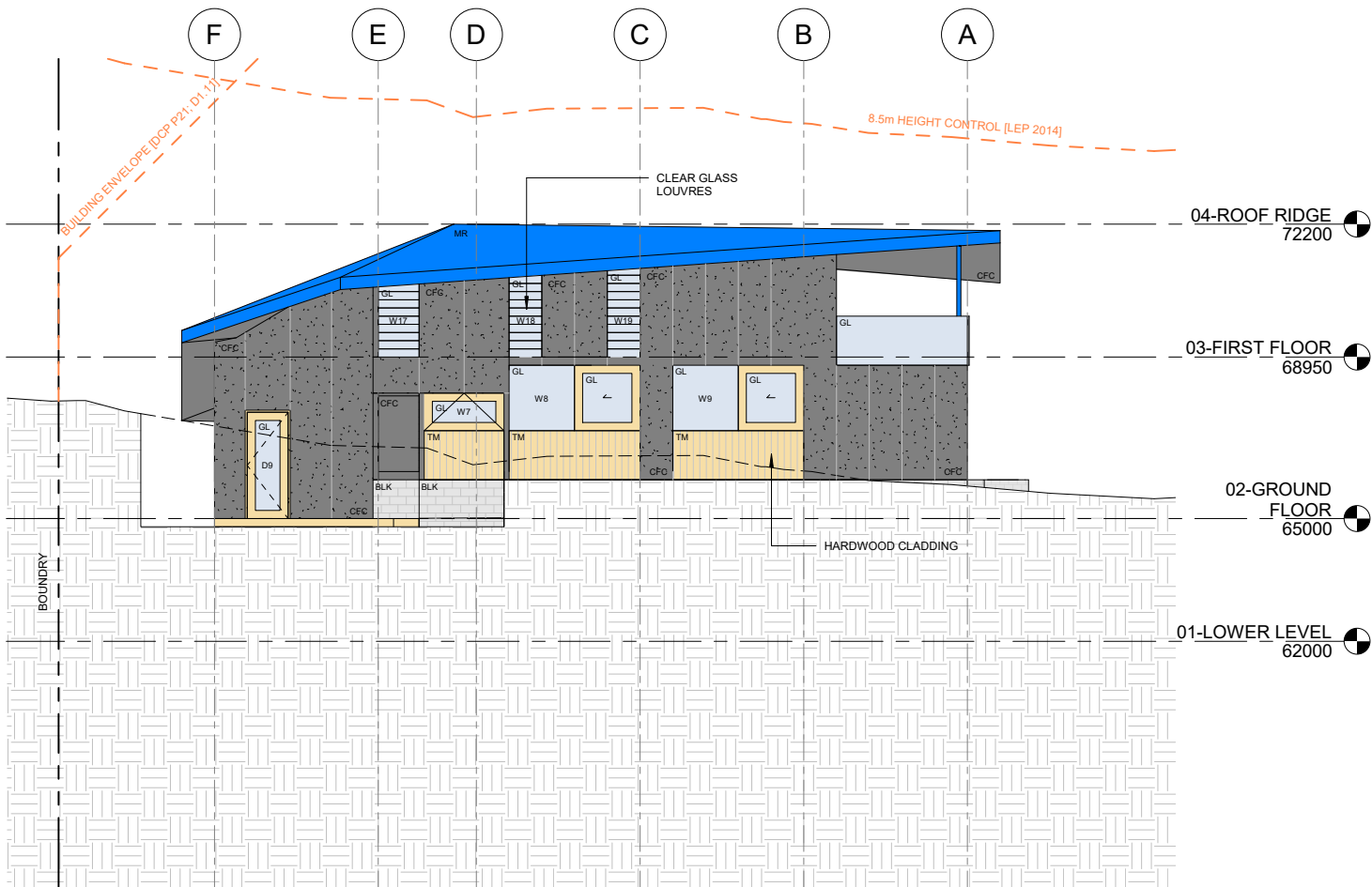
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NORTH ELEV.

PROJECT: 2302
DRAWN BY: DHAA
DATE: 11/10/2023
SCALE: 1 : 100

A-300
SHEET

DEVELOPMENT APPLICATION

ARCHITECTURAL



EASTERN ELEVATION 01
1:100 @ A3

REV.	ISSUE:	DATE:
F	DA RESUBMISSION	1/10/23
H	DA RESUBMISSION	11/10/23

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PH: 1 8454 481 270
DREW@GREYHEATHARCHITECT.COM
ABN 90 642 694 308 1 REG NO. 8716

CLIENT:
Ms. LAUREN WALLACE & Mr.
ANDREW WALLACE

ADDRESS:
LOT 6, DP 262332
11 CAPRI CLOSE
AVALON, NSW 2107
AUSTRALIA

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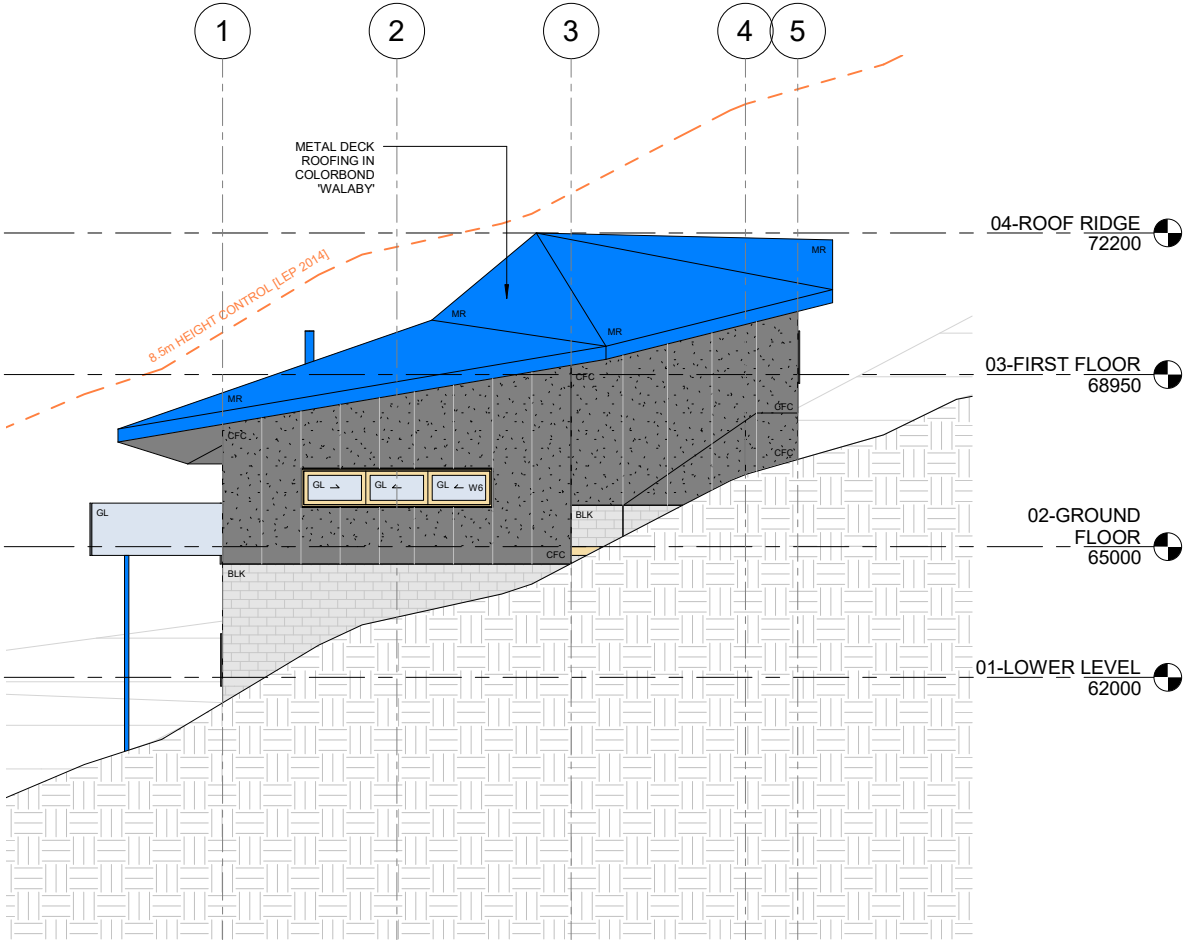
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ELEV.**

PROJECT: 2302
DRAWN BY: DHAA
DATE: 11/10/2023
SCALE: 1 : 100

A-301
SHEET

DEVELOPMENT APPLICATION

ARCHITECTURAL



SOUTHERN ELEVATION 01
1:100 @ A3

REV. ISSUE: DATE:
F DA RESUBMISSION 1/10/23
H DA RESUBMISSION 11/10/23

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DREW HEATH ARCHITECTURE ASSOCIATES
PH: 1 8454 481 270
DREWHEATHARCHITECT.COM
ABN 90 642 694 308 1 REG NO. 8716

CLIENT:
Ms. LAUREN WALLACE & Mr.
ANDREW WALLACE

ADDRESS:
LOT 6, DP 262332
11 CAPRI CLOSE
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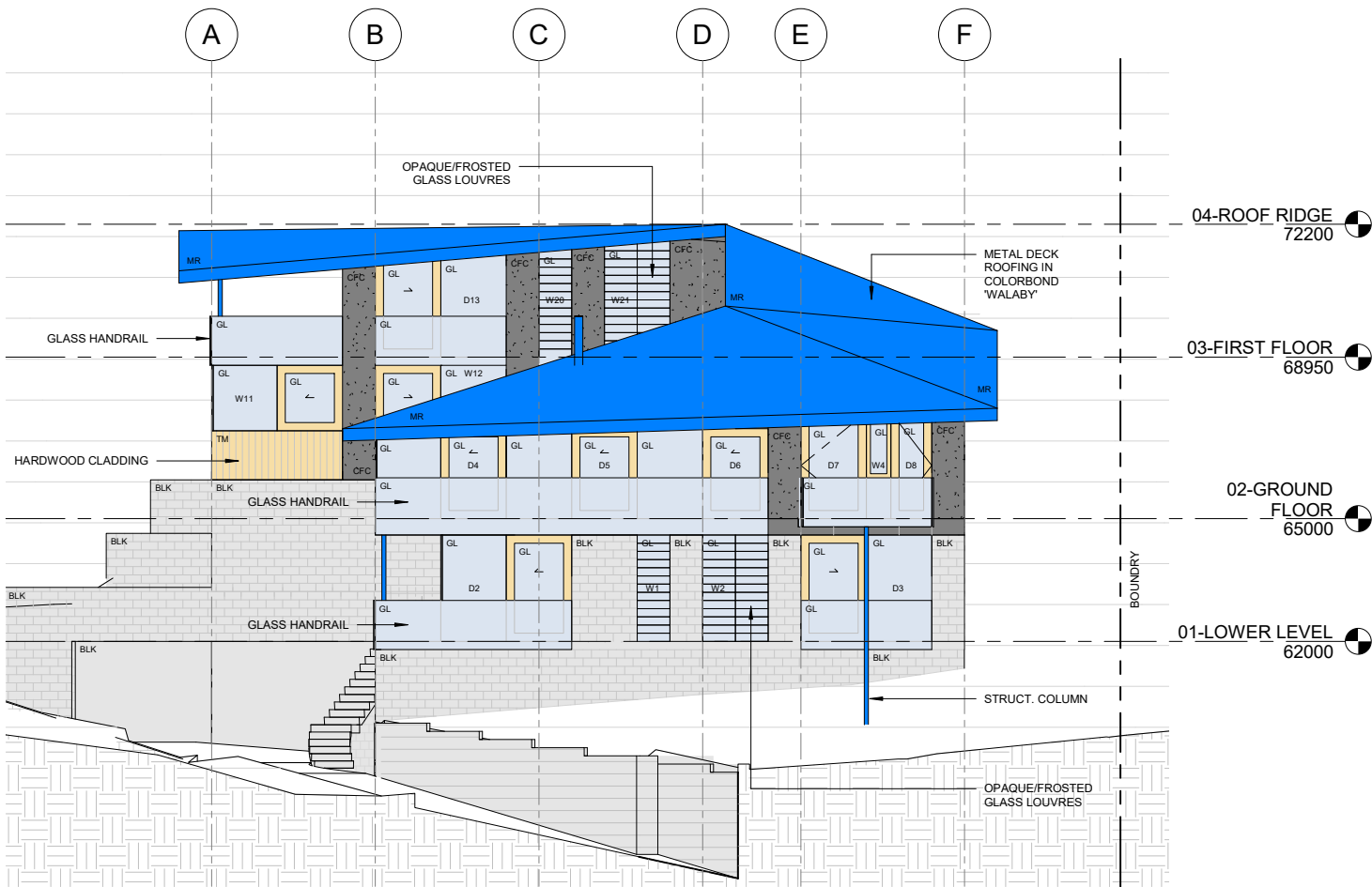
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**SOUTHERN
ELEV.**

PROJECT: 2302
DRAWN BY: DHAA
DATE: 11/10/2023
SCALE: 1 : 100

A-302
SHEET

DEVELOPMENT APPLICATION

ARCHITECTURAL



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GREY HEATH ARCHITECTURE ASSOCIATES
PH: 1 8454 481 270
DREW@GREYHEATHARCHITECT.COM
ABN 90 642 694 308 1 REG NO. 8716

CLIENT:
Ms. LAUREN WALLACE & Mr. ANDREW WALLACE

ADDRESS:
LOT 6, DP 262332
11 CAPRI CLOSE
AVALON, NSW 2107
AUSTRALIA

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DRAWING TITLE:
**WESTERN
ELEV.**

PROJECT: 2302
DRAWN BY: DHAA
DATE: 11/10/2023
SCALE: 1 : 100

A-303
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DEVELOPMENT APPLICATION

ARCHITECTURAL

WESTERN ELEVATION 01
1:100 @ A3

ITEM 3.2	DA2023/0638 - 11 BRISSENDEN AVENUE COLLAROY - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING SWIMMING POOL AND STUDIO
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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 **refuses** Development Consent to DA2023/0638 for Demolition works and construction of a dwelling house including swimming pool and studio on land at Lot 11 & 12 DP 978060, 11 Brissenden Avenue COLLAROY, for the reasons for refusal set out in the Assessment Report.

REPORTING MANAGER**TRIM FILE REF**

2024/157810

ATTACHMENTS[↓](#) 1 Assessment Report[↓](#) 2 Site Plan and Elevations

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0638
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Responsible Officer:	Nick England
Land to be developed (Address):	Lot 11 DP 978060, 11 Brissenden Avenue COLLAROY NSW 2097 Lot 12 DP 978060, 11 Brissenden Avenue COLLAROY NSW 2097
Proposed Development:	Demolition works and construction of a dwelling house including swimming pool and studio
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:	Ben William James Moffat
Applicant:	Simon Geoffrey Vaughan

Application Lodged:	29/05/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	05/06/2023 to 19/06/2023
Advertised:	Not Advertised
Submissions Received:	8
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 1,537,059.00
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EXECUTIVE SUMMARY

This development application (as amended) seeks consent for the demolition of an existing dwelling and the construction of a new two-storey dwelling, studio and swimming pool.

The application is referred to the Development Determination Panel (DDP) due to the number of submissions exceeding five (5).

During the notification periods, eight (8) submissions received, objecting to the proposed development.

Concerns raised in the objections predominantly relate to: privacy; visual impact; view loss; overshadowing and insufficient measures to manage stormwater.

Upon detailed assessment of the proposal, the proposal the objectives or requirements of the following controls of Council:

- Side Boundary Envelope development control and the objectives of which relate to;
- mitigating visual impact;
- responding to site topography;
- reasonable sharing of views; and
- adequate management of stormwater.

This report concludes with a recommendation that the DDP refuse the development application, for the reasons specified in the report.

PROPOSED DEVELOPMENT IN DETAIL

The application consists of the demolition of an existing dwelling and the construction of a two-storey dwelling house, with attached parking for two (2) vehicles. An in-ground swimming pool / spa and associated terrace is proposed to the rear. Adjoining the rear (northern) boundary is a detached "home office / studio".

In correspondence dated 19 September 2023, Council advised the applicant that the proposal was not supported based on:

- insufficient information to determine the potential impact on views enjoyed by adjacent properties (height poles were requested);
- breaches of the Side Boundary Envelope control of WDCP 2011 on both the east and west elevations of the proposal;
- non-compliance with the Rear Setback control of WDCP 2011;
- non-compliance with the Landscape Open Space control of WDCP 2011;
- Adverse impact on the privacy on adjoining properties of proposed areas of private open space, inconsistent with Parts D2 Private Open Space and D8 Privacy of WDCP 2011; and
- insufficient stormwater management measures to comply with Part C4 Stormwater of WDCP 2011.

Amended plans were provided on 6 November 2023. No height poles were erected at this time. The amendments consisted of:

- Deletion of the roof terrace;
- Amendment to 1st floor outdoor area to increase setback from east boundary and provide planter box and privacy wall;
- Increase setback of home office / studio from rear (northern) boundary; and
- Increase areas of landscaped open space.

A second set of amended plans was received on 6 February 2024, with corresponding height poles

erected and confirmed via survey on 9 February 2024. These amendments consisted of:

- Reduction of floor space for studio to 39m² (from original 43m²);
- Increased part of west side setback on 1st floor, to 2.15m;
- 0.8m reduction in length of west elevation wall;
- 0.4m reduction in length of east elevation wall; and
- reduction in size of terrace adjoining Bedroom, from 22m² to 17m².

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

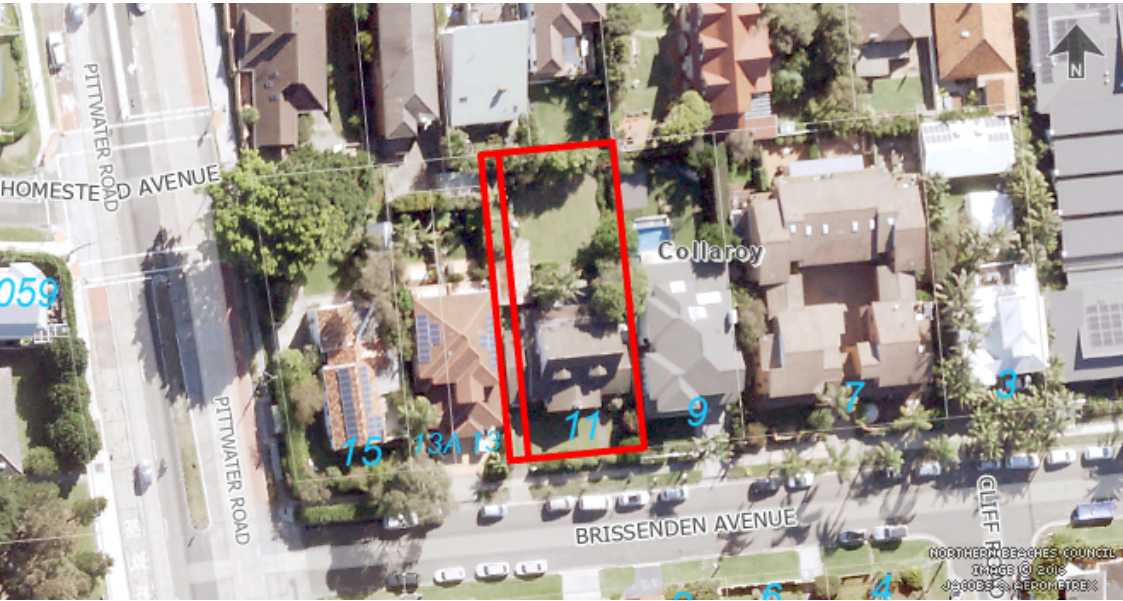
Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B9 Rear Boundary Setbacks
Warringah Development Control Plan - C4 Stormwater
Warringah Development Control Plan - D2 Private Open Space
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 11 DP 978060 , 11 Brissenden Avenue COLLAROY NSW 2097 Lot 12 DP 978060 , 11 Brissenden Avenue COLLAROY NSW 2097
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Detailed Site Description:	<p>The subject site consists of two (2) allotments (Lots 11 & 12 in DP 978060), located on the northern side of Brissenden Avenue, Collaroy.</p> <p>The site is regular in shape with a frontage of 19.71m along Brissenden Avenue and a depth of 45.72m. The site has a combined surveyed area of 901.1m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two-storey dwelling and outbuildings.</p> <p>The site has a northerly aspect with a fall of approximately 1.5m down towards the rear (northern) boundary of the site.</p> <p>The site has no significant vegetation.</p> <p>Adjoining and surrounding development is characterised predominately by dwelling houses, with the exception of multi-unit dwellings (Birdwood Avenue) to the north of the site. A residential flat building adjoins the site to the south, on the opposite side of Brissenden Avenue.</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.

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 2011 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&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 29</u> of the EP&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&A Regulation 2021 allow Council to request additional information. Additional information was requested in correspondence to the applicant, dated 19 September 2023 and 16 January 2024. Issues raised in the correspondence related to: view sharing; privacy; side boundary envelope, rear setback; landscaped open space; secondary dwellings and stormwater management.</p> <p><u>Clause 61</u> of the EP&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>Clauses 62 and/or 64</u> of the EP&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&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&A Regulation 2021 requires the consent</p>

Section 4.15 Matters for Consideration	Comments
	authority to consider the provisions of the Building Code of Australia (BCA). This matter could be 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) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	Despite the issues identified in the assessment of this application, the site is considered suitable for the proposed development in principle.
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	<p>This assessment has found the proposal to be contrary to the relevant requirement(s) of</p> <ul style="list-style-type: none"> Part D7 Views of WDCP 2011 and the Planning Principle established by the Land and Environment Court in <i>Tenacity Consulting v Warringah Council (2004) NSWLEC 140</i>; Part B3 Side Boundary Envelope of WDCP 2011; and Part C4 Stormwater of WDCP 2011. <p>This will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.</p>

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 05/06/2023 to 19/06/2023 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 8 submission/s from:

Name:	Address:
Mr William James Cowper Robison	5 / 1052 Pittwater Road COLLAROY NSW 2097
Mr Christopher Douglas Hunt Mrs Kristine Mary Hunt	5 Hendy Avenue COLLAROY NSW 2097
Mr Paul Barry Byrne	63 Waterloo Street NARRABEEN NSW 2101
Mr Craig William Busch Mrs Lillian Jean Busch	9 - 11 Birdwood Avenue COLLAROY NSW 2097
Mr Ross Anthony Corben Mrs Roberta Leader Corben	9 Brissenden Avenue COLLAROY NSW 2097
Mr Philip David Blanshard Mrs Jennifer Dorothy Maria Blanshard	13 Brissenden Avenue COLLAROY NSW 2097
Mr Michael John Grant	1073 Pittwater Road COLLAROY NSW 2097
Mrs Elizabeth Ellen Whittaker Mrs Wendy Anne Millson Mr Gregor Maxwell Millson	9 - 11 Birdwood Avenue COLLAROY NSW 2097

During the notification period, a total of eight (8) submissions were received, from individual people / dwellings.

The amended plans received were not re-notified, as they did not incur any additional environment impact, as per the provisions of the Northern Beaches Community Participation Plan (CPP).

The following issues were raised in the submissions, which has been summarised and addressed as follows:

- **The application will have an adverse impact on the views enjoyed by surrounding properties.**

Comment: A detailed consideration of the likely impact of the development on the views of adjoining properties is provided elsewhere in this report. In summary, the proposal is likely to have an adverse impact on the views of adjoining properties and in the context of the non-compliance with the Side Boundary Envelope control, this loss of views is not considered reasonable. Hence, this forms one of the reasons for the recommended refusal of the application.

- **The application is inconsistent with the planning controls of Council, in regard to: rear setback, landscaped open space; building bulk; and side boundary building envelope.**

Comment: A detailed consideration of the relevant development controls is provided elsewhere in this report. In summary, the non-compliance with the building envelope control is not supported and this forms one of the recommended reasons for the refusal of the application.

- **The application will have an adverse impact on the visual privacy of adjoining properties.**

Comment: The application has been amended from its original form, to: delete the roof terrace; increase the rear setback of the studio; and increase the side setback of the balcony on the north-east corner of the proposed dwelling. Based on these amendments, the development is considered to meet the relevant objectives and requirements for visual privacy. This is not considered to be a valid reason to refuse the application.

- **The application will have an adverse impact on the acoustic privacy of adjoining properties.**

Comment: The landscaping plan provided with the application denotes a "pool filter / equipment" enclosure at a nil setback from the east boundary. In the event that the application is approved, and to ensure adequate acoustic privacy, a condition of consent could be applied to require this structure to be relocated out of the side setback and within a more appropriate area to mitigate the potential emissions of noise.

- **The application will result in an adverse loss of solar access to adjoining properties.**

Comment: A consideration of the shadow diagrams provided with the application demonstrates that the proposal can comply with the relevant solar access standards of the WDCP 2011. Hence, this is not considered to be a valid reason to refuse the application.

- **The proposed office/studio is in size and layout more consistent with a secondary dwelling**

Comment: This aspect of the application has been amended since lodgement, to reduce the total floor area and re-configure the layout of the studio. As such, the structure is not considered to be a secondary dwelling and this is not considered to be a valid reason to refuse the application.

- **The application makes inadequate provision for the management of stormwater**

Comment: The applicant has failed to provide sufficient evidence that the stormwater generated from the proposal can be adequately managed in accordance with the standards of Council. This therefore forms a reason for the recommended refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application seeks consent for demolition works and construction of a dwelling house including swimming pool and studio.</p> <p>The Arborist's Report prepared by Complete Arborcare indicates that a group of <i>Syzygium</i> sp. (Lilly Pilly) of Low landscape significance are to be removed to accommodate the proposed works. A number of exempt trees (palms) are also to be removed.</p> <p>The Landscape Plan prepared by Paddock indicate a range of tree, shrub and ground covers across the site, including replacement tree planting.</p> <p>No objections are raised with regard to landscape issues subject to conditions.</p>
NECC (Development Engineering)	<p>The property is notionally a low level property with a slight fall to the rear. The applicant has chosen to drain roof areas to the front. Council has no objections to this, however the chosen method of draining areas to the rear of the property needs to be addressed. On site detention has been provided as per Councils Low Level Policy for roof areas draining to the front. The applicant can revise the design as the Low Level policy does not apply to areas draining to the street.</p> <p>The proposal needs to address the requirements of Section 5 of Councils Water Management for Development Policy Version 2 dated 26 February 2021 for properties or parts of properties that cannot drain to the street. (WMfDP). The Policy requires applicants to undertake a three (3) stage process in disposing of stormwater from the site:</p> <p>STEP 1. Ask for a drainage easement from downstream properties. Evidence of approval or rejection needs to be provided using the form in Appendix 2 of the WMfDP.</p> <p>STEP 2. If proof of easement rejection is provided, the applicant is asked to undertake a feasibility study for an Absorption Trench as per Appendix 3 of the WMfDP.</p> <p>STEP 3. If an Absorption Trench is not feasible, the applicant is asked to design a Level Spreader as per Appendix 4 of the WMfDP. Total discharge including by pass flows and controlled flows through the level spreader must not exceed the 20% AEP state of nature storm event.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<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>

External Referral Body	Comments
Aboriginal Heritage Office	The Aboriginal Heritage Office have advised they have no objection to the proposal, subject to condition.

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, in relation to the proposed new dwelling house.

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 could be applied in the event that the development is recommended for approval.

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 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
 - ii) platform for members of the public, including persons with a disability,
 - iii) 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
 - ii) adverse impact referred to in paragraph (a), or
 - iii) 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 proposed works are not considered to result in an impact that will be adverse to the requirements and matters so specified in Clause 2.11 of the SEPP (Resilience and Hazards) 2021.

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: The proposed works are unlikely to increase the risk of coastal hazards.

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: There are no coastal management programs that apply to the subject 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.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	7.2m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	No

Detailed Assessment

6.2 Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and
- (b) to allow earthworks of a minor nature without requiring separate development consent.

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

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

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability

in the locality.

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

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

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

Comment: No significant fill or excavation (beyond that required for the proposed swimming pool) is proposed. A condition of consent could apply to ensure that 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 to limit impacts during excavation/construction could apply in the event that consent is granted.

(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. Conditions of consent could apply requiring any fill to be of a suitable quality.

(f) the likelihood of disturbing relics

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

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

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

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 complies with Part 6.2 Earthworks.

6.4 Development on sloping land

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

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

Comment: The site is located in Area A of Council's Landslip Risk Map. This is an area that represents a very low risk of landslip. therefore, Council is satisfied that the development presents no serious risk in relation to both property and life.

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

Comment: The application has also been assessed by Council's Development Engineers in relation to

stormwater discharge. The Engineers have advised that they do not support the proposed development, as no method of complying with Section 5 of Council's Water Management for Development Policy (for low level properties) has been provided. Therefore, it is considered that there is inadequate information to form the view that the development will not cause significant detrimental impacts because of stormwater discharge from the development site and forms one of the reasons for recommended refusal of the application.

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

Comment: The site is located in Area A of Council's Landslip Risk Map. This is an area that represents a very low risk of landslip. Therefore, it is considered that the development presents no serious risk in relation to both property and life, or potential presence of subsurface flow conditions. As such, it is considered that the proposal will not result in adverse impacts or effects on the existing subsurface flow conditions.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation	Complies
B1 Wall height	7.2m	6.9m (west) 7.1m (east)	N/A N/A	Yes Yes
B3 Side Boundary Envelope	4m (east)	Breach of 12m x 1.4 - 1.9m	35	No
	4m (west)	Breach of 11m (length) x 0.6-1.6m (height)	33	No
B5 Side Boundary Setbacks	0.9m (east)	1.2 - 1.45m	N/A	Yes
	0.9m (west)	1.2 - 1.95m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	7.9m	N/A	Yes
B9 Rear Boundary Setbacks	6m	15.4m (dwelling) 10.5m (pool/spa) 2m (home office / studio)	N/A N/A 66	Yes Yes No
	50% of rear setback area (outbuildings)*	46.1m ² or 38%	N/A	N/A
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	371.9m ² or 41%	N/A	Yes

* control does not apply as the studio in size and layout is considered to be a secondary dwelling

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	No	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	No	No
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	No	No
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
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

A breach of the Side Boundary Envelope control is estimated on both the east and west elevations of the proposed dwelling, as described below:

East: 12m (length) x 1.9m (maximum height) or 35% outside of the maximum permitted, see estimate depicted below. in figure 1

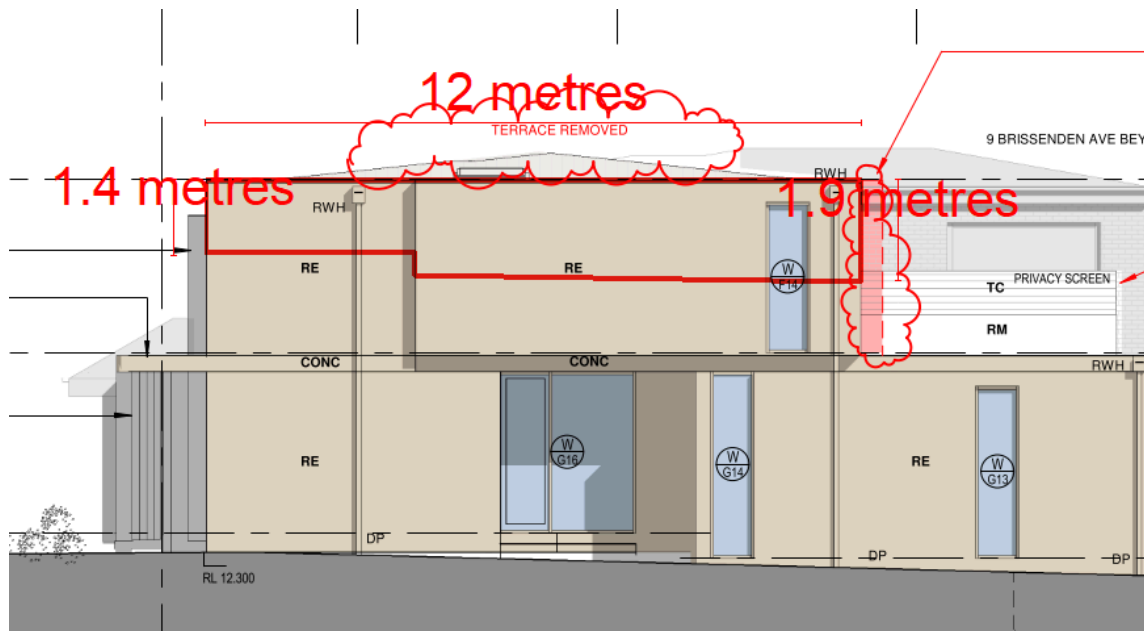


Figure 1.

West: 11m (length) x 1.6m (maximum height) or 33% outside of the maximum permitted, see estimate depicted below in Figure 2:

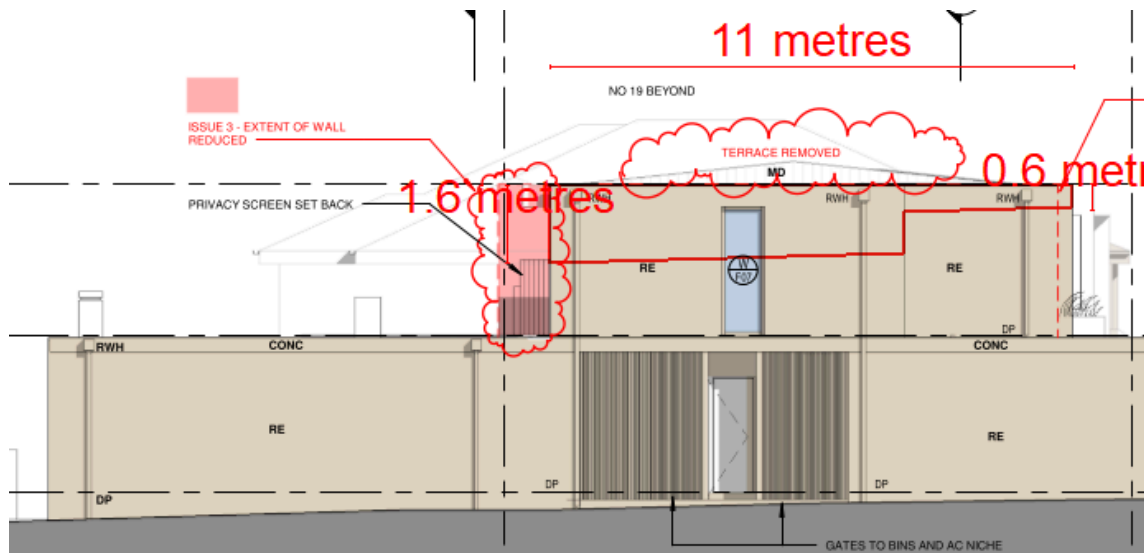


Figure 2.

Merit consideration

With regard to the consideration for a variation, the development is assessed 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 extent of the breaches proposed on both elevations are considered significant, specifically more than 1 metre outside of the envelope and run for the entire length of the upper level. In this regard, the proposed works are considered to be visually dominant when viewed from both the public domain and from adjoining private properties. Hence, the proposal fails this objective.

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

Comment: The amendments made to the proposal have remedied the breach of the envelope caused by the terrace privacy screen / wall on the east elevation. A consideration of the shadow diagrams provided with the application have demonstrated that the proposal will be able to meet the minimum solar access requirements of WDCP 2011. Hence, there is no specific amenity issue with regard to solar access.

However, the proposed windows on the upper level, "WF07" and "WF14" directly face windows on the adjoining properties at No.13 and No.9 Brissenden Avenue, respectively. These are within 2.6 to 3 distance, not consistent with the DCP standard of 9m separation.

Hence, an adverse privacy impact is likely to result from these windows that are within the portion of the proposed dwelling that is outside of the envelope and this objective is not achieved.

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

Comment: The site is relatively flat, with the exception of a steeper slope towards the rear of the site. The area of the site subject to the breach is relatively flat, as is the surrounding area along Brissenden Avenue and the greater area known as the "Basin". The east and west elevations of the proposed dwellings rises up to a significant height that is not considered to respond to the topography of this area. Hence, the proposal fails this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP 2011 and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

B9 Rear Boundary Setbacks

Description of non-compliance

The proposed "home office / studio" is located 2m from the rear (north) boundary which represents a 66% variation with the minimum rear setback of 6m.

Further assessment of this structure indicates that the internal configuration represents as a "secondary dwelling".

Exceptions to the 6m rear setback are permitted for (as directly stated in WDCP 2011): "exempt development", "swimming pools" and "outbuildings". This exemption can only apply if the proposed structure is considered to be an "outbuilding".

In its current form, this structure could not be reasonably considered to be an outbuilding. However, in the event that approval is granted, a condition of consent could apply to require the deletion of various rooms within the structure (ie. wetbar, bathroom and bedroom) to be consistent with the exemption. A test of any such modified structure is provided 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 opportunities for deep soil landscape areas are maintained.*

Comment: The revised design has ensured sufficient areas of landscaped open space on the subject site, to comply with the minimum numerical standard. Therefore, this objective is achieved.

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

Comment: The revised setback of 2m to the rear boundary, for the proposed single storey structure, is adequate to achieve this objective.

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

Comment: Despite objection from adjoining properties, the amended design to move the structure 2m off the rear boundary provides an adequate level of amenity for adjoining land. This will provide sufficient opportunities for landscaped open space and the northern elevation has no significant openings or windows that will result in adverse loss of visual privacy. As such, this objective is achieved.

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

Comment: Adjoining properties in Brissenden Avenue have outbuildings and structures in the rear setback. Hence, this objective is not compromised.

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

Comment: As discussed above, the proposed development (subject to condition) will not result in an adverse impact on the acoustic or visual amenity of adjoining properties. Hence, this objective is met.

Having regard to the above assessment, it is concluded that the proposed development (subject to condition of consent, if approval is granted) is consistent with the objectives of this control of WDCP 2011 and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979.

C4 Stormwater

Council's Development Engineers have reviewed the application and have advised they do not support the application.

Their comments are provided in full elsewhere in this report. In summary, the engineers have advised that as the site triggers the requirements of Section 5.5 "Stormwater Drainage from Low Level Properties" of Council's Water Management for Development Policy. As such, the applicant will need to demonstrate how the areas to the rear of the site (ie. areas of paved open space and the proposed "studio / home office") can be effectively managed.

The applicant has been advised of these requirements and the Council three (3) stage process for managing such sites.

As at the time of writing, Council has not been provided with any information to demonstrate that this policy can be achieved.

D2 Private Open Space

The original design incorporated a roof terrace, which was identified in the original assessment of the proposal to be inconsistent with Requirement 3 of Part D2, which states:

Private open space is to be directly accessible from a living area of a dwelling and be capable of serving as an extension of the dwelling for relaxation, dining, entertainment, recreation and children's play.

The proposal has been subsequently amended to delete this roof terrace and hence now complies with Part D2.

D7 Views

During the course of the notification, Council received a number of submissions from adjacent properties in regard to the potential loss of views. These properties were specifically:

- 13 Brissenden Avenue, Collaroy (to the west of the site); and
- 5/1052 Pittwater Road, Collaroy (to the south of the site).

To aid in the assessment of the potential impact, height poles were erected based on the most recently amended proposal. These poles were verified by survey on 9 February 2024.

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

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

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

Site visits were undertaken on both effected properties, on 9 February 2024.

In respect to the property at 13 Brissenden Avenue, Collaroy, the following views are present: north to Narrabeen beach / headland; limited views of other coastal features/landmarks to the north, including the lower Central Coast; general views of the Tasman Sea are also present to the north and north-east; and limited views of Long Reef Headland and golf course to the south-east.

In regard to the property at No.5/1052 Pittwater Road, a very specific view is present to the north, which incorporates the shoreline of Narrabeen Beach; forested ridgeline of Narrabeen Headland; and very minor parts of the Tasman Sea.

