



northern
beaches
council

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held in the Walamai Room, Civic Centre, Dee Why

WEDNESDAY 28 AUGUST 2019

Ashleigh Sherry
Manager Business Systems and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 28 August 2019
in the Walamai Room, Civic Centre, Dee Why**

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 14 AUGUST 2019

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 14 August 2019 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 DA2019/0055 - 9 MINKARA ROAD, BAYVIEW - CONSTRUCTION OF A DWELLING HOUSE

REPORTING MANAGER Anna Williams

TRIM FILE REF 2019/468822

ATTACHMENTS
1 Assessment Report
2 Site Plan & Elevations
3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **refuse** Development Consent to DA2019/0055 for construction of a dwelling house on land at Lot 40 DP 28908, 9 Minkara Road, Bayview, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0055
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Responsible Officer:	Julie Edwards
Land to be developed (Address):	Lot 40 DP 28908, 9 Minkara Road BAYVIEW NSW 2104
Proposed Development:	Construction of a dwelling house
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:	Joshua Caine Dick
Applicant:	Joshua Caine Dick

Application lodged:	24/01/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	13/02/2019 to 01/03/2019
Advertised:	Not Advertised
Submissions Received:	2
Clause 4.6 Variation:	4.3 Height of buildings: 16.47%
Recommendation:	Refusal

Estimated Cost of Works:	\$ 987,845.00
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Executive Summary

This application seeks consent for the construction of a new dwelling with swimming pool, carport and an on-site wastewater management system. The works are described as a 'dwelling house' and are permissible with consent.

The proposal has a variation of 16.47% to the Height of Building Development Standard. As the variation is greater than 10%, the application is referred to the Development Determination Panel.

The proposed development is non compliant with the requirements of Clause 7.6 Biodiversity Protection of the Pittwater Local Environment Plan 2014 (PLEP) and Clauses A4.6 Ingleside Locality and B4.18 Heathland/Woodland Vegetation of the Pittwater 21 Development Control Plan (PDCP). These non-compliance are unacceptable and the proposal does not meet the outcomes of the control.

Public exhibition of the proposal resulted in two (2) submissions relating to compliance with the conditions of consent and protection of the existing bush land on the site and is currently the subject of compliance action in relation to the illegal clearing of protected bushland and unauthorised storage of shipping containers on the site.

Councils NECC (Bushland and Biodiversity) do not support the proposal as it is inconsistent with the objectives of PLEP Clause 7.6 Biodiversity, Pittwater 21 DCP Clause B4.18 Heathland/Woodland Vegetation, and the NSW Biodiversity Conservation Act 2016. The proposal also does not provide adequate supporting information required by the controls and consideration for supporting biodiversity information to accompany a new proposal.

The subject site is located within bushfire prone land and the Bushfire Threat Assessment was referred to the NSW RFS for comment. The NSW RFS raised several concerns with the bush fire consultants assessment of the bushfire risk and were not satisfied that the proposed development would be sited outside of a radiant heat exposure of 29kW/m² as is required.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is not suitable or appropriate development for the subject site.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this assessment is detailed within this report.

Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be refused.

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 - 7.6 Biodiversity protection

Pittwater 21 Development Control Plan - A4.6 Ingleside Locality
Pittwater 21 Development Control Plan - B4.18 Heathland/Woodland Vegetation

SITE DESCRIPTION

Property Description:	Lot 40 DP 28908 , 9 Minkara Road BAYVIEW NSW 2104
Detailed Site Description:	<p>The subject site consists of one allotment located on the western side of Minkara Road, Bayview.</p> <p>The site is irregular in shape with a frontage of 324.787m along Minkara and a depth of 102.475m. The site has a surveyed area of 2.163ha.</p> <p>The site is located within the RU2 Rural Landscape zone. The site is currently vacant except for three shipping containers.</p> <p>The site slopes from the rear western boundary down to the eastern front boundary with a slope of approximately 32%.</p> <p>The whole site was densely vegetated, however, since approximately the end of 2016, areas of the site (in the location of the proposed dwelling) has been cleared and earthworks undertaken without Council approval. There is evidence that there are native and threatened species present on the site. More details are provided under site history and NECC (Bushland and Biodiversity) referral comments.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential development. To the north, south and west of the site are single residential dwellings on large lots. To the east of the site is Aveo Retirement Village and Minkara Aged Care Facility. Along the western rear boundary of the site is an unformed road.</p>