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

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

Comment to Principle 2:

In regard to the property at No.13 Brissenden Avenue, the views identified are obtained from the 1st floor living areas, kitchen and dining room. The views are enjoyed across both a rear and side boundary. The ocean / landmark views to the north are obtained from both a standing and seated position, with the south-east views only in a standing position.

The views identified from No.No.5/1052 Pittwater Road are obtained from a balcony, living room and kitchen, in both a standing and seated position. All views are gained across a front boundary. The view could be generally described as being between a "corridor" between the side boundaries of Nos.11 and 13 Brissenden Avenue.

3. Extent of impact

"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more

significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.

Comment to Principle 3:

In respect to the impact on No.13 Brissenden Avenue, only a small portion of the ocean views to the north-east will be lost as result of the proposed development. In this respect, the loss of views could be reasonably described as minor, possibly very minor, given the retention of the vast majority of existing views.

Turning to the impacts on No.5/1052 Pittwater Road, the proposed works will result in a near total loss of the limited views to the sea, foreshore and headland that this property has. A

photograph illustrating this loss is provided below:



Figure 3

- This loss could be described as being more severe than moderate.

4. Reasonableness of the proposal that is causing the impact

“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A

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

Comment to Principle 4:

The loss of views to No.13 Brissenden Avenue is considered to be, at worst, minor. However, as this loss of views is a direct result of non-compliance with a development control (side boundary envelope), then even this small loss is considered to be unreasonable.

In regard to the loss at No.5/1052 Pittwater Road, the identified severe loss of views is considered unreasonable on its own circumstances, with the non-compliance being further emphasis that the proposal is unacceptable.

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

Comment:

Not relevant to the proposed development.

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

Comment:

Not relevant to the proposed development.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WDCP 2011 and the established principles of the NSW Land and Environment Court (view sharing) and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

D8 Privacy

The original design incorporated a roof terrace and a 1st floor terrace in close proximity to the eastern side boundary.

The amended design has deleted the roof terrace and amended the design of the 1st floor terrace to:

- reduce the size of the terrace;
- setback the terrace area 2.8m from the boundary;
- provide a 0.6m wide planter box adjoining the terrace area; and
- a 1.5m high privacy wall/screen 2m from the eastern boundary.

Based on these amendments, an adequate level of visual and acoustic privacy is now provided to

adjoining properties.

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 \$15,371 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,537,059.

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, 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:

- Inconsistent 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
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

PLANNING CONCLUSION

The application has been referred to the DDP due to the number of submissions received (7).

Despite the two (2) amendments made to this application since lodgement, the design of the proposal has neither met the concerns of Council, nor those of the submissions received.

The excessive breaches of the side boundary envelope on the east and west elevations will result in an adverse visual impact when viewed from adjoining properties. Further, the non-compliances will be complicit in a minor and severe loss of views to adjoining properties and this impact is considered unreasonable.

Insufficient measures to adequately manage stormwater and avoid adverse impacts on adjoining properties, have been provided. This is critical given that the property is defined under Council 's policies as a Low level property and on-site detention with overflow to an easement on downstream properties is Council's preferred option.

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 DA2023/0638 for the Demolition works and construction of a dwelling house including swimming pool and studio on land at Lot 11 DP 978060, 11 Brissenden Avenue, COLLAROY, Lot 12 DP 978060, 11 Brissenden Avenue, COLLAROY, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.

Particulars:

The proposed development is not compliant with the relevant development standards and principles in relation to: view sharing; side boundary envelopes; and stormwater management.

2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part 6.4 Development on Sloping Land of the Warringah Local Environmental Plan 2011.

Particulars:

Insufficient detail has been provided that will ensure that no detrimental impacts of stormwater discharge to adjoining properties will be occur.

3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part B3 Side Boundary Envelope of the Warringah Development Control Plan 2011.

Particulars:

The breach of the side boundary envelope on the east and west elevations will: have an adverse visual impact when viewed from adjoining properties and the public domain; will result in adverse impact on the privacy of adjoining properties; and does not respond to the topography of the surrounding area.

4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part C4 Stormwater of the

Warringah Development Control Plan.

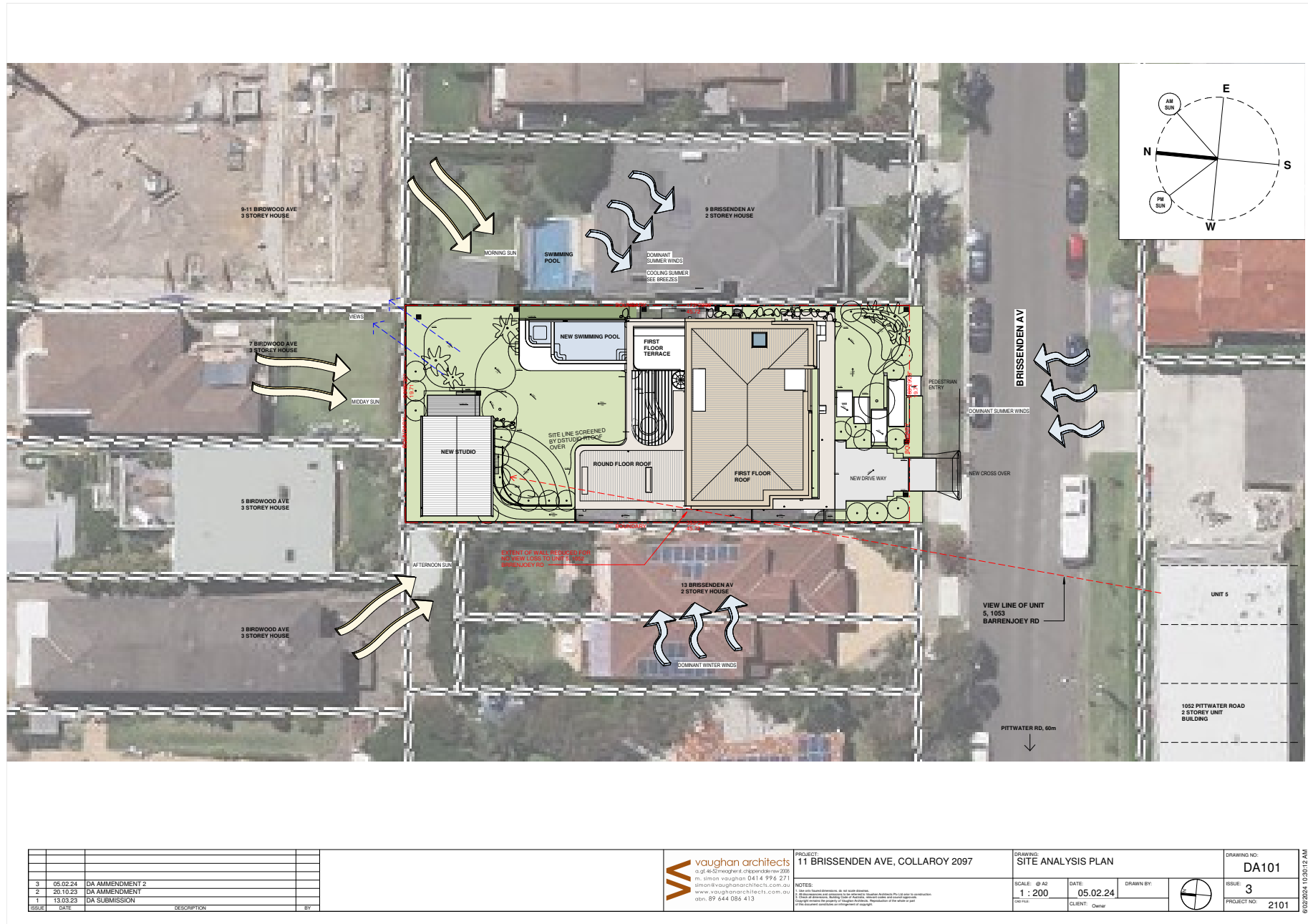
Particulars:

Insufficient information has been provided to demonstrate that stormwater from the proposed development on the site can be adequately managed, in accordance with Section 5.5 "Stormwater Drainage from Low Level Properties" of Council's Water Management for Development Policy.

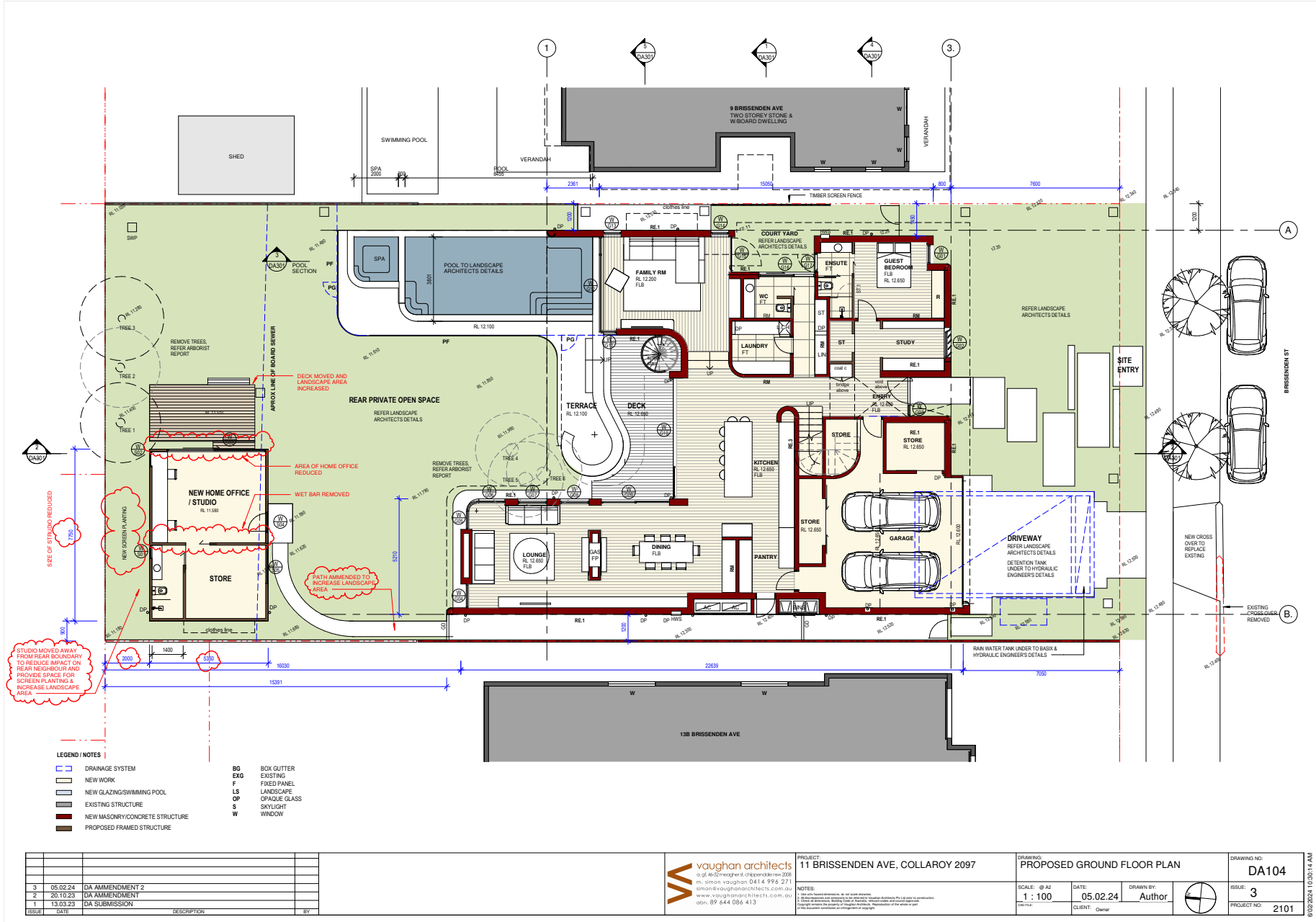
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Part D7 Views of the Warringah Development Control Plan 2011.

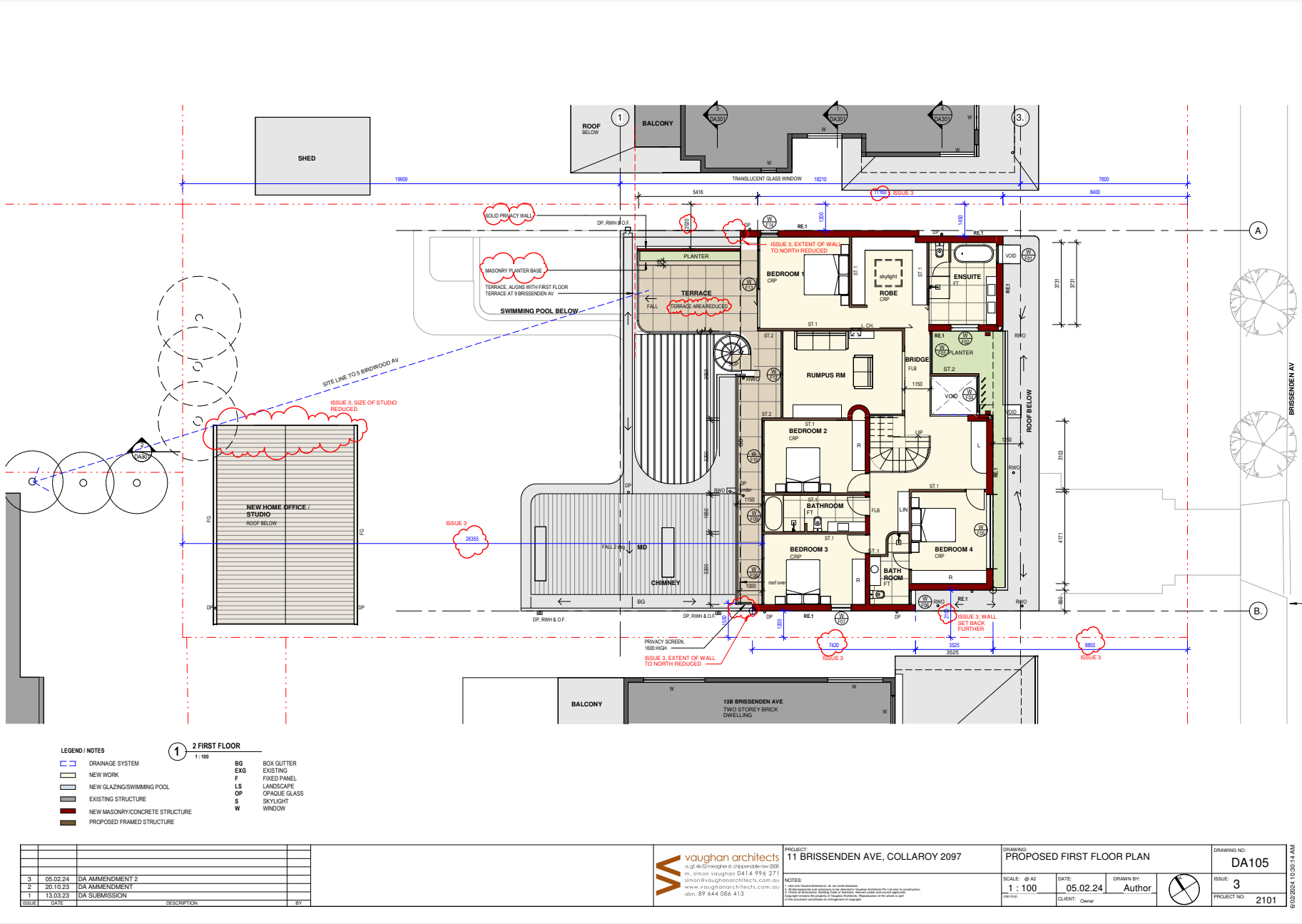
Particulars:

The application will result in a minor to severe loss of views enjoyed by adjoining properties and does not by the nature of its design represent an acceptable attempt to meet the principles of view sharing.









ITEM 3.3	DA2023/1242 - 28 A OCEAN ROAD MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE AND ASSOCIATED WORKS
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PURPOSE

1. To refer the attached application for determination as required under adopted delegations of the Charter.
2. 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 and floor space ratio.

RECOMMENDATION

- A. That Council as the consent authority, vary the Height of Building Development Standard of Clause 4.3 and 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.
- 1.
- B. THAT Council as the consent authority **approves** Development Consent to DA2023/1242 for Alterations and additions to a dwelling house and associated works on land at Lot Y DP 445287, 28 A Ocean Road MANLY, subject to the conditions set out in the Assessment Report.

REPORTING MANAGER
TRIM FILE REF

2024/157258

ATTACHMENTS

- [↓1 Assessment Report](#)
- [↓2 Site Plan and Elevation](#)
- [↓3 Clause 4.6](#)

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/1242
Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot Y DP 445287, 28 A Ocean Road MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house and associated works.
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Anita Kathryn Wildash
Applicant:	Sheralee Patricia Hogan
Application Lodged:	06/09/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	13/09/2023 to 27/09/2023
Advertised:	Not Advertised
Submissions Received:	10
Clause 4.6 Variation:	4.3 Height of buildings: 6.7% 4.4 Floor space ratio: 21.5%
Recommendation:	Approval
Estimated Cost of Works:	\$ 907,500.00

EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house and associated works.

The application is referred to the Development Determination Panel (DDP) due to a 21.5% non-compliance with the FSR standard - Clause 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2013, and due to the number of submissions received to the application exceeding 5.

During the notification periods of the application, Council received 8 submissions. Concerns raised in the objections predominantly relate to the non-compliant floor space ratio and building height, side setbacks, wall height, open space and landscaping, amenity issues created by the spa, impacts to views, overshadowing and parking. These have been addressed within the assessment report.

Assessment issues included floor space ratio and building height.

The variation to the FSR and building height has been justified by the application through a written Clause 4.6 variation request. In the case of FSR, it is argued that the variation arises from the additional floor area created through reconfiguration of the internal floor spaces on the ground and lower ground floors of the dwelling house. The additional floorspace does not unreasonably increase the bulk or scale of the building. In the case of the variation to building height, this is less than a 10% departure, however the non-compliance to the standard arises from alterations and additions to the existing non-compliant building.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposal development proposed alterations and additions to the existing dwelling as follows:-

"Carport:

- Removal of rear boundary fence for new driveway;
- New double carport with pitched roof; and
- Retain existing stairs and path to the lower ground floor along the southern boundary.

Lower ground floor:

- Extension of the rear wing into the southern side boundary;
- Demolition of rear walls for a new deck. The deck is to include a spa and BBQ with a floor to ceiling wall on the southern side boundary and a 2.1m high privacy screen on the northern boundary;
- New privacy landscape screening along the rear of the deck and northern side boundary;
- Internal reconfiguration works includes a new games room, two bedrooms, an ensuite and a laundry/bathroom on this level.
- Relocation of internal stairs to the ground level and the external stairs to the carport level;
- Changes to the windows along the northern boundary and removal of two doors; and
- Removal of existing fireplace in bed 2.

Ground floor:

- Extension of the rear wing and deck into the southern side boundary;
- Internal reconfiguration works includes open plan kitchen, living and dining room, a bedroom with walk-in-robe and ensuite, a powder room, and a study;
- Deck to include wall and privacy screen from floor to ceiling height on the southern boundary;
- Removal of fireplace in kitchen and bed 1;
- Relocation of internal stairs;
- New skylights;
- New front door and entry path;
- Changes to the windows along the northern boundary;
- Landscaping works to the front yard including 6 new Olive trees; and
- New front fence.

Roof level

- Existing main roof and chimney retained;
- 4 x new skylights to main;
- Remove existing rear hipped roof for new gable roof;
- Solar panels to rear roof"

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 - 3.1.1 Streetscape (Residential areas)
 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 - 3.4.3 Maintenance of Views
 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 - 4.1.7 First Floor and Roof Additions
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features
 Manly Development Control Plan - 4.1.10 Fencing
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

SITE DESCRIPTION

Property Description:	Lot Y DP 445287 , 28 A Ocean Road MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Ocean Road and the western side of Augusta Lane (double street frontage).</p> <p>The site is regular in shape with a frontage of 6.02m along Ocean Road and a frontage of 6.095m along Augusta Lane and a depth of 43.16m along the northern side boundary and 43.125m along the southern side boundary. The site has a surveyed area of 260.9m².</p> <p>The site is located within the R1 General Residential zone and accommodates a part one, part two storey semi-detached brick and clad dwelling. The dwelling shares a party wall with 26 Ocean Road with no significant vegetation exists on site.</p> <p>The site has a substantial slope falling approximately 6m from the Ocean Road frontage down to the Augusta Lane frontage.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by a mix of low and medium density residential developments.</p>

Map:



SITE HISTORY

PLM2022/0209 - Alterations and additions to a semi-detached dwelling including a garage and spa

A review of the plans submitted with this pre-lodgement meeting were considerable different to the current proposed development under this current development application as follows:-

Garage:

- New double garage with rooftop garden;
- New external stairs along northern boundary; and
- New lift.

Lower ground floor:

- New lawn/garden area over garage;
- New privacy landscape screening along side boundaries;
- Demolition of rear external walls and construction of a new covered deck with spa;
- New lift and internal stairway; and
- Removal of existing fireplace in guest room.

Ground floor:

- Extension of rear deck to southern boundary with dividing wall and privacy screening;
- New lift and internal stairway;
- Removal of fireplace in kitchen and bedroom;
- New skylights; and
- New front door and entry path.

Attic floor:

- New attic master bedroom with ensuite, WIR and deck; and
- New stair access.

Concluding Comments

"While some of the non-compliances could be supported, overall, the proposed development is not supportable in its current form, with the main areas of concern being the height of the proposed development, specifically the proposed attic roof dormer, the additional gross floor area, and the lack of adequate landscaped area."

APPLICATION HISTORY

Following the preliminary assessment of the application further information was requested from Council's Development Engineer in relation to parking and access, and stormwater and Council's Heritage Officer relating to the front façade of the dwelling.

On 7 November 2023, the applicant submitted additional information including amended Master Plans, amended Stormwater Plans and Schedule of Finishes.

January and February 2024 - further assessment undertaken including site inspections of the adjoining properties to south (26 Ocean Road) and to the north (30 Ocean Road). The proposed attic storage area within the roof space was considered to gross floor area (GFA) and would have to be included within the floor space ratio (FSR).

On 29 February 2024 the applicant submitted amended plans removing the attic storage area and access stairs. An internal change was made with the master bedroom, walk in robe and study been moved around within the western portion of the ground floor, however there no external modifications and no windows changes. The internal skylight proposed for the roof space was also altered to a skylight for the living room on the ground floor and the skylight for the ensuite has moved 0.5m to the west after the request was made by the owner of 30 Ocean Road.

It is noted that the applicant has not addressed all of the initial comments raised by Council's Heritage Officer with the two (2) sets of amendment plans and conditions have been included to ensure this outcome.

The amended plans constitute a reduced environmental impact and therefore, the application was not required to be re-notified, in accordance with the Northern Beaches Community Participation Plan (CPP).

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 (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&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>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to amended plans to address concerns raised by Council's Development Engineer, Heritage Officer including issues raised during the assessment of this application. In response Council has received amended plans from the applicant which were received on 7 November 2023 and 29 February 2024.</p> <p><u>Clause 61</u> of the EP&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&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&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&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) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</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 13/09/2023 to 27/09/2023 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 process council is in receipt of 10 submission/s from:

Name:	Address:
Mrs Anne Elizabeth Dineen	27 Ocean Road MANLY NSW 2095
Bill Tulloch	Po Box 440 MONA VALE NSW 1660
Ms Meagan Maguire	16 Cecil Street FAIRLIGHT NSW 2094
Mr Philip Alan Earl	24 Ocean Road MANLY NSW 2095
Boston Blyth Fleming Pty Ltd	1 / 9 Narabang Way BELROSE NSW 2085
Mr James William Gray	3 / 36 Ocean Road MANLY NSW 2095
Mr Dean Robert Doctor Mrs Janelle Maree Doctor	Po Box 595 DEE WHY NSW 2099
Wilkinson & Associates Architects Pty Ltd	PO Box 2106 STRAWBERRY HILLS NSW 2012
BBF Town Planners	1 / 9 Narabang Way BELROSE NSW 2085
Mr William Fleming	1 / 9 Narabang Way BELROSE NSW 2085

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
- View loss
- Overdevelopment
- Spa (non-compliances with MDCP)
- Building height, wall height and rear setback
- Overshadowing
- Noise (spa)
- Solar panels (glare/reflection)
- Request for a dilapidation reports
- Streetscape
- Party wall
- Parking and proposed carport
- Precedent
- Public Interest
- Fire safety
- Ventilation
- Maintenance
- Attic habitation
- Prelodgement

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 Development Engineer has completed a review of the proposal and subject to conditions, is satisfied that the proposed development can capture and discharge its stormwater in accordance with Council's Water Management Policy.

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

The submissions raised concerns that the proposal provides 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 seeks to vary the FSR under the relevant control of both the MLEP 2013 and MDCP and this has been shown on the amended architectural plans recently submitted with this development application.

It is considered that for the reasons discussed within the Clause 4.6 assessment within this report that the proposed development is satisfactory.

Given the above, it is considered that the variation to the FSR control under the MLEP is supportable.

- **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 for the roof over the ground floor deck is well under the existing height of the dwelling and the adjoining dwellings (26 and 30 Ocean Road). 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 a result in a dwelling excessive in terms of bulk and scale.

- **View loss**

The submission raised concerns over view loss created by the proposed extension to the ground floor deck and associated fire rated wall and aluminum privacy screen.

Comment: A full assessment has been undertaken under 3.4.3 - Maintenance of Views of MDCP. The view loss has been assessed a minor due to a number of considerations including that the view is achieved over the northern side boundary which are partial obscured by privacy screens and there should be a reasonable expectation of development to be undertaken on the adjoining property.

It is deemed that issue does not warrant refusal, however a condition has been recommended for the removal of the far eastern aluminum privacy screen as part of this assessment.

- **Overdevelopment**

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

Comment: It is 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 Height of Buildings) and MDCP (wall height, side setbacks, landscaping (including TOS) and rear setback have been also been addressed and supportable in this instance.

- **Spa (non-compliances with MDCP)**

The submissions raised concerns issues with non-compliances with the Part 4.1.9 Swimming Pools, Spas and Water Features.

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 is resolvable with conditions.

- **Building height, wall height and side and rear setbacks**

The submissions raised concerns over the building height, wall height and side and rear setback.

Comment: A detailed assessment has been completed under Part 4.3 Height of buildings of the MLEP 2013 and Part 4.6 Exceptions to development standards and deemed acceptable in this instance. 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 it is considered that the variation are supportable in this instance. Additionally, a detailed assessment under Part 4.1.4 Setbacks (front, side and rear) and Building Separation has considered the variations to the side and rear setbacks and it is considered that the variations are supportable in this instance.

The proposal has been assessed against the requirements and underlying objectives of the MLEP and MDCP and is not considered to a 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 Part 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 property are evident within the proposal's design, as the works sits well below the existing building height and provides acceptable and consistent setbacks.

This matter does not warrant the refusal of this application.

- **Noise (spa)**

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

Comment: Suitable condition(s) have been recommended to ensure reasonable amenity levels are maintained to adjoining and surrounding properties.

- **Solar panels (glare/reflection)**

The submissions raised concerns that the proposed solar panels on the roof will create glare and reflection to surrounding properties/dwellings

Comment: The initial plans proposed the nine (9) solar panels on the eastern portion on the new roof and after discussions between the owner of the subject site and the owners of 30 Ocean Road the panels have been relocated to the main central part of the roof via the amended plans. It is noted that 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 which are now centrally located of the main existing roof that the panels likelihood of glare/reflection is now considered minimal.

- **Request for a dilapidation reports**

Concerns were raised over the proposed excavation works for the proposed carport off Augusta Lane.

Comment: Conditions have been recommended for pre-dilapidation and post-dilapidation reports for adjoining properties/dwellings, namely 26 and 30 Ocean Road, Manly.

- **Streetscape**

Concerns were raised over the proposed changes to the front façade of the dwelling including the proposed new front fence.

Comment: A review has been undertaken this under this assessment under 3.1.1 Streetscape (Residential areas) and 4.1.10 Fencing including a review by Council Heritage Officer with the following comments: -

"The proposed first floor addition is considered to be sympathetic to the original building as it is mainly confined to the rear and not visible from the street. However, the proposed replacement of the original windows at the front façade including the leadlight windows is not supported by Heritage as the retention of all original fabric is required where possible, including the internal fabric such as the fire places, ceiling decorations, picture rails, skirting boards, floor boards etc. The front façade is recommended to be retained as existing including the fenestration, materials and colours. The existing face brick walls can not be painted, where they are visible from the street. The proposed skylight facing the street is also not supported on heritage grounds."

Given the above it is considered that issues have adequately addressed in the assessment report and suitable conditions have been included to ensure this outcome.

- **Party wall**

One submission raised concerns over the the party wall.

Comment: It is noted that are no works proposed to the party wall and that the proposed works can be supported independently.

- **Parking and proposed carport**

Issues were raised about the loss of off-street parking in Augusta Lane and that the proposed carport was not consistent with the streetscape and non compliant with the required width for two (2) car spaces.

Comment: An assessment by Council's Traffic Engineer and Development Engineer have been undertaken and it is noted that there will be the loss of two (2) parking spaces on Augusta Lane, however there will be two (2) spaces provided on the subject site maintaining no net reduction of parking within the locality. Suitable conditions have been included and an assessment has also been under 4.1.4 Setbacks (front, side and rear) and Building Separation and 4.1.6 Parking, Vehicular Access and Loading (including Bicycle Facilities).

Given the above it is considered that issues have adequately addressed in the assessment report and suitable conditions have been included to ensure this outcome.

- **Precedent**

That this proposed development will set a precedent.

Comment: It is considered that the proposed development will not establish a precedent in this area. A thorough review has been conducted, encompassing all submissions, concerns, and variations of the relevant built form controls of the MLEP 2013, MDCP, and relevant parts of the MDCP.

- **Public Interest**

Issue was raised that the proposed development was not in the public interest.

Comment: An assessment has been completed under the relevant matters for consideration under the Environmental Planning and Assessment Act 1979 via Section 4.15(1)(e) - the public interest and there are no matters have arisen in this assessment that would justify the refusal of the application in the public interest.

- **Fire safety**

Issue was raised that a full length fire rated wall would be required along the southern elevation of the deck.

Comment: Matters of first safety are matters for the construction certificate.

- **Ventilation**

Issue was raised with the fire rated wall and privacy screens blocking the predominate north-easterly winds.

Comment: As part of this assessment via 3.4.3 Maintenance of Views a condition has been included for the removal of the proposed aluminum privacy screen on the eastern portion of the southern elevation of the ground floor deck which will ensure acceptable levels of ventilation to 26 Ocean Road.

- **Maintenance**

Issue was raised over maintenance of both dwellings given the position of the proposal.

Comment: Maintenance of buildings will be the responsibility of the both owners of 26 and 28A Ocean Road, additionally owner(s) can use Access

to Neighbouring Land Act 2000, should a dispute arise.

- **Attic habitation**

Issues were raised about the possible habitation of the proposed attic space within the roof area.

Comment: As part of this assessment under 4.4 Floor Space Ratio of the MLEP 2013 the proposed attic storage area would have been required to be included with the GFA of the dwelling. Recent amended plans have now deleted this attic storage area and the access stairs.

- **Rear entryway**

Concerns were raised about the rear entryway leading to Augusta Lane.

Comment: The plans clearly show that these stairs will be retained as part of the proposed development (see figure 1) below.

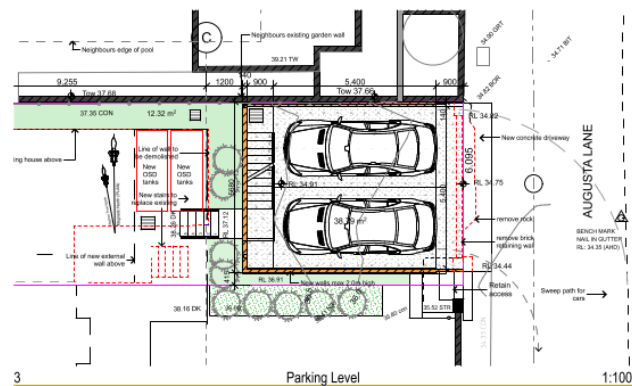


Figure 1: which clearly notates "Retain access"

- **Pre lodgement**

"Council pre lodgement advice has been largely ignored."

Comment: The proposed plans submitted PLM2022/0209 - Alterations and additions to a semi-detached dwelling including a garage and spa are quite different to the current proposal with habitable floor space proposed within the roof area, substantial variations to the FSR and Height of Building for this new level, a lift, a double garage and storage proposed at the PLM. It is considered that the current proposal is of a much less scale with far reduced variations to the FSR and Height of Building. An assessment of this proposal has been undertaken and has been supported subject to recommended conditions.

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, and the following Manly DCP 2013 controls (but not limited to):</p> <ul style="list-style-type: none"> • 3.3.1 Landscaping Design • 3.3.2 Preservation of Trees or Bushland Vegetation • 4.1.5 Open Space and Landscaping, including 4.1.5.2 (c) Minimum Tree Plantings <p>Landscape Referral raises concern that the proposed development does not achieve the 35% landscaped area under the MDCP requirement, and this matter shall be assessed and determined under merit consideration by the Assessing Planning Officer. Should the development application be approved the proposed 7 x <i>Olea europaea</i> shall be replaced with one locally native tree to help offset the deficient landscaped area and to satisfy MDCP 4.1.5.2. No significant landscaping can be achieved in the rear setback.</p> <p>All proposed planting shall be installed in accordance with the requirements outlined in the conditions of consent.</p>
NECC (Development Engineering)	<p>The proposed impervious area for the site exceeds 60% of the site area and as such on-site stormwater detention (OSD) is required for the proposal. A concept design in accordance with clause 9.3.3 of Council's Water Management for Development Policy must be provided for the proposal.</p> <p>The proposed carport design does not comply with the requirements of AS/NZS 2890.1:2004 in terms of the dimensions of the spaces and grade between the laneway and the parking slab. Also there is insufficient offset or aisle width between the parking spaces and the lane to allow vehicles to turn in and</p>

Internal Referral Body	Comments														
	<p>exit from the spaces in accordance with the standard due to the existing on street parking spaces opposite the site in the lane. The applicant has requested that the parking spaces be removed on the plans. This issue must be assessed by Council's Traffic Team as any amendment to on street parking needs the support of the traffic committee. In order to demonstrate compliance with the standard, the applicant must provide swept path analysis for the B85 vehicle in accordance with AS/NZS 2890.1:2004. If the carport is proposed for two vehicles then the width of the carport will need to be increased and the length increased to demonstrate vehicles can enter and exit with the existing on street parking spaces. The level of the garage may be too high. Sections from either side of the driveway crossing is required with vehicle profiles to demonstrate vehicles will not scrape. This may require lowering of the slab level to suit.</p> <p>The submitted Geotechnical report is acceptable.</p> <p>Development Engineering do not support the application due to insufficient information to address stormwater and vehicle parking and access in accordance with clauses 3.7, 4.1.6 and schedule 3 of the DCP.</p> <p>This application must be referred to Council's Traffic Team to assess the proposed removal of the existing on street parking in the lane shown on the submitted plans.</p> <p>Amended plans submitted 7/11/23 and Comments from Traffic Provided 7/12/23</p> <p>The amended plans have addressed the previous issues raised and the proposal has been supported by Council's Traffic Team.</p> <p>Development Engineering support the proposal, subject to conditions as recommended.</p>														
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS														
	Discussion of reason for referral														
	<p>The proposal has been referred to Heritage as the subject site is within the vicinity of two heritage items, listed in Schedule 5 of Manly LEP 2013:</p>														
	<p>Item I2 - All stone kerbs - Manly municipal area</p>														
	<p>Item I188 - House - 19 Ocean Road, Manly</p>														
	Details of heritage items affected														
	<p>Item I2 - All stone kerbs</p> <p><u>Statement of significance</u> Stone kerbs are heritage listed.</p> <p><u>Physical description</u> Sandstone kerbing to streets relating to paving and kerbing of streets in the nineteenth century. Mostly located within Manly Village area and adjacent lower slopes of Eastern Hill and Fairlight.</p>														
	<p>Item I188 - House</p> <p><u>Statement of Significance</u> A fine example of Federation Filigree style of residence.</p> <p><u>Physical Description</u> Elaborate two storey Federation Filigree style brick residence with two storey verandah featuring timber fretwork balustrading and (to first floor) timber shingling and valance. Original Art Nouveau style tiled risers with marble steps and sandstone surrounds. Sympathetic timber picket fence and lychgate. Central brick arch to ground floor verandah entry, projecting semicircular balcony to centre of first floor verandah with timber shingled gable end above. Roof hipped and gabled with single stuccoed and half timbered gable end to main roof. Concrete roof tiling. Two roughcast stuccoed and brick chimneys. Leadlight front door, fanlight, sidelights.</p>														
	Other relevant heritage listings														
	<table><tr><td>SEPP (Biodiversity and Conservation) 2021</td><td>No</td><td></td></tr><tr><td>Australian Heritage Register</td><td>No</td><td></td></tr><tr><td>NSW State Heritage Register</td><td>No</td><td></td></tr><tr><td>National Trust of Aust (NSW) Register</td><td>No</td><td></td></tr><tr><td>RAIA Register of 20th Century Buildings of Significance</td><td>No</td><td></td></tr></table>	SEPP (Biodiversity and Conservation) 2021	No		Australian Heritage Register	No		NSW State Heritage Register	No		National Trust of Aust (NSW) Register	No		RAIA Register of 20th Century Buildings of Significance	No
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RAIA Register of 20th Century Buildings of Significance	No														

Internal Referral Body	Comments		
	Other	No	
	Consideration of Application		
	<p>The proposal seeks consent for alterations and additions, including a first floor addition to a semi-detached dwelling house dates back to early 1900s and is considered to be an intact example of its period. The proposed first floor addition is considered to be sympathetic to the original building as it is mainly confined to the rear and not visible from the street. However, the proposed replacement of the original windows at the front facade including the leadlight windows is not supported by Heritage as the retention of all original fabric is required where possible, including the internal fabric such as the fire places, ceiling decorations, picture rails, skirting boards, floor boards etc. The front facade is recommended to be retained as existing including the fenestration, materials and colours. The existing face brick walls can not be painted, where they are visible from the street. The proposed skylight facing the street is also not supported on heritage grounds.</p> <p>Given the proposed works are mainly confined to the rear and do not dominate the adjacent semi or the existing Ocean Road streetscape the proposal is considered to not adversely impact the significance of the heritage items in the vicinity.</p> <p>Therefore, no objections are raised on heritage grounds subject to the imposition of three conditions.</p> <p><u>Consider against the provisions of CL5.10 of Manly LEP 2013.</u></p> <p>Is a Conservation Management Plan (CMP) Required? No</p> <p>Has a CMP been provided? No</p> <p>Is a Heritage Impact Statement required? Yes</p> <p>Has a Heritage Impact Statement been provided? Yes</p>		
Traffic Engineer	<p><u>Proposal description:</u> Alterations and additions to a dwelling house and associated works.</p> <p>The proposal is for the extension of the rear of the dwelling to the east, new double carport fronting Augusta Lane, new lower ground level deck, extension to ground floor deck, changes to openings along the northern boundary, internal reconfiguration works and landscaping.</p> <p>The traffic team has reviewed the following documents:</p> <ul style="list-style-type: none">Plans (Master Set), Drawing No B – designed by Site Specific Designs, dated 26/10/2023,Plans (Driveway Engineering), Revision 1, project No: ACE23117, designed by Site Specific Designs, dated 17/10/2023, andThe <i>Statement of Environment Effects</i>, Ref: M220434, prepared by Planning Ingenuity Pty Ltd dated 30 August 2023. <p><u>Parking requirement and design:</u></p> <ul style="list-style-type: none">The Manly DCP applies to the subject site. Under the DCP, two (2) parking spaces per dwelling are required for a semi-detached dwelling house. As two (2) parking spaces (in the form of double carport) have been provided, the proposal comprising a residential semi-detached dwelling provides adequately for the parking needs generated by the development.Given that the residential parking supply meets DCP requirements, the parking needs of residents will be adequately addressed, and residents of the development will therefore not be eligible for resident parking permits. This will be conditioned.Under the DCP, a secure storage area capable of accommodating at least two adult-sized bicycles are required for each dwelling house. It is reported in the SEE that the site can accommodate storage for two bicycles, in compliance with the DCP. This is not presented in the architectural plans. This will be conditioned.The double carport layout (minimum space width of 2.7 metres and length of 5.4 metres for each parking space) is compliant with Australian Standards AS2890.1:2004 Off-Street Parking requirements.It is noted that swept path plots demonstrating satisfactory access (reverse entry and forward exit) for the B85 vehicles turning to and from the parking spaces to Augusta Lane are included in the Plans (Driveway Engineering).The proposed driveway will result in losing two (2) parking spaces on Augusta Lane, to facilitate access to on-site parking for the dwelling. Currently, two (2) 'No Parking' signs (L & R) are in place in front of the proposed driveway on the other side of the Augusta Lane. An application shall be submitted to Council's Traffic Committee for the removal of these signs. Any of the works approved by Council's Traffic Committee shall be carried out by the Applicant at no cost to Council and the works shall be completed in full prior to the issue of an Occupation Certificate.The driveway and ramp gradients appear satisfactory, and it is noted that vertical clearance plots for a B85 vehicles are included in the Plans (Driveway Engineering), however the assessment on the driveway ramp should be undertaken for a B99 car entering and accessing the carport to demonstrate that there is adequate overhead clearance and that scraping and bottoming does not occur. This is conditioned.		

Internal Referral Body	Comments
	<ul style="list-style-type: none"> Pedestrian sightline triangle of 2.0 metres by 2.5 metres, in accordance with AS2890.1:2004 to be provided at the vehicular access to ensure adequate pedestrian visibility for exiting vehicles. <p>Traffic Impact</p> <ul style="list-style-type: none"> The proposal will generate minimal vehicular traffic during the peak, and it will not have any unacceptable implications in terms of road network capacity performance. <p>Conclusion</p> <p>Subject to conditions, the application can be supported on traffic grounds.</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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A477327_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
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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	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.07m (new works)	6.7%	No
Floor Space Ratio	FSR: 0.6:1 (156.4m ²)	FSR: 0.73:1 (190m ²)	21.5%	No*

* Existing GFA is 186.6m² (0.72:1 - variation of 19.3%)

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Clause 4.3 Height of Building of the Manly Local Environmental Plan 2103

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.07m
Percentage variation to requirement:	6.7%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the 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 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

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

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

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

(a) the consent authority is satisfied that:

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

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

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development

standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

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

Comment:

The Applicant's written request 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:

"1. As detailed in Figure 1, the extent of the height variation relates to the rear roof form which sits below the height of the existing roof ridge and as such the maximum height of the dwelling will be unchanged from the existing situation.

2. The rear roof form has changed to compensate the first floor extension and provide a roof pitch and design that better relates with the existing main roof.

3. It is considered that there is an absence of any unreasonable or material impacts on the amenity or the environmental values of the locality, the amenity of future building occupants and the character of the area. Specifically:

- a. The extent of the non-compliance creates no significant additional overshadowing to adjoining properties and complies with the solar access requirements for adjacent private open space and north facing windows under MDCP 2013. Furthermore, when considering the extent of overshadowing against the backdrop of the applicable planning controls, the extent of overshadowing caused by the non-compliant element would be insignificant.*
- b. The height breach does not result in any additional privacy impacts. The rear roof form has no habitable areas or windows and therefore, there is no overlooking impacts and will not generate any acoustic impacts; and*
- c. The height breach does not result in any additional view loss. As mentioned, the rear roof are located below the existing height of the building. No significant views are accessed across the site due to the flat nature of Ocean Road fronting the site. Accordingly, there are no impacts to views as a consequence of the variation.*

4. The proposed development will have the appearance of a one storey dwelling when viewed from the street. This is characteristic of other buildings along Ocean Road whilst appearing smaller than several two storey dwellings along the street. As such, to the casual observer viewing the property from the streetscape, the building will continue to appear at a compatible scale with the existing development and surrounding properties on Ocean Road.

5. The proposed development meets the objectives of the height of buildings development standard and meets the objectives of the R1 – General Residential zone (as further detailed in Section 8a and 8b below).

6. The proposed development achieves the Objects in Section 1.3 of the Environmental Planning and Assessment Act 1979. Specifically, that 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 (1.3g)."

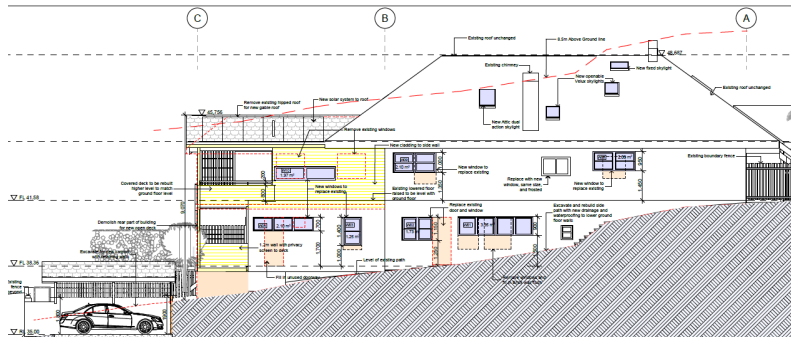


Figure 2: Section taken of the alterations and additions showing the building height non compliance

It is considered that the breach of the height of buildings control is a result of the existing excavation on site and is limited to the alterations and additions within the existing building envelope and footprint. Council agrees with the applicants argument and supports the stepping of the dwelling with the topography of the site. In addition, the proposed new roof will sit well below the existing ridge of the main roof over the dwelling and the roofs at 26 and 30 Ocean Road respectively. It is considered the proposed rear roof is consistent with the existing and desired future streetscape character and is consistent with the objectives of the control.

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 Height of Buildings 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 4.3 – 'Height of buildings' of the MLEP 2013 are:

(1) The objectives of this clause are 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 breach occurs as a result of the alterations and additions to the existing dwelling. The breach occurs to the top of the new pitched roof over the ground floor deck. The proposed roof height is substantially lower than the existing roof on the subject site and the roofs at 26 and 30 Ocean Road respectively (see Figure 2 below). Therefore, the proposed rear roof is consistent with the existing and desired future streetscape character which reflects its appropriateness within the locality.

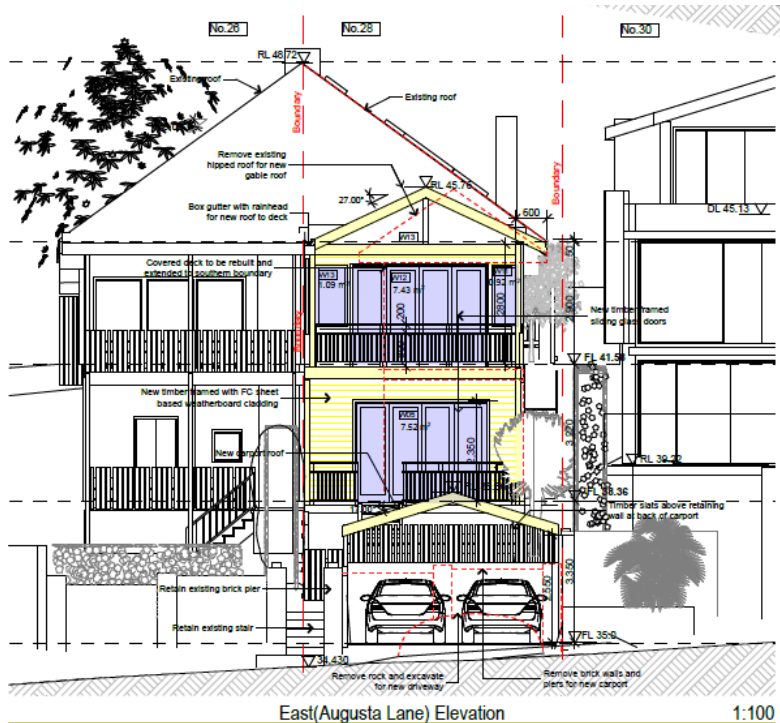


Figure 3: Eastern elevation taken of the alterations and additions showing the building height non compliance

b) to control the bulk and scale of buildings,

Comment:

The breach of height relates to the alterations and additions to the existing dwelling that is non compliant with the building height and relates to a new roof over the ground floor deck. It is not considered observers would find the proposed development by virtue of its bulk and scale offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

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:

It is not expected that any views are impacted as a result of the area of non-compliance.

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 is not expected to have any unreasonable impact on access to adequate sunlight for the subject site and adjoining sites.

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 works do not significantly change the visual relationship of the dwelling and the existing character of the area. The additions of a new roof over the ground floor deck creates a two (2) storey element which does not give rise to any unreasonable impacts on the character of the area and consistent with the number of storeys for low density residential developments.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

- To provide for the housing needs of the community.

Comment:

The development relates to alterations and additions to a single dwelling which maintains the existing use, that being a semi attached dwelling house, which will provide for the housing needs of the community.

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

Comment:

The development will maintain a dwelling house within the locality which maintains a mix of housing types and densities.

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

Comment:

The proposal does not include proposed land uses other than residential. As above, the proposal is relates to a alterations and additions to a single dwelling, which will provide for the housing needs of the community.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of Clause 4.3 Height of buildings and the objectives of the R1 General 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 development is considered appropriate that flexibility in the application of the height of buildings 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, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

However, as will be detailed in the next section, this application also includes a greater than 10% breach of the floor space ratio development standard. Nonetheless, 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. As will be demonstrated in the following section, 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).

Clause 4.4 Floor Space Ratio of the Manly Local Environmental Plan 2103

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1 (156.4m ²)
Proposed:	0.73:1 (190m ²)
Percentage variation to requirement:	21.5%

The existing dwelling has a gross floor area of 186.6m² and an FSR of 0.72:1.

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 proposed additional floor area is due to a small extension on the lower ground and ground level to relocate the stairwell in a more appropriate location that allows better use of the internal living areas and create larger decks. The minor increase in floor area will significantly improve the amenity for occupants without significantly impacting the character of the site when viewed from Ocean Road. The proposed alterations and additions sit behind and below the existing facade and will not create any unreasonable bulk or scale. The existing character of the dwelling viewed from Ocean Road will be largely unaffected in this proposal.
- The resultant built form is similar to the existing built form, floor area and scale as neighbouring properties along Ocean Road and therefor, will result in no significant change to the character of the area. Being located behind the existing facade, it is not dominantly visible from the public domain but for distant views and has no significant impact on the streetscape to Ocean Road and Augusta Lane.
- The additional floor space 3.4m² is minor in nature and is able to be provided in a way which does not increase the perceived bulk and scale of the dwelling, being located entirely within the existing setbacks, footprint and envelope of the dwelling. In addition, the proposed additions do not increase the intensity of use on the site as no new bedrooms are proposed.
- It is considered that there is an absence of any unreasonable or material impacts on the amenity or the environmental values of the locality, the amenity of future building occupants and the character of the area due to the additional floor area. Specifically:
 - a. The extent of the non-compliance of additional floor area creates no significant additional overshadowing to adjoining properties and complies with the solar access requirements for adjacent private open space and north facing windows under MDCP 2013. Furthermore, when considering the extent of overshadowing against the backdrop of the applicable planning controls, the extent of overshadowing caused by the non-compliant element would be insignificant.
 - b. The additional floor area does not result in any additional privacy impacts. There is no overlooking impacts and will not generate any acoustic impacts; and

- c. The additional floor area not result in any additional view loss. As mentioned, bulk and scale from the additional floor area is located within the existing setbacks and height. No significant views are accessed across the site due to the flat nature of Ocean Road fronting the site. Accordingly, there are no impacts to views as a consequence of the variation.*
- *The proposed development meets the objectives of the development standard and meets the objectives of the R1 General Residential zone.*
 - *The proposed development achieves the objects in Section 1.3 of the EP&A Act, specifically:*
 - a. The proposal promotes the orderly and economic use and development of land by providing an improved residential development (1.3c); and*
 - b. The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3g)."*

The applicant argues that the additional floor space does not unreasonably increase the bulk and scale of the dwelling given the location of the new floor space within the existing building envelope and the modest size of the internal additions to the lower and ground floors. The additional floor area with the relocation of the stairwell and reconfiguration of the internal floor space is such the bulk and scale of the dwelling does not significantly increase when viewed from adjoining sites. The dwelling will appear as two storeys upon entry to the site and when viewed from surrounding sites it has been stepped with the topography of the site. This additional area does not result in an unreasonable bulk and scale to the dwelling and has been constructed to complement the sloping topography of the site.

Council are in agreement with the applicant that there are sufficient environmental planning grounds, particularly as it is not likely to be any significant privacy, solar access, view or amenity impacts as a result of the works.

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 façade is maintained (via condition(s) 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 will be slightly reduced due to inclusion of the double carport off Augusta Lane, however it is considered that the proposed landscaping will ensure consistency with this objective.

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.

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 development and 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

Built Form Controls - Site Area: 204.9m ²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Dwelling Size: 112m ² (3 bedrooms + study, 3 bathrooms)	190m ²	-	Yes
4.1.2.1 Wall Height	N & S: 7.5m (based on gradient 1:6)	7.8m (northern elevation) 7.6m (southern elevation)	4% 1.3%	No No
4.1.2.2 Number of Storeys	2	2	-	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.6m	-	Yes
	Pitch: maximum 35 degrees	27 degrees	-	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	5.7m (Ground Floor - existing)	-	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 2.5m (based on wall height 7.5m)	1m (Lower & Ground Floors)	60% (1m)	No
	S: 2.5m (based on wall height 7.5m)	Nil (Lower and Ground Floors)	100% (2.5m)	No
	No new windows within 3m of a side boundary	7 new windows including 2 existing windows (including 2 new skylights) proposed within 3m of a side boundary, closest 1m of the northern side boundary	13.3% (0.4m) - 66.7% (2m)	No

4.1.4.4 Rear Setbacks	8m	8.5m (dwelling/decks) 0.6m (carport)	- 92.5%	Yes No
4.1.5.1 Minimum Residential Total Open Space Requirements	Open space 55% (143m ²) of site area	42% (108m ²)	24.5% (35m ²)	No
Residential Open Space Area: OS3	No more than 25% (35.75m ²) total open space above ground	20% (29m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% (50m ²) of open space	29% (42m ²)	16% (8m ²)	No
4.1.5.3 Private Open Space	18sqm per dwelling	>18sqm	-	Yes
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 Landscaping	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	No	Yes
3.4.2 Privacy and Security	No	Yes
3.4.3 Maintenance of Views	No	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
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)	No	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)	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
4.1.10 Fencing	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)	No	Yes
Schedules	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The development is of an acceptable form with regards to the visual presentation fronting Ocean Road, subject to the recommended conditions by Council's Heritage Advisor who requires the retention of the original windows at the front façade including the leadlight windows, fenestration, materials and colours that form part of the fabric of the heritage building. Additionally, the existing face brick walls cannot be painted, where they are visible from the street and the proposed skylight facing the street is also not supported on heritage grounds.

Upon analysis of the visual pattern of development fronting Augusta Lane, the proposed 0.6m setback of the carport is consistent with the prevailing pattern of parking structures within the streetscape, garages and sheds along Augusta Lane, which also have either reduced or nil setbacks.

The fencing along Ocean Road is consistent with the height of fencing for the adjoining properties and is considered to complement the architectural style and period of the dwelling.

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 (26 Ocean Road) 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, with only minor overshadowing to the northern portion of the rear yard created by the proposed carport.
- **12pm 21st June:** Additional shadow to part of rear yard. The proposed development will not result in an elimination of more than one third of sunlight to the adjoining private open space
- **3pm 21st June:** Shadowing will increase over the roof and rear yard which will be almost completely in shadow (self shadowing also created by 26 Ocean Road).

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. 26 Ocean Road 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 dining room eastern facing doors will be unaffected by the development at 9am, however there will be a loss of solar access to the eastern 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 28A Ocean Road.

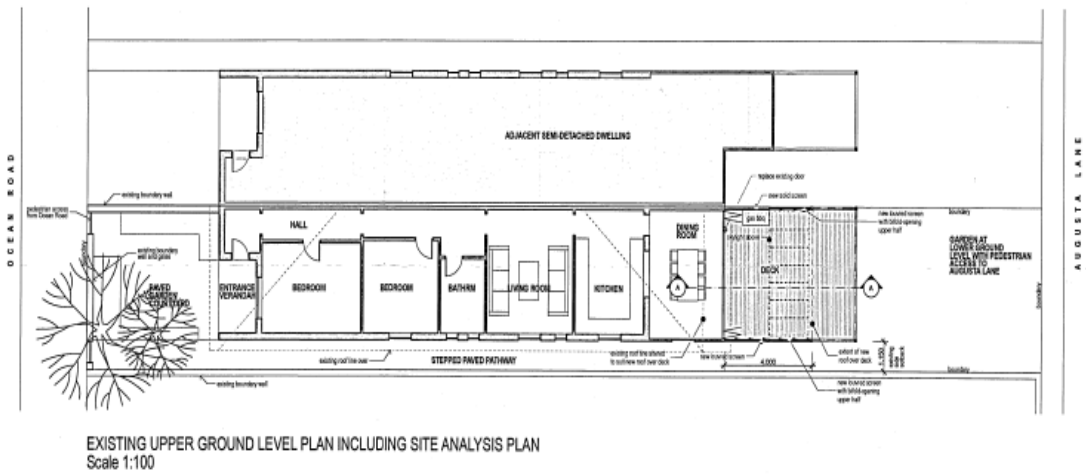


Figure 4: Plan of existing ground floor plan DA0151/2010 - 26 Ocean Road

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 Ocean Road 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.

The proposed development features an elevated lower level deck situated at RL38.36. This balcony has a trafficable area of only 11.4m², is directly accessible from games room on the lower level. The area is designed to allow the enjoyment of views towards the east, the balcony is intended for entertainment and passive recreation purposes.

The placement of the deck on the lower level will contribute to maintain reasonable amenity for the private open space on the southern adjacent property at 26 Ocean Road (refer to Figure 6). Furthermore, the presence of an existing retaining wall/high fence on the northern side boundary (see Figure 7 below) ensures the preservation of reasonable privacy levels for the northern adjacent property at 30 Ocean Road.

Figure 6: Proposed Lower floor

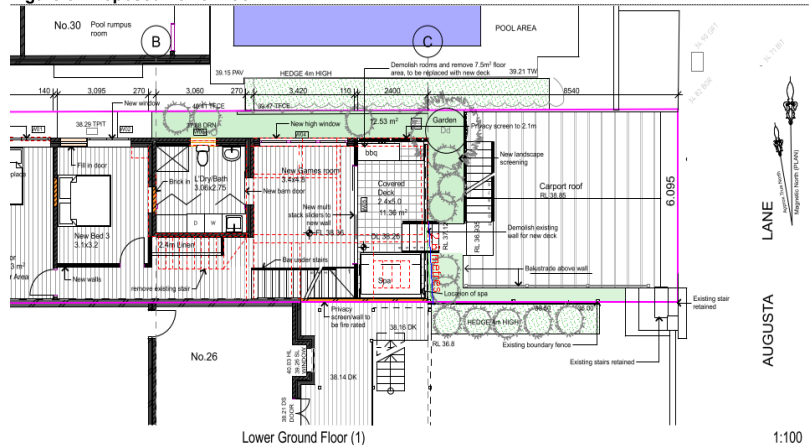


Figure 7: Proposed Eastern Elevation



Ground Level Deck

The proposed development features a small infill area to the existing ground floor deck on the southern end, which has a limited area of only 6.53m². This additional area will create a deck space with an overall trafficable area of 17.76m², which is directly accessible from the kitchen on the ground level. The space is designed to allow the enjoyment of ocean views towards the east, the balcony is intended for entertainment and passive recreation purposes.

The deck on the ground level maintains reasonable amenity for the private open space on the southern and northern adjacent properties at 26 Ocean Road and 30 Ocean Road (refer to Figure 9 below). A proposed privacy wall and with an aluminum privacy screen is proposed to be fitted to southern elevation to maintain acceptable privacy levels for the southern adjacent property at 26 Ocean Road. It is noted on the northern elevation of the ground floor at 26 Ocean Road that a privacy screen is already erected, with the eastern most screen fixed and the screen closer to the kitchen area moveable. Given this, it is considered that given the presence of the existing screens on 26 Ocean Road that the screens at 28A Ocean Road could be deleted to allow for some views across the northern side boundary (refer to Figures 8 & 9 below). Given the existing deck is not to be altered on the northern end it is considered unreasonable to install a privacy screen to this elevation.

Figure 8: Proposed ground floor deck extension

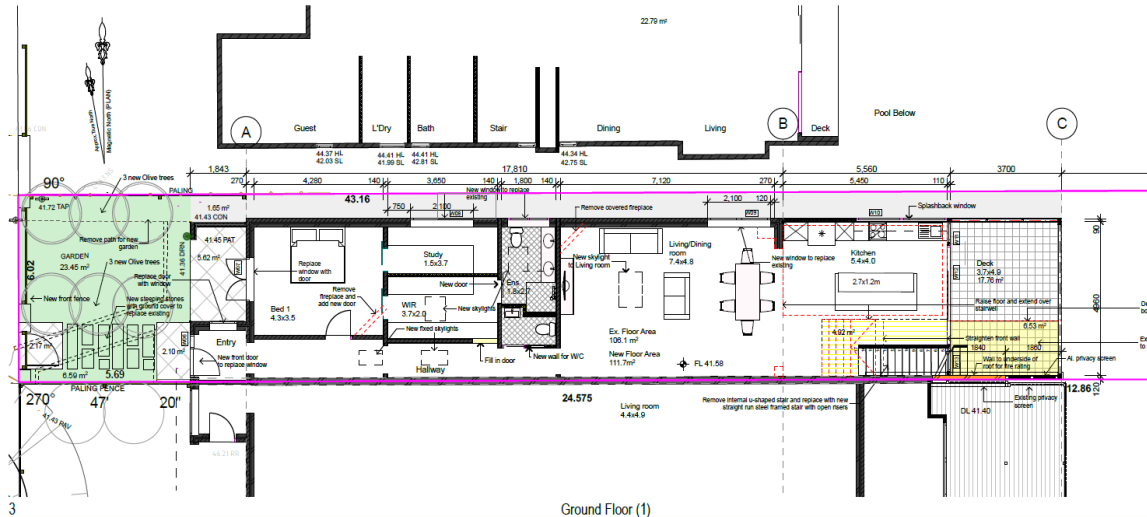


Figure 9: Photo from submission from BBF Town Planners on behalf of the owners of 26 Ocean Road, Manly



3.4.2.3 Acoustical Privacy (Noise Nuisance).

- a) Consideration must be given to the protection of acoustical privacy in the design and management of development.
- b) Proposed development and activities likely to generate noise including certain outdoor living areas like communal areas in Boarding Houses, outdoor open space, driveways, plant equipment including pool pumps and the like should be located in a manner which considers the acoustical privacy of neighbours including neighbouring bedrooms and living areas.
- c) Council may require a report to be prepared by a Noise Consultant that would assess likely noise and vibration impacts and may include noise and vibration mitigation strategies and measures.

Comment:

Adequate separation has been afforded from the opposing areas of private open space to ensure that a reasonable level of acoustical privacy is maintained. In addition, a condition has been recommended limiting all sound producing plant, equipment, machinery or fittings to no more than 5dB (A) above the background level when measured from any property boundary and/or habitable rooms.

Conclusion

Having regard to the above assessment, it is concluded that the proposal will satisfy the requirements of this control.

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.

Council has considered four (4) submissions from and on behalf of the owners of 26 Ocean Road, Manly in relation to views:-

1. Dean and Janelle Doctor owners of 26 Ocean Road, Manly
2. BBF Planners, 1 / 9 Narabang Way, Belrose
3. Wilkinson & Associates Architects Pty Ltd, PO Box 2106 Strawberry Hills
4. Urbaine Design Group, Level 2, 74 The Corso, Manly

Comment:

The view impacted are part water and horizon views with district views within the foreground from the adjoining and attached dwelling (26 Ocean Road) located to the south of the subject site (28A Ocean Road).

It is noted that there are no water views in which the interface between the land and water is visible from the dining room and kitchen within the view been assessed.



Figure 10: View from upper terrace (ground level) photo submitted by BBF Planners on behalf of the owners of 26 Ocean Road, Manly



Figure 11: View from dining room (ground level) photo completed by Urbaine Design Group on behalf of the owners of 26 Ocean Road, Manly



Figure 12: View from dining room (ground level) photo completed by Urbaine Design Group (view showing view loss in cyan overlay with red outline).

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 kitchen, dining room and deck on the ground floor of the attached dwelling house at 26 Ocean Road. It noted that the view in question is over the northern side boundary and as stated via the planning principle:-

"For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries."

"The expectation to retain side views and sitting views is often unrealistic."

It is noted that the view over the rear eastern boundary of 26 Ocean Road is unaffected by the proposal.

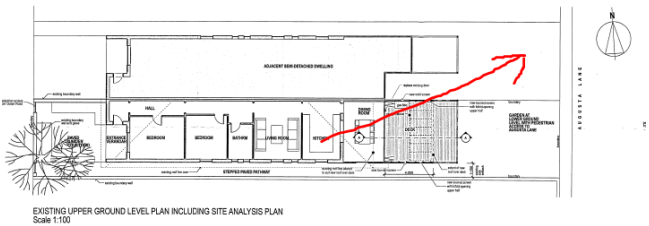


Figure 13: Plan from DA151/10 - Alterations and additions to an existing dwelling including a roof over existing deck and privacy screens approved 13 July 2010 by Manly Council (Red pen indicates view corridor raised in objection to the proposed development by 26 Ocean Road)



Figure 14: Viewpoint locations for visual impact assessment completed by Urbanine Design Group - Point 1 kitchen/dining room and Point 2 - Deck
It is noted the consultant has used the incorrect floor layout on the diagram above which demonstrates the lower ground floor and should demonstrate the ground floor.

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:

As the view is obtained over the northern side boundary and the view is partially obscured by the existing privacy screens at 26 Ocean Road coupled with the above statement in 'the second step': -

"For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries."

"The expectation to retain side views and sitting views is often unrealistic."

The view impacted is from the deck, dining, and kitchen areas of 26 Ocean Road.

The view is obtained over the northern side boundary.

The view is partial obscured by a fixed privacy screen on the eastern portion and an operable/sliding privacy screen on the western portion of the deck.

The view obtained from the dining room and kitchen are part water/horizon/district views.

Views of the direct interface of the land and water from the dining room and kitchen are not visible.

Given the above it is considered that the impact is minor.

The view loss assessment completed in Visual Impact Assessment dated March 2024 completed by Urbaine Design Group has considered the view loss as severe.

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:

As stated above the views in question is achieved over the northern side boundary of 26 Ocean Road and the retention of side views is often unrealistic. The view is already partial obscured by a fixed privacy screen at eastern portion of the deck and a sliding/operable screen at the western portion end of the deck at 26 Ocean Road. Direct views of the interface of the land and water from the dining room and kitchen are not visible.

It is noted that there are variations proposed by the development within the relevant controls of the MLEP and MDCP have all been considered, addressed and supported in the relevant parts of this assessment. The deck and privacy screens at 26 Ocean Road are located with a minimal setback to the side boundary and breach the wall height controls, the same as the proposed development.

Additionally, it is noted that the Visual Impact Assessment dated March 2024 completed by Urbaine Design Group has considered the view loss as severe. Based on points raised above in this assessment it is considered that the view assessment is minor when applying the four point test of planning principle correctly.

Given the above, it is deemed that the development is acceptable and demonstrates a generally consistency with the existing deck and screening at 26 Ocean Road. However, a condition will be included to remove the proposed aluminum privacy screen on the southern elevation of the proposed deck at the eastern end at 28A Ocean Road. This will preserve some views over the northern side boundary and, given the fixed nature of the privacy screen on the eastern portion at 26 Ocean Road, will help ensure that a satisfactory level of amenity is maintained between 26 and 28A Ocean Road.

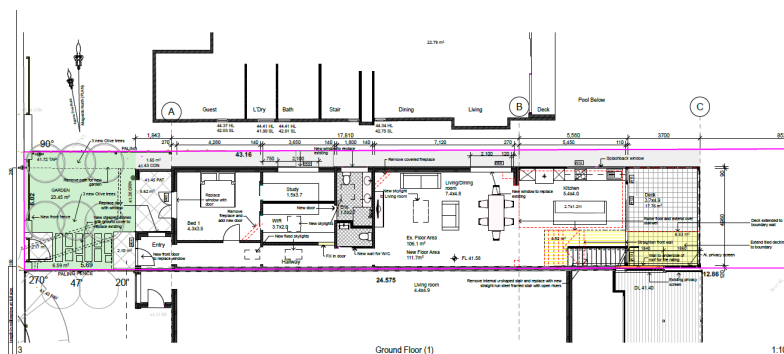


Figure 15: proposed deck extension with fire rated wall and aluminum privacy screen (conditioned to be deleted)

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 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 7.8m, representing a maximum variation of 4% to the control.

The proposal present a non-compliant wall height on the southern elevation of 7.6m, representing a maximum variation of 1.3% 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 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.

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)

The proposal presents a Floor Space Ratio of 0.73:1 (190m²) which represents a variation of 21.5% to the 0.6:1 (156.4m²) FSR requirement.

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 in the circumstances of the case and that there are sufficient environmental planning grounds to justify the variation.

Furthermore, it is noted that the site is not an 'undersized allotment', as defined by the Manly DCP 2013.

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 existing ground floor level (5.7m) 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 shared boundary with 26 Ocean Road, 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 existing/proposed lower floor and ground floor is 1m 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/decks is located 8.5m from the rear boundary and the proposed carport is located 0.6m 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 seven (7) new windows with two (2) existing windows remaining including two (2) new skylights 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 streetscapes is not considered to be adversely impacted and the proposed carport on Augusta Lane is considered to be consistent with other parking structures and other outbuildings/structures. 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 and the proposed inclusion of a double carport off Augusta Lane. The proposed development is well under the existing building height and that of the adjoining dwellings to the south (26 Ocean Road) and to the north (30 Ocean Road), 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% (143m²) of the site to be open space. In addition, at least 35% (50m²) of the proposed total open space is to be landscaped area. Furthermore, no more than 25% (35.75m²) of total open space can be provided above ground level.

The subject site exhibits 42% (108m²) total open space, representing a variation of 24.5% (35m²) to the control. Landscaped area makes up 29% (42m²) of total open space, representing a variation 16% (8m²) to the control. Total open space above ground level is compliant with 20% (29m²) which is 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 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 and the provision for off-street parking (double carport off Augusta Lane) which has reduced area for landscaping however will provide significantly benefits for the occupants on the site.

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)

Description of non-compliance

Under Clause 4.1.5.1 Parking Designs and the Location of Garages, Carports or Handstand Areas of Manly Development Control Plan 2013, the following applies:

c) the maximum width of any garage, carport or handstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.

The proposal includes a new carport with a width of 5.68m presenting a variation of 93.2% as the site is only 6.095m wide.

Additionally, it is noted that the internal dimensions of the proposed carport is 5.4m in width may not comply with Australian Standard AS/NZS 2890.1:2004 Parking Facilities, however it is considered that these spaces are of adequate dimensions to allow for parking of two (2) vehicles on the subject site.

As such, the proposal has been assessed against the objectives of the control. In this instance, the proposed variation is supportable as the objectives have been met.

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 proposal will result in two (2) parking spaces that is more than compliant with the required parking spaces for dwelling house.

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 proposal will reduce the demand for on-street parking by providing two (2) car space on site and therefore reduce the demand for on-street 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 proposal carport is considered to be efficient, safe, convenient, and appropriately integrated into the design of the development that will not detract from the visual aesthetic of the streetscape.

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 carport will not result in any significant excavation, interruption to ground water flows.

Objective 5) To ensure the width and number of footpath crossings is minimised.

Comment:

The proposal vehicular crossover will located directly on Augusta Lane, and as such there will be no changes to the width and number of footpath crossings.

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 carport will be located on Augusta Lane and given the small width of the block and the width required the double carport it is considered that there is limited opportunities for landscape treatments. It is noted that are many other parking structures in Augusta Lane and it is considered that the proposal demonstrates consistency with the existing streetscape and is deemed to satisfy this objective on its merits.

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 site is located nearby to readily available public transport to reduce the demand for onsite parking requirements. It is noted that there are bus stops located in Raglan Street less than 200m from the subject site. In addition the site is located 850m from Manly Wharf which provides ferry services to Circular Quay.

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.

4.1.7 First Floor and Roof Additions

The proposed attic space within the roof space has now been removed from the plans with the proposed access stairs leading up from the ground floor to the roof space has also been removed. A condition will be included that the roof space not to be used only for storage.

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

Under Clause 4.1.9.1 Height above ground of the MDCP 2013, swimming pools and spas must be built on or in the ground and not elevated more than 1m above natural ground level. Consideration of any exception to exceed the height above ground must demonstrate that any swimming pools/spas 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/or spa and their curtilage and/or concourse at any point above existing ground level.

The proposed spa provides a varying height of 1.1m - 1.3m above natural ground level presenting a minor departure from the 1m required height.

Under Clause 4.1.9.2 Location and Setbacks of the MDCP 2013, spas are required to have a minimum setback to the side and rear boundaries of 1m to the curtilage and 1.5m to the waterline.

The proposed spa is setback a minimum 0.2m from the curtilage and 0.3m from the waterline to the side boundary, which results in variation of 0.8m (80%) to curtilage control and 1.2m (80%) to the waterline 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 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:

Whilst the setbacks and height of the proposed spa are numerically non-compliant, it is considered the proposed location is acceptable given it is located on the lower ground floor level which not directly impact the main living areas of 26 Ocean Road which are located on the ground floor level (i.e. living room, kitchen, dining and main deck). A condition is also recommended ensuring the pool filter noise does not exceed 5dB(A) above background level at the nearest property boundary. It is considered the siting of the spa will not cause any unreasonable amenity impacts upon adjacent dwellings.

Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;

Comment:

The spa is to be located on the proposed lower ground floor deck on the southern end of the dwelling and will not be directly visible from either street frontage and does not impact on the streetscape character.

Objective 3) To integrate landscaping; and

Comment:

The proposed spa is integrated within the proposed lower ground deck and it is considered that there is sufficient landscaping to be provided adjoining the eastern edge of the spa to ensure it is integrated well within the site.

Objective 4) To become an emergency water resource in bush fire prone areas.

Comment:

The site is not located within a bush fire prone area.

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 s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

4.1.10 Fencing

Merit Consideration

The proposal consists of a new front fence constructed of sandstone piers with timber batten with a pedestrian gate and letter box to be installed with a varying height of 1.8m - 2.1m.

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

Objective 1) To minimise any negative visual impacts of walls, fences and carparking on the street frontage.

Comment

The subject site includes a 1.8m - 2.1m high front boundary fence which is compatible with the streetscape. The inclusion of sandstone piers and timber battens fencing will provide consistency with neighbouring properties and will not result in a negative visual impact.

Objective 2) To ensure development is generally viewed from the street complements the identified streetscape.

Comment

As above, the proposed fencing with the inclusion of the front gate will complement the existing streetscape.

Objective 3) To encourage soft landscape alternatives when front fences and walls may not be appropriate.

Comment

The proposed front fence will replace an existing front fence on site, a soft landscaping alternative would be unreasonable in this instance.

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.

4.4.5 Earthworks (Excavation and Filling)

Merit Consideration

Clause 4.4.5.2 Excavation stipulates the following:

a) *Excavation is generally limited to 1m below natural ground level with the exception of basement parking areas (which will be contained within the footprint of the building) and swimming pools;*

b) *a dilapidation survey report and geotechnical assessment may be required for excavation works exceeding 1m. Dilapidation survey reports are to include photographic survey of the physical condition of adjoining properties, both internally and externally, including walls ceilings, roof, structural members and other such items. Such records are to provide proper record in relation to the proposed development to particularly assist in any dispute over damage to adjoining proposed arising from the works. It is in the interests of applicants and adjoining landowners for it to be as full and as detailed as necessary commensurate with the nature of the proposed development.*

Comment

The proposal includes excavation to accommodate a carport fronting Augusta Lane, the excavation is in excess of 1m in parts but will not exceed 2m and is

limited to this area. Dilapidation reports will be required via a recommended condition(s) as the works will be located within close proximity of the southern and northern adjoining neighbours. A condition will also be recommended to ensure management of sediment and erosion during construction phase.

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 \$9,075 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$907,500.

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 4.3 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.

Additionally, 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 Height of Buildings and Floor Space Ratio within the MLEP 2013, and due to the number of submissions received to the application exceeding 5.

Concerns raised in the objections predominantly relate to the non-compliant floor space ratio and building height, side setbacks, wall height, open space and landscaping, amenity issues created by the spa, impacts to views, overshadowing and parking. These have been addressed within the assessment report.

Assessment issues included floor space ratio and building height.

The variation to the FSR and building height has been justified by the application through a written Clause 4.6 variation request. In the case of FSR, it is argued that the variation arises from the additional floor area created through reconfiguration of the internal floor spaces on the ground and lower ground floors of the dwelling house. The additional floorspace does not unreasonably increase the bulk or scale of the building. In the case of the variation to building height, this is less than a 10% departure, however the non-compliance to the standard arises from alterations and additions to the existing non-compliant building.

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 permits a contravention of Clause 4.3 Height of Building and 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 DA2023/1242 for Alterations and additions to a dwelling house and associated works. on land at Lot Y DP 445287, 28 A Ocean Road, MANLY, 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
DA00	C	Site and Roof Plan	Site Specific Designs	29 February 2024
DA01	C	Site and Roof Plan	Site Specific Designs	29 February 2024
DA02	C	Lower Ground and Garage	Site Specific Designs	29 February 2024
DA03	C	Ground Floor Plan	Site Specific Designs	29 February 2024
DA04	C	Long Section 1 (Section AA)	Site Specific Designs	29 February 2024
DA05	C	West Elevation, North Elevation, West (Ocean Road) Fence Elevation	Site Specific Designs	29 February 2024
DA06	C	Elevations (South, East (Augusta Lane) Elevation	Site Specific Designs	29 February 2024
DA08	C	Site Management and Erosion Plan	Site Specific Designs	29 February 2024
Sht-101	D	Master Landscape Plan	Jamie King Landscape Architect	20 June 2023
Sht-102	D	Detail Plan	Jamie King Landscape Architect	20 June 2023
Sht-103	D	Sections	Jamie King Landscape Architect	20 June 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Geotechnical Comments (28A Ocean Road, Manly) J4466B	1	White Geotechnical Group	20 June 2023
BASIX Certificate (A477327_02)	2	Site Specific Designs	4 July 2023
Waste Management Plan	1	Sheralee Hogan	31 July 2023
Statement of Heritage Impact	1	Sheralee Hogan	July 2023
Exterior Paint Finishes	1	Richard Williamson Design and Colour	7 November 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	Received
Ausgrid	Ausgrid Referral Response	18 September 2023

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website 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 \$9,075.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$907,500.00.

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).

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

7. **Construction, Excavation and Associated Works Security Bond(s)**

The applicant is to lodge a bond with Council for the following:

Drainage Works

As security against any damage to Council's stormwater drainage infrastructure as part of this consent a bond of \$2,000.

Details confirming payment of the bond(s) are to be submitted to the Principal Certifier prior to the issue of the Construction Certificate.