Map:



SITE HISTORY

DA2018/0787

Construction of a new dwelling house and swimming pool
Withdrawn - 13/08/2018

The application was requested to be withdrawn as the proposal could not be supported as a result of impacts on the natural environment and non-compliance with Clause 7.6 (Biodiversity) of PLEP 2014, B1.4 (Aboriginal Heritage) of P21 DCP and B4.18 (Heathland/Woodland Vegetation) of P21 DCP. The proposal also did not comply with requirements of the *NSW Biodiversity Conservation Act 2016*. Furthermore, there were concerns with the building height and insufficient information regarding access to the site and a landscape plan was not submitted.

A meeting was held with Applicant, Architect and Council Staff on 19 September 2019 to discuss the withdrawal of the application and what would be required for the re-lodgement of the proposal. Discussions included the existing unauthorised clearing of the site and the requirement for a Biodiversity Development Assessment Report (BDAR).

Subject Development Application

A withdrawal letter was sent 28 May 2019. The withdrawal letter outlined issues with the current application including non-compliance with the PLEP and PDCP and insufficient and missing information. The insufficient information included a BDAR, Biodiversity Management Plan, Arborist Report, and Bushfire Assessment Report. The proposal was also missing a Landscape Plan and the swimming pool was not included in the Wastewater Management Plan or SEE.

A subsequent email was sent 12 June 2019 to the applicant with the NSW RFS referral comments in which the NSW RFS raise concerns with the information in the submitted Bushfire Risk Assessment Report. The issues raised in the referral comments are detailed elsewhere in the report.

The applicants Bushfire Consultant provided a response to the NSW RFS, which was forwarded to NSW RFS for review and further comment. At the time of writing, no response had been received from the NSW RFS.

The site is currently the subject of several Building Compliance investigations which are detailed below:

EPA2018/0302 - Investigation Illegal Land Use - Shipping containers on site with no consent
Order issued - 20/11/2018

Council received a complaint alleging that unauthorised building use have been undertaken at the site. An inspection undertaken by Council Officer on 23 October 2018 revealed the following observations:

- That an additional shipping container had been placed on the site and the property is being used to facilitate the storage of earth moving machinery and equipment.

The owner provided representation that two of the shipping containers would be removed and one would be used for the storage of horticultural tools and equipment. The use of one shipping container was considered fair and reasonable by Council.

A site inspection undertaken on 20 June 2019 revealed that the site was still being used to store earth moving machinery and that the two shipping containers had not been removed.

The matter is still under investigation.

EPA2018/0288 - Investigation Illegal Land Use - Land clearing
NOI Issued - 20/11/2018

Council received a complaint alleging that unauthorised earthworks have been undertaken at the site. An inspection undertaken by Council Officer on 23 October 2018 and 29 October 2018 revealed the following observations:

- Further earthworks had been undertaken on the property that is not considered exempt development and as a result has breached the Stop Works Order (EPA2018/0069) issued on 6 April 2018.
- The property is being used to temporary store earthmoving machinery.
- Inadequate siltation and erosion control where loose spoil/fill has been placed.

The matter is still under investigation pending the out come of the current Development Application.

EPA2018/0278 - Investigation Illegal Land Use - Land clearing
Order Issued - 20/11/2018

A development control order was served on 6 April 2018 advising the owner of the site to stop carrying out all further earthworks and vegetation removal from the allotment that does not meet the development control set out within the State Environmental Planning Policy- (Exempt and Complying) - 2008 .