Reason: 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 Amuna Civil Engineers, drawing number ACE23117 S1 Rev 1, S2 Rev1, S3 Rev1, S4 Rev 1, S5 Rev 1 and S6 Rev 1, dated 18/10/23. 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:

1. The outlet pipe from the site is to be connected to the Council pipe in Augusta Lane. The connection is to be approved by Council via a Stormwater Drainage Application.

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

9. **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 and documentation.

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.

10. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing 5.4 metres wide in accordance with Northern Beaches Council Standard Drawing Normal Profile 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.

11. **Vertical clearance assessment and driveway long sections**

A vertical clearance assessment on the driveway ramp should be undertaken, using traffic engineering software such as Autotrack/Autoturn, for a B99 car entering and accessing the carpark to show overhead clearance and demonstrate that scraping/bottoming does not occur.

Details demonstrating compliance with this condition must be submitted to the Principal Certifier prior to the issue of the construction Certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

12. **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:

- The proposed phases of construction works on the site, and the expected duration of each construction phase.
- 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.
- Make provision for all construction materials to be stored on site, at all times.
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period.
- 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.
- 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:
 - Evidence of the legal right and terms to use the access route or provide owners consent from the owners/strata/community association.
 - Demonstrate that direct access from a public space/road is not viable for each stage of works.
 - 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.
 - 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.
 - No construction vehicles, materials or plant are to be located or parked in the private road/driveway, community title road or right of way.
 - 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.
 - 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.
 - 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.
 - 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:
 - Compare the post-construction report with the pre-construction report,
 - 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,
 - Should any damage have occurred, identify remediation actions taken.
 - Be submitted to Council with the Occupation Certificate.
- 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.
- Make provision for parking onsite. All Staff and Contractors are to use any basement parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.
- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian safety.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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.
- Proposed protection for Council and adjoining properties.
- 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.

13. Vehicle Access & Parking

All vehicle parking space/ carport dimensions must be designed and constructed to comply with the relevant section of AS 2890 (Off-street Parking standards).

With respect to this, the following revision(s) must be undertaken;

- A secure storage area capable of accommodating at least two adult-sized bicycles should be provided and shown on the Architectural Plans.

Plans prepared by a suitably qualified Engineer shall be submitted to the Principal Certifier prior to the issue of a Construction Certificate.

Reason: To ensure compliance with Australian Standards relating to manoeuvring, access and parking of vehicles.

14. Pedestrian sight distance at property boundary

A pedestrian sight triangle of 2.0 metres by 2.5m metres, in accordance with AS2890.1:2004 is to be provided at the vehicular access to the property and where internal circulation roadways intersect with footpaths or other pedestrian access areas.

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

Reason: To maintain pedestrian safety.

15. Amendments to the approved plans

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

- The aluminum privacy proposed to be affixed to the southern elevation (eastern portion) of the ground floor deck is to be deleted.

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. 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.

17. 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.

18. Stormwater Drainage Application

The applicant is to provide a stormwater drainage application under Section 68 of the Local Government Act 1993 to Council for approval. The submission is to include Civil Engineering plans for the design of the stormwater connection from the site into the existing Council pipeline in Augusta Lane which are to be generally in accordance with the civil design approved with the Development Application and Council's specification for engineering works - AUS-SPEC #1. The form can be found on Council's website at www.northernbeaches.nsw.gov.au > Council Forms > Stormwater Drainage Application Form.

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fees and Charges.

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

Reason: To ensure appropriate provision for disposal and maintenance stormwater management and compliance with the BASIX requirements, arising from the development.

19. Front facade

The existing front facade, facing Ocean Road must be retained as existing, with the implementation of necessary improvements to the existing facebrick front wall such as cleaning and repointing. The existing fenestration to the front facade, including the existing lead light windows, existing entry door and the existing bedroom window facing Ocean Road must be retained as existing. The proposed skylight to the front roof plane must be deleted.

Details, demonstrating compliance with this condition are to be submitted to the Council's Heritage Advisor prior to the issue of the Construction Certificate.

Reason: To preserve the significant features of the original building and to ensure the proposed works are sympathetic to the heritage context.

20. External finishes - colour scheme and front fence

The materials and colour scheme for the proposed front fence in the architectural drawings is different than the submitted external finishes report. This must be clarified and the details of the final colour scheme is to be submitted to the Council's Heritage Advisor prior to the issue of the Construction Certificate.

Reason: To ensure the finishes and colours are compatible with the heritage context.

21. 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.

22. 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.

23. 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 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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

24. Work Zones and Permits

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site.

A separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane and a Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

Reason: To ensure Work zones are monitored and installed correctly.

25. Demolition Traffic Management Plan

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the Northern Beaches Council Traffic Team prior to commencing any demolition work.

Due to heavy traffic congestion throughout the area, truck movements will be restricted during the major commuter peak times being 8.00-9.30am and 4.30-6.00pm.

The DTMP must:-

- o Make provision for all construction materials to be stored on site, at all times.
- o The DTMP is to be adhered to at all times during the project.
- o Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- o Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- o Specify that, due to the proximity of the site adjacent to ##### School, no heavy vehicle movements or construction activities effecting vehicle and pedestrian traffic are permitted in school zone hours (8:00am-9:30am and 2:30pm-4:00pm weekdays).
- o Include a Traffic Control Plan prepared by an TfNSW accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- o Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- o Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- o Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP 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. These communications must be documented and submitted to Council prior to work commencing on site.
- o Specify spoil management process and facilities to be used on site.

- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP 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 Demolition Traffic Management Plan is submitted.

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

26. Pre-Construction Dilapidation Report

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifier prior to any works commencing on the site (including demolition or excavation). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property / Properties: 26 & 30 Ocean Road, Manly

The dilapidation report is to be prepared by a suitably qualified person. A copy of the report must be provided to Council, the Principal Certifier and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access. The Principal Certifier must be satisfied that the requirements of this condition have been met prior to commencement of any works. If access is denied, then no dilapidation report is required.

Note: This documentation is for record keeping purposes and may be used by an applicant or affected property owner to assist in any action required to resolve any civil dispute over damage rising from the works.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the commencement of any works on site.

Reason: To maintain proper records in relation to the proposed development.

27. Photographic Archival Recording

A full photographic archival recording of the site is to be made of the buildings (including interiors and exteriors), surrounding structures and buildings as well as their setting (including any major landscape elements). This record is to be prepared generally in accordance with the guidelines issued by NSW Heritage and must be submitted to **Council’s Heritage Officer** for approval, prior to the issue of a Construction Certificate.

The photographic record should be made using digital technology and should include:

- Location of property, date of survey and author of survey;
- A site plan at a scale of 1:200 showing all structures and major landscape elements;
- Floor plans of any buildings at a scale of 1:100;
- Photographs which fully document the site (including items of moveable heritage), cross referenced in accordance with recognised archival recording practice to catalogue sheets.

Details demonstrating compliance with this condition are to be provided to the Principal Certifying Authority.

Reason: To provide an archival photographic record of this heritage item and any moveable heritage onsite, prior to the commencement of any works.

DURING BUILDING WORK

28. Tree and Vegetation Protection

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

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

b) tree protection shall be undertaken as follows:

- 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,
- 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,
- 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,
- 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,
- 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,
- 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,
- 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,
- 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.

29. 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.

30. Implementation of Demolition Traffic Management Plan

All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.

31. Implementation of Construction Traffic Management Plan

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate TfNSW accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: To ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.

32. Ongoing Management

The applicant shall be responsible in ensuring that the road reserve remains in a serviceable state during the course of the demolition and building works.

Reason: To ensure public safety.

33. 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.

34. 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.

35. Survey Certificate

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

Details demonstrating compliance are to be submitted to the Principal Certifier when the external structure of the building is complete.

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

36. 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

37. Landscape Completion

- a) landscape works are to be implemented in accordance with the approved Landscape Plan(s) (drawing Sht-101 by Jamie King dated 20/06/23), and inclusive of the following conditions:
- i) landscape works are to be contained within the legal property boundaries,
 - ii) substitute the 7 x *Olea europaea* with one (1) locally native tree to achieve at least 6 metres height at maturity, and selected from Northern Beaches Council's Native Plant Species Guide, or Council's Tree Guide,
 - iii) all tree planting shall be a minimum pre-ordered planting size of 75 litres; meet the requirements of Natspec - Specifying Trees; planted into a prepared planting hole 1m x 1m x 600mm depth generally, backfilled with a sandy loam mix or approved similar, mulched to 75mm depth minimum and maintained, and watered until established; and shall be located at least 3.0 metres from buildings and other trees or more, at least 1 metre from common boundaries; and located either within garden bed or within a prepared bed within lawn,
 - iv) mass planting shall be installed at minimum 1 metre intervals (or less) for shrubs of a minimum 200mm container size at planting or as otherwise scheduled if greater in size, and at 4 plants per metre square for groundcovers of a minimum 140mm container size at planting or as otherwise scheduled if greater in size, and shall be in a garden bed prepared with a suitable free draining soil mix and minimum 75mm depth of mulch.
- 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.

38. Post-Construction Dilapidation Report

Post-Construction Dilapidation Reports, including photos of any damage evident at the time of inspection, must be submitted after the completion of works. The report must:

- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council.

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

Reason: To maintain proper records in relation to the proposed development.

39. 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.

40. 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.

41. Submission of Engineering Plans

An application shall be submitted to Council's Traffic Committee for the following works.

- Removal of two (2) 'No Parking' signs (L & R) in front of the proposed driveway on the other side of Augusta Lane

Any of the works approved by Council's Traffic Committee shall be carried out by the Applicant at no cost to Council and the works shall be completed in full prior to the issue of an Occupation Certificate.

Reason: To ensure compliance with Council's specification for engineering works.

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

42. 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, or other 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.

43. Landscaping adjoining vehicular access

The applicant must ensure that the planting chosen for any land immediately adjacent to the driveway and adjacent to any driveway intersections must not exceed a height of 1,140mm

Reason: To maintain unobstructed sight distance for motorists.

44. Swimming Pool/Spa Motor Noise

The swimming pool / spa motor shall not produce noise levels that exceed 5dB(A) 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.

45. Resident Parking Permits

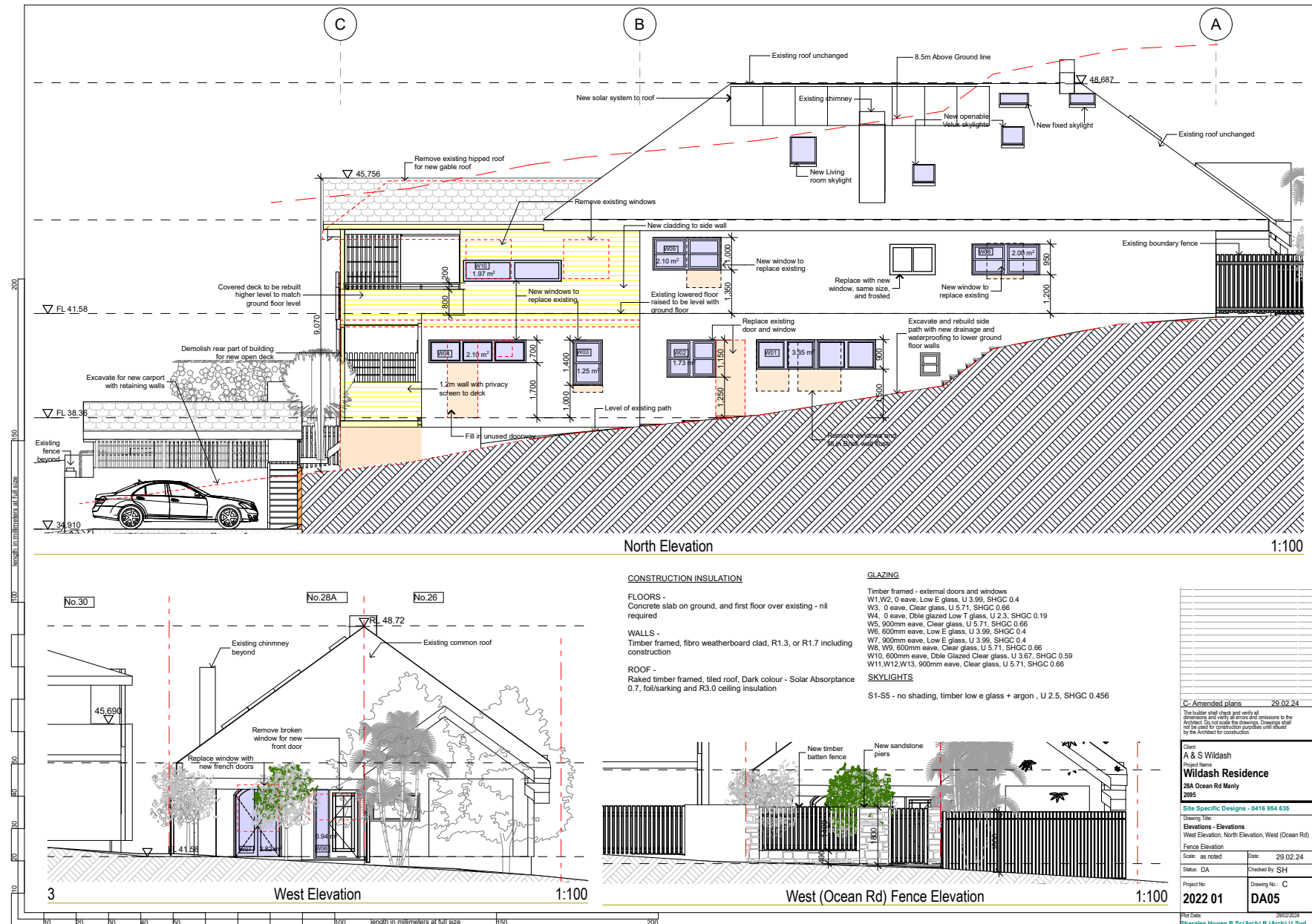
Any residents and/or tenants of the subject site are not eligible for resident parking permits even if they reside in a Permit Parking Scheme area. This condition is to be provided on the property Title.

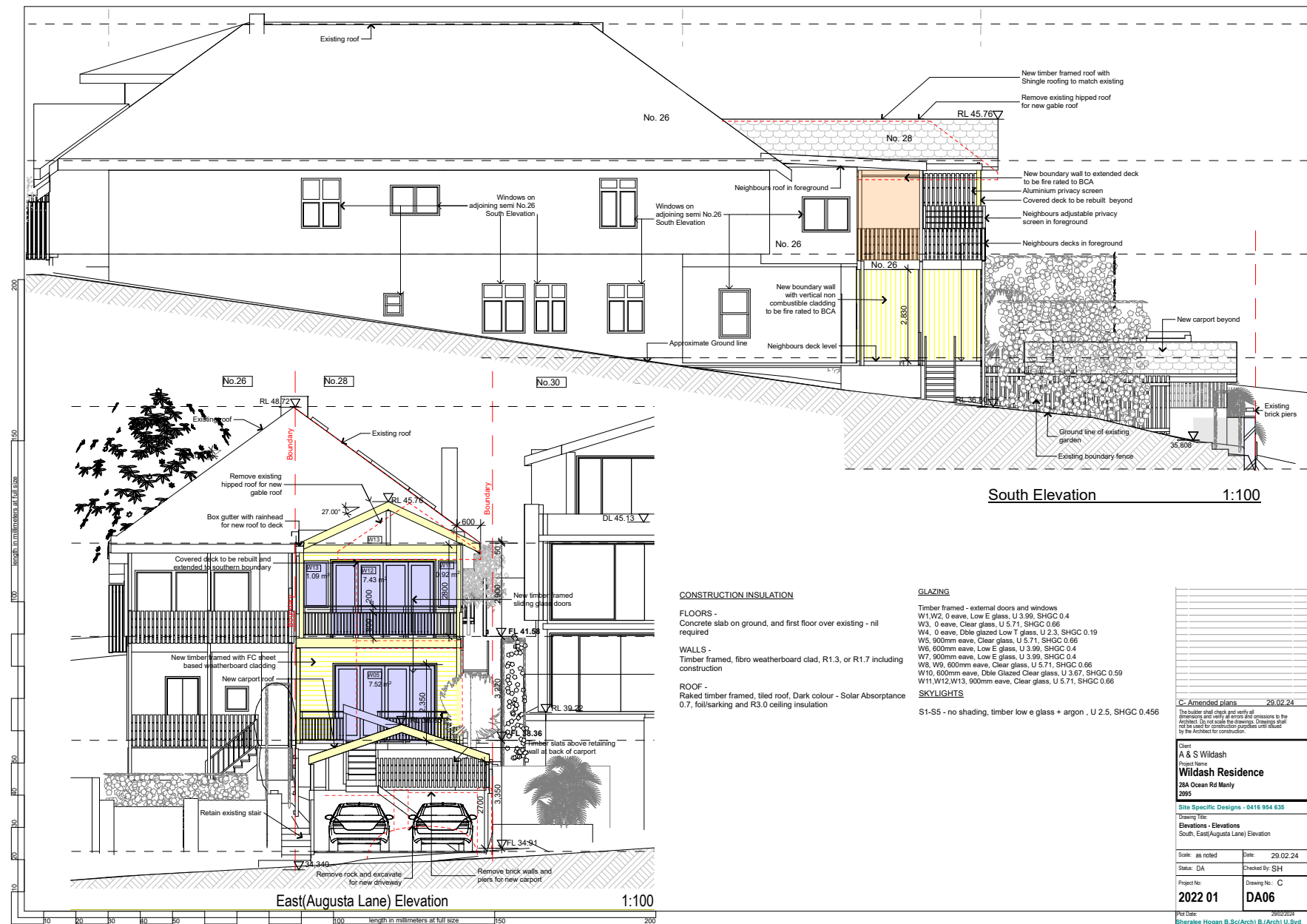
Reason: to encourage sustainable transport alternatives and ensure that residents/tenants are aware that they are not entitled to a permit.



1:200

Sheralee Hogan B.Sc(Arch) B.(Arch) U.Syd







ANNEXURE B

Clause 4.6 Variation – Building Height





Clause 4.6 Variation Statement – Maximum Height (clause 4.3)

1. INTRODUCTION

This Variation Statement has been prepared in accordance with Clause 4.6 of Manly Local Environmental Plan (MLEP) 2013 to accompany an application for alterations and additions to an existing dwelling at No. 28A Ocean Road, Manly.

2. CLAUSE 4.3 OF THE MLEP

Clause 4.3(2) of MLEP relates to the maximum height requirements and refers to the Height of Buildings Map.

Building height is defined as:

“building height (or height of building) means—

(a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or

(b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.”

Clause 4.3(2) requires that height of a building should not exceed the maximum building height shown for a site on the Height of Buildings Map. **Figure 12** shows the relevant map which identifies the subject site as having a maximum height of 8.5m.

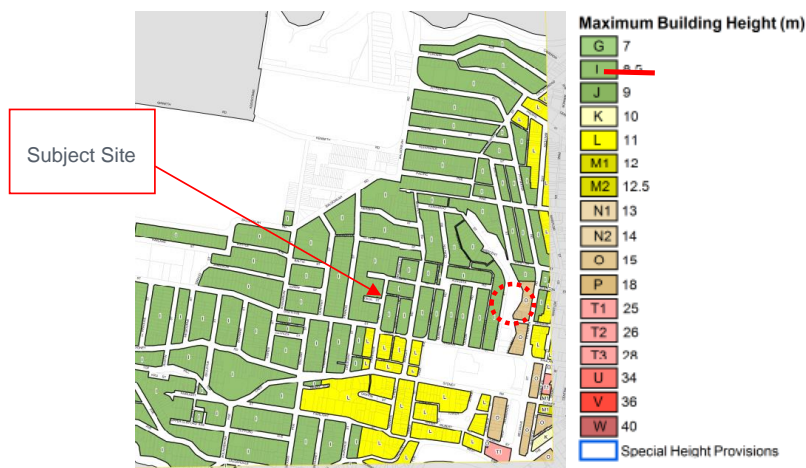


Figure 12 Height of Building Map (Sheet: HOB_003)

3. PROPOSED VARIATION

As indicated in the elevations included in **Figure 13** below, at approximately 10.36m in height, the existing building already exceeds the 8.5m height limit for the site. The subject development application does not include any works that will extend beyond the height of the existing building, however, the proposal does include changes to the rear roof form which exceeds the 8.5m height limit. At its highest point the rear roof form will reach 9.07m which equates to a numerical variation of 0.57m and a percentage variation of 6.7%. The existing rear roof form height is 8.7m

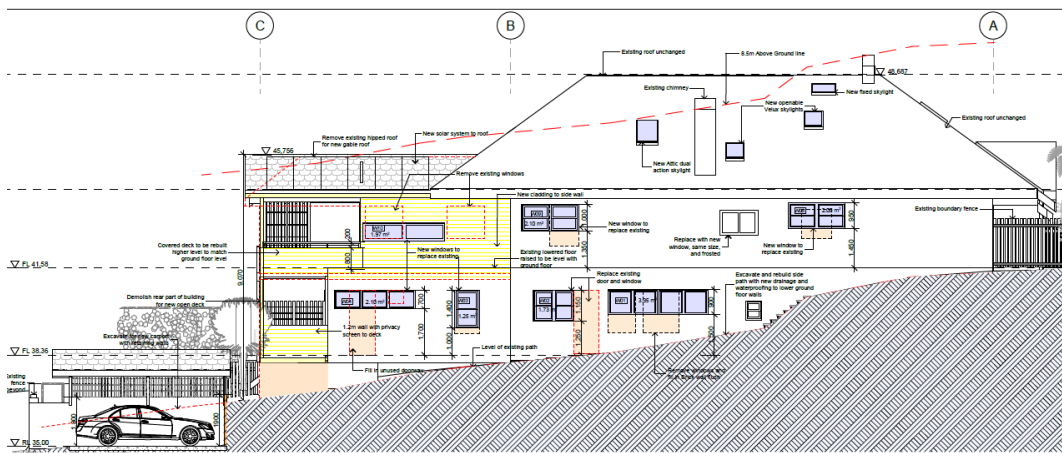


Figure 13 Northern elevation showing variation with height of buildings standard

4. CLAUSE 4.6 OF MLEP

The objectives and provisions of clause 4.6 are as follows:

4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*



- (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*
- (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.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if:*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note. *When this Plan was made it did not include all these zones.*

- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) *clause 5.4.*

The development standards in clause 4.3 are not "expressly excluded" from the operation of Clause 4.6.

Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of Subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of Subclauses 4.6(3) & (4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by Subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, Subclause 4.6(6).

It is hereby requested that a variation to this development standard be granted pursuant to Clause 4.6 so as to permit a maximum building height of 9.07m which equates to a numerical variation of 0.57m and a percentage variation of 6.7%.

5. COMPLIANCE IS UNREASONABLE AND UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (CLAUSE 4.6(3)(a))

Of relevance to Clause 4.6(3)(a), in *Wehbe v Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

“ An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. 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 judgement goes on to state that:

“ 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).”

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

“...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”

Compliance with the maximum building height development standard is considered to be unreasonable and unnecessary in this instance as the objectives of that standard are achieved for the reasons set out in Section 8 of this statement. For the same reasons, the objection is considered to be well-founded as per the first method underlined above. On this basis, the requirements of Clause 4.6(3)(a) are satisfied.



6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS (CLAUSE 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 24) states:

*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].*

The assessment of this numerical non-compliance is also guided by the recent decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 whereby Justice Pain ratified the original decision of Commissioner Pearson.

The following planning grounds are submitted to justify contravening the maximum building height:

1. As detailed in **Figure 13**, the extent of the height variation relates to the rear roof form which sits below the height of the existing roof ridge and as such the maximum height of the dwelling will be unchanged from the existing situation.
2. The rear roof form has changed to compensate the first floor extension and provide a roof pitch and design that better relates with the existing main roof.
3. It is considered that there is an absence of any unreasonable or material impacts on the amenity or the environmental values of the locality, the amenity of future building occupants and the character of the area. Specifically:
 - a. The extent of the non-compliance creates no significant additional overshadowing to adjoining properties and complies with the solar access requirements for adjacent private open space and north facing windows under MDCP 2013. Furthermore, when considering the extent of overshadowing against the backdrop of the applicable planning controls, the extent of overshadowing caused by the non-compliant element would be insignificant.
 - b. The height breach does not result in any additional privacy impacts. The rear roof form has no habitable areas or windows and therefore, there is no overlooking impacts and will not generate any acoustic impacts; and
 - c. The height breach does not result in any additional view loss. As mentioned, the rear roof are located below the existing height of the building. No significant views are accessed across the site due to the flat nature of Ocean Road fronting the site. Accordingly, there are no impacts to views as a consequence of the variation.





4. The proposed development will have the appearance of a one storey dwelling when viewed from the street. This is characteristic of other buildings along Ocean Road whilst appearing smaller than several two storey dwellings along the street. As such, to the casual observer viewing the property from the streetscape, the building will continue to appear at a compatible scale with the existing development and surrounding properties on Ocean Road.
5. The proposed development meets the objectives of the height of buildings development standard and meets the objectives of the R1 – General Residential zone (as further detailed in Section 8a and 8b below).
6. The proposed development achieves the Objects in Section 1.3 of the *Environmental Planning and Assessment Act 1979*. Specifically, that 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 (1.3g).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the fact the variations are located below the existing height of the dwelling. The proposed rear roof form for the first floor extension provides an improved amenity for the existing and future residents of the dwelling, complements the important design elements of the existing building and streetscape and does not result in any significant adverse impacts beyond those of a fully compliant development.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ 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:

86. *The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*
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 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.



7. THE APPLICANTS WRITTEN REQUEST HAS ADEQUATELY ADDRESSED THE MATTERS REQUIRED TO BE DEMONSTRATED BY SUBCLAUSE (3), (CLAUSE 4.6(4)(a)(i))

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 5 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in 7a below). Clause 4.6(3)(b) is addressed in Section 6 above.

The second opinion of satisfaction, in clause 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 particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(i). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 8a and 8b.

8. THE PROPOSED DEVELOPMENT IS IN THE PUBLIC INTEREST BECAUSE IT IS CONSISTENT WITH THE OBJECTIVES OF THE STANDARD AND THE R2 ZONE (CLAUSE 4.6(4)(a)(ii))

8a. The objectives of the Height of Buildings Standard

The objectives of clause 4.3 of the MLEP are 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,*
- (b) *to control the bulk and scale of buildings,*
- (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),*
- (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,*
- (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.*



In order to address the requirements of subclause 4.6(4)(a)(ii), each of the relevant objectives of Clause 4.3 are addressed in turn below.

Objective (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”

The subject site has a steep topography which has been reflected in the roof design. The proposed roof does not increase the overall maximum height of the building. That is, the proposed alterations and additions do not change the existing height of the building which is a prevailing building height. In addition, as illustrated in **Figure 43**, the proposed roof height (RL 45.76) is lower than the existing roof on the subject site and at No. 26 and No. 30 Ocean Road of RL 48.72 and 49.20 respectively. Therefore, the proposed rear roof is consistent with the existing and desired future streetscape character.

Accordingly, the proposed development achieves objective (a).

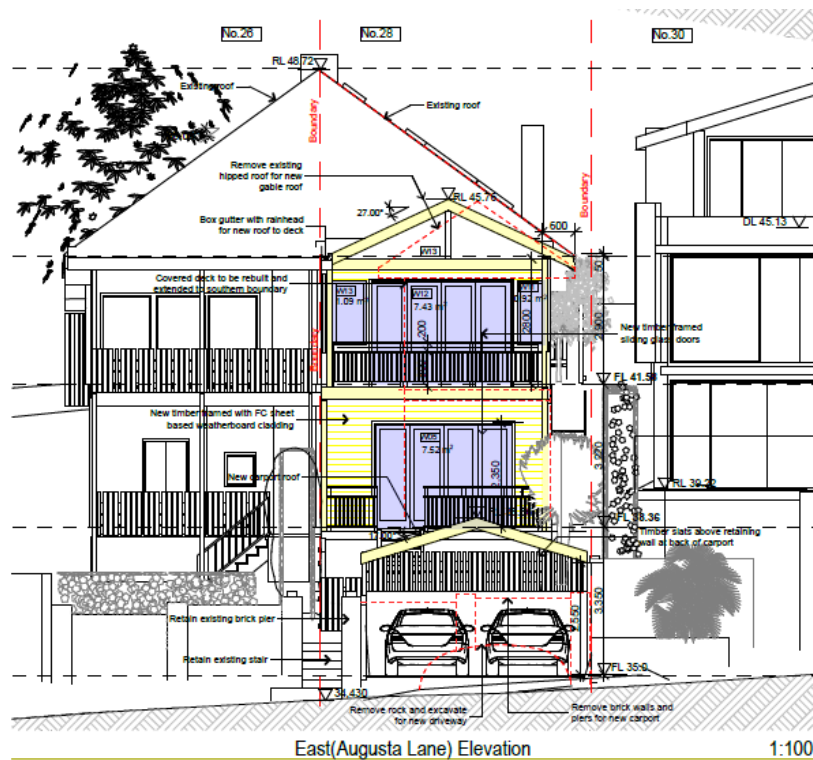


Figure 14 Eastern elevation of subject site and neighbours

Objective (b): “to control the bulk and scale of buildings”

The proposed development includes no overall increase in the maximum height of the dwelling and the variation is due to a roof form that has no habitable space within it. Therefore, the proposed height represents an existing approved level of bulk and scale.





Accordingly, the proposed development achieves objective (b).

Objective (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),”

The proposed maximum height is maintained as existing and therefore any impacts on views are minimal. With regards to (i), the proposed development does not obstruct any significant views to nearby residential development from public spaces including Ocean Road and Augusta Lane as alterations and additions are mainly within the existing building envelope. With regards to (ii), the majority of views are towards the ocean to the east. Given the east-west orientation of houses, the proposed alterations and additions will generate negligible impacts on views towards the ocean and foreshore as the proposed building height is retained. The section of Ocean Road fronting the subject site is relatively flat and therefore minimal views are afforded across the subject site. With regards to (iii), as has been noted above the view impacts of the proposed development are minimal given the existing variation is not extended and development is located mainly within the existing building envelope. Minimal views between public spaces are existing in the majority residential immediate locality and therefore the proposed development will have negligible impacts.

Accordingly, the proposed development achieves objective (c).

Objective (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,”

As is detailed in the shadow diagrams within the architectural plans submitted with this development application, the extent of overshadowing of the proposed development is isolated to minimal shadows cast over Augusta Lane and the rear yard of adjoining No. 26. The level of sunlight to habitable rooms of adjoining dwellings is not compromised and solar access to the private open space of No. 26 is within the controls of the MDCP 2013. Overall, the proposed development represents negligible overshadowing impacts as the existing non-compliant height is maintained and the extent of additional overshadowing is a consequence of the proposed carport and rear additions which is well below the maximum height control.

Accordingly, the proposed development achieves objective (d).

Objective (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.”

The proposed development involves residential alterations and additions dwelling within Zone R1 General Residential and therefore objective (e) is irrelevant.

8b. Objectives of the R2 Low Density Residential Zone

Clause 4.6(4)(a)(ii) also requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The objectives of Zone R1 General Residential, and a response as to how the proposal meets the objective is provided as follows:

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

The proposal involves alterations and additions that will enhance an existing dwelling house to meet the needs of residents. The height of the dwelling is acceptable as it is the same as existing.





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

The proposal involves alterations and additions to an existing dwelling and does not adversely affect the variety of housing types and densities in the locality.

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

Not applicable to the proposed development, which will not adversely affect any other facilities or services in the area to meet the day to day needs of residents.

The proposed development is therefore considered to be consistent with the objectives of Zone R1 and the proposed variation is deemed to be acceptable.

9. THE CONCURRENCE OF THE SECRETARY HAS BEEN OBTAINED (CLAUSE 4.6(4)(b))

The second precondition in Clause 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (Clause 4.6(4)(b)). Under Clause 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice, 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 Clause 4.6, subject to the conditions in the table in the notice.

10. WHETHER CONTRAVENTION OF THE DEVELOPMENT STANDARD RAISES ANY MATTER OF SIGNIFICANCE FOR STATE OF REGIONAL ENVIRONMENTAL PLANNING (CLAUSE 4.6(5)(b))

Contravention of the maximum building height development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

11. THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD (CLAUSE 4.6(5)(b))

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the maximum building height. As such, there is no public benefit in maintaining strict compliance with the development standard. Whilst the existing building height does not meet the maximum building height prescribed for the site, the proposed development 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. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

12. CONCLUSION

Having regard to all of the above, it is our opinion that compliance with the maximum building height development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach.

Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation is worthy of support.





ANNEXURE C

Clause 4.6 Variation – Floor Space Ratio





Clause 4.6 variation statement – floor space ratio (clause 4.4)

1. INTRODUCTION

This Variation Statement has been prepared in accordance with Clause 4.6 of Manly Local Environmental Plan (MLEP) 2013 to accompany an application for alterations and additions to an existing dwelling at No. 28A Ocean Road, Manly.

2. PROPOSED VARIATION

Clause 4.4 of MLEP 2013 relates to maximum allowable Floor Space Ratio. The relevant map [sheet FSR_003] refers the site to Clause 4.4 (2) which indicates that the maximum FSR permitted at the subject site is 0.6:1

The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area. Gross floor area is defined to mean:

“...means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*
- but excludes:*
- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement:*

- (i) storage, and*
- (ii) vehicular access, loading areas, garbage and services, and*
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) any space used for the loading or unloading of goods (including access to it), and*
- (i) terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) voids above a floor at the level of a storey or storey above.”*

The existing dwelling has a gross floor area of 186.6m² and an FSR of 0.72:1. The proposed alterations and additions will increase the gross floor space by 3.4m² to 190m² and subsequently increase the floor space ratio to 0.73:1 resulting a variation of 33.46m² (21%). This represents an increase to an existing non-compliance.

The maximum FSR under Clause 4.4 is a “development standard” to which exceptions can be granted pursuant to Clause 4.6 of the LEP.

3. OBJECTIVES AND PROVISIONS OF CLAUSE 4.6

The objectives and provisions of Clause 4.6 are as follows;

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

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





- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
 - (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
 - (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
 - (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*
 - (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.*
 - (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
 - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note. When this Plan was made it did not include any of these zones.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
 - (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) *a development standard for complying development,*



(b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*

(c) *clause 5.4.*

The development standards in Clause 4.4 are not “expressly excluded” from the operation of Clause 4.6.

Objective 1(a) of Clause 4.6 is satisfied by the discretion to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of subclauses 4.6(3) & (4) in order to demonstrate to Council that the exception sought is consistent with the exercise of “an appropriate degree of flexibility” in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, subclause 4.6(6).

4. THAT COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (CLAUSE 4.6(3)(a))

In *Wehbe v Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, *inter alia*:

An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. 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 judgement goes on to state that:

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).

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*



Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

“...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”

Compliance with the Floor Space Ratio development standard is considered to be unreasonable and unnecessary as the objectives of that standard are achieved for the reasons set out in Section 7 of this statement. For the same reasons, the objection is considered to be well-founded as per the first method underlined above.

Notably, under Clause 4.6(4)(a)(ii) a consent authority must now be satisfied that the contravention of a development standard 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. Clause 4.6(4)(a)(ii) is addressed in Section 6 below.

5. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS (CLAUSE 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 24) states:

*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].*

The assessment of this numerical non-compliance is also guided by the decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 whereby Justice Pain ratified the original decision of Commissioner Pearson. The following planning grounds are submitted to justify the floor space ratio non-compliance:

1. The proposed additional floor area is due to a small extension on the lower ground and ground level to relocate the stairwell in a more appropriate location that allows better use of the internal living areas and create larger decks. The minor increase in floor area will significantly improve the amenity for occupants without significantly impacting the character of the site when viewed from Ocean Road. The proposed alterations and additions sit behind and below the existing facade and will not create any unreasonable bulk or scale. The existing character of the dwelling viewed from Ocean Road will be largely unaffected in this proposal.
2. The resultant built form is similar to the existing built form, floor area and scale as neighbouring properties along Ocean Road and therefore, will result in no significant change to the character of the area. Being located





behind the existing facade, it is not dominantly visible from the public domain but for distant views and has no significant impact on the streetscape to Ocean Road and Augusta Lane.

3. The additional floor space 3.4m² is minor in nature and is able to be provided in a way which does not increase the perceived bulk and scale of the dwelling, being located entirely within the existing setbacks, footprint and envelope of the dwelling. In addition, the proposed additions do not increase the intensity of use on the site as no new bedrooms are proposed.
4. It is considered that there is an absence of any unreasonable or material impacts on the amenity or the environmental values of the locality, the amenity of future building occupants and the character of the area due to the additional floor area. Specifically:
 - a. The extent of the non-compliance of additional floor area creates no significant additional overshadowing to adjoining properties and complies with the solar access requirements for adjacent private open space and north facing windows under MDCP 2013. Furthermore, when considering the extent of overshadowing against the backdrop of the applicable planning controls, the extent of overshadowing caused by the non-compliant element would be insignificant.
 - b. The additional floor area does not result in any additional privacy impacts. There is no overlooking impacts and will not generate any acoustic impacts; and
 - c. The additional floor area not result in any additional view loss. As mentioned, bulk and scale from the additional floor area is located within the existing setbacks and height . No significant views are accessed across the site due to the flat nature of Ocean Road fronting the site. Accordingly, there are no impacts to views as a consequence of the variation.
5. The proposed development meets the objectives of the development standard and meets the objectives of the R1 General Residential zone (as further detailed in Section 7 below).
6. The proposed development achieves the objects in Section 1.3 of the EP&A Act, specifically:
 - a. The proposal promotes the orderly and economic use and development of land by providing an improved residential development (1.3c); and
 - 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 (1.3g).

The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development. The proposal will enhance the occupant amenity of the existing dwelling in the absence of any adverse impacts on adjoining properties.

It is noted that *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ 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:

86. *The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*



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 in any case considered that the proposal will provide for a better planning outcome than the existing development due to the enhanced occupant amenity. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

6. CLAUSE 4.6(4)(a)

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in 7a below). Clause 4.6(3)(b) is addressed in Section 5 above.

The second opinion of satisfaction, in clause 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 particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 7 below.

7. 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 (CLAUSE 4.6(4)(a)(ii))

7a. Objectives of Development Standard

The objectives and relevant provisions of Clause 4.4 are as follows:

- (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.*

Clause 4.4 nominates a maximum Floor Space Ratio of 0.6:1 for the site. It is requested that an exception to this development standard be granted pursuant to Clause 4.6 so as to permit a Floor Space Ratio of 0.73:1. This represents a variation of 0.13:1 from the development standard and a variation of 0.01:1 from existing FSR.

In order to address the requirements of subclause 4.6(4)(a)(ii), the objectives of Clause 4.4 is addressed below.

Objective (a) – “to ensure the bulk and scale of development is consistent with the existing and desired streetscape character”

The proposal will largely retain the building bulk, form and scale as viewed from Ocean Road. The proposed alterations and additions are located behind the existing dwelling façade and have been provided to improve the amenity for occupants. The proposed development will not be significantly visible when viewed from Ocean Road and Augusta Lane and retains the primary streetscape character. Accordingly, despite the non-compliance with FSR, the proposal is compatible with the desired character of the area.

Accordingly, the proposed development achieves objective (a).

Objective (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 proposed floor space ratio is considered to provide appropriate development density as the increase in FSR pertains to the addition for a larger internal area to the living area and games room which will have no increase to the density of the dwelling. This addition retains the building bulk, form and scale as viewed from Ocean Road with no existing significant landscape and townscape features visible across the site.

Accordingly, the proposed development achieves objective (b).

Objective (c) – “to maintain an appropriate visual relationship between new development and the existing character and landscape of the area”

The proposed alterations and additions enhance the existing dwelling, improving resident amenity and integrating well into the existing character of the area. The visual character of the proposed additions are compatible with the existing dwelling and the locality and landscaped character.

Accordingly, the proposed development achieves objective (c).

Objective (d) – “to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain”

The additional floor space is able to be provided in a way which does not increase the perceived bulk and scale of the dwelling, being located almost entirely within the existing footprint and envelope of the dwelling.

The resultant built form will result in no significant change to the character of the area, due to the limited locations from which the additional area could be viewed. Being located behind the façade, it is not readily visible from the public domain and has no significant impact on the streetscape. As a result, the proposal will have no visual and acoustic privacy impact, no view loss and provides a reasonable solar access impact to the adjoining properties and public domain.

Accordingly, the proposed development achieves objective (d).





Objective (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 is not in a business zone and therefore this objective is irrelevant.

7b. Objectives of the Zone

Clause 4.6(4)(a)(ii) also requires consideration of the relevant zone objectives. The objectives of the Zone R1 General Residential are as follow:

- *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 proposed development will increase the existing floor space but will not impact the achievement of the zone objectives. The proposed development will continue to provide for the housing needs of the community and will improve the amenity for the residents of the site.

The proposed development will not modify the character of the locality and will not be significantly visible when viewed from Ocean Road. The amenity of the neighbouring properties will be largely unaffected by this proposal as it will not generate any additional visual or aural privacy impacts given the use of privacy screening and window and room placement. With regards to the solar gain of the neighbouring properties, the proposal will not generate unacceptable overshadowing on 21 June and will retain solar access as required under the DCP.

The FSR variation does not contravene any objectives for the zone and for that reason the proposed variation is acceptable.

8. THE CONCURRENCE OF THE SECRETARY HAS BEEN OBTAINED (CLAUSE 4.6(4)(B))

The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, 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.

9. WHETHER CONTRAVENTION OF THE DEVELOPMENT STANDARD RAISES ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING (CLAUSE 4.6(5)(a))

Contravention of the maximum Floor Space Ratio development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.





10. THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD (CLAUSE 4.6(5)(b))

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the maximum floor space ratio. As such there is no public benefit in maintaining strict compliance with the development standard. Whilst the proposed development will increase the existing non-compliant FSR it is consistent with the objectives of the development standard and objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

11. CONCLUSION

Having regard to all of the above, it is our opinion that compliance with the maximum FSR development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach.

Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation supported.



ITEM 3.4	DA2023/0707 - 2 MANOR ROAD INGLESIDE - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A CARPORT AND SECONDARY DWELLING
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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 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.
2.
 - B. THAT Council as the consent authority **approves** Development Consent to DA2023/0707 for Alterations and additions to a dwelling house including a carport and secondary dwelling on land at Lot 81 DP 866452, 2 Manor Road INGLESIDE, subject to the conditions set out in the Assessment Report.

REPORTING MANAGER

TRIM FILE REF

2024/157327

ATTACHMENTS

- [↓1 Assessment Report](#)
- [↓2 Site Plan and Elevations](#)
- [↓3 Clause 4.6](#)

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2023/0707
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Responsible Officer:	Jordan Howard
Land to be developed (Address):	Lot 81 DP 866452, 2 Manor Road INGLESIDE NSW 2101
Proposed Development:	Alterations and additions to a dwelling house including a carport and secondary dwelling
Zoning:	RU2 Rural Landscape
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	John Arthur Vumbaca Esterina Vumbaca
Applicant:	John Arthur Vumbaca

Application Lodged:	06/06/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	13/06/2023 to 27/06/2023
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 30.9%
Recommendation:	Approval

Estimated Cost of Works:	\$ 180,000.00
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EXECUTIVE SUMMARY

This development application seeks consent for alterations and additions to a dwelling house including a carport and secondary dwelling.

The application is referred to the Development Determination Panel (DDP) due to a proposed variation to the height of buildings development standard of greater than 10%.

Following public exhibition of the application, no submissions have been received.

Critical assessment issues included the assessment of the proposed variation to the height of

buildings development standard, as well as proposed variations to the front and side building lines stipulated by the Pittwater 21 Development Control Plan, and archeological / heritage concerns.

The 4.6 request for non-compliance with the height standard arises as PLEP 2014 Clause 4.3 (2FA) stipulates that the maximum height for a secondary dwelling or a rural worker's dwelling in Zone C4 Environmental Living or Zone RU2 Rural Landscape is 5.5m if the secondary dwelling or rural worker's dwelling is separate from the principal dwelling. The proposal includes a detached secondary dwelling with a proposed height of 7.2m, a 30.9% variation to the development standard.

This variation arises as the secondary dwelling is proposed over a sloped portion of the site, with the variation occurring to the rear of the slope. Nonetheless, this variation is supported, as the siting and design of the development has been constrained by heritage / archaeological concerns, as well as topography, stormwater watercourses, access considerations and the irregular site shape. The variation is not considered to unreasonable impact on the rural character of the area, the streetscape or neighbouring properties.

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed development comprises of alterations and additions to a dwelling house including a carport and secondary dwelling. Specifically, the proposal seeks development consent for the following:

- Construction of a new detached secondary dwelling.
- Construction of a carport attached to the secondary dwelling.
- Driveway, with new crossing and layback leading to proposed carport.
- Associated landscaping and clearing of vegetation.

During the course of the assessment, additional information was requested in relation to:

- Clause 4.3 Height of buildings & 4.6 Exceptions to development standards of the Pittwater Local Environmental Plan 2014.
- Clause D6.5 Front building line & Clause D6.6 Side and rear building line of the Pittwater 21 Development Control Plan.
- A request for a Geotechnical Report.
- A request for further information to be depicted in Architectural Plans.
- Internal referral responses from Council's Heritage team & Development Engineering team.
- An external referral response from Heritage NSW.

Additional information and amended plans were received, which did not require re-notification, 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

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 5.4 Controls relating to miscellaneous permissible uses
Pittwater Local Environmental Plan 2014 - 5.10 Heritage conservation
Pittwater Local Environmental Plan 2014 - 5.21 Flood planning
Pittwater 21 Development Control Plan - C1.11 Secondary Dwellings and Rural Worker's Dwellings
Pittwater 21 Development Control Plan - D6.1 Character as viewed from a public place
Pittwater 21 Development Control Plan - D6.3 Building colours and materials
Pittwater 21 Development Control Plan - D6.5 Front building line
Pittwater 21 Development Control Plan - D6.6 Side and rear building line

SITE DESCRIPTION

Property Description:	Lot 81 DP 866452 , 2 Manor Road INGLESIDE NSW 2101
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the north-eastern side of Manor Road.</p> <p>The site is irregular in shape with a frontage of 114.085m along Manor Road and a depth of 300.71m. The site has a surveyed area of 1.931ha.</p> <p>The site is located within the RU2 Rural Landscape zone and accommodates a dwelling house.</p> <p>The site slopes from the front (south-west) down to the rear (north-east), with a fall across the site of approximately 20m. There is another rise at the very rear section of the site.</p> <p>The site contains grassed areas, vegetation, trees and internal gravel / dirt roads and paths. The very rear portion of the site is largely dense bushland. There are no details of threatened species in the vicinity of the proposal.</p>

	<div><div>Detailed Description of Adjoining/Surrounding Development</div><div>Adjoining and surrounding development is characterised by dwelling houses and rural land uses within a bushland / rural area.</div></div>
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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:

Development Applications No. DA2023/0331 and DA2023/0488 were both attempts at lodging a similar application to this application. Both were returned at lodgment due to inadequate and/or insufficient information being provided to assess the proposed development.

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 Matters for Consideration	Comments
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>Part 4, Division 2 of the EP&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&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&A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to:</p> <ul style="list-style-type: none"> • Clause 4.3 Height of buildings & 4.6 Exceptions to development standards of the Pittwater Local Environmental Plan 2014. • Clause D6.5 Front building line & Clause D6.6 Side and rear building line of the Pittwater 21 Development Control Plan. • A request for a Geotechnical Report. • A request for further information to be depicted in Architectural Plans. • Internal referral responses from Council's Heritage team & Development Engineering team. • An external referral response from Heritage NSW. <p><u>Clause 61</u> of the EP&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&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&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&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 Matters for Consideration	Comments
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) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</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 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, dated 2 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 13/06/2023 to 27/06/2023 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
Building Assessment - Fire and Disability upgrades	<p>Supported, without conditions</p> <p><u>Planner Comment:</u> No comments were provided by the Referral Officer. The proposal was supported, with</p>
Environmental Health (Unsewered Lands)	<p>Supported, subject to conditions</p> <p>General Comments The proposal is for a second dwelling on the site which will have a new AWTS and pres A favourable WW report by Broadcrest Consulting Pty Ltd has been submitted. Comment: Site inspected by Council 14.6.2023 which revealed the following: 1. Proposed AWTS location for 2nd 2 bed dwelling is satisfactory, currently low scrub a necessary, but a NSW Health complying AWTS system tank details have not been sub for DA, with appropriate conditions. 2. The existing septic tank with disposal trenches for the original main dwelling currently This WW0755/01 system also is currently non compliant - trenches sunken - appears to vehicles accessing LAA. Owner advises septic tank pumped out recently. Environmental To Operate form and verbal instruction was left with the owner to facilitate resolution. On this basis to enable the proposal to progress Environmental Health will support the p</p>
Landscape Officer	<p>Supported, subject to conditions</p> <p>The proposal is supported with regard to landscape issues.</p> <p><u>Additional Information Comment 02/11/23:</u> The amended plans are noted.</p> <p>The increased northern (side) setback is supported and will allow for screen planting. C</p> <p><u>Original Comment Summary:</u></p> <ul style="list-style-type: none"> • no concerns were raised with exempt tree removal and replacement tree plantin • concerns were raised with the visual bulk of the secondary dwelling which wasn
NECC (Bushland and Biodiversity)	<p>Supported, subject to conditions</p> <p>The proposal seeks approval for Alterations and additions to a dwelling house including The comments in this proposal relate to the following applicable controls and provisions</p> <ul style="list-style-type: none"> • NSW Biodiversity Conservation Act 2016 • NSW Biodiversity Regulation 2017 • Planning for Bushfire Protection 2019 • Pittwater LEP 2014 - Part 7.6 Biodiversity Protection • Pittwater 21 DCP - Clause B4.18 Heathland/Woodland Vegetation

Internal Referral Body	Comments
	<p>Portions of the site are identified on the Department of Planning and Environment's Biodiversity Conservation Act, any removal of native vegetation from within mapped areas will trigger the Biodiversity Development Assessment Report (BDAR).</p> <p>However, the submitted plans and documentation indicate that the proposed works are within the BOS.</p> <p>The proposal has been submitted with an arboricultural impact assessment that has been designed to accommodate the proposed footprint. No objections are raised. However, protection is specified in section 4.5 of the report.</p> <p>The proposal has also been submitted with a Bushfire Report (Report #4272, BPLD M BAL-29 and has recommended that portions of the site be treated as an asset protection zone.</p>
NECC (Development Engineering)	<p>Supported, subject to conditions</p> <p>Assessment 1 - 10/08/23:</p> <p>The Development Application proposes the construction of a new secondary dwelling, c</p> <p>Access:</p> <p>The applicant is proposing a new carport and driveway for the secondary dwelling. The proposed driveway would be the third driveway to service the property. The property frontage is greater than 100m and there is no impact on street parking as</p> <p>The proposed driveway is in close proximity to councils existing open drain. Requesting the applicant to locate the pipeline and show on the revised plans. The grades are also quite steep. Requesting 2 longitudinal sections on both ends of the proposed driveway from the edge of the road. There would also be a significant impact on the street trees on the road reserve. Refer to</p> <p>Stormwater:</p> <p>The site seems to be flood affected. As such, No OSD is required. A referral from our flood</p> <p>Council's records indicate that the subject property is burdened by a Council stormwater information as a reference for detailed stormwater investigations, available under the "S" (https://services.northernbeaches.nsw.gov.au/icongis/index.html).</p> <p>To demonstrate compliance with Warringah Council's Development Control Plan 2011 as it is recommended that the following details are submitted:</p> <ul style="list-style-type: none"> • Accurately locate, confirm dimensions including depth and plot to scale Council's that outline the proposal. This should be carried out by a service locating contractor. A stormwater system should be provided) <p>If the applicant proposes to use a CCTV pipeline survey to confirm the location of the pipeline Council's guideline</p> <ul style="list-style-type: none"> • All structures are to be located clear of any Council pipeline, pit or easement and

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • Footings of any structure adjacent to an easement, pipeline, culvert or channel • Structural details prepared by a suitably qualified Civil Engineer demonstrating c <p>A stormwater plan has been provided. Requesting amended stormwater drainage plans.</p> <p>Geotech: The site falls within council's geotechnical hazard map. Requesting the applicant to submit a geotechnical report and form no. 1 and 1(a), Check Council's Geotechnical Risk Management Policy for Pittwater.</p> <p>As such, Development Engineering cannot support the application due to insufficient information in Appendix 5 of the DCP.</p> <p>Assessment 2 - 10/11/23 Access: The applicant has removed the proposed 3rd driveway which would serve the secondary dwelling. A third driveway wouldn't affect on street parking and was supported. This is preferred as it would give direct access to the secondary dwelling for construction of a watercourse. A turning bay in this site would also benefit users to allow entry and exit in a forward direction. Alternatively, if the applicant does not wish to construct the driveway to serve the secondary dwelling, provided to ensure the proposal does not affect council's stormwater infrastructure. At a minimum a pedestrian path shall be created from the primary dwelling to the secondary dwelling infrastructure.</p>

Internal Referral Body	Comments
	<div><p>© 2023 Northern Beaches Council Aerometrex 2019 Sydney Water, NSW Emergency Information Coordination Unit (EICU) Sydney Water</p><p>Scale: 1:443 Date Printed: 10/11/2023</p><p>Produced from LPI's cadastre base with permission. Produced and published by the publishers. Although great care has been taken, Northern Beaches Council does not accept any liability for errors or omissions.</p></div> <p>Stormwater:</p> <p>A plan of the watercourse and council pipe has been provided. There is another watercourse located adjacent to the proposed secondary dwelling.</p> <p>This shall also be accurately located.</p> <p>The survey plan shall be overlaid onto the architectural and stormwater plans.</p> <p>In accordance with clause 4.4 Stormwater Discharge to Watercourse or Open Channel</p> <p>"Direct discharge to a waterway will only be permitted from land directly adjoining a waterway"</p>

Internal Referral Body	Comments					
	<p>Management Plan that no other alternatives are available. Other alternatives should be As such, a spreader system or method of stormwater discharge that minimises scouring</p> <p>Geotech: Forms 1 and 1(a) and a geotechnical report has been provided by White Geotechnical (Recommendations have been provided to move the hazards to an acceptable risk. This is supported and can be conditioned.</p> <p>As such, development engineering cannot support the application due to insufficient evi</p> <p>Assessment 2 - 19/02/24 Amended engineering plans have been submitted. I have no further objections to the pr engineering conditions of consent.</p>					
NECC (Riparian Lands and Creeks)	<p>Supported, subject to conditions</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none">- Supplied plans and reports;- Coastal Management Act 2016;- State Environmental Planning Policy (Resilience and Hazards) 2021;- Relevant LEP and DCP clauses; and- Northern Beaches Council Water management for development policy. <p><i>Riparian</i> The site is located near the headwaters of Mullet Creek and as such proposed developi ecological integrity of Mullet Creek or the quantity and quality of surface and ground wa</p> <p><i>Sediment Management</i> Sediment and erosion controls must be installed prior to any disturbance of soil on site ;</p>					
Strategic and Place Planning (Heritage Officer)	<p>Supported, subject to conditions</p> <table><tr><th>HERITAGE COMMENTS</th></tr><tr><td>Discussion of reason for referral</td></tr><tr><td>This application has been referred as the site is part of an archaeological site, being It "Ruins of Powder Works", 2 and 10 Manor Road, Ingleside, listed in Schedule 5 of 2014.</td></tr><tr><th>Details of heritage items affected</th></tr><tr><td>Details of the heritage item, as contained within the Heritage Inventory, are: Item 2270133 - "Ruins of Powder Works", 2 and 10 Manor Road, Ingleside <u>Statement of Significance</u> The Ruins of Powderworks are significant as their fabric expresses an unusual (rare) 1 industrial activity and are important through their association with Carl Von Bieren and manufacturing venture, a significant event in the locality with the area being subseque 'Ingleside' after his house. The listing does not include the houses (fronting Manor Road) located within the curtilk Powderworks. <u>Physical Description</u></td></tr></table>	HERITAGE COMMENTS	Discussion of reason for referral	This application has been referred as the site is part of an archaeological site, being It "Ruins of Powder Works", 2 and 10 Manor Road, Ingleside , listed in Schedule 5 of 2014.	Details of heritage items affected	Details of the heritage item, as contained within the Heritage Inventory, are: Item 2270133 - "Ruins of Powder Works", 2 and 10 Manor Road, Ingleside <u>Statement of Significance</u> The Ruins of Powderworks are significant as their fabric expresses an unusual (rare) 1 industrial activity and are important through their association with Carl Von Bieren and manufacturing venture, a significant event in the locality with the area being subseque 'Ingleside' after his house. The listing does not include the houses (fronting Manor Road) located within the curtilk Powderworks. <u>Physical Description</u>
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Internal Referral Body	Comments		
	<p>Cobblestone road associated with former Powderworks. Other stone structures as well as ruins. The place is located in a small gully at the junction of two creeklines about 200m from the former Ingleside house. The place consists of the ruins of sandstone block building walls that were built in the mid 1880s for the purposes of gunpowder manufacture. The place consists of two areas. One area on the southern side of the creekline has the remains of two structures, of each structure is standing. The other area is on the northern side of the creekline with remains standing on the top of a small cliff. Numerous sandstone blocks are strewn throughout the site. Erosion of a small creekline threatens the stability of the structures on the southern side (Tropman 1993).</p>		
	Other relevant heritage listings		
	SEPP (Biodiversity and Conservation) 2021	No	Comment if applicable
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	Amended application		
	<p>This application is for construction of a secondary dwelling located adjacent to Manor House, the existing main dwelling. The original plans included a driveway and carport, but these have been deleted from the amended plans.</p>		
	<p>As the site is listed as an archaeological site, Clause 5.10(7) of Pittwater LEP 2014 applies and requires referral to Heritage NSW and consideration of any response received. The original application was referred however Heritage NSW could not comment until an <i>Archaeological Assessment Report</i> was submitted.</p>		
<p>This amended application, accompanied by a <i>Baseline Heritage and Archaeological Research Report</i> (18 October 2023), was referred again to Heritage NSW for comment under Clause 5.10(7) of Pittwater LEP 2014. The response from Heritage NSW, dated 17 November 2023, acknowledges that the site of the proposed secondary dwelling is on disturbed land and has been identified as an area of low archaeological potential. The <i>Archaeological Report</i> concludes that an excavation permit exemption under section 139(4) of the Heritage Act 2017 could be undertaken using an excavation permit exemption under section 139(4) of the Heritage Act 2017. Heritage NSW advised that use of this exemption provision is self-assessed and not dependent on a permit. On this basis, Heritage NSW have not raised any objection to the proposal, subject to the condition to cover the event that relics are discovered during works.</p>			
<p>Based on this response from Heritage NSW, no objections are raised on heritage grounds to the imposition of the condition required by Heritage NSW (<i>Notify discovery of archaeological remains</i>) has been added to this referral.</p>			
<p>NOTE: the advice from Heritage NSW also addresses Aboriginal cultural heritage and the application is referred to AHO for their comment.</p>			
<p><u>Consider against the provisions of CL5.10 of PLEP 2014:</u></p>			

Internal Referral Body	Comments
	Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	<i>Supported, subject to conditions</i> 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	<i>Supported, subject to conditions</i> Reference is made to the proposed development at the above area and Aboriginal heritage. 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. Given the above, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development. 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.

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. 1372440S, dated 9 February 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	50

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. 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*	7.2m	30.9%	No
Floor Space of Secondary Dwellings	25% of the total floor area of the principal dwelling (92sqm)	92sqm	-	Yes

*PLEP 2014 Clause 4.3 (2FA) stipulates that the maximum height for a secondary dwelling or a rural worker's dwelling in Zone C4 Environmental Living or Zone RU2 Rural Landscape is 5.5 metres if the secondary dwelling or rural worker's dwelling is separate from the principal dwelling.

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
5.10 Heritage conservation	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

Description of Non-compliance

Development standard:	Height of buildings
Requirement:	5.5m
Proposed:	7.2m
Percentage variation to requirement:	30.9%

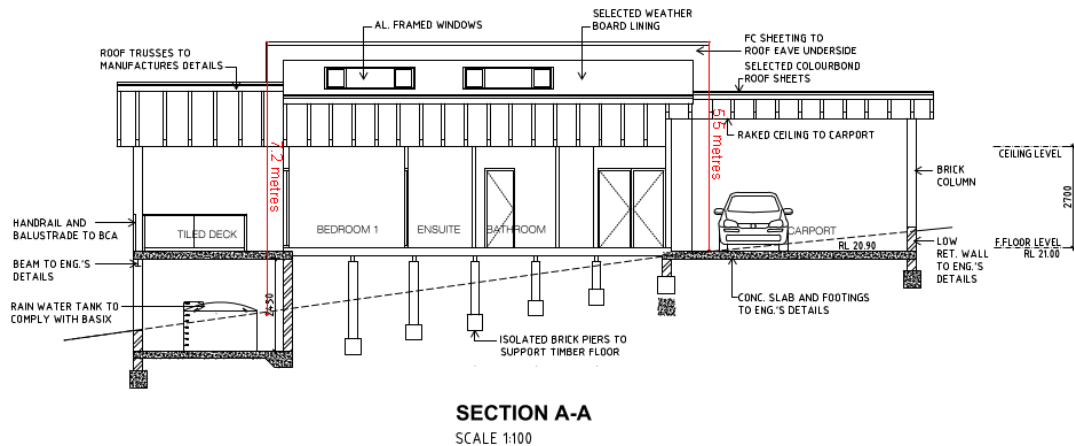


Figure 1 - Extract of Section A-A (Drawing No. 2-2 1008 22, Issue 3, dated 6 February 2024) depicting building height.

Assessment of Request to vary a Development Standard

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard, has taken into consideration the 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 4.3 - Height of Buildings development standard is not expressly excluded from the operation of this clause.

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

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

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

standard unless:

(a) the consent authority is satisfied that:

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

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

(b) the concurrence of the Secretary has been obtained.

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

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

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

Comment:

The Applicant's written request 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:

- That the proposed development meets the objectives of PLEP 2014 Clause 4.3 Height of buildings.*
- That the proposed development meets the objectives of PLEP 2014 RU2 Rural Landscape zone.*
- That the location of the secondary dwelling is favorable due to the spot having been partially cleared and disturbed during the course of the land holding, which is of note as other parts of the site have heritage and archaeological considerations. Furthermore, the provision of access to the secondary dwelling would be constrained on other parts of the site.*
- The slope beneath the chosen location is steep, and the 5.5m height control for secondary dwellings does not provide much tolerance when working with steep sites or steep grades.*
- If the roofline and floor to ceiling height were reduced or redesigned, these changes would offer poor amenity for the occupiers and bad architecture that is not the objective of planning guidelines.*
- The variation will allow for orderly and economic use and development of land with no adverse privacy concerns or loss of solar access constraints for the adjoining property.*

The arguments provided by the applicant are generally concurred with. The subject site is constrained by heritage / archaeological concerns, as well as topography, stormwater watercourses, access considerations and the irregular site shape. These constraints limit the locations where a secondary dwelling may be accommodated.

The chosen spot is already a disturbed portion of the site, and the proposal is supported at this location by Heritage NSW and Council's Heritage team. The spot chosen allows for access to be provided to the secondary dwelling from Manor Road. This location however is sloped, and the 5.5m height of buildings standard that specifically applies to detached secondary dwellings on rural land does not provide much tolerance for working with sloped topography. Given the floor space restrictions on secondary dwellings, and preference for single-storey secondary dwellings outline the P21DCP, it would not be reasonable to require a two-storey stepped secondary dwelling to accommodate for slope. Excavation would also be unfavorable.

It is finally noted that if the proposal was not for a detached seconded dwelling, it would be subject to an 8.5m height of buildings limit, a height limit that the proposal is well below.

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 Height of Buildings development standard and the objectives of the RU2 Rural Landscape zone. An assessment against these objectives is provided below.

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

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

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 is considered to be of a height and scale that is consistent with desired character of the locality. The proposed development is commensurate with surrounding development and the area is characterised by detached dwellings / structures on large lots within a rural and bushland area.

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

Comment:

The proposed secondary dwelling is considered to be smaller than surrounding development. The applicable lower 5.5m height limit only applies to detached secondary dwellings, with other structures in the area permitted up to 8.5m. As such, the proposal is compatible with the height and scale of surrounding and nearby development.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The proposed development will not cause unreasonable overshadowing of the subject site,

surrounding sites, or public areas.

d) to allow for the reasonable sharing of views,

Comment:

It is not anticipated that the proposal will unreasonably impact on view.

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

Comment:

The location chosen at the subject site is sloped, and the 5.5m height of buildings standard that specifically applies to detached secondary dwelling on rural land does not provide much tolerance for working with sloped topography. Given the floor space restrictions on secondary dwellings, and preference for single-storey secondary dwellings outline the P21DCP, it would not be reasonable to require a two-storey stepped secondary dwelling to accommodate for slope. Excavation would also be unfavorable. As such, the proposed development is considered 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.

Comment:

The subject site is constrained by heritage / archaeological concerns. These constraints limit the locations where a secondary dwelling may be accommodated. The chosen spot is already a disturbed portion of the site, and the proposal is supported at this location by Heritage NSW and Council's Heritage team. Regarding the natural environment, the proposal has been reviewed and supported by Council's Bushland and Biodiversity team, Riparian Lands and Creeks team, and Landscape team, subject to conditions from each of these teams. The proposed development is considered to minimise the adverse visual impact of development on the natural environment, heritage conservation areas and heritage items.

Zone Objectives

The underlying objectives of the RU2 Rural Landscape zone are:

- *To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.*

Comment:

The proposed development is for residential accommodation within a rural zone. The proposed development will not impact on primary industry or the natural resource base.

- *To maintain the rural landscape character of the land.*

Comment:

The area is characterised by detached dwellings / structures on large lots within a rural and bushland area. The proposed development is considered to maintain this rural character and the rural landscaped character of the land.

- *To provide for a range of compatible land uses, including extensive agriculture.*

Comment:

The proposed development is for residential accommodation within a rural zone, specifically a secondary dwelling. This is a permissible use within the zone, and is compatible with other rural land uses, including agriculture.

- To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.

Comment:

The proposed development is for residential accommodation within a rural zone, specifically a secondary dwelling. This is a permissible use within the zone, and is not considered to unreasonably increase the demand for public services or public facilities.

- To minimise conflict between land uses within this zone and land uses within adjoining zones

Comment:

The proposed development is for residential accommodation within a rural zone, specifically a secondary dwelling. This is a permissible use within the zone, and is compatible with other rural land uses. In this regard, the use is not expected to conflict with other land uses within this zone or adjoining zones.

Conclusion on Objectives

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the height of buildings development standard and the RU2 Rural Landscape 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 development and it is therefore considered appropriate that in this instance, flexibility in the application of the height of buildings 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 Height of building Development Standard associated with a single dwelling house (Class 1 building).

5.4 Controls relating to miscellaneous permissible uses

The proposed secondary dwelling has a GFA of 92sqm.

Clause 5.4(9)(a) stipulates that a secondary dwelling may have a total floor area up to 25% of the total floor area of the principal dwelling. The principle dwelling has a floor area of 368sqm, of which 25% is 92sqm.

Therefore, the proposed secondary dwelling has a compliant GFA.

5.10 Heritage conservation

The site is part of an archaeological heritage item, being **Item 2270133 - "Ruins of Powder Works", 2 and 10 Manor Road, Ingleside**, listed in Schedule 5 of the PLEP 2014. As the site is listed as an archaeological site, Clause 5.10(7) of the PLEP 2014 applies, which requires referral to Heritage NSW and consideration of any response received.

The application was referred to Heritage NSW, who responded initially stating that they could not deal with the request until such time as an 'Archaeological Assessment Report' or an 'Archaeological Research Design and Excavation Methodology' was submitted. This issue was raised within a Request for Further Information letter put to the applicant, following which additional information was submitted. This amended application, accompanied by a Baseline Heritage and Archaeological Report prepared by Romic Planning (18 October 2023), was referred again to Heritage NSW for comment, as required by Clause 5.10(7) of the PLEP 2014.

The response from Heritage NSW, dated 17 November 2023, acknowledges that the site of the proposed secondary dwelling is on disturbed land which has been identified as an area of low archaeological potential. The Archaeological Report concluded that the works could be undertaken using an excavation permit exemption under section 139(4) of the Heritage Act, 1977. Heritage NSW advised that use of this exemption provision is self-assessed and not determined by them.

On this basis, Heritage NSW have not raised any objection to the proposal, subject to the imposition of a condition to cover the event that relics are discovered during works.

Furthermore, the proposal has been reviewed by Council's internal Heritage team, who are supportive of the proposal, subject to conditions.

5.21 Flood planning

Portions of the property are mapped on the NBC Flood Hazard Map as low, medium and high risk precincts. However, these areas are all located on parts of the subject site away from the area occupied by the proposed development. The proposed development is not located on a section of the subject site identified as flood prone.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	20m	5.5m (to carport) 11.3m (to secondary)	72.5% 43.5%	No No

		dwelling		
Rear building line	7.5m	>7.5m	-	Yes
Side building line	North-West 7.5m	3.5m	53.3%	No
	East 7.5m	>7.5m	-	Yes
Building envelope	North-West 3.5m	Within envelope	-	Yes
	East 3.5m	Within envelope	-	Yes
Landscaped area	96% of the total site area minus 400sqm (18,137.6sqm). Therefore, 1,172.4sqm of non-landscaped area permitted.	1,168.9sqm of non-landscaped area.	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.6 Ingleside Locality	Yes	Yes
B1.1 Heritage Conservation - Heritage items, heritage conservation areas and archaeological sites listed in Pittwater Local Environmental Plan 2014	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
B4.13 Freshwater Wetlands (non Endangered Ecological Communities)	Yes	Yes
B4.14 Development in the Vicinity of Wetlands	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.18 Heathland/Woodland Vegetation	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	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
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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	No	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D6.1 Character as viewed from a public place	No	Yes
D6.3 Building colours and materials	Yes	Yes
D6.5 Front building line	No	Yes
D6.6 Side and rear building line	No	Yes
D6.7 Building envelope	Yes	Yes
D6.8 Landscaped Area - Non Urban General	Yes	Yes
D6.11 Fences - Flora and Fauna Conservation Areas	Yes	Yes
D6.12 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

C1.11 Secondary Dwellings and Rural Worker's Dwellings

Description of non-compliance

The proposed secondary dwelling does not comply with the specific control that requires "a secondary dwelling or rural worker's dwelling contains not more than two (2) bedrooms and not more than one (1) bathroom." The secondary dwelling contains two (2) bedrooms, two (2) bathrooms, laundry, kitchen and dining / living room. There is one (1) more bathroom than permitted by this control.

Merit assessment

With regard to the consideration for a variation, the development is considered against the underlying outcomes of this clause as follows:

- Limitation of the visual bulk and scale of development.

Comment:

Whilst the proposal exhibits a non-compliance with the height of buildings development standard of 5.5m under the PLEP 2014, this variation is supported on merit. Refer to the section of this report on PLEP 2014 Clause 4.6 Exceptions to development standards for further details. The secondary dwelling presents to the street as a single-storey dwelling and is

only elevated at the rear.

The secondary dwelling is compliant with the floor area allowed by PLEP 2014 Clause 5.4(9) (a), which stipulates that a secondary dwelling may have a total floor area up to 25% of the total floor area of the principal dwelling. As such, the addition of the extra bathroom has not resulted in a floor area non-compliance, nor does this bathroom contribute to the height breach.

Overall, it is considered that the bulk and scale of the proposal will not cause unreasonable impacts to adjacent properties or the streetscape.

- Provision of design flexibility for second storey development.

Comment:

Not applicable. The development does not propose a two-storey secondary dwelling, a point of compliance with this control.

- Restriction of the footprint of development site.

Comment:

As outlined above, it is considered that the overall bulk and scale of the proposal will not cause unreasonable impacts to adjacent properties or the streetscape. The secondary dwelling is compliant with the floor area allowed by PLEP 2014 Clause 5.4(9)(a), which stipulates that a secondary dwelling may have a total floor area up to 25% of the total floor area of the principal dwelling. Furthermore, the proposal is compliant with the provisions of P21DCP Clause D6.8 Landscaped Area - Non Urban General, which stipulates controls relating to site coverage and landscaped area. For these reasons, the footprint of the secondary dwelling and residential development at the subject site is not considered to be excessive.

- Retention of natural vegetation and facilitation planting of additional landscaping.

Comment:

The proposal is compliant with the provisions of P21DCP Clause D6.8 Landscaped Area - Non Urban General, which stipulates controls relating to site coverage and landscaped area. The proposal has been reviewed by Council's Landscape team, who support the proposal, subject to conditions, including conditions stipulating required additional planting and protection of existing vegetation / trees.

- Provision of rental accommodation.

Comment:

The proposed secondary dwelling has the potential to be utilised as rental accommodation.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D6.1 Character as viewed from a public place

The proposed carport is located in front of the proposed secondary dwelling and forward of the 20m

front building line, inconsistent with the requirement of this control for parking structures to be located behind the front building line.

Nonetheless, the proposed carport is an open-style structure that is to be integrated with the design of the proposed secondary dwelling. The width of the carport is less than 50% of the frontage of the site as required by this control. Furthermore, the existing primary dwelling has an existing front carport which is located closer to the front boundary, making this not an unusual feature to the streetscape.

The proposal is considered to be consistent with the outcomes of this control, notwithstanding the variation to the front building line, that is found to be supported on merit within section of this report on P21DCP Clause D6.5 Front building line.

D6.3 Building colours and materials

A schedule of external colours and finishes has not been submitted with the proposal. As such, a suitable condition requiring consistency with this control has been included in the recommendations of this report.

D6.5 Front building line

Description of non-compliance

The control requires a 20.0m front setback to Manor Road.

The proposed carport, which is located in-front of the proposed secondary dwelling, has a front setback of 5.5m, representing a variation of 72.5%. Furthermore, the proposed secondary dwelling itself has a front setback of 11.3m, representing a 43.5% variation to the control.

It is noted that the existing dwelling house has a carport attached to its front, setback 4.8m from the front boundary. The dwelling house itself is setback 10.4m from the front boundary. Therefore, the proposed secondary dwelling and carport will be located behind these existing front setback encroachments.

It is also noted that the placement of the secondary dwelling has been constrained by heritage / archaeological concerns, as well as topography, stormwater watercourses, flood mapping, access considerations and the irregular site shape.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying outcomes of this clause as follows:

- *Achieve the desired future character of the Locality.*

Comment:

The proposed development is considered to be consistent with the Ingleside locality, by maintaining a building height below the tree canopy in harmony with the natural environment, remaining consistent with the low-density, rural residential environment, and involving minimal site disturbance.

- *Equitable preservation of views and vistas to and/or from public/private places.*

Comment:

It is not anticipated that the proposal will unreasonably impact on views.

- *The amenity of residential development adjoining a main road is maintained.*

Comment:

The proposed development does not adjoin a main road.

- *Vegetation is retained and enhanced to visually reduce the built form.*

Comment:

The proposal is designed, sited and conditioned to maintain ample landscaped areas around the development that will assist in visually reducing the built form.

- *Vehicle manoeuvring in a forward direction is facilitated.*

Comment:

Vehicles will not have sufficient room to facilitate entering and exiting the new driveway to the proposed carport in a forward direction. This is considered acceptable due to the existing nature of the site. Additionally, the low trafficked nature of the road is not considered to impact on the safety and functionality of the vehicles entering and exiting the site. The proposal has been reviewed by Council's Development Engineer who has raised no objection, subject to conditions.

- *To preserve and enhance the rural and bushland character of the locality.*

Comment:

The proposed development is consistent with the character of surrounding development, which comprises of varied setbacks and low density residential development within a rural / bushland setting. As such, the proposal preserves the rural and bushland character of the locality.

- *To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.*

Comment:

The proposed development is of a smaller scale to the existing dwelling and other dwellings in the streetscape, as it is a secondary dwelling. The existing low density of the site is retained.

- *To encourage attractive street frontages and improve pedestrian amenity.*

Comment:

The proposed development presents a detached secondary dwelling, consistent with the existing streetscape, from which dwellings within a rural landscape are visible. The proposed development does not present an unreasonable impact on pedestrian amenity.

- *To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing urban environment.*

Comment:

The works maintain the established front building line and will not give rise to any adverse streetscape impacts. In this regard, it is considered that the proposed development achieves consistency with spatial characteristics of the existing urban environment in Ingleside.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D6.6 Side and rear building line

Description of non-compliance

This control requires development to be setback 7.5m from side and rear boundaries.

The proposal exhibits a greater than 7.5m rear setback, complaint with this control.

The proposal exhibits a greater than 7.5m setback to the east side boundary, complaint with this control.

The proposal exhibits a 3.5m setback to the north-west side boundary, the side boundary adjacent and closest to the proposed secondary dwelling. This represents a 53.3% variation to the control.

It is noted that the placement of the secondary dwelling has been constrained by heritage / archaeological concerns, as well as topography, stormwater watercourses, flood mapping, access considerations and the irregular site shape.

Merit consideration

With regards to the consideration for a variation, the development is considered against the underlying outcomes of the control as follows:

- *To achieve the desired future character of the Locality.*

Comment:

The proposed development is considered to be consistent with the Ingleside locality, by maintaining a building height below the tree canopy in harmony with the natural environment, remaining consistent with the low-density, rural residential environment, and involving minimal site disturbance.

- *The bulk and scale of the built form is minimised.*

Comment:

The development is generally of a low scale. It is considered to be a modestly sized secondary dwelling and within the character of the area, that being low-density, detached dwellings within a rural / bushland landscape. The proposed works are considered to be generally consistent with the desired character statement. Conditioned landscaping will act to soften the built form.

- *Equitable preservation of views and vistas to and/or from public/private places.*

Comment:

It is not anticipated that the proposal will unreasonably impact on views.

- To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

Comment:

As above, it is not anticipated that the proposal will unreasonably impact on views.

- To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.

Comment:

The proposal will not have any unreasonable amenity impacts on adjoining neighbours. The proposed secondary dwelling is approximately 30m from the closest neighbouring dwelling to the north-west, a distance which negates any privacy, amenity or solar access issues. Furthermore, conditioned landscaping along the boundary will soften and visually shield the build form. The side setback non-compliance will not cause unreasonable impacts in this regard.

- Substantial landscaping, a mature tree canopy and an attractive streetscape.

Comment:

The proposal is designed, sited and conditioned to maintain ample landscaped areas around the development that will assist in visually reducing the built form. A mature tree canopy and an attractive streetscape will be maintained.

- Flexibility in the siting of buildings and access.

Comment:

The proposal allows for flexibility in the siting of development, without resulting in any unreasonable impacts to the subject site or adjoining sites. The proposal is considered to be an appropriate development of the site, considering existing site conditions and constraints.

- Vegetation is retained and enhanced to visually reduce the built form.

Comment:

The proposal is designed, sited and conditioned to maintain ample landscaped areas around the development that will assist in visually reducing the built form.

- A landscaped buffer between commercial and residential zones is achieved.

Comment:

Not applicable. The site does not adjoin a commercial zone.

- To preserve and enhance the rural and bushland character of the locality.

Comment:

The proposed development is consistent with the character of surrounding development which comprises of varied setbacks and low density residential development within a rural / bushland setting. As such, the proposal preserves the rural and bushland character of the locality.

- To ensure a landscaped buffer between commercial and residential zones is established.