Council received a complaint alleging that further unauthorised earthworks and land clearing had been undertaken since the issuing of a stop works Order by Council on 6 April 2018.

A site inspection undertaken 23 October 2018, revealed that further earthworks had been carried out and Council is of the opinion that the stop works order has been breached. An inspection undertaken by Council Officer on 23 October 2018 revealed the following observations:

- That further earthworks and land clearing had been undertaken since the last inspection that

was undertaken on 5 April 2018.

- Ariel mapping of the area revealed that earthworks and vegetation removal has occurred since the period between 13 June 2018 to 14 September 2018.

As a result of the above, Council reissued the stop works Order as dated above on this Development Control Order.

The matter is still under investigation, pending outcome of the current Development Application.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is seeking approval for the construction of a new dwelling with swimming pool and spa located in the middle of the site, an on-site wastewater treatment system, carport and driveway from Minkara Road. The proposal includes the following:

Basement

- Foyer and stairs,
- Home Cinema,
- Garden tool store,
- Pool equipment,
- Gym,
- Dark room,
- Games room,
- Retreat.

Level 1

- Entrance, foyer, stairs and lift,
- Lounge and bar,
- Billiards room,
- Kitchen, dining, pantry and cellar,
- Laundry and storage,
- Family room,
- Access to outdoor terrace and swimming pool.

Level 2

- Office, stairs and hall,
- Guest Bedroom, dressing room and bathroom,
- Terrace,
- Four bedrooms, Bedroom 1 with dressing room and ensuite.

Outside

- Driveway,
- Carport and turning area,
- Swimming pool and spa,
- Outdoor terrace,

- Landscaping

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	None applicable.
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 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters may be addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter may be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter may be addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter may be addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact</p> <p>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. In summary, the impact on the habitat for the local populations of the Red-crowned Toadlet, Glossy Black Cockatoo, Eastern Pygmy Possum and numerous other threatened species which have been identified on the site or nearby have been inadequately documented.</p>

Section 4.15 Matters for Consideration'	Comments
	<p>Council's biodiversity assessment, indicates that significant impact will occur and a comprehensive Biodiversity Development Assessment Report (BDAR), A Biodiversity Management Plan and Level 5 Arborist Report is required to address this issue. In the absence of these documents, the environmental impacts are not considered to have been fully addressed.</p> <p>The impacts on the site's biodiversity values as a result of the removal of at least 0.528ha of native bushland is considered inconsistent and unacceptable.</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	<p>The suitability of the site in terms of likely impacts on the environment and amenity has been discussed in detail in the various section of this report. In summary, the suitability of the site for the development as proposed in its current form remains uncertain, due to fact that the proposal has not comprehensively addressed the environmental impacts on Threatened Species on the site. Therefore, a determination that the site is suitable cannot be supported.</p>
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	<p>See discussion on "Notification & Submissions Received" in this report.</p>
Section 4.15 (1) (e) – the public interest	<p>The public interest has been considered as part of the application process. In this instance, the public interest is best served by the consistent application of the requirements of the relevant planning controls, and by Council ensuring that any adverse effects on the surrounding area and the environment are minimised and/or managed.</p> <p>The proposal has been assessed against the provisions of the relevant planning controls and is deemed to be unacceptable in terms of its impact on the natural environment (specifically the threatened species). and the developments inconsistency with the requirement(s) of clause 7.6 Biodiversity protection of the PLEP2014 and parts A4.6 Ingleside Locality, B3.2 Bushfire Hazard, B4.18 Heathland/Woodland Vegetation of PDGP 21 and 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 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 (prepared by Bushfire Protection Consultants, dated 19 December 2018). The report stated that the bushfire attack level of the site is Bal 29. The report recommended an alternative solution to comply with Planning for Bush Fire Protection.