Comment:

Not applicable. The site does not adjoin a commercial zone.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP 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

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 \$ 900 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 180,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 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:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 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 a dwelling house including a carport and secondary dwelling has been referred to the Development Determination Panel (DDP) due to a proposed variation to the height of buildings development standard of greater than 10%.

Following public exhibition of the application, no submissions have been received.

Critical assessment issues included the assessment of the proposed variation to the height of buildings development standard, as well as proposed variations to the front and side building line stipulated by the Pittwater 21 Development Control Plan, and archeological / heritage concerns.

The Clause 4.6 variation for height of buildings under PLEP 2014 is considered to be well founded and is supported.

The variations to the other built form controls under P21DCP are also satisfactory and 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 permits a contravention of clause 4.3 Height of Building development standard pursuant to clause 4.6 of the PLEP 2014 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 DA2023/0707 for Alterations and additions to a dwelling house including a carport and secondary dwelling on land at Lot 81 DP 866452, 2 Manor Road, INGLESIDE, 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
1-2 1008 22	3	Site Plan	High Design	6 February 2024
2-2 1008 22	3	Elevations, Sections and Floor Plans	High Design	6 February 2024

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
BASIX Certificate	1372440S	Sustainability-Z Pty Ltd	9 February 2023
On-Site Wastewater Report	2839-WW-A-01	Broadcrest Consulting Pty Ltd	9 May 2023
Bushfire Report	-	Bushfire Planning Services	2 March 2023
Arboricultural Impact Appraisal and Method Statement	-	Ezigrow	7 May 2023
Geotechnical Report	J5188	White Geotechnical Group	24 October 2023
Waste Management Plan - 2 Manor Road, Ingleside	-	-	-

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	Undated (dated 14/06/2023 on EDMS)
Department of Planning and Environment - Heritage NSW	DPE - Heritage Referral Response - delegated response letter	17 November 2023 (dated 20/11/2023 on EDMS)

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website 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 Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$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.
- (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 \$900.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$180,000.00.

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).

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

BUILDING WORK – BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

7. 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.

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 from the site to adjacent water course through a transpiration bed or minimum 6 metre long level spreader.

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. **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 24.10.2023 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.

10. **Vehicle Crossings Application**

The Applicant is to submit an application with Council for driveway levels to construct one vehicle crossing a maximum of 4.0 metres wide in accordance with Northern Beaches Council Standard Drawing A4 3330/5 EL 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.

11. **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.

12. **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.

13. **Approval to Install an On-site Sewage Management System**

Prior to the release of the Construction Certificate the applicant must receive an 'Approval to Install an On-Site Sewage Management System' from Council for the new 2nd Waste Water system (AWTS) on the site

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

Reason: To fulfil the requirements under Section 68 of the Local Government Act 1993

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 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.

16. **External Colours and Finishes**

The external colours and finishes shall have a medium to dark range. Light colours such as off white, cream, silver or light grey colours are not permitted.

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

Reason: To ensure building colours and materials complement and enhance the natural landscapes and to ensure that excessive glare or reflectivity nuisance does not occur as a result of the development.

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 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

18. 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.

19. Protection of Landscape Features and Sites of Significance

a) 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 and detailed on approved plans.

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.

20. Protection of Existing Street Trees

a) all existing street trees in the vicinity of the works shall be retained during all construction stages, and the street tree(s) fronting the development site shall be protected by tree protection fencing in accordance with Section 4 of AS 4970-2009 Protection of trees on development sites. As a minimum the tree protection fencing for street tree(s) fronting the development site shall consist of standard 2.4m panel length to four sides and in accordance with Australian Standard 4687-2007 Temporary Fencing and Hoardings, unless otherwise directed by an Arborist with minimum AQF Level 5 in arboriculture. All fencing shall be located to allow for unrestricted and safe pedestrian access upon the road verge.

b) all street trees within the road verge are protected under Northern Beaches Council development control plans, except where Council's written consent for removal has been

obtained. The felling, lopping, topping, ringbarking, or removal of any tree(s) is prohibited. No excavated material, building material storage, site facilities, nor landscape materials are to be placed within the canopy dripline of street trees.

Reason: Street tree protection.

21. 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.

22. **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.

23. **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.

24. **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.

25. **Clearing for Asset Protection Zones**

Clearing of vegetation during works for APZ establishment must only occur within the marked APZ boundaries as established within the supplied bushfire report #4272 (Bushfire Planning and Design, March 2023) in Map 3.

No clearing is to be undertaken outside of the APZ boundaries.

Written certification of compliance is to be submitted to the Principal Certifier.

Reason: To protect native vegetation and wildlife.

26. **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.

27. 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.

28. 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.

29. 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.

30. 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.

31. **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.

32. **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.

33. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

34. **Notify discovery of a relic**

If any archaeological deposits or relics are discovered during works, works must cease, and the Heritage Council of NSW must be notified. To address this discovery, a s146 notification to the Heritage Council of NSW must be lodged. Additional assessment and approval under the Heritage Act 1977 may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

Reason: Archaeological relics are protected under s.139 of the Heritage Act 1977. Notification of the unexpected discovery of known or suspected relics is a statutory requirement under s.146 of the Heritage Act 1977.

35. **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

36. Required Tree Planting

- a) one locally native tree shall be planted within the property boundary to achieve at least 8 metres height at maturity, and shall be selected from Northern Beaches Council's Native Plant Species Guide, or Council's Tree Guide, and in accordance with the following:
 - i) tree planting shall be a minimum pre-ordered planting size of 75 litres; meet the requirements of Natspec - Specifying Trees and Planning for Bushfire Protection 2019; planted into a prepared planting hole 1m x 1m x 600mm depth, backfilled with a sandy loam mix or approved similar, and maintained, and watered until established; and shall be located at least 3.0 metres from buildings or more, at least 1.5 metres from common boundaries; and located either within garden bed or within a prepared bed within lawn,
 - ii) 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,
- 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.

37. Required Screen Planting

- Screen planting along the northern boundary shall be installed in accordance with the following:
- a) for the entire east-west extent of the secondary dwelling and associated deck,
 - b) the selected planting is to comprise of species capable of attaining a height of 3.5 metres at maturity,
 - c) plants are to be installed as a visual buffer in accordance with the bushfire requirements; be of a minimum container size so plant height is 1.5 metres at installation; and installed in a garden bed prepared with a suitable free draining soil mix,
 - d) where the property is certified Bush Fire Prone Land, any new planting may be managed in accordance with Planning for Bushfire Protection 2019.

Reason: To maintain environmental amenity.

38. 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.

39. 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.

40. **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.

41. **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.

42. **Wastewater Systems -Approval to Operate**

Prior to the issuing of an Occupation Certificate, a copy of a s68 (Local Government Act 1993) approval to operate a wastewater system, and the wastewater system must be activated and effectively operating to the satisfaction of the Principal Certifier.

Note: This applies to the two(2) systems 1. The second dwelling new AWTS and also 2. The main original dwelling with septic tank with trenches.

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

Reason: To ensure the premises are maintained in an appropriate manner and do not present a risk to public health

43. **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

44. **Landscape Maintenance**

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

Reason: To maintain local environmental amenity.

45. **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

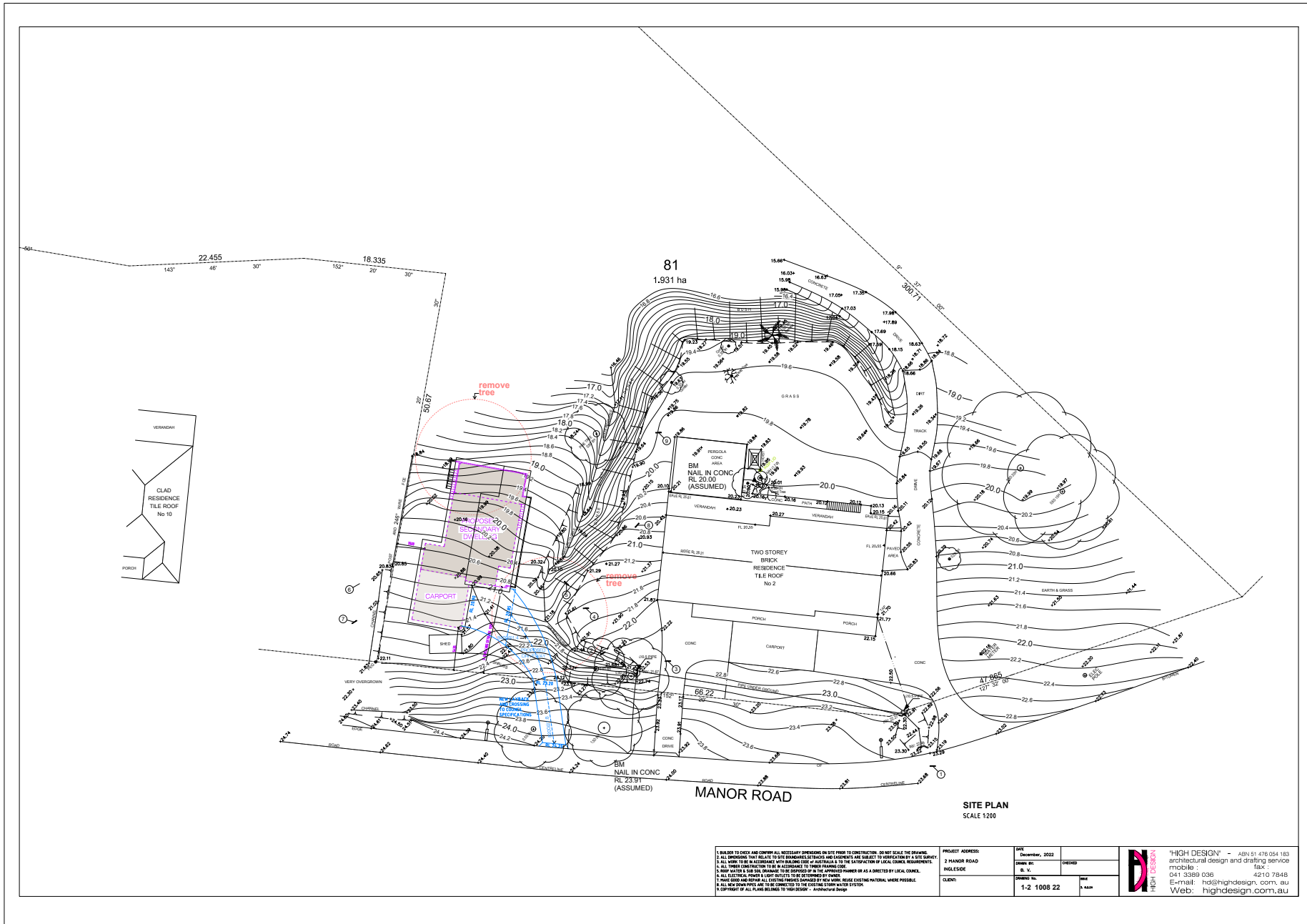
maintenance of the device at the cost of the property owner.

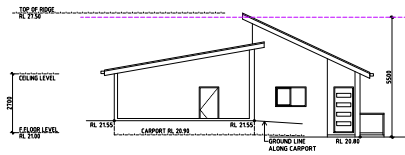
Reason: To protect the receiving environment.

46. **Geotechnical Recommendations**

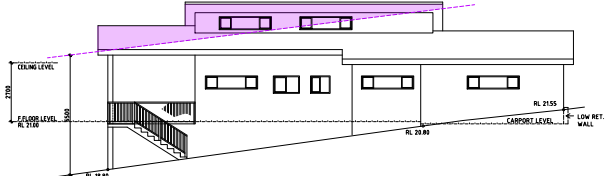
Any ongoing recommendations (if any) of the risk assessment required to manage the hazards identified in the Geotechnical Report referenced in Condition 1 of this consent are to be maintained and adhered to for the life of the development.

Reason: To ensure geotechnical risk is mitigated appropriately.

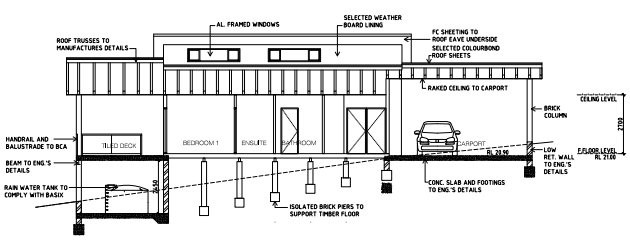




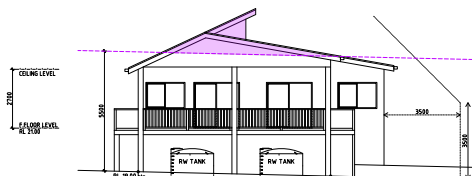
WEST ELEVATION
SCALE 1:100



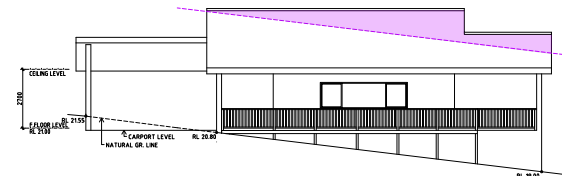
NORTH ELEVATION
SCALE 1:100



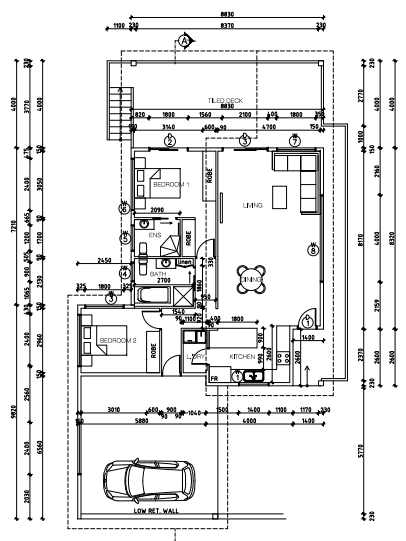
SECTION A-A
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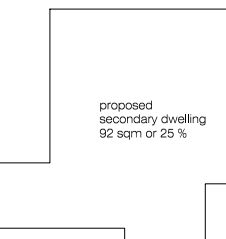
EAST ELEVATION
SCALE 1:100



SOUTH ELEVATION
SCALE 1:100



SECONDARY DWELLING FLOOR PLAN
SCALE 1:100



1. BUILDER TO CHECK AND CONFIRM ALL NECESSARY DIMENSIONS ON SITE PRIOR TO CONSTRUCTION. DO NOT SCALE THE DRAWING.
2. ALL DIMENSIONS THAT RELATE TO THE BUILDING'S EXTERIOR ARE SUBJECT TO INSPECTION BY A SITE SURVEYOR.
3. ALL WORK TO BE IN ACCORDANCE WITH BUILDING CODE OF AUSTRALIA & TO THE SATISFACTION OF LOCAL COUNCIL REQUIREMENTS.
4. ALL DIMENSIONS TO BE IN ACCORDANCE TO THE PLANNING CODE.
5. RAIN WATER & GAS GAS DRAINAGE TO BE DISPOSED OF IN THE APPROVED MANNER OR AS DIRECTED BY LOCAL COUNCIL.
6. ALL ELECTRICAL, POWER & LIGHT ROUTES TO BE DETERMINED BY OWNER.
7. FURNITURE AND DECOR ALL LISTED ITEMS APPROVED BY NEW SOUTH WALES EXISTING MATERIAL WHERE POSSIBLE.
8. ALL NEW CHAIN PILES ARE TO BE CONNECTED TO THE EXISTING STORM WATER SYSTEM.
9. COPYRIGHT OF ALL PLANS BELONGS TO HIGH DESIGN - Architectural Design

PROJECT ADDRESS:
2 HAMOR ROAD
HOLDSIDE

DATE:
December, 2022
DRAWN BY:
B. V.
CHECKED BY:
B. V.
CLIENT:
2-2 1008 22

“HIGH DESIGN” - ABN 51 476 054 183
architectural design and drafting service
mobile: 041 3369 036 fax: 4210 7848
E-mail: hd@highdesign.com.au
Web: highdesign.com.au



Rev 1_Clause 4.6 variation - Exception to Development Standards

Property: 2 Manor Road, Ingleside 2101

Development: Construction of a new secondary dwelling, car port, tree removal and ancillary works

Introduction

Clause 4.6 of Pittwater Local Environmental Plan 2014 (PLEP 14) allows Council to permit consent for development even though the proposal seeks a dispensation from a development standard imposed.

Clause 4.6 also requires that a consent authority may be satisfied before granting consent to a development that contravenes a development standard in PLEP 14:

- The applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- The applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

Assistance on the approach to justifying a contravention to a development standard is taken from legal decisions of the Land and Environment Court of NSW in the following cases:

1. Wehbe v Pittwater Council [2007] NSWLEC 827;
2. Four2Five Pty Ltd v Ashfield Council [2013] NSWLEC 1009;
3. Micaul Holdings Pty Limited v Randwick City Council [2013] NSWLEC 1386; and
4. Moskovich v Waverley Council [2016] NSWLEC 1015.

With respect to the matters above, this Clause 4.6 request outlines the departure sought to the Height of buildings control and establishes that compliance with this development standard is unreasonable and unnecessary in the circumstances.

It also demonstrates that there are enough environmental planning grounds to justify the contravention and provides an assessment of the matters the Council is required to consider in the development assessment process.



The Development Standard to be Varied

The development standard that is sought to be varied as part of this application is Clause 4.3 (2FA) of PLEP 14, relating to the Height of buildings, and reads:

- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*
- (2FA) *Despite subclause (2), the maximum height for a secondary dwelling or a rural worker's dwelling in Zone C4 Environmental Living or Zone RU2 Rural Landscape is 5.5 metres if the secondary dwelling or rural worker's dwelling is separate from the principal dwelling.*

Clause 2FA prescribes a 5.5 metre control for the site for the category of development and would in any other case be 8.5 metres.

The Proposed Variations

PLEP 14 requirement	Subject site	Variation
5.5 metres	The non-compliances relate to the roofline and upper walls of the secondary dwelling (refer to architectural drawings).	<p>Western (front) elevation, the tip of the roofline protrudes the height by <u>0.19 metres</u> or 3.45% variation.</p> <p>Eastern (rear) elevation, the roofline, and upper walls protrude the height by <u>0.97 metres</u> or 17.63% variation.</p> <p>Northern (left side) elevation, the roofline and upper walls including fenestration protrudes the height by <u>1.7 metres</u> or 30.91% variation.</p> <p>Southern (right side) elevation, the roofline protrudes the height by <u>1.56 metres</u> or 28.36% variation.</p> <p>We note this variation at first glance may be significant, however we would like to remind the reader the height control is low for this category of development where normally a control of 8.5 metres would apply.</p>



Justification for Contravention of the Development Standard

Clause 4.6 of PLEP 14 states:

- (1) The objectives of this clause are as follows—*
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless—*
 - (a) the consent authority is satisfied that—*
 - (i) the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) the concurrence of the Planning Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—*
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) the public benefit of maintaining the development standard, and*
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*



Assistance on the approach to justifying a contravention to a development standard is also to be taken from the applicable decisions of the NSW Land and Environment Court and the NSW Court of Appeal in:

- *Wehbe v Pittwater Council* [2007] NSW LEC 827; and
- *Four2Five Pty Ltd v Ashfield Council* [2013] NSWLEC 1009.

The relevant matters contained in Clause 4.6 of the PLEP 14, with respect to the Height of building control development standard, are each addressed below, including with regard to these decisions.

Clause 4.6(3)(a): Compliance with the development standard is unreasonable and/or unnecessary in the circumstances of the particular case

In *Wehbe*, Preston CJ of the Land and Environment Court provided some assistance by outlining five main ways in which a variation to a development standard had been shown as unreasonable or unnecessary.

While *Wehbe* related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), the analysis can be of assistance to variations made under clause 4.6 where subclause 4.6(3)(a) uses the same language as clause 6 of SEPP 1 (see *Four2Five* at [61] and [62]).

As the language used in subclause 4.6(3)(a) is the same as the language used in Clause 6 of SEPP 1, the principles contained in *Wehbe* are of assistance to this clause 4.6 variation request.

The five methods outlined in *Wehbe* include:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method).
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Method).
3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Method).
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Method).
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Method).



The 'First Way' is of particular assistance in this matter, in establishing that compliance with a development standard is unreasonable or unnecessary.

The following section addresses the matters in Clause 4.3, how the objectives of the Height of building control are achieved notwithstanding the non-compliance with the numerical control.

The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Method)

The first method, demonstrating that the objectives of the Height of building control can be achieved and we offer the following opinion and discussion.

We accept that it is prudent for our written request to demonstrate why the height exceedance over and above what might be permissible under the LEP is justified on environmental planning grounds.

We would say that the construction of the secondary dwelling would obviously provide additional affordable housing, and Council may take the view that the secondary dwelling would be for private use, and we accept that may not be an acceptable ground.

We have taken the approach that from the local context and understanding compatibility, we have elected to argue the physical topography constraints and built form context is an environmental planning ground in the meaning at Clause 4.6(3)(b), and how it might be appropriately reflected about the question of sufficiency.

The height exceedance occurs primarily due to the steepness of the site and its topography surrounding the footprint of the secondary dwelling where the upper envelope and roofline of the building protrudes beyond the 5.5 metre projection from the existing ground level as nominated on the architectural drawings to the respective elevations.

We note the grounds levels range from RL 22.4 (front property boundary interface) and drop to RL 18.4 (rear building line of secondary dwelling) or is some 14.5%.

We point out the intent of Clause 2FA does not provide any objectives to support this 5.5 metre height approach, and the fall back is in fact Clause 1- the objectives contained in Clause 4.3, and we will have regard to these as we assess the First Method.

We also note that the intent of the Clause 2FA relates specifically to secondary dwellings or rural worker's dwelling that are separate from the main dwelling.

However, if the secondary dwelling in this instance was in fact attached, then the control of 5.5m would not apply and that the maximum height would be 8.5 metres instead by default and would result in a neutral outcome.

Now when we compare these parameters i.e., 5.5 metres versus 8.5 metres, we note that it results in a height difference of 3 metres or 1 storey.

At our first reading of Clause 2FA, we would say the intent of the control from a planning point of view and in the mind of the author at the time of writing the control, would have been likely to



regulate the scale and height of the building if it was detached so that the exterior and appearance would not be dominant to the rural landscape in which the building would be found and that proposed development is compatible with the height and scale of surrounding and nearby development.

And we also assume that such a building would most likely be found behind the rear building line of the main dwelling house, as naturally, from a planning and architectural design point of view, you would not have dominant buildings behind a rear building for visual reasons as the main residence would be expected to take centre stage.

Our presumption is based on our experience and education, and we would comfortably say the same intent is derived upon this approach from reading clause 2FB, where the example of a dual occupancy is cited where the dwelling furthest back would be limited to a height control of 5.5 metres.

Of interest, we do not see what the control would be in place if someone choose to erect a farm building in place of the secondary dwellings or that of a rural worker's dwelling, where the controls are silent on this and that the maximum control would be 8.5 metres from our interpretation.

We would simply conclude that the controls are in part related to controlling the height and scale of a building when it is located behind the rear building line of the main dwelling and for visual intrusion considerations to take priority in creating a consistent scale for a townscape or neighbourhood is an environmental planning ground.

The project architect's approach is to create a consistent scale with neighbouring development and with the main dwelling house and that trajectory from a height relationship would be consistent at the street level as being 1 storey. The architect could call the building as something else and that would be disingenuous.

Another consideration is understanding the placement of footprints and managing visual impact, we feel there needs to be a consistency with that of the front and rear building lines, and in this case, the scenario envisaged by Clauses 2F, and 2FB does assist our understanding of the intent, as the secondary dwelling is clearly detached to form a separation between neighbouring development and with the main dwelling house building to minimise visual impact.

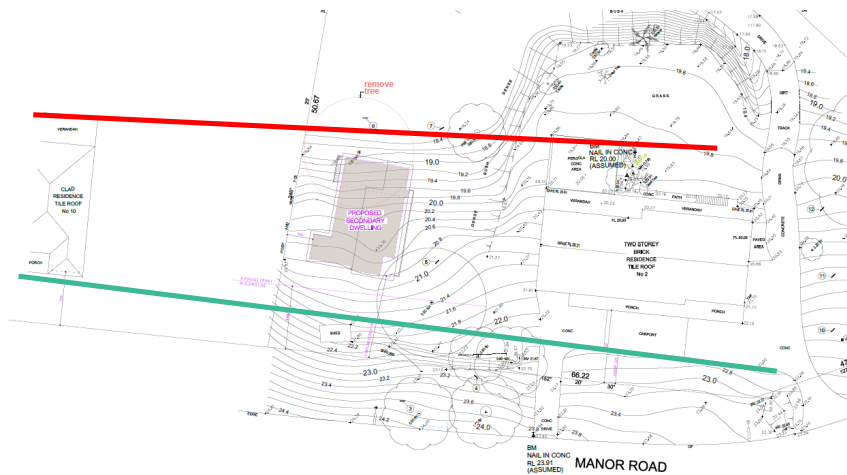
The project architect in this instance feels that it would be inappropriate to position the secondary dwelling behind the main dwelling house found on the land or attaching the building, due to site constraints and that addressing the public road frontage would be a desirable outcome given the townscape.

We note that the earlier scheme filed to Council provided for a larger footprint of the development proposal where a former carport was integrated into the design, which is now redundant, and along with other supplementary charges in this revised scheme are now made to lessen the environmental impact of the development and these include:



- Deletion of the car port and driveway.
- Increased front setback- increased to 11.3 metres (previously shown to be 5.72 metres)
- Increased side setback- increased to 3.5 metres (previously shown to be 1 metre).
- Retention of an existing tree to the front yard.
- Reduction to the floor level by 1 metre/RL 21.0 (previously RL 22.0).

We have provided the lines of projection below of the proposal and that of neighbouring development and the main dwelling house to provide some perspective on consistency to the front and rear building lines.



Projection of front and rear building lines

If we extend our thought process and consider the controls contained in Clauses 2D to 2FB, we would say that in our view, the site is identified as a steep site, and naturally, town planning rules do not provide much tolerance when working with steep sites or steep grades, as the controls adopted by town planners assume ground levels are flat which isn't the reality and some thought was applied upon reading Clause 2D on face value and we could conclude to rely on Second Method.

Now, if we compare the immediate context and style of the immediate dwellings (the existing dwelling house found on the subject land) and that of the adjoining dwelling at 10 Manor Road to understand the historical built form approach taken from a neighbourhood contextual point of view, it is evident these buildings contain an undercroft or storey, and when we visually breakdown this, we can see from the street/public domain, these dwellings present as a single storey building and from the rear, it resembles a 2 storey building (see images below).



Subject site (existing dwelling)



Adjoining dwelling at 10 Manor Road

The design approach of the new secondary dwelling is to appear as a single storey building and we note there is [an exceedance of upper skillion roof line](#), and we would say that the exceedance would not be readily noticeable to a passer-by at the streetscape level and naturally, the secondary dwelling would be 1 storey in appearance at first observation, and this would be the key visual consideration and that of the landscape absorption factors.

And from the side elevations and that of the rear building elevation would be less important given the configuration of the land holding and the projection of the front and building lines are consistent with the buildings found on the land and the neighbouring land holding.

And, we would say that it would be fitting to adopt this approach for the secondary dwelling and that the characterisation of the immediate area would remain low density residential housing set within a rural setting and in our view the proposal would not alter the character of the wider setting because of the noncompliance.



In our view, we cannot say the proposal will provide a positive or beneficial outcome, and that rather the proposal on balance would result in a neutral outcome which is acceptable to justify contravention of the standard.

We also say that a consistent scale from the streetscape would be achieved because of the exceedance, and we mentioned earlier, the development site creates exceptional opportunities and constraints to achieving a good design outcome, as another type of roofline would provide a poorer architectural outcome.

From the point of view of the landowners, about why the secondary dwelling is not attached to the main dwelling house to allow no exceedance to the height of building control is because it would not be appropriate since the owner's request for some form of separation from the main dwelling to the secondary dwelling to house a multi-generational family. We understand that this is not a sufficient environmental planning ground and would be a private benefit.

The objectives of Clause 4.3 are:

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

Assessment:

We understand that there is a direct correlation between floor space ratio and height controls to understand bulk and scale considerations.

In this instance, there is no floor space ratio at play. There is a floor area control of 25% of the existing dwelling footprint (92sq.m), which is compliant.

The proposed development proposes a density that will achieve the objectives of the zone that applies to the site and the desired character of the area in our view is to remain low density residential housing set within a rural setting and the proposal is contextually appropriate given the topography of the landscape.

We also feel that based on our understanding of the background information obtained for the purposes of the Precinct Planning process for the Ingleside Release Area that was coordinated by the State Government i.e., Draft Ingleside Place Strategy, May 2021, prepared by Department of Planning, Industry and Environment, the proposal would be consistent with the low density housing vision earmarked for the future desired character of this locality and we direct the reader to refer to our baseline Historical Archaeological Assessment Report by the same author.

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

Assessment:

We note that there are other land uses that are not strictly rural style housing in the locality and these include places of worship and the NSW Rural Fire Service compound. And opposite



the site is the local listed heritage item known as 1 Manor Road and 12 King Road, Ingleside (*Ingleside House*).

We feel that the proposal would be compatible with the height and scale of surrounding development and that from the streetscape visual line of projection, the proposal would appear to be single storey in built form and the immediate context contains dwellings up to 2 storeys, and this new secondary dwelling building would not be out of character.

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

Assessment:

The secondary dwelling does not negatively affect the solar access enjoyment for the neighbouring property at 10 Manor Road in our view [as the revised scheme provides for an increased side setback \(now shown to be 3.5 metres\)](#).

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

Assessment:

There are no important views in this instance for consideration and we note that the visual assessment of the secondary dwelling from the streetscape would present as a single storey-built form and would not be out of context given the exceedance.

The rear 2 storey element would not be readily visible as the ground slopes downwards from the public viewpoint.

We also note the visual catchment contains bushland and undulating topography that allows for better visual absorption opportunities.

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

Assessment:

In this case, we note that the topography of the site is defined as steep in our earlier opinion and presents challenges.

To overcome this, we would say the design of the secondary dwelling responds to the steepness of the site by adopting a raised floor/bearer and joist construction technique with the least amount of intrusiveness.

And the adoption of a veranda to the south elevation, and along [with covered balcony along the eastern elevation](#) creates a sense of openness and breaks the dominance of a heavy base or massing of lower walls. The direct use of vertical supports provides a human scale link between the floor plates and that of the ground levels.

We note the roofline is causing the exceedance; however, we feel the skillion roof lines are not visually imposing and if an alternative roofline was adopted, it would result in a distracting design and interrupt the rhythm of the building.



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

Assessment:

We feel that the visual catchment contains bushland and undulating topography that allows for better visual absorption opportunities and the impacts on the natural and built environment and along with the heritage item is within acceptable levels in our view.

We also note that environments which contain good quality vegetation coverage also has a greater capacity to visually absorb a structure than an environment which is barren of vegetation or tree canopies.

For example, the placement of a building within a flat environment will tend to have a greater degree of visibility from surrounding areas than one which has been introduced into undulating land. And the reason for this is due to the abating effect of undulating land by either reducing views of the building or providing a backdrop to it.

Based on the literature of our office in the Planning Report, we say that from a visual assessment, the size and scale of the secondary dwelling would not impact the heritage item located directly opposite and that is because of the spatial separation between the new building and the existing heritage building i.e., approximately 70 metres.

Any visual intrusion is mitigated by the architectural design of the new building, where the secondary dwelling is presented in a postmodern sense and does not mock the features of the heritage building and the area has greater capacity to visually absorb the secondary dwelling given the landscape setting and the exceedance to the height is nugatory.

From a heritage and archaeological viewpoint (refer to the baseline Historical Archaeological Assessment Report by the same author), we agree that Powderworks Ruins would be conserved within the surface area identified in the high historical archaeological potential and the area of the proposed secondary dwelling footprint is highly disturbed and hence the low sensitivity distribution afforded by past research remains the same.

We are of the view that the area of the new secondary dwelling footprint may result in nil opportunities for heritage and archaeological considerations as this is due to the clearing and disturbance which has occurred over this part of the land holding.

Moreover, the proposed construction of the secondary dwelling would not identify any new opportunities in our experience based on this evidence at hand.



Clause 4.6(3)(b): Environmental planning grounds to justify contravening the development standard

There are sufficient environmental planning grounds to justify a flexible approach to the application of the Height of building as it applies to the site.

Conclusion on Clause 4.6(3)(b)

Considering the above it is considered that there are no environmental planning grounds that warrant maintaining and/or enforcing the Height of building standard in this case.

If the height plane was followed strictly speaking on this site, it would result in our view an absurd and detracting roofline and our approach is to create a consistent scale with neighbouring development which is an environmental planning ground.

There are clear and justifiable environmental planning merits which justify the application of flexibility allowed by Clause 4.6.

Clause 4.6(4)(a)(ii): In the public interest because it is consistent with the objectives of the zone and development standard

Consistency with objectives of the development standard

The proposed development is consistent with the objectives of the Height of building development standard, for the reasons discussed earlier in this report.

Consistency with objectives of the zone

The subject site is zoned RU2 Rural Landscape under Pittwater Local Environmental Plan 2014.

Assessment:

The development proposal satisfies the objectives of PLEP 14 whereby the secondary dwellings are a permissible form of development and would be consistent with Points 2, 4 and 5. Other Points would not be applicable.

No unreasonable impacts are associated with the proposed variation in our view.

Therefore, the proposal does not result in any circumstance that would be contrary to those objectives.

The development proposal satisfies the objectives of PLEP 14.



Secretary Concurrence

Under Clause 4.6(5), in deciding whether to grant concurrence, the Secretary must consider the following matters:

- (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.*

These matters are addressed in detail below.

Clause 4.6(5)(a): Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The variation does not raise any matter of significance for State or regional planning.

The variation allows for the orderly and economic use of land as envisaged by the Environmental Planning and Assessment Act, 1979.

There are no detrimental impacts on amenity and environmental impacts to neighbours.

The architectural presentation is site responsive and meets the desired future local character.

The variation to the standard will not undermine the legitimacy or future standing of the PLEP 14 controls.

The development controls are generally compliant except for the height of building breach.

Clause 4.6(5)(b): The public benefit of maintaining the development standard

The non-compliance is of no consequence in our view and there is no public benefit in maintaining the control as the outcome would be neutral.

Clause 5.6(5)(c): Any other matters required to be taken into consideration by the Secretary before granting concurrence.

None.

Note, pursuant to the Notification of assumed concurrence of the Director-General under clause 4.6(4) (and the former clause 24(4)) of the Standard Instrument contained in Planning Circular PS 08-003 (dated 9 May 2008), the concurrence of the Director-General under clause 4.6(4)(b) may be assumed to the granting of development consent to the development that contravenes the development standards.



Conclusion

For reasons mentioned herein, the proposed development satisfies the provisions of Clauses 4.6(3) and (4) of PLEP 14 despite the secondary dwelling exceeding the height of building control.

In all, we feel that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

From our point of view, the land use is to remain low density in nature and the existing and desired rural residential character is to remain in balance despite the noncompliance of the height of the secondary dwelling, as we feel the building as presented to the streetscape would be consistent in scale with neighbouring development and the existing building found on the land which is an environmental planning ground.

The proposal would not alter the character of the wider setting of the locality despite the exceedance with the 5.5 metre height of building standard itself and would result in a neutral outcome which is acceptable to justify contravention of the standard because in our view, we cannot say the proposal will provide a positive or beneficial outcome.

We feel there are sufficient environmental planning grounds to justify contravening the development standard as the proposal would meet the relevant zone and height of building objectives.

We find the variation will allow for orderly and economic use and development of land and we note there are no adverse privacy concerns or loss of solar access constraints for the adjoining property and the proposal does not adversely affect any views to and from the Heritage property being *Ingleside House* and that from a visual absorption point of view, there would be minor potential visual effects.

We also feel that the secondary dwelling does not need to be repositioned on the site as the area of the new secondary dwelling footprint may result in nil opportunities for heritage and archaeological considerations as this is due to the clearing and disturbance which has occurred over this part of the land holding and is appropriately sited on what we know.

We accept that introducing some landscaping to the front boundary line will provide for a positive improvement to the streetscape as currently there is a lack of structured planting, and the removal of the vegetation is justified, and we would say this is minor rather than major and can be offset by the introduction of embellishment and is an acceptable planning outcome.

There is no public benefit in maintaining strict compliance with the standards and approval based on our assessment in this document would not be contrary to the public interest and if the roofline and floor to ceiling height were reduced or redesigned, these changes would offer poor amenity for the occupiers and bad architecture in our view and that is not the objective of planning guidelines.



This Clause 4.6 variation is forwarded to Council in support of the development proposal and this request be looked upon favourably by Council.

Prepared by:

Momcilo (Momo) Romic

BTP (UNSW), MEM (UNSW)

NSW Builder Licence No. 252856C

Town Planning Consultant

[Dated: 2 November 2023](#)

ITEM 3.5	MOD2023/0684 - 1191 & 1193 BARRENJOEY ROAD PALM BEACH - MODIFICATION OF DEVELOPMENT CONSENT NO. DA2021/0669 GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION OF A NEW RESTAURANT, CARPARKING AND ASSOCIATED USES
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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 Mod2023/0684 for Modification of Development Consent No. DA2021/0669 granted for Demolition works and construction of a new restaurant, carparking and associated uses on land at Lot 298 DP 721522, 1191 Barrenjoey Road PALM BEACH & Lot 7002 and 7005 DP 1117451, 1193 Barrenjoey Road PALM BEACH, subject to the conditions set out in the Assessment Report.

REPORTING MANAGER

TRIM FILE REF	2024/157379
ATTACHMENTS	↓ 1 Assessment Report

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0684
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Responsible Officer:	GAT and Associates (Planning Consultants)
Land to be developed (Address):	Lot 298 DP 721522, 1191 Barrenjoey Road PALM BEACH NSW 2108 Lot 7002 and 7005 DP 1117451, 1193 Barrenjoey Road PALM BEACH NSW 2108
Proposed Development:	Modification of Development Consent No. DA2021/0669 granted for Demolition works and construction of a new restaurant, carparking and associated uses.
Zoning:	C2 Environmental Conservation RE1 Public Recreation
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level	DDP
Land and Environment Court Action:	No
Owner:	NSW Government - Department of Industry - Lands Island Getaway Pty Ltd Nitola Pty Ltd NBT Pty Ltd
Applicant:	Lance Doyle

Application Lodged:	20/12/2023
Integrated Development:	Yes
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	16/01/2024 to 13/02/2024
Advertised:	Not Advertised
Submissions Received:	139
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This application seeks approval for a modification of the existing Development Consent No. DA2021/0669 which approved 'Demolition works and construction of a new restaurant, carparking and associated uses' at the site known as the 'Boathouse Palm Beach'. The associated uses approved with the redevelopment of the boathouse include a boat hire business and a seaplane charter business (permitted with consent under Schedule 1 Additional Permitted Uses of the Pittwater LEP 2014 and approved under DA2021/0669).

The modification proposed in the current application comprises a change to extend the operating hours. No changes to buildings internally or externally are proposed with this modification application. The modification does not propose any changes to the restaurant, secondary buildings or car parking on site.

The application was exhibited between 16/01/2024 to 13/02/2024. One-hundred and thirty-nine (139) submissions relating to opening hours were received; one-hundred and thirty-two (132) in favour and seven (7) objections to the proposed modification.

As Council's exhibition of the proposed modification attracted more than five submissions in objection, the application is reported to the Development Determination Panel for determination. Being a Section 4.55(1A) modification application, the subject application does not require determination by the Local Planning Panel in accordance with the Ministerial Local Planning Panels Direction – Development Applications and Applications to Modify Development Consent issued on 6 September 2023 and the Conflict of Interest Management Strategy prepared by Council in relation to this application, dated 13 November 2023.

Given that the proposed modifications are acceptable in terms of Environmental Health, acoustic, visual and environmental impacts, it is recommended that Council grant approval to the modification application, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The following operating hours currently apply as per Condition No. 96 of approval DA2021/0699.

“96. Hours of Operation

The hours of operation outside of daylight saving are to be restricted to:

- Monday to Saturday – 7.00am to 4.00pm
- Sunday and Public Holidays – 7.00am to 4.00pm

The hours of operation during daylight saving are to be restricted to:

- Monday to Thursday – 7.00am to 4.00pm
- Friday and Saturday – 7.00am to 10.00pm
- Sunday – 7.00am to 4.00pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

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

This Section 4.55(1A) application seeks to modify Condition No. 96 of development consent No. DA2021/0669 with the following:

“96. Hours of Operation

The hours of operation of the approved use are to be restricted to:

- Monday to Sunday (inclusive) 7.00am to 11.00pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

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

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.

COUNCIL-RELATED DEVELOPMENT APPLICATIONS POLICY

The Council-related Development Applications Policy applies to the development. Specifically, the Policy requires referral to the Executive Manager Development Assessment for a conflict-of-interest assessment and preparation of a Management Statement. This Statement was duly prepared and the application was sent out for external planning assessment and publicly exhibited for 28 days.

SUMMARY OF ASSESSMENT ISSUES

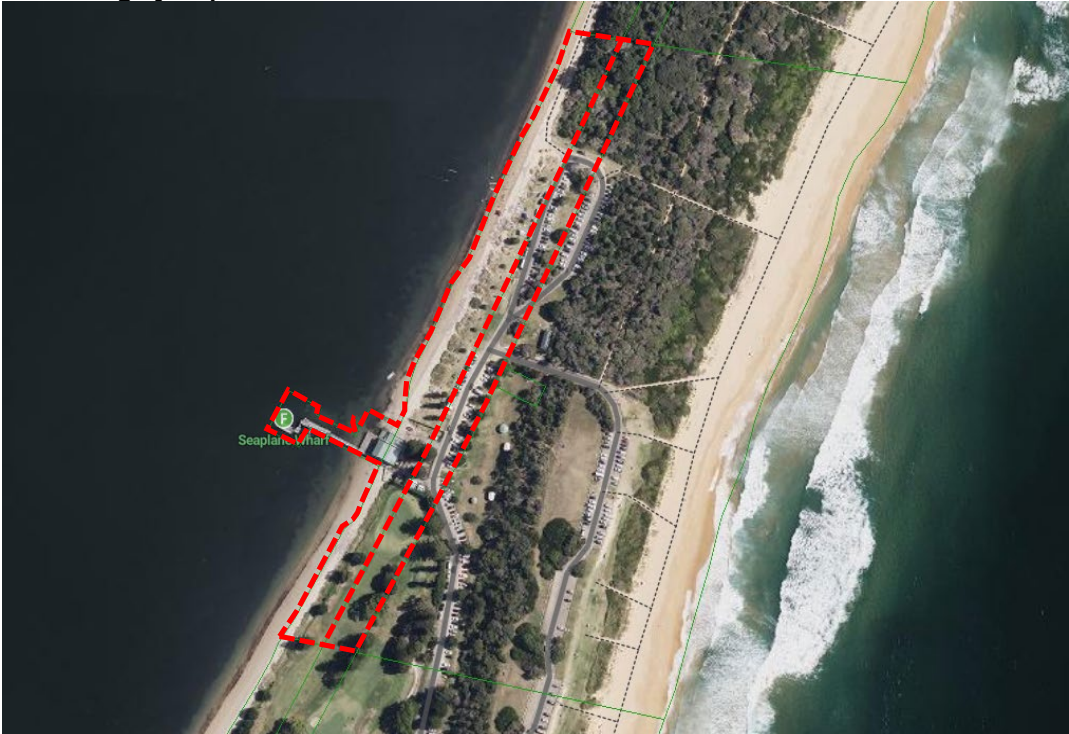
No assessment issues raised.

SITE DESCRIPTION

Property Description:	Lot 298 DP 721522, 1191 Barrenjoey Road PALM BEACH NSW 2108 Lot 7002 DP 11175592 and 7005 DP 1117451, 1193 Barrenjoey Road PALM BEACH NSW 2108
Detailed Site Description:	The site containing the existing Boathouse Café building is located in the northwestern corner of Governor Phillip Park, at Nos. 1191 to 1193 Barrenjoey Road, Palm Beach and fronts Pittwater on the peninsula that links the Barrenjoey Headland and Palm Beach. The site of the Boathouse development extends over the following three (3) allotments and is subject to a split zoning: Lot 298, in DP 721522, (containing the existing Boathouse Café) is on the seaward side of Mean High Water Mark (MHW) and is zoned C2 Environmental Conservation. Crown Land is managed by the Department of Industry – Crown Lands. Lot 7005, in DP1117451 extends from the MHW easterly for approximately 25

	<p>metres, generally in line with Barrenjoey Beach and the foreshore and is zoned RE1 Public Recreation. Crown Land is part managed by the Department of Industry – Crown Lands and part managed by Council.</p> <p>Lot 7002, in DP1117592 is the most eastern portion of the site and generally covers street frontage of the site, the street and the adjacent access road car park, and is zoned RE1 Public Recreation. Crown Land is managed by Northern Beaches Council.</p> <p>The existing two-storey building and deck structure on the site is currently under construction, near completion.</p> <p>A wharf extends from the Boathouse building to the west into Pittwater. The wharf is publicly accessible with pedestrian access from Governor Phillip Park and contains mooring facilities for boats and sea planes.</p> <p>Vehicle access to the site is provided by an internal road which loops within Governor Phillip Park, and is accessed from Beach Road. The site is relatively level with a mild grade from east to west.</p>
	<p>Description of Surrounding Development</p> <p>Directly to the west of the site is Pittwater, to the east of the site is the Barrenjoey Road internal loop road, providing vehicular access to Barrenjoey Head, and to Governor Phillip Park. Station Beach is located north adjacent the site. To the south of the subject site is a mix of natural areas with beaches, trees, pathways, vehicle parking as well as recreation such as the Palm Beach golf club, community facilities including North Palm Beach Surf Lifesaving Club and cafes. Residential dwellings are located further south.</p>

Aerial imagery map with cadastre:



Source: Mecone Mosaic (2024)

Site Location Map



Source: Northern Beaches Mapping (2024)

SITE HISTORY

The land has been used for boat hire, sea plane charter and café for an extended period. A search of Council's records has revealed the following relevant history:

- **NO409/98:** A development application was submitted on 9 November 1998 and approved 4 May 1999 for use of the site for a commercial boat hire of non-powered watercraft in Pittwater.
- **DA2021/0669:** The development application was submitted on 26 May 2021 and approved on 15 December 2021 by the Northern Beaches Local Planning Panel. The development approved is for *"Demolition works and construction of a new restaurant, carparking and associated uses, including a Voluntary Planning Agreement"* and comprised of the following works:
 - Demolition of the existing structures on Lot 298 (excluding the existing wharf).
 - Replacement of existing piles with taller supporting piles.
 - Construction of a two-storey building, with a raised floor level, for continued use of a café, boat hire and seaplane office. The café and boat hire business will be accommodated on the ground floor, with the seaplane booking office and café staff amenities located on the first floor.
 - Four (4) x building identification signage.
 - Construction of a new ancillary building, replacing the existing outbuildings south-east of the Boathouse building, for use as bathroom amenities (open to the public), storeroom and waste storage room.
 - Raise the upper level of the seaward decking.
 - Landscaping and associated works within the adjacent leased land within Governor Phillip Park.
 - Addition of further landscaping south of loading bay and north of parking bays, including dune stabilisation works.
 - Enlargement of parking bays to the north of the building to achieve compliance with the relevant Australian standards.
 - Install a pedestrian path running north from eastern side of Boat House to the Barrenjoey Beach.
 - The proposed hours of operation for in-house dining, takeaway meals and refreshments are 7.00am to 4.00pm, 7 days a week.
 - The proposed hours of operation for functions are 4.00pm to 10.00pm on Fridays and Saturdays during summer periods.
 - The proposed maximum number of patrons is 152.
- **MOD2022/0153:** Modification of DA2021/0669 was submitted on 5 April 2022 and approved 4 May 2022 to modify the timing of conditions relating to the provision of an Environmental Management Plan and Dangerous Good Storage.
- **MOD2023/0171:** A further modification to DA2021/0669 was submitted 14 April 2023 and approved on 2 August 2023. The modification made the following changes to the approved buildings:
 - Installation of solar panels to western and northern roofs;
 - Removal of ramp to southern deck;
 - Timber decking to be P4 grade;
 - FRP grating to eastern and southern deck and enlarge eastern deck width by 240mm;
 - Provide louvre windows to southern elevation;
 - Increase sill height to western wall windows to Female WCs;
 - Additional WC to first floor amenities area; and
 - Glazed hinged door to southern elevation of first floor.
- **MOD2023/0415:** This modification was submitted on 14 August 2023 and approved 19 December 2023. This modification included the following changes:
 - Additions to ventilation and satellite dishes on the roof
 - Alteration to the approved external windows, door openings and awning detail on the eastern elevation.

- Internal room reconfiguration and minor change in floor level to provide a mild slope of 1:800 for drainage.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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 consideration 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;
- A review and consideration of all submissions made by the public in relation to the application; and
- 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 DA2021/0669 in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - 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 proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • The modified proposal does not alter the approved building footprint, building envelope or height. The proposed changes will have no visual impact to the development. • The proposed modifications will have no unreasonable amenity impacts to surrounding properties or the public domain. • The proposed modifications will not result in detrimental impacts on the heritage conservation area.

Section 4.55(1A) - Other Modifications	Comments
(b) 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 DA2021/0669 for the following reasons:</p> <ul style="list-style-type: none"> • The use, height, bulk and scale of the development is retained. • The changes to the operating hours will not have visual impacts or environmental impacts. • The extended operating hours can be appropriately managed through conditions of consent.
Section 4.55(1A) - Other Modifications	Comments
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require, or</p> <p>(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</p>	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.	The 132 submissions in support and seven (7) objections received in relation to this application are addressed below.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining a modification application made under Section 4.55 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 the 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	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	Not applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment	<u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via an existing condition of consent.
Regulation 2021 (EP&A Regulation 2021)	<p><u>Clause 29</u> of the EP&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&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&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via approved conditions of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&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 an existing condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> 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 an existing condition of consent.</p>

Section 4.15 'Matters for Consideration'	Comments
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) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the approved 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	One-hundred and thirty-two (132) submissions in support and seven (7) objections have been received in relation to this application.

Section 4.15 'Matters for Consideration'	Comments
EPA Regs	
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 modification.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject modification application has been publicly exhibited for 28 Days from 16/01/2024 to 13/02/2024 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 one-hundred and thirty-nine (139) unique submission/s from

Name:	Address:
Steven Jacobs	11 Ebor Road PALM BEACH NSW 2108
Ms Caren Anna Young	906 Barrenjoey Road PALM BEACH NSW 2108
Mrs Sally Elizabeth Bowie Wilson	2/17 Gladswood Gardens DOUBLE BAY NSW 2028
Ms Anna Maria Monticelli	11 Ebor Road PALM BEACH NSW 2108
Stephen Jones	3 Waratah Road PALM BEACH NSW 2108
Mr Richard Kovacs	2 Waratah Road PALM BEACH NSW 2108
Mr Nicholas Burton-Taylor	Hillgrove Young Road BOOROWA NSW 2586
Hannah Jones	3 / 12 Ashburner Street MANLY NSW 2095
Mrs Abbey Trim	4 / 12 Ashburner Street MANLY NSW 2095
Angus James	7 A Karloo Parade NEWPORT NSW 2106
Mr Steven James Howe	PO Box 837 AVALON BEACH NSW 2107
Ms Sarah Helen James	PO Box 1023 NEWPORT BEACH NSW 2106
Ms Cornelia Maria Sullivan	62 Bynya Road PALM BEACH NSW 2108
Ms Elizabeth Ann Jones	4 / 1172 Pittwater Road NARRABEEN NSW 2101
Briana Kennison	25 Dolphin Crescent AVALON BEACH NSW 2107
Mr Ian Spencer	8 Albert Road AVALON BEACH NSW 2107
Mr Peter Maxwell Jones	4 / 1172 Pittwater Road NARRABEEN NSW 2101
Mrs Rosetta Pia Spencer	5 / 5 Avalon Parade AVALON BEACH NSW 2107
Mrs Susan Lee Donaldson	14 / 8 - 10 Clarke Street NARRABEEN NSW 2101
William Manning	50 York Terrace BILGOLA PLATEAU NSW 2107
Deb Jones	Address Unknown
Amelia Eilbeck	35 Careel Head Road AVALON BEACH NSW 2107
David George Eilbeck	35 Careel Head Road AVALON BEACH NSW 2107
Luke Howarth	Address Unknown

Name:	Address:
Gillian Grant	7 / 65 Old Barrenjoey Road AVALON BEACH NSW 2107
Ms Linda Jane Rochester	4 A Delecta Avenue CLAREVILLE NSW 2107
Sandy Tran	1933 A Pittwater Road BAYVIEW NSW 2104
Mr Peter Robert Binks	1 Delecta Avenue CLAREVILLE NSW 2107
Tessa Blaiklock	3 / 5 A Wollombi Road BILGOLA PLATEAU NSW 2107
Mrs Amanda Alice Eilbeck	13 Bruce Street MONA VALE NSW 2103
Mr Zachary Rocky Rochester	176 Central Road AVALON BEACH NSW 2107
Mrs Fiona Caroline Russell	9 Coolawin Road AVALON BEACH NSW 2107
Natalia Zumbo Rochester	176 Central Road AVALON BEACH NSW 2107
Rita Kluge	28 Bellevue Avenue AVALON BEACH NSW 2107
Mr John Hampton	Address Unknown
Mrs Sarah Lynne Hampton	1 George Street AVALON BEACH NSW 2107
Mr Christopher Michael Barter	22 Rayner Road WHALE BEACH NSW 2107
Mrs Hayley Jennifer Baillie	PO Box 596 AVALON BEACH NSW 2107
Mr Richard John Roxburgh	53 Bungan Head Road NEWPORT NSW 2106
Stella Blaiklock	Address Unknown
Mrs Melanie Jane Ritchie	46 Simpson Street BONDI BEACH NSW 2026
Mr Gary John Lacroix	56 William Street AVALON BEACH NSW 2107
Ms Brianna Lee Seale	43 Queens Avenue AVALON BEACH NSW 2107
Ms Victoria Van Brugge	1114 - 1118 Pittwater Road COLLAROY NSW 2097
Simon Hayward	224 Forest Way BELROSE NSW 2085
Ms Julia Helen Burton Taylor	40 Florida Road PALM BEACH NSW 2108
Adam Blaiklock	8 Goodwin Road NEWPORT NSW 2106
Ms Katrina Maw	47 The Avenue NEWPORT NSW 2106
Ashley Askaro	117 Riverview Road EARLWOOD NSW 2206
Ms Emma Louise Ferris	163 Avalon Parade AVALON BEACH NSW 2107
Mr Ross Kirkwood Williams	5 / 48 Golf Avenue MONA VALE NSW 2103
Mr Andrew Harkness Clarke	5 Allen Avenue BILGOLA BEACH NSW 2107
Thomas Warren	29 Elaine Avenue AVALON BEACH NSW 2107
Ilter Dumduz	13 Cannes Drive AVALON BEACH NSW 2107
Mr Josh May	109 Avalon Parade AVALON BEACH NSW 2107
Nathan Teixeira	Address Unknown
Mrs Emma May Love	28 Burrawong Road AVALON BEACH NSW 2107
Mr Aidan James Sarsfield	19 Milga Road AVALON BEACH NSW 2107
Pip Wrench	Address Unknown
Ms Heidi Belinda Middleton	136 Pacific Road PALM BEACH NSW 2108
Mrs Jane Kestell Mander-Jones	97 Pacific Road PALM BEACH NSW 2108
Mr John Michael Raymond	211 Hudson Parade CLAREVILLE NSW 2107
Tim Mander-Jones	97 Pacific Road PALM BEACH NSW 2108
Michael Ritchie	51 Robertson Road SCOTLAND ISLAND NSW 2105
Ms Janet Helen Alexander	PO Box 826 AVALON BEACH NSW 2107

Name:	Address:
Simon John Goodings	66 Pacific Road PALM BEACH NSW 2108
Ms Jane Massett Strang	PO Box 552 AVALON BEACH NSW 2107
Mrs Elisabeth Frayne	3 Crescent Road MONA VALE NSW 2103
Ms Catherine Patricia Warr Goodings	66 Pacific Road PALM BEACH NSW 2108
Mr George Warrington Holman	1 Larool Road TERREY HILLS NSW 2084
Mrs Bronwyn Gai Watts	15 Elaine Avenue AVALON BEACH NSW 2107
Mr Jeremy Dylan Carr	89 Myola Road NEWPORT NSW 2106
Mrs Christine Ann McGoldrick	C/- Grech and Associates Architects Suite 7 121-123 Military Road NEUTRAL BAY NSW 2089
Sally Oxenham	2 Livistona Lane PALM BEACH NSW 2108
Mr David Ronald Watson	12 Bareena Road AVALON BEACH NSW 2107
Ms Katherine Lee Dennis	12 / 61 Old Barrenjoey Road AVALON BEACH NSW 2107
Mr Michael Alexander Kennison	25 Dolphin Crescent AVALON BEACH NSW 2107
Jayne Solomon	4 Alexander Road AVALON BEACH NSW 2107
Ms Edwina Jane Jones	6 Beauty Drive WHALE BEACH NSW 2107
Ms Jill Adrienne Gosselin	2 / 91 Avalon Parade AVALON BEACH NSW 2107
Ms Michelle Marguerite Pfafflin	49 Marine Parade AVALON BEACH NSW 2107
Claire Belford	Address Unknown
Mrs Kara Sargent	2 Hakea Drive WARRIEWOOD NSW 2102
Michael H McMichael	986 Barrenjoey Road PALM BEACH NSW 2108
Mr Nicholas Maxwell Anderson Brook	62 Marine Parade AVALON BEACH NSW 2107
Kim Louise Binks	1 Delecta Avenue CLAREVILLE NSW 2107
Mrs Emma Kate Vickery Wilson	PO Box 784 AVALON BEACH NSW 2107
Ms Erica Llewellyn Pearce	13 A Burrawong Road AVALON BEACH NSW 2107
Ms Brooke Annabel Taylor	56 William Street AVALON BEACH NSW 2107
Mrs Rebekah Chandler	18 Park Avenue AVALON BEACH NSW 2107
Ms Genevieve Christina Smart	19 Milga Road AVALON BEACH NSW 2107
Maria Martinsson Crimp	Address Unknown
Mr Remo Adoncello	52 Hilltop Road AVALON BEACH NSW 2107
Mrs Diane Elizabeth Van Ooi	358 Barrenjoey Road AVALON BEACH NSW 2107
Mrs Diana Elizabeth Edwards	64 Sunrise Road PALM BEACH NSW 2108
Marino Festa	22 Palmgrove Road AVALON BEACH NSW 2107
Andrew Goldsmith	2 Albert Road AVALON BEACH NSW 2107
Amikka May	109 Avalon Parade AVALON BEACH NSW 2107
Richard Rains	219 Whale Beach Road WHALE BEACH NSW 2107
Ms Sarah Kathleen Dickie	3 / 31 Cavill Street FRESHWATER NSW 2096
Rebecca Kate Simpson	15 Inglebar Avenue ALLAMBIE HEIGHTS NSW 2100
Penelope Ann Rains	PO Box 181 AVALON BEACH NSW 2107
Daniel John Morley	49 Careel Head Road AVALON BEACH NSW 2107
Mrs Natascha Jocelyn Scutts	18 Heath Street MONA VALE NSW 2103

Name:	Address:
Jason Grier	Address Unknown
Ms Kerry Louise Nichols	62 William Street AVALON BEACH NSW 2107
Mr Geoffrey Richard Hodgkinson	45 A Sunrise Road PALM BEACH NSW 2108
Mrs Christina Catherine Hodgkinson	PO Box 781 AVALON BEACH NSW 2107
Mr Robert Maurice Allo	81 Myola Road NEWPORT NSW 2106
Mr Robert Julian Constable	16 Waratah Road PALM BEACH NSW 2108
Mrs Holly Eyrans Anderson	60 Palmgrove Road AVALON BEACH NSW 2107
Mrs Amethyst Rose Robinson	1065 Barrenjoey Road PALM BEACH NSW 2108
Sarah Mellish	Address Unknown
Mr Lionel James Hunt	3/2 Ocean Road PALM BEACH NSW 2108
Frank Guy Stokes Mellish	109 Pacific Road PALM BEACH NSW 2108
Mrs Tania Caroline Kerr	19 Rayner Road WHALE BEACH NSW 2107
Ms Lucinda Maree Aboud	29 Cranbrook Road ROSE BAY NSW 2029
Meg Hayne Mr Matthew Hayne	9 Iluka Road PALM BEACH NSW 2108
Mrs Megan Tranter	1 Blue Hills Drive RANGEVILLE NSW 4350
Mr Jeremy Rudolph Bohrsmann Letts	44 Herbert Avenue NEWPORT NSW 2106
John Emery Kennedy	1127 Barrenjoey Road PALM BEACH NSW 2108
Theodore Steven Chambers	44 Bynya Road PALM BEACH NSW 2108
Ms Nina Leone Hearne	49 Palmgrove Road AVALON BEACH NSW 2107
Ms Kathryn Jane Crone	12 Northview Road PALM BEACH NSW 2108
Mr Paul Wright Dickson Mrs Lucy Ann Dickson	7 / 1741 - 1745 Pittwater Road MONA VALE NSW 2103
Mrs Maryanne Cuschieri	27/11 Amherst Street CAMMERAY NSW 2062
Mr Malcolm John Thompson	896 Barrenjoey Road PALM BEACH NSW 2108
Mrs Kathryn Margaret Walsh	5 Coral Close AVALON BEACH NSW 2107
Ms Sally Ann Constable	255 Whale Beach Road WHALE BEACH NSW 2107
Alistair Champion	40 Iluka Road PALM BEACH NSW 2108
Mr Jeromine Alpe	13 Prince Albert Street MOSMAN NSW 2088
Scott Wenkart	22 Iluka Road PALM BEACH 2108
Lara Malouf	Address Unknown
Victor	Address Unknown
Ellie Malouf	Address Unknown
Belinda Massy Greene	96 Iluka Road PALM BEACH 2108
Steve Burcher	20 Iluka Road PALM BEACH 2108

Of the submissions above, one-hundred and thirty-two (132) submissions are in support of the proposal, and seven (7) submissions objecting to the proposal raised the following issues:

- *Concern of noise impact negatively affecting enjoyment of the park*
- *Noise Impacts until 11 pm may have negative environmental impacts on neighbouring residents.*

- *Negative traffic impact resulting from potentially hundreds of patrons until 11 pm*
- *Parking in the park may be negatively affected from operating 7am to 11 pm*
- *The proposal appears to propose an additional car space.*
- *The extension of hours will not benefit the public as it is likely to be restricted for booked functions only.*
- *Visual impact of bulk and scale of the development as a whole*
- *Concern the extension of hours changes the use on the site to a bar.*
- *Impact from noise may be exacerbated by neighbouring restaurants and cafes open late.*

The matters raised in the submission are addressed as follows:

- **Noise Assessment** - A noise impact assessment has been submitted to address noise impacts from the extended hours of operation and includes noise management recommendations. The proposal has been referred internally to Council's Environmental Health officer who supports the proposal subject to conditions regarding the outdoor speaker direction and noise limiter to address potential noise impact.
- **Noise Uses** - Other restaurant and café venues operate at night and are notably closer to residential areas than the site such as the 'Dunes Palm Beach' (110m north of residents) and 'Casa by the Boathouse' which operates until 10 pm adjoining dwelling houses compared to the site located 500m north of residents.
- **Traffic and Parking** - The proposal does not propose any additional parking spaces with the modification.
- **Public Benefit** - The proposed modification is to extend the hours only, and the extension of hours does not propose any restriction of the restaurant for functions only.
- **Intensification** - The proposed modification does not seek to increase the maximum capacity of the premises above the approved 152 Patron Limit as per condition 97 of consent DA2021/0669.
- **Submission on Other Site** - One of the objections appears to refer to a different development application as the submission included links to a news article regarding apartment complexes in Palm Beach.
- **Loss of Existing Noise Restrictions** - The proposed modification to condition 96 will retain the portion of the condition that after the permitted hours, all service and entertainment is to cease, and patrons will be required to leave within 30 minutes.

REFERRALS

Internal Referral Body	Comments
Environmental Health - Commercial use	<p>Supported</p> <p>Environmental Health supports the proposed modifications without requiring additional conditions.</p>
Environmental Health – industrial use	<p>Supported</p> <p>Environmental health supports the proposed modification subject to the recommendations provided in the acoustic report submitted being implemented through conditions of consent.</p> <p>Operational conditions recommended:</p> <p>External Speakers</p>

Internal Referral Body	Comments
	<p><i>External speakers located in the outdoor covered deck area are to be orientated to project sounds towards the west-south-west or west-north-west (towards the Pittwater)</i> <i>Reason: To ensure acoustic compliance in an operational situation.</i></p> <p>Noise Limiter <i>The sound system is to be fitted with a noise limiter so that the maximum output is limited to an L10 noise level 95dBA at 1 metre. A suitable person proficient in acoustics is to ensure the noise limiter has been set according to this requirement.</i> <i>Reason: To ensure a suitable acoustic environment.</i></p>
Property and Commercial Development	<p>Supported</p> <p>The proposal is a modification to the approved operating hours. Property has no comment to make regarding the proposed modification.</p> <p>Property and Commercial development support the proposal without requiring additional conditions.</p>
Parks, Reserves and Foreshores	<p>Supported</p> <p>No external works are proposed, and the landscape and public domain outcomes remain unaltered.</p>
External Referral Body	Comments
DPI Fisheries Referral	<p><i>Is not required under S201 of the Fisheries Management Act 1994 No.38.</i></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 original development application was referred to Ausgrid who raised no objections. As the modification proposes a change of hours only, a referral to Ausgrid was not necessary in this case.

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

2.7 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 original application was considered against the matters listed (a)-(g) and was supported by numerous expert reports relating to the construction adjacent and within the foreshore area. The original application was found to be acceptable against the SEPP. The modification relates to the extension of operating hours only therefore, the modification does not give rise to any new environmental or coastal issues.

- 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 proposed amendments will not give rise to any new environmental or coastal issues.

Division 4 Coastal use area

2.8 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*
 - ii) *platform for members of the public, including persons with a disability,*
 - iii) *overshadowing, wind funnelling and the loss of views from public places to*
 - 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*
 - vi) *is satisfied that: the development is designed, sited and will be managed to avoid an adverse*
 - vii) *impact referred to in paragraph (a), or*
 - viii) *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
 - b) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

Comment:

The original application was considered against the matters listed (a)-(b) and was supported by numerous expert reports relating to the construction adjacent and within the foreshore area. The original application was found to be acceptable against the SEPP. The proposed modification includes a noise impact assessment including recommendations for management of noise on the site. Therefore, the proposed modifications do not give rise to any new environmental or coastal issues.

Division 5 General

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

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

Comment:

The proposed modification does not give rise to any new coastal hazards.

The modified proposal 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 recreational and restaurant purposes for a significant period of time with no prior land uses.

Adjacent to the southern boundary are several ancillary buildings. A small central building was used to store petroleum products. A Stage 2 Detailed Site Investigation, prepared by EBG Environmental Geoscience accompanied the original development application and was prepared in support of the proposal. The report concluded that the site is suitable for the proposed development, subject to the recommendations of the report which is referenced within the original consent. In granting the original consent, Council was satisfied that the land is suitable for the purpose for which the development is proposed to be carried out and the recommended conditions continue to apply to the development.

This modification does not propose an alteration to the recommendations approved in the contamination report therefore, the modification does not give rise to new contamination issues.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone RE1: Yes Zone C2: Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone RE1: Yes Zone C2: Yes

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	Complies
Height of Buildings	4m + HAT* = RL 5.17m	RL 10.296m AHD (Or 5.126m above requirement)	No change to building height	No, however unchanged from approved development

* Highest Astronomical Tide (HAT) + 1.17m ADH

Compliance Assessment

Clause	Compliance with Requirements
2.5 Additional permitted uses for particular land	Yes

4.3 Height of buildings	N/A
5.10 Heritage conservation	Yes
5.21 Flood planning	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes
19 Use of certain land at 1191 Barrenjoey Road, Palm Beach	Yes
Schedule 5 Environmental heritage	Yes

Zoning and Permissibility

The site is zoned part RE1 Public Recreation and part C2 Environmental Conservation under PLEP 2014.

The approved Boathouse building is below MHW and within the C2 zone. The proposed uses, for a café, boat hire business and sea plane charter business are permissible with consent as per clause 2.5 (Additional permitted uses for particular land) and clause 19 of Schedule 1 of PLEP.

19 Use of certain land at 1191 Barrenjoey Road, Palm Beach

(1) This clause applies to 1191 and 1193 Barrenjoey Road, Palm Beach, being Lot 298, DP 721572 and Lot 7005, DP 1117451 and identified as "Area 19" on the Additional Permitted Uses Map.

(2) Development for the purposes of business premises (but only those associated with use of the waterway), charter and tourism boating facilities, kiosks or restaurants or cafes is permitted with development consent.

The RE1 Public Recreation zone allows for the following uses:

Centre-based child care facilities; Community facilities; Environmental facilities; Information and education facilities; Kiosks; Public administration buildings; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Respite day care centres; Restaurants or cafes; Signage; Take away food and drink premises; Water recreation structures

Restaurants and cafes are permissible with consent in the RE1 zone.

Clause 5.10 Heritage Conservation

The site is within the C1 - Barrenjoey Heritage Conservation Area (local significance) which is listed within Schedule 5 of the Pittwater Local Environmental Plan 2014. The Boathouse is not a heritage item.

As the modification proposes an extension of hours only, referral to Council's Heritage officer was not necessary for this modification.

Pittwater 21 Development Control Plan

Compliance Assessment:

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
A4.15 Waterways Locality	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C2.12 Protection of Residential Amenity	Yes	Yes
C2.24 Take-away Food Premises	Yes	Yes
C5.19 Food Premises Design Standards	Yes	Yes

CROWN LAND MANAGEMENT ACT 2016 AND LOCAL GOVERNMENT ACT 1993

The land is owned by the Crown and is part managed by Council and part managed by the Department of Industries - Crown Lands.

Under section 3.21 of the *Crown Land Management Act 2016*, Council, as Crown Land Manager, is authorised to classify and manage the land as if it were public land within the meaning of the Local Government Act 1993.

Section 35 of the *Local Government Act 1993* identifies that Community land is required to be used and managed in accordance with:

- The plan of management applying to the land;
- Any law permitting the use of the land for a specified purpose or otherwise regulating the use of the land; and
- Division 2 of the *Local Government Act 1993*.

The *Governor Phillip Park Plan of Management* ('the POM') and the *Governor Phillip Park Conservation Management Plan* ('CMP') apply to the RE1 zoned land.

While the Boathouse building is on land zoned C2 Environmental Conservation and not within the Governor Phillip Park boundary, the Boathouse activities and operations extend into the RE1 Public Recreation zone. Access to the Boatshed building is over public Reserve land. The POM includes the key objective to "*conserve and enhance the Park's natural, historical and cultural environment whilst providing a diverse range of quality informal passive recreational opportunities in a unique and relatively undeveloped setting.*"

The POM requires future uses within Governor Phillip Park to satisfy Section 2.8.1 'Permissible uses', which include to: *encourage public use and enjoyment of appropriate Crown land; encourage public use and enjoyment of appropriate Crown land; optimise public access and use of coastal Crown lands; and encourage the rehabilitation of degraded coastal Crown lands.*

Given the status of the approval and that this application seeks to amend the operating hours only, the development as to be modified is considered to be consistent with the POM and CMP.

Assessment of Application on Crown Land

- Is the land a Crown Reserve?
Response: The land is part of a Crown Reserve
- Is Council the Crown land manager?

Response: Northern Beaches Council is currently the Crown Land Manager under the *Crown Lands Management Act 2016*.

- Can it be taken that the Minister has given consent on behalf of the Crown for its Crown land manager to sign as landowner? (what section of the Act applies?)

Response: Owners consent from Crown Lands has been granted in accordance with Section 2.23 of the Crown Lands Management Act 2016.

- Is the land classified as community land?

Response: The land is classified as community land under the Local Government Act 1993.

- Is there a Plan of Management and if so, are the proposed works consistent with that Plan?

Response: There is a Plan of Management and the development as to be modified is consistent with that POM.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal remains 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 original Development Application. The proposed modification does not alter the cost of works therefore, no change to development contributions is required.

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 Environmental Noise Impact Assessment, 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

The proposed modifications are to the operating hours only with the 7am open remaining the same and the modification extending the closing time of operation to 11pm on a year round Monday to Sunday basis.

The application remains substantially the same as originally approved under DA2021/0669.

The proposed modification to operating hours is supported, and the application recommended for approval.

The proposed development satisfies the appropriate controls and all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2023/0415 for Modification of Development Consent DA2021/0669 granted for Demolition works and construction of a new restaurant, carparking and associated uses on land at Lot 7005 DP 1117451,1193 Barrenjoey Road, Lot 7002 DP 1117592,1193 Barrenjoey Road and Lot 298 DP 721522,1191 Barrenjoey Road, PALM BEACH, subject to the conditions below:

Modification Summary

The development consent is modified as follows:

MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-397616 Mod2024/0684	The date of this notice of determination	Modification to extend the operating hours. Insert additional condition 1C (Approved plans and documentation). Amend condition 92 Amplified Music & condition 96 Hours of Operation Insert operational conditions 101 and 102 for external speakers and noise limiter.
PAN-318758 MOD 2023/0415	19/12/2023	Minor design modifications including adjustments to fenestration, additional doors, upgrade of external wood decking, internal configuration and the addition of solar panels.

Application Number	Determination Date	Modification description
PAN-206791 MOD 2022/0153	04/05/2023	The amendment to two conditions (28 and 38) relating to the timing of the submission of an Environmental Management Plan and the timing of the implementation of the recommendation of the dangerous goods assessment into the Management Plan for the site.
PAN-318758 MOD 2023/0171	02/08/2023	Minor design modifications including adjustments to fenestration, additional doors, upgrade of external wood decking, internal configuration and the addition of solar panels.

Modified Conditions

A. Add Condition 1C – Modification of Consent – Approved plans and supporting Documentation, to read as follows:

1C - Approved Plans and supporting Documentation.

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Modification Approved Plans

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Environmental Noise Impact Assessment	04.10.2023	Day Design Pty Ltd
Plan of Management	09.08.2023	ArtisanOz Consulting

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

B. Modify Condition 92 – Amplified Music, to read as follows:

92 – Amplified music.

Music and any amplified equipment including microphones are to be restricted to the conditions as set out in the "Environmental Noise Impact Assessment Section 4.55 Modification Application Station Beach Boat House Palm Beach – 1191 Barrenjoey Road, Palm Beach NSW" report number 6953-5.1, R Rev B, dated 4 October 2023 including restriction of music to between 7am and 11pm, Monday to Sunday. No music is to be audible within any habitable rooms in any residential premises in the area.

C. Modify Condition 96 – Hours of Operation, to read as follows:

96 – Hours of Operation.

The hours of operation of the approved use are to be restricted to:

- Monday to Sunday (inclusive) 7.00am to 11.00pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

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

D. Additional 101 – External Speakers, to read as follows:

101 – External Speakers.

External speakers located in the outdoor covered deck area are to be orientated to project sounds towards the west-south-west or west-north-west (towards the Pittwater)

Reason: To ensure acoustic compliance in an operational situation.

E. Additional 102 – Noise Limiter, to read as follows:

102 – Noise Limiter.

The sound system is to be fitted with a noise limiter so that the maximum output is limited to an L10 noise level 95dBA at 1 metre. A suitable person proficient in acoustics is to ensure the noise limiter has been set according to this requirement.

Reason: To ensure a suitable acoustic environment.

FINAL DECLARATIONS



Consultant Name: Michael Stephen, GAT & associates.

In submitting this report to Council, I declare that I do not have a conflict of interest in making this recommendation.

ITEM 3.6	MOD2023/0625 - 199 WHALE BEACH ROAD WHALE BEACH - MODIFICATION OF DEVELOPMENT CONSENT DA2022/1951 GRANTED FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
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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 Mod2023/0625 for Modification of Development Consent DA2022/1951 granted for Alterations and additions to a dwelling house on land at Lot 10 DP 10782 & Lot 200 DP 1033789, 199 Whale Beach Road WHALE BEACH, subject to the conditions set out in the Assessment Report.

REPORTING MANAGER

TRIM FILE REF	2024/157864
ATTACHMENTS	↓1 Assessment Report ↓2 Site Plan and Elevations

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2023/0625
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Responsible Officer:	Mark Milton
Land to be developed (Address):	Lot 10 DP 10782, 199 Whale Beach Road WHALE BEACH NSW 2107 Lot 200 DP 1033789, 199 Whale Beach Road WHALE BEACH NSW 2107
Proposed Development:	Modification of Development Consent DA2022/1951 granted for Alterations and additions to a dwelling house
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:	Nancy Kim
Applicant:	Campbell Architecture

Application Lodged:	23/11/2023
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Refer to Development Application
Notified:	29/11/2023 to 13/12/2023
Advertised:	Not Advertised
Submissions Received:	7
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

This development application, made under s4.55(2) of the *Environmental Planning and Assessment Act 1979*, seeks consent for the modification of Development Consent DA2022/1951 granted for Alterations and additions to a dwelling house.

The application is referred to the Development Determination Panel (DDP) due to a building height non-compliance. The proposed height is non-compliant with the 8.5m development standard and proposes a height of 10.72m. This presents a variation of 2.22m (26%) from the development standard and is a 570mm increase from the parent application DA2022/1951, which approved a building height

of 10.15m (19% variation from 8.5m standard). The 570mm height increase is attributed to a ridge top increase of the level 3 roof.

Additionally, this proposal has seven (7) objections.

Concerns raised in the objections predominantly relate to bulk and scale, building height and view sharing.

Critical assessment issues included building height, building envelope and the western side building line.

The 4.6 request for the non-compliance with height standard arises from an increase in the built form, with the level 3 roof ridge increasing by 570mm to a maximum height of 10.72m.

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

PROPOSED DEVELOPMENT IN DETAIL

This modifications include the following:

Multiple levels

- Construction of an internal lift

Level 1

- Bedroom 2 extension southward to accommodate lift

Level 2

- Kitchen and wall reconfiguration to accommodate lift
- Living room and entry internal reconfigurations and new windows

Level 3

- Internal reconfiguration to accommodate lift
- New finished floor level of RL 46.58, 440mm higher than RL 46.58 approved in prior consent.
- Roof reconfiguration with new maximum RL 49.95 at level 3 ridge (570mm higher than level 3 ridge RL approved in prior consent, RL 49.38)

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

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater 21 Development Control Plan - D12.6 Side and rear building line
Pittwater 21 Development Control Plan - D12.8 Building envelope

SITE DESCRIPTION

Property Description:	Lot 10 DP 10782 , 199 Whale Beach Road WHALE BEACH NSW 2107 Lot 200 DP 1033789 , 199 Whale Beach Road WHALE BEACH NSW 2107
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Whale Beach Road, Whale Beach.</p> <p>The site is irregular in shape with a frontage of 17.425m along Whale Beach Road and a depth of 57.1m. The site has a surveyed area of 1143.6m².</p> <p>The site is located within the C4 <i>Environmental Living</i> zone and accommodates a multi-storey dwelling house and swimming pool.</p> <p>The site slopes downward from the street frontage to the rear of site by approximately 17.5m.</p> <p>The site contains mature native and exotic vegetation, with some at the front of site and the majority at the rear of the dwelling.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached dwellings of similar scale, many also containing swimming pools.</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:

Application **P455/95** for the erection of a new dwelling was approved on 28 March 1996 by Council staff.