The application was referred to the NSW Rural Fire Service for further assessment. The NSW Rural Fire Service has raised a number of issues with the Bushfire Threat Assessment Report and were not satisfied that the proposed development was sited outside of a radiant heat exposure of 29kW/m², as proposed by the bush fire consultant.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

Name:	Address:
Julie Emerson	12 Minkara Road BAYVIEW NSW 2104
Ms Rosalind Dawn Williams	23 Jendi Avenue BAYVIEW NSW 2104

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

- Strict compliance with the approval
- Protection of the environment

The matters raised within the submissions are addressed as follows:

- **Strict compliance with the approval**
The submission raised the following concerns *'applicant has previously done significant works to the property illegally, both in nature and in time, we request that very strict compliance processes be undertaken and monitored to ensure the development is carried out as per the approval.*
We do not wish to put up with building works outside of approved times, especially prior to 7am or on sundays as happened previously!!'

Comment:

All approved development is subject to conditions regarding hours of work. The standard condition that would apply to this proposal would require building construction and delivery of material restricted to 7.00am to 5.00pm Monday to Friday, 8.00am to 1.00pm on Saturdays and no works on Sundays or public holidays. Demolition and excavation works are restricted to 8.00 to 5.00pm Monday to Friday only. Any works outside of these hours would need to be reported to the Certifying Authority and Councils Building Compliance team to investigate.

- **Protection of environmental**

The submission raised the following comment 'We also wish that regular monitoring be carried out to ensure the vegetation on the escarpment facing Minkara Road be maintained in its natural state and not degraded in any way'. A submission was also received with the following comment 'Will there ever be a time when Northern Beaches Council put the environment of this beautiful area before the profits of developers'.

Comment:

No works or landscaping are proposed along the escarpment facing Minkara Road. Council is not in a position to carry out monitoring of sites to make sure that they are not damaged, that is at the discretion of the owner, those contracted to do the works and the certifying authority. If damage does occur as a result of works on the site then this can be reported to the Certifying Authority and Council to investigate.

Council does not support the proposed and existing clearing and works on the site, as stated in the NECC (Bushland and Biodiversity) referral comments. Councils Building and Compliance team are currently investigating the illegal works on the site.

REFERRALS

Internal Referral Body	Comments
Environmental Health (Acid Sulphate)	<p>Supported subject to conditions</p> <p>The site is located in an Acid Sulfate Soil Class 5 area. No comment has been made in any of the reports submitted with this DA by the applicant especially the SEE which should specifically address this issue. It is noted that "Excavation is to 3.5m". The site appears sloping and basically self-draining and it is not expected that "ground water will be impacted by lowering the water table" the main thrust of the classification. However, the risk is considered negligible in regard to Acid Sulfate Soil. A condition will be added.</p> <p>Recommendation Approval</p>
Environmental Health (Solid Fuel/Oil Heater)	<p>Supported subject to conditions</p> <p>Wood fire heater/fire places appear to be proposed as 2 chimneys and 2 fire places are shown on plans. No comment has been made in any of the reports submitted with this DA by the applicant especially the SEE which should specifically address this issue. Wood fire heaters have the potential to create an environmental smoke and odour nuisance. If the fire places are gas fires and the chimneys decorative only this needs to be stated in the SEE.</p>