Application **DA2022/1951** for Alterations and additions to a dwelling house was approved on 03/05/2023 by Council's Development Determination Panel.

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 DA2022/1951, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - 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 proposed modification is of minimal environmental impact, and	<p>Yes</p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> • No unreasonable additional amenity impact to adjacent properties or the public domain is expected. • The built form of the dwelling will remain generally consistent with the approved development.
(b) 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 DA2022/1951 for the following reasons:</p> <ul style="list-style-type: none"> • The modification is generally consistent with the approved alterations and additions to the existing dwelling. • The modification does not alter the low density residential land use of the site. • All expected outcomes of the original assessment are maintained under the modification.
(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	<p>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.</p>
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided	<p>See discussion on "Notification & Submissions Received" in this report.</p>

Section 4.55(1A) - Other Modifications	Comments
by the development control plan, as the case may be.	

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 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 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&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&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&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&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&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>

Section 4.15 'Matters for Consideration'	Comments
	<p>Clause 69 of the EP&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&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) Environmental Impact 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) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</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 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 7 submission/s from:

Name:	Address:
Mr Peter Taylor	197 Whale Beach Road WHALE BEACH NSW 2107

Name:	Address:
Kerry Dibbs	197 Whale Beach Road WHALE BEACH NSW 2107
Mr Donald Butler Curchod	13 Capri Close AVALON BEACH NSW 2107
Mr Jonathon Pratten	4 Malo Road WHALE BEACH NSW 2107
Ms Judith Nan Rogley	196 Whale Beach Road WHALE BEACH NSW 2107
Mr Brian Lamrock	30 George Street AVALON BEACH NSW 2107
Mrs Christine Joy Brown	118 Whale Beach Road WHALE BEACH NSW 2107

The following issues were raised in the submissions:

- Two additional storeys are being added
- Lack of information regarding the works
- Bulk and scale - southern elevation causes excessive bulk to the street, obstructing neighbour + pedestrian views
- Building height increased, no height poles
- Existing roof height is above street level
- Structural integrity
- Risk of excavation damage
- Existing trees
- Potential vibration from the proposed lift
- Noise, vibration, dust, working hours
- Overshadowing
- Lack of street parking
- Exceeds allowable site coverage ratio permitted by Council

The above issues are addressed as follows:

- **Two additional storeys are being added**

The submissions raised concerns that two additional storeys would cause significant amenity issues.

Comment:

This concern relates to a previously approved application, DA2022/1951. Whilst the height is proposed to increase 570mm, no increase in storeys is proposed with this application, and this assessment considers, discusses and justifies all proposed non-compliances and their potential amenity issues that comprise this specific application.

- **Lack of information regarding the works**

The submissions raised concerns that the provided information was unsatisfactory for assessment.

Comment:

The provided documentation is sufficient for assessment.

- **Bulk and scale - southern elevation causes excessive bulk to the street, obstructing neighbour and pedestrian views**

The submissions raised concerns that the additional bulk and scale will obstruct neighbouring and pedestrian views.

Comment:

No unreasonable view impacts are expected. Further discussion regarding view impacts are included in this report.

- **Building height increased, no height poles**

The submissions raised concerns that the building height is excessive and that no height poles are present.

Comment:

Whilst there is some height increase on the eastern side of site, the provided shadow diagrams show no unreasonable overshadowing on adjacent sites. Furthermore, existing native vegetation along the street frontage should provide sufficient screening to soften the visual bulk of the proposed development. View corridors, particularly from the street frontage, are expected to be improved as a resulting of this application. Height poles are not considered necessary for this proposal based on the existing approval and the overall height increase.

- **Existing roof height is above street level**

The submissions raised concerns that the roof height will extend above street level.

Comment:

The existing approved ridge is 1.04m above street level from the centre of the site, with the proposal extending to 1.61m above the same point. This is not considered excessive and is softened by the siting of the proposal along with the established native vegetation along the street frontage.

- **Structural integrity**

The submissions raised structural integrity concerns of the proposal.

Comment:

Conditions included in this assessment ensure that the proposal shall be built in accordance with Australian standards.

- **Potential vibration from the proposed lift**

The submissions raised concerns of potential vibration from the proposed lift.

Comment:

The lift is not expected to generate any discernable vibrations for the subject site or neighbouring properties. Additionally, the proposal has been reviewed and supported by a geotechnical engineer.

- **Noise, vibration, dust, working hours**

The submissions raised concerns regarding noise, vibration, dust and working hours during

development.

Comment:

Standard conditions included in this consent regarding the mitigation of these items are expected to be adhered to.

- **Existing trees**

The submissions raised concerns that several trees require Tree Protection Zone protection.

Comment:

Conditions regarding vegetation protection are included in the consent of the parent application, DA2022/1951. This modification proposes works which are not expected to further impact existing vegetation or landscaped area on site. Council's Landscape Officer is supportive of this modification proposal without additional conditions.

- **Exceeds allowable site coverage ratio permitted by Council**

The submissions raised concerns that the proposal exceeds allowable site coverage.

Comment:

The site coverage exceedance is relatively minor (4.8% non-compliance) and is previously approved, with no change proposed for this specific application. The previous approval is maintained.

- **Views and overshadowing**

The submissions raised concerns overshadowing and view loss concerns, stating that both are increased by the proposal, particularly for 197 and 201 Whale Beach Rd.

Comment:

Views: No unreasonable view loss is expected to be generated by the proposal, partly due to the slope of the site and the existing frontage vegetation. Additionally, the alteration of Level 3 presents a reduced structure when viewed from the street.

Overshadowing: The provided shadow diagrams show that solar access is increased for 201 Whale Beach Rd. 197 Whale Beach Rd will experience a minor but not unreasonable variation to existing 3pm shadows at the front of site.

- **Lack of street parking**

The submissions raised concerns regarding the section of Whale Beach Rd in front of the property in relation to material storage and parking.

Comment:

Standard conditions are imposed with this assessment. No dangerous material storage or parking situations are expected to arise.

- **Risk of excavation damage**

The submissions raised concerns regarding excavation damage.

Comment:

Conditions included in this assessment ensure that the proposal shall be built in accordance with Australian standards. Additionally, the proposal has been reviewed and supported by a geotechnical engineer.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The application is for modification to development consent DA2022/1951.</p> <p>The proposed amendments will not change the landscape outcome approved in DA2022/1951, and as such the original conditions remain. No further conditions are imposed.</p>
NECC (Bushland and Biodiversity)	<p>The application seeks consent for modification to development consent DA2022/1951.</p> <p>The proposed modifications are located within the footprint of the approved development and do not impact upon native vegetation or fauna habitat. No objections, subject to existing conditions.</p>
NECC (Coast and Catchments)	<p>The proposal seeks approval for modification of development consent DA 2022/1951 granted for alterations and additions to the existing dwelling and the construction of a separate pavilion containing guest accommodation and a gymnasium.</p> <p>This application proposes minor modifications to the approved design, including to accommodate internal lift access within the dwelling.</p> <p>The subject property is located within the 'Coastal Use Area' map of the Coastal Zone.</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> · Supplied plans and reports, including; • Statement of Environmental Effects prepared by Blackwattle Planning Pty. Ltd. UNDATED, · Coastal Management Act 2016

Internal Referral Body	Comments
	<ul style="list-style-type: none"> · State Environmental Planning Policy (Resilience & Hazards) 2021 · Relevant LEP and DCP Clauses <p>The objectives and requirement of the CMA 2016, SEPP -R & H 2021 and relevant LEP and DCP Clauses have been met.</p> <p>The proposed modifications appear consistent with the design intent of the original proposal and fulfills the objectives and requirements of the relevant clauses of the Act, SEPP, LEP and DCP.</p> <p>No conditions in additions to those for the original development application are considered necessary</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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A474653_02, dated 7 November 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 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 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
 - ii) platform for members of the public, including persons with a disability,
 - iii) 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
 - ii) adverse impact referred to in paragraph (a), or
 - iii) 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:

Council is satisfied the proposed development is appropriately designed and sited in a manner that avoids adverse impact to the coastal use area.

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:

Council is satisfied the proposed development will not cause an increased risk of coastal hazards on the site or surrounding 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:

All relevant provisions of applicable certified coastal management programs have been considered as

part of the assessment of the application.

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.

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

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	19% (10.15m)	10.72m	26% (2.22m)	No

The parent consent, DA2022/1951, gave approval for a building height of maximum 10.15m, presenting a 19% (1.65m) variation to the 8.5m control. This proposal seeks to increase the building height to 2.22m, a 26% variation to the 8.5m control. This is 570mm higher than the consent granted in DA2022/1951. The 570mm increase in height is at the Level 3 Ridge RL.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	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

4.3 Height of buildings

Description of non-compliance:

A Height of Buildings non-compliance was previously approved under DA2022/1951, and this application proposes a modification of that approval, increasing the height by 570mm. The maximum ridge height is proposed to change to RL49.95 from RL49.38.

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.72m
Percentage variation to requirement:	26%

Assessment of request to vary a development standard:

Whilst the modification application will result in a building height that exceeds the maximum permitted by Clause 4.3 of the Pittwater LEP 2014, 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 height of buildings development standard and the underlying objectives of the C4 *Environmental Living* 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:

Wehbe v Pittwater Council 2007 established five ways in which this clause may be achieved. Not all of the five tests must be satisfied in each circumstance. One of these five tests is for the application to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The congruence of the proposal against the relevant objectives is assessed below in the following section 4.3 *Height of buildings*.

There are sufficient environmental planning grounds to justify contravening the development standard,

Comment:

The applicant has provided the following comments to satisfy this clause:

- *"The steep topography of the site is such that despite a significant stepping of the dwelling, the upper level will project beyond the 8.5m height limit.*
- *The majority of the non-compliance arises from the significant existing cut at Level 1, which was required to achieve levels for building on the steeply sloping land.*
- *The exceedance is justified because the new level three is able to utilise space currently occupied by the existing pitched roof. The existing dwelling is heavily noncompliant (regardless of how existing ground levels are measured) and the distribution of built form under the proposed design as modified is a significantly better outcome despite the non-compliance.*
- *Furthermore, the minor height increase is justified because of the need to facilitate improved access through the dwelling for future mobility needs of the occupants, allowing them to age in place.*
- *The performance of the proposed design when building height is measured using natural ground levels results in substantially less non-compliance. The minor height exceedance would comfortably comply with the tests under Clause 4.3(2)(D) which allows development meeting such tests to reach up to 10m in height without relying on Clause 4.6.*
- *Given the steep terrain, natural ground levels are appropriate for the consideration of building height relative to its context and this is reinforced by the objectives of the Height of buildings standard where buildings are encouraged to respond sensitively to the natural topography."*

It is agreed that this modification proposal enhances the amenity for the occupants through providing enhanced accessibility throughout the dwelling. Additionally, the steep slope of the subject site presents a heightened challenge in strict compliance with all controls whilst providing a functional and amenable dwelling that conforms with the site features. Previous excavation of the existing ground level is attributable to the current height of buildings non-compliance. This means that the overall height of the dwelling when viewed from the streetscape is somewhat softened and is not considered excessively high for the area. The existing native vegetation at the front of site and along the streetscape further reduces the visual bulk of the proposal when viewed from the streetscape. This vegetation has been conditioned to remain after review by Council's Landscape Officer.

Summarily, the additional height proposed with this application maintains the outcomes achieved under the previous assessment DA2022/1951. The applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of the Height of buildings development standard in this instance.

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.

4.3 Height of buildings

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

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

Comment:

The proposed modification retains the low-density nature of the subject dwelling, which is stepped to conform with the steep topography of the site. The proposal increases the western setback of level three, reducing the shadow and amenity impacts on the western neighbours. Additionally, the dwelling sits below the canopy of the existing vegetation at the front of site and on the public road reserve, reducing the visual bulk of the proposal when viewed from the streetscape. Finally, the proposal maintains the existing landscape features and is sited over and with existing built form, mitigating the extent of site disturbance.

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

Comment:

Overall the proposal proposes a reduction in level three structure, providing less visual bulk and providing more views through the subject site from the streetscape despite the additional height non-compliance. The proposal adds height to the existing built form and is similar in height and scale to surrounding dwellings, many of which also face the same topographical challenges on their respective sites.

c) to minimise any overshadowing of neighbouring properties,

Comment:

The provided shadow diagrams show reduced shadows on the western neighbour with the level three reconfiguration. The eastern neighbour will have a small pocket of additional shadow at the front of site, however this is not considered unreasonable and is located on a steep edge bordering the driveway that is not considered a particularly valuable or accessible part of the site.

d) to allow for the reasonable sharing of views,

Comment:

The amended level three should provide enhanced views over the dwelling from the streetscape. The non-compliant section is sufficiently screened by existing native vegetation at the front of site and in the public road reserve. The reduction in the western side of the dwelling should enhance views for the western neighbour towards the east from the parent application. No unreasonable view loss is anticipated as a result of this application.

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

Comment:

The proposal and dwelling are considered to respond appropriately to the steep topography of the site, particularly through the stepped design. This modification will result in minimal site disturbance.

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

Comment:

The proposal is sited on existing built form, minimising the visual impact of development. Furthermore, extensive landscaping at the front of site promotes a vegetated and natural context to the site. Additionally, there are no heritage conservation areas or items that will be affected by this development.

Zone objectives

The underlying objectives of the C4 *Environmental Living* zone are:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment:

The proposal should provide enhanced views over the site towards Whale Beach and the Pacific Ocean when viewed from the streetscape. The siting of this proposal minimises the site disturbance, maintains existing abundant vegetation on site and is considered low-impact.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment:

For the reasons immediately above, the residential development is not thought to have an adverse effect on the special ecological, scientific or aesthetic values of the zone.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment:

The development maintains its low-density character. Existing landscaping is to be maintained and the proposal is sited on existing built form, minimising site disturbance. The stepped design integrates with the steep topography of the site.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment:

The retainment of existing landscaping and conditions imposed by Council's Landscape Officer in conjunction with the landscape plan of the parent application ensure that existing flora and fauna values of the site are retained and enhanced.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the C4 *Environmental Living* 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.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	Level 1: 8.3m Level 2: 3.0m - 6.1m Level 3: 5.6m - 6.9m	Level 1: Unaltered Level 2: Unaltered Level 3: Unaltered	Yes Yes Yes
Rear building line	6.5m	Level 1: 18.6m Level 2: 25.7m Level 3: 38.1m	Level 1: Unaltered Level 2: Unaltered Level 3: Unaltered	Yes Yes Yes
Side building line	2.5m (West)	Level 1: 2.5m - 6.1m Level 2: 1.3m - 2.6m Level 3: 5.9m - 6.7m	Level 1: Unaltered Level 2: 1m - 2m Level 3: Unaltered	Yes No Yes
	1m (East)	Level 1: 5.4m - 6.3m Level 2: 10.6m - 11.5m Level 3: 1.4m - 4.4m	Level 1: Unaltered Level 2: Unaltered Level 3: Unaltered	Yes Yes Yes
Building envelope	3.5m (West)	Outside envelope	Within envelope	Yes
	3.5m (East)	Outside envelope	Outside envelope	No
Landscaped area	60% (634.2sqm)	57.1% (604sqm)	Unaltered	No (As existing)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach 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
B4.6 Wildlife Corridors	Yes	Yes
B5.15 Stormwater	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	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
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	Yes	Yes
D12.2 Scenic protection - General	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.5 Front building line	Yes	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	Yes	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

D12.6 Side and rear building line

Description of non-compliance

This control requires development to be setback 2.5m from one side boundary and 1m from the other side boundary. In this case the 2.5m building line control is applied to the west boundary and the 1m building line is applied to the east boundary.

The non-compliance proposed with this application relates to the extension of the entry on level 2, depicted below in Image 1. This 4.9m long proposed wall varies in separation from the western side boundary from 1m to 2m for its length. Additionally, this modification proposal is compliant with the eastern side boundary and the rear boundary.

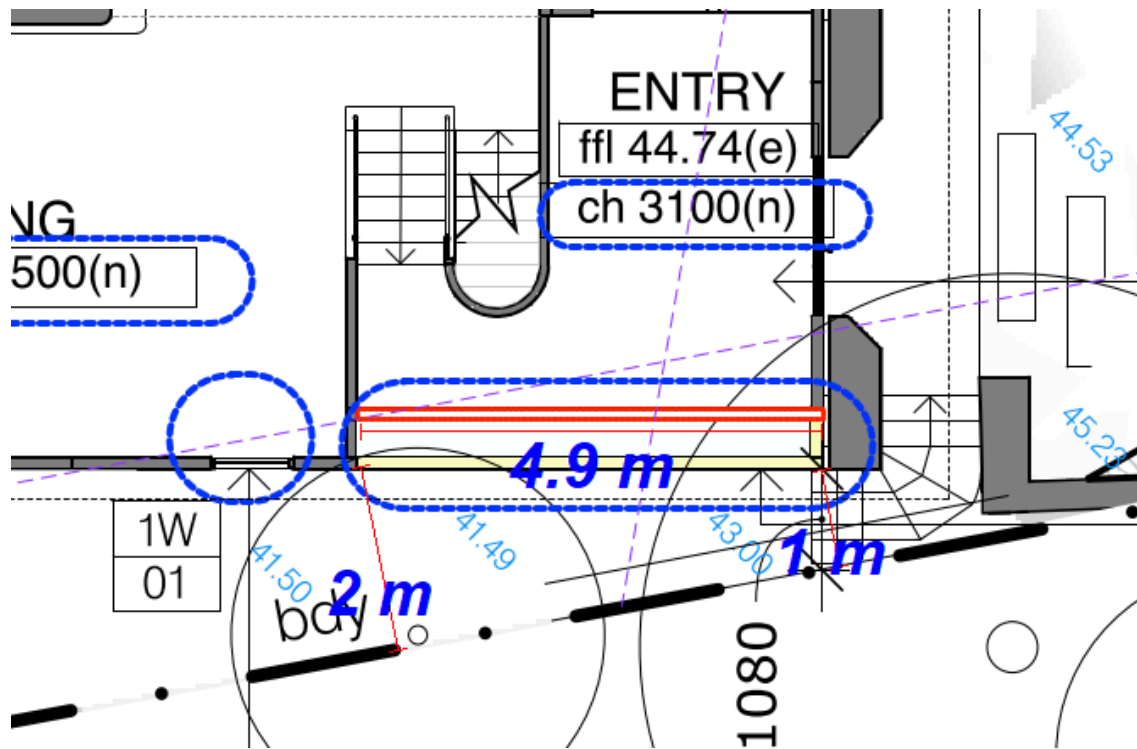


Image 1. Extent of the proposed western side boundary non-compliance, on level 2.

Merit consideration

With regards to the consideration for a variation, the development is considered against the underlying objectives of the control as follows:

- **To achieve the desired future character of the Locality.**

Comment:

The proposed development is consistent with the desired future character of the Palm Beach Locality as it maintains a low-density residential character in a landscaped setting.

- **To bulk and scale of the built form is minimised.**

Comment:

The proposed development is not expected to cause an unreasonable amenity impact to adjacent properties or the streetscape by way of bulk and scale.

- **Equitable preservation of views and vistas to and/or from public/private places.**

Comment:

No unreasonable impact to existing view corridors is expected to be caused by the proposed development. The reduction of level 3's height above this proposed non-compliant section should enhance views from the streetscape over the dwelling due to its siting relative to the streetscape.

- ***To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.***

Comment:

No views are expected to be unreasonably impacted by the proposed development.

- ***To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to residential properties.***

Comment:

The proposed development is not expected to cause any unreasonable impact upon the privacy, amenity or solar access of adjacent properties. Additionally, solar access is minorly increased by this proposal for the western neighbour along the subject western boundary.

- ***Substantial landscaping, a mature tree canopy and an attractive streetscape.***

Comment:

The proposed development will allow for substantive landscaping across the site. Additionally, Council's Landscape and Bushland & Biodiversity specialists are supportive of the proposal.

- ***Flexibility in the siting of buildings and access.***

Comment:

It is considered that the proposed development is adequately sited to ensure a reasonable level of amenity and a reasonable visual presentation for the subject site and adjacent sites.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

Comment:

The proposed development includes adequate vegetation and landscaping to soften and visually reduce the built form, and is supported by Council's specialists as mentioned above.

- ***To ensure a landscape buffer between commercial and residential zones is established.***

Comment:

The proposed development does not adjoin a commercial zone.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of P21DCP 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.

D12.8 Building envelope

Description of non-compliance

Clause D12.8 Building envelope of Pittwater 21 Development Control Plan requires buildings to be sited with the following envelope:

"Planes are to be projected at 45 degrees from a height of 3.5 metres above ground level (existing) at the side boundaries to the maximum building height."

Existing non-compliance

DA2022/1951 provided justification and consent for side boundary envelope non-compliances for some corner elements along eastern and western wall lines associated with the entry area, living room, rear decks, new roof edge and minor structures including some existing wall elements.

Proposed non-compliance

This proposal presents a variation to the building envelope non-compliance along the East Elevation, for a length of 4.1m and height from nil to 1.7m, as Image 2 below shows. This proposed non-compliance is the result of the Level 3 study extending to the east to better accommodate the internal lift. The West elevation has no increase in envelope non-compliance for this assessment, and the Level 3 alteration will reduce the extent of the non-compliance from previously approved in DA2022/1951.

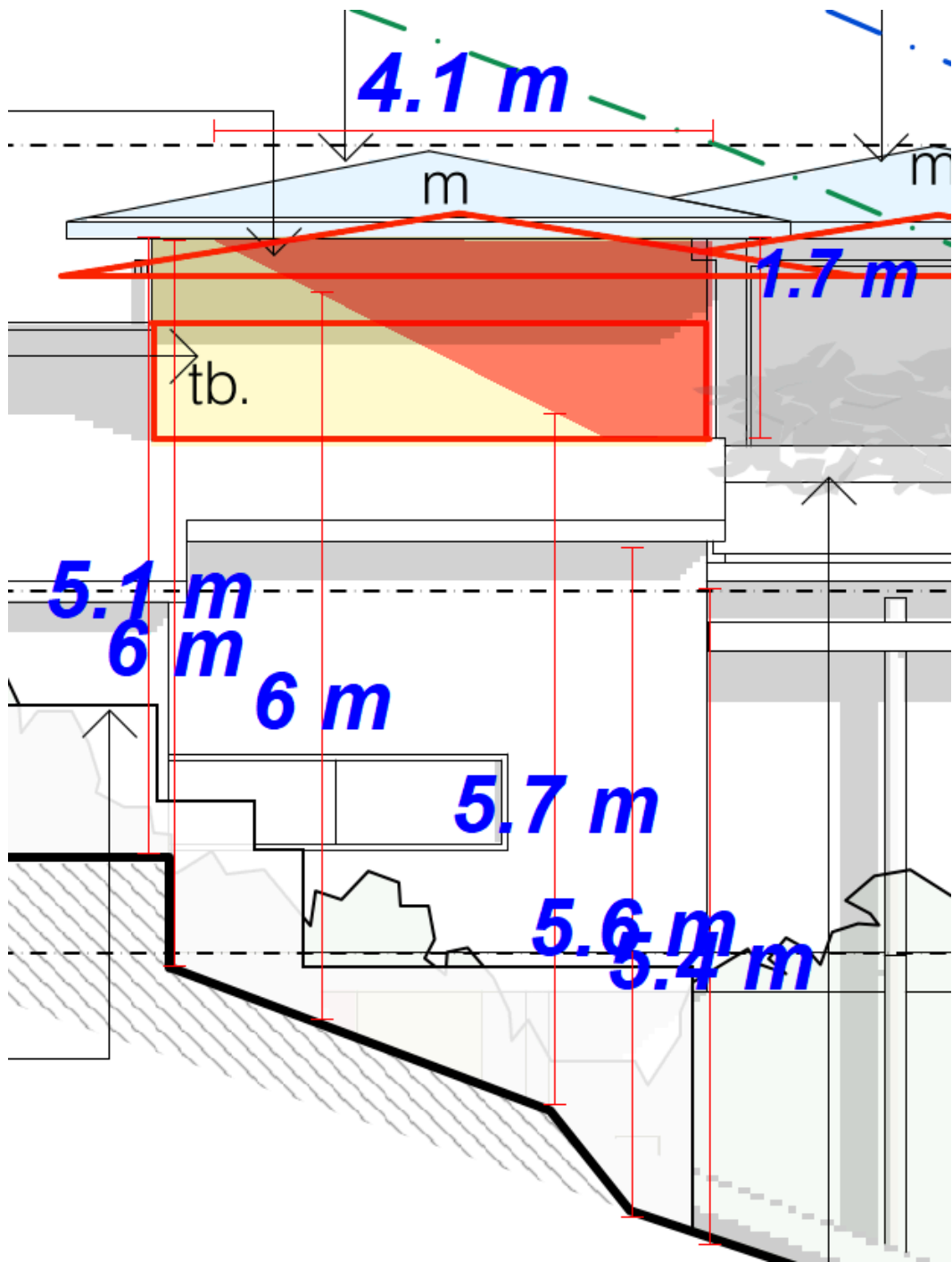


Image 2. Visualization of East Elevation boundary non-compliance

Merit consideration

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

- ***To achieve the desired future character of the Locality.***

Comment:

The proposal is consistent with the desired future character of the Palm Beach Locality, with the subject dwelling maintaining a low-density form that complements the existing development and minimises site disturbance. Whilst the building technically exceeds the two storey desired character, this particular proposal does not seek to add any additional storeys to what has been previously approved, and the steep slope of the site presents a mitigating factor.

- ***To enhance the existing streetscapes and promote a building scale and density that is below the height of the trees of the natural environment.***

Comment:

The proposal will enhance the existing streetscape, with much of the visual bulk and scale reduced when viewed from the streetscape due to the siting of the proposal. The proposal promotes a building scale and density that is situated below the height of the trees of the surrounding natural environment.

- ***To ensure new development responds to, reinforces and sensitively relates to spatial characteristics of the existing natural environment.***

Comment:

The proposed development responds to, reinforces, and sensitively relates to the spatial characteristics of the existing natural environment. It is noted that the proposed works will not result in any changes to the natural environment, with the existing vegetation retained. Furthermore, the non-compliant section is sufficiently set back from all boundaries.

- ***The bulk and scale of the built form is minimised.***

Comment:

The proposal will not result in any adverse bulk and scale as a result of the proposed development. It is considered that the proposed development presents a moderate bulk and scale that is limited to the existing building footprint. Additionally, the majority of the bulk is not visible from the street frontage due to the slope of the site. The level 3 reconfiguration is anticipated to reduce the visual bulk of the proposal when viewed from the streetscape despite the increase in building height.

- ***Equitable preservation of views and vistas to and/or from public/private places.***

Comment:

The proposal will ensure preservation of views and vistas to and/or from public/private places. The level 3 reconfiguration will provide enhanced views over the dwelling towards Whale Beach when viewed from the street frontage. No unreasonable changes to views are anticipated as a result of this proposal.

- ***To ensure a reasonable level of privacy, amenity and solar access is provided within the development site and maintained to neighbouring properties.***

Comment:

The proposal will ensure a reasonable level of privacy, amenity, and solar access to the development site, and to neighbouring properties. Furthermore, the proposed level 3 works and the reconfiguration of the level 2 roof provides the western neighbour with a reduced shadow from the subject dwelling.

- ***Vegetation is retained and enhanced to visually reduce the built form.***

Comment:

The proposal will not result in any removal of existing vegetation. Therefore, the proposal will retain the existing vegetation on site that will assist to visually reduce the built form.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of PDCP 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

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;
- 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

PLANNING CONCLUSION

This proposal, for modification of Development Consent DA2022/1951 granted for Alterations and additions to a dwelling house has been referred to the Development Determination Panel (DDP) due to an increase to the approved building height non-compliance by a further 570mm to a maximum height of 10.72m (26% variation to the 8.5m development standard). Seven (7) objections have also been received regarding this proposal.

The concerns raised in the objections have been addressed within this report and the proposal is demonstrated to result in a development that is substantially the same as what was approved under the parent application, DA2022/1951. No unreasonable impacts on neighbouring amenity are expected as a result of this proposal.

The critical assessment issues included building height, building envelope and the western side building line. The building height increase is attributed to a 570mm level 3 roof ridge increase. The proposed building height increase is considered to have minimal environmental impact on adjoining properties and the streetscape. Additionally, the western part of the level 3 development is reduced with this proposal, and as such the building envelope non-compliance is lessened on the western elevation. The increase to the eastern envelope non-compliance occurs due to the level 3 study expanding and no unreasonable impacts are expected to arise as a result of this. The western side boundary is subject to a 2.5m distance to the dwelling, with the proposed 1m - 2m distance presenting a 20% - 60% non-compliance. This non-compliance is due to the level 2 entry expanding westward. No unreasonable view corridor impacts are expected, and the provided shadow diagrams show that the western neighbour will experience slightly increase solar access despite the non-compliance, due to the proposed level 3 western reductions.

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 dwelling will remain substantially the same when compared to parent application DA2022/1951. The proposed building height increase is somewhat offset by reductions in other parts of level 3, and is sited to have minimal impact on neighbouring properties or the streetscape. The reduction in the western part of level 3 should enhance the view over the property towards Whale Beach when viewed from the streetscape, and the section proposed for height increase is sufficiently screened by vegetation at the front of site. The approved bulk and scale of the development remains primarily unchanged by the proposed modifications. The proposal satisfies the objectives of the height of buildings development standard and the C4 *Environmental Living* zone.

The proposal is considered to satisfy and address the relevant planning controls and objectives. 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. Mod2023/0625 for Modification of Development Consent DA2022/1951 granted for Alterations and additions to a dwelling house on land at Lot 10 DP 10782,199 Whale Beach Road, WHALE BEACH, Lot 200 DP 1033789,199 Whale Beach Road, WHALE BEACH, 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# 389415 - MOD2023/0625	The date of this notice of determination	Modification of Development Consent DA2022/1951 granted for Alterations and additions to a dwelling house Insert Condition 1A

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.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
DA 04	B	Plan Level 1	Campbell Architecture	6 February 2024
DA 05	A	Plan Level 2	Campbell Architecture	9 November 2023
DA 06	A	Plan Level 3	Campbell Architecture	9 November 2023
DA 07	A	Elevation West & South	Campbell Architecture	9 November 2023
DA 08	A	Elevation East & North	Campbell Architecture	9 November 2023

DA 09	A	Section AA & Building Envelope	Campbell Architecture	9 November 2023
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Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Geotechnical Assessment for Section 4.55 modification to approved works at 199 Whale Beach Road, Whale Beach, NSW	-	Crozier Geotechnical Consultants	20 November 2023
Waste Management Plan	-	Hugh Campbell (Applicant)	21 November 2023
BASIX Certificate #A474653_02	-	Eco Certificates Pty Ltd	7 November 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.



issue	date	description
-	05/09/22	DA
A	08/11/23	DA-S4.55

remember The Contractor shall verify all dimensions & levels on the site.
Written dimensions to take preference over scaled dimensions.
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campbell architecture
75 Renwick Street Alexandria NSW 1515
t/ +61 02 7903 5266
@/ info@campbellarchitecture.com.au
ABN 48 616 525 449
NOM REG NO. 8324

project | drawing
site plan & concept
storm water roof pla
199 whale beach rd
whale beach

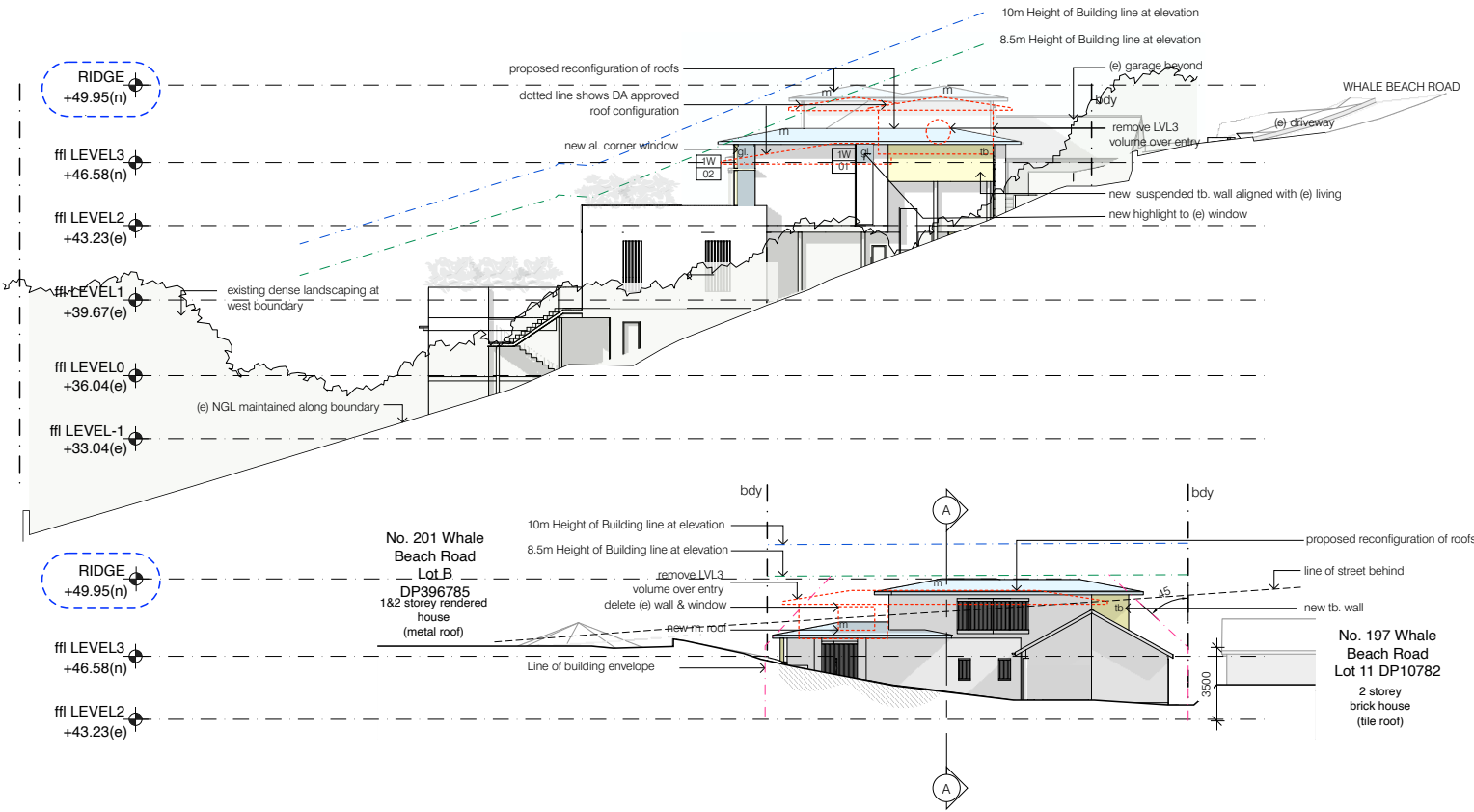
DA 02
1:200
last modified : 2
filename :
2107 201007 pls
2107

last modified : 23.11.09
filename :
2107_201009 plans DA S455

issue

campbell
architecture





issue	date	description	about
A	05/09/22	DA	
	08/11/23	DA-S4.55	

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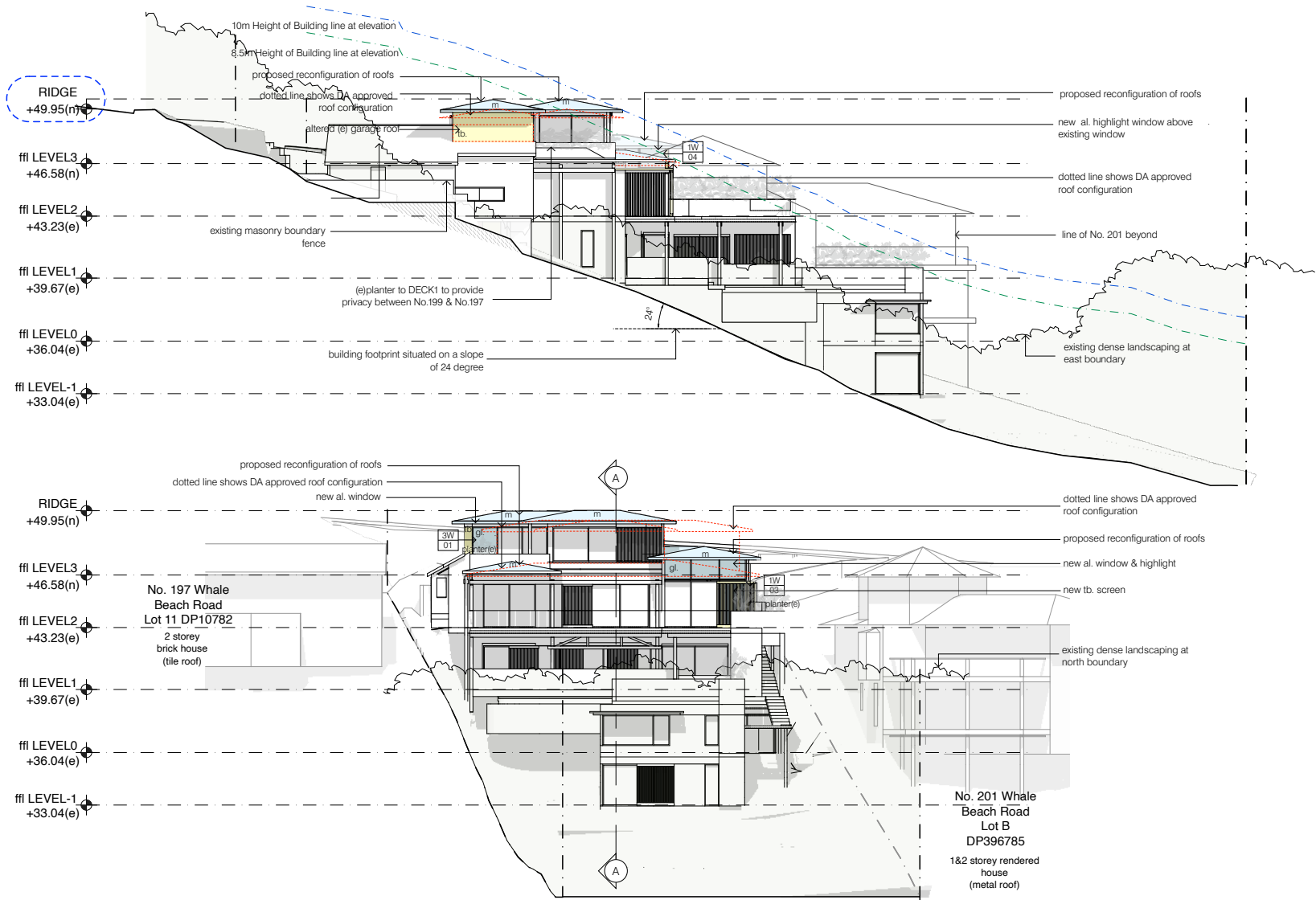
campbell architecture
75 Renwick Street Alexandria NSW 2015
t/ +61 02 7903 5266
e/ info@campbellarchitecture.com.au
ABN 48 616 525 449
NOM REG NO. 8324

elevation west & south
199 whale beach rd
whale beach

DA 07
1:200
last modified : 23.11.09
filename : plans DA S455
2107

ISSUE A

campbell architecture



ISSUE	DATE	DESCRIPTION
A	05/09/22	DA
	08/11/23	DA-S4.55

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e/ info@campbellarchitecture.com.au
ABN 48 616 525 449
NOM REG NO. 8324

elevation east & north
199 whale beach rd
whale beach

DA 08
1:200
last modified : 23.11.09
filename : 199 whale beach plans DA S455
2107

ISSUE A
campbell architecture