Internal Referral Body	Comments
	<p>No details indicating compliance with specific wood fire design standards have been submitted.</p> <p>Note: The applicant does have the option of a separate Mod or providing details for this DA or removing these fire places from plan , and applying at a later time for a section 96 application.</p> <p>Recommendation REFUSAL</p> <p>Additional Referral comments - 27/05/2019 The applicant has advised Councils Planner that the Chimneys are decorative and the heaters gas. A condition has be included to reflect this.</p> <p>Recommendation APPROVAL</p>
Environmental Health (unsewered lands)	<p>Supported subject to conditions This new DA mirrors previous DA2018/0787 where Environmental Health made positive comments following additional information after our initial refusal comments.</p> <p>The site is unsewered and an updated waste water report by Blue Mountains Geological and Environmental Services dated 29 August 2018 (previous reports 6 July 2018 and April 2017) has been submitted. An updated WW report by Grant Austin dated 29 August 2018 confirms his findings from the previous report 6 July 2018 including subsurface disposal area of 858m2.</p> <p>The current proposal related to effectively 6 bedrooms' potential occupation.</p> <p>It is noted that comments about the actual low intended occupancy by the owner are not relevant and misleading in respect the future and ongoing use of the property unless a legal covenant is the registered on the property restricting occupancy.</p> <p>Additionally, the issue of the waste water backwash from the swimming pool and spa which may contain chemical residue detrimental to a land application area has not been addressed in either the Waste Water Report or the SEE, as it has a potential environmental impact. The applicant may wish to propose a cartridge filter system to eliminate backwash to deal with this issue, otherwise the disposal of this waste water needs a management report.</p> <p>Therefore Environmental Health has no option but to recommend refusal at this time.</p> <p>Recommendation REFUSAL</p>

Internal Referral Body	Comments
	<p>Planners Note: The applicant has provided details to Council that a cartridge filter system will be installed in the swimming pool and spa. A condition has been included in the report.</p>
Landscape Officer	<p>Supported subject to conditions</p> <p>The proposal, in terms of landscape outcome, is acceptable subject to the protection of existing trees and vegetation, and the completion of landscaping to areas cleared for development works.</p> <p>Council's Landscape section has assessed the proposal against the following Pittwater 21 DCP 2014 Controls:</p> <ul style="list-style-type: none"> • B4.22 Preservation of Trees and Bushland Vegetation • C1.1 Landscaping <p>No Landscape Plan nor Arboricultural Impact Assessment is provided with the application, and conditions of consent shall be required to be met. There are no existing trees within 5m of the proposed dwelling or carport works.</p> <p>The site contains predominately native Eucalypt and Angophora forest with native understory shrubs and minimal ground cover plants. Existing rock outcrops and ledges shall also be protected.</p> <p>There is some minor weed invasion to be targeted as part of the development. Removal of all weeds and regeneration with native vegetation is required.</p> <p>Recommendation APPROVAL</p> <p>Planners Note: These comments reflect the current state of the site not how the site was prior to being cleared. Matter relating to the clearing of the site are being addressed by Building Compliance.</p>
NECC (Bushland and Biodiversity)	<p>Not supported</p> <p>Council's Natural Environment - Biodiversity Section cannot support the application due to non-compliances with the Pittwater LEP and DCP controls.</p> <p>This application was assessed against the objectives of Pittwater LEP Clause 7.6 Biodiversity, Pittwater 21 DCP Clause B4.18 Heathland/Woodland Vegetation, and the NSW <i>Biodiversity Conservation Act 2016</i>. The property is also mapped as bushfire prone land and "Major Habitat" within Pittwater's wildlife corridor mapping. Any development application must consider proposal options which are compliant with applicable Pittwater LEP and DCP controls, specifically:</p> <ul style="list-style-type: none"> • <i>The development is designed, sited and will be managed to avoid any significant adverse environmental impact.</i>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • <i>Development shall retain and enhance habitat and wildlife corridors for threatened species, endangered populations, endangered ecological communities and other locally native species.</i> • <i>Development shall not reduce or degrade habitat for locally native species, threatened species, endangered populations or endangered ecological communities.</i> <p>A substantial portion of the native intact bushland on the site was cleared prior to lodgement of this DA. The cleared area is located largely within the footprint of the proposed development. As such, there can be little consideration for ways to avoid and minimise impacts as per the application of mitigation hierarchy.</p> <p>The proposed development will result in a substantial loss of native vegetation (including canopy trees) and wildlife habitat on the site. The proposal as submitted does not demonstrate that the objectives of relevant Natural Environment controls have been taken into account in designing and siting the development, nor is it evident that the proponent has made an effort to avoid direct or indirect impacts to the site's biodiversity values.</p> <p>Given that the existing submission does not achieve compliance with LEP and DCP controls, the applicant is encouraged to consider a redesign of the proposal. It is noted that this DA includes additional impacts compared to the previous application. Any new proposal should incorporate a substantially reduced footprint (with reconsideration of the need for non-ancillary elements) and demonstrate feasible measures to avoid impacts to the site's biodiversity values.</p> <p>Detailed comments <i>Non-compliance with biodiversity controls and legislation</i> The property is 2.18 ha and currently contains remnant native bushland (PCT 1783 and PCT 1250), including wildlife habitat large native trees with hollows and sandstone escarpments, and also provides corridor values. The proposal is for a new dwelling with 5 bedrooms, home office, billard room, lounge room, family room, gym, home cinema, retreat, games room, an associated swimming pool and spa, new concrete driveway, unspecified areas of landscaping, an on-site sewerage treatment system and treated water dispersal area, rough boulder wall and Asset Protection Zone (APZ) establishment.</p> <p>At least 0.528 ha of native bushland, including native trees with hollows, will be removed as a result of the proposal (Skelton 2018). There are inconsistencies within the supporting information which suggests this area is likely to be larger. The proposal will result in a substantial loss of native vegetation inconsistent with the controls. The property and area to be impacted provides habitat for threatened species, which have been identified onsite and records nearby, including, but not limited to:</p>

Internal Referral Body	Comments
	<ul style="list-style-type: none"> • <i>Pseudophryne australis</i> Red-crowned Toadlet (heard calling within the property during the ecological survey by Nick Skelton) • <i>Haliaeetus leucogaster</i> White-bellied Sea-eagle • <i>Lophoictinia isura</i> Square-tailed Kite • <i>Calyptorhynchus lathami</i> Glossy Black-Cockatoo • <i>Ninox connivens</i> Barking Owl, (owl pellet found onsite during site-inspection for this referral, possibly Barking Owl or Powerful Owl) • <i>Ninox strenua</i> Powerful Owl (as above) • <i>Rhodamnia rubescens</i> Scrub Turpentine • <i>Cercartetus nanus</i> Eastern Pygmy-possum • <i>Chalinolobus dwyeri</i> Large-eared Pied Bat • <i>Miniopterus australis</i> Little Bent-wing Bat • <i>Miniopterus schreibersii oceanensis</i> Eastern Bent-wing Bat • <i>Myotis macropus</i> Southern Myotis <p><i>Inadequate supporting information required by controls and considerations for supporting biodiversity information to accompany any new proposals</i></p> <p>There is inadequate supporting documentation regarding impacts to biodiversity values on the site. Any new proposals should be accompanied with the following reports, in accordance with Council controls and guidelines as well as assessment against the NSW <i>Biodiversity Conservation Act 2016</i>. All reports are to be clear and consistent in terms of total scale of biodiversity impacts (trees and native vegetation).</p> <p>The submitted Biodiversity Development Assessment Report (BDAR, Skelton 2018) must assess all biodiversity impacts including site storage/containers, landscaping, construction, access, stockpiling and APZ impacts, and any likely indirect impacts such as installation of services and stormwater infrastructure, OSD tanks, changes in hydrology, soil disturbance, runoff, waste water disposal, artificial lighting etc. All areas of residual biodiversity impacts must be included in the offset calculation (including the driveway). Skelton states, "<i>The site contains a high density and variety of hollows including large tree hollows that are suitable for Cockatoos (such as Sulphur Crested Cockatoos and Glossy Black Cockatoos) and small hollows suitable for gliders and Eastern Pygmy Possums.</i>". These hollows must be described and provided on a map. No nocturnal survey was completed as per industry standard. The report did not follow survey guidelines for Species Credit microbat species, Large-eared Pied bat requires additional survey as per these guidelines (OEH 2018) and during identified survey season (Nov - Jan).</p> <p>A Biodiversity Management Plan must be provided with the application. A Biodiversity Management Plan is required to be submitted as per Clause B4.18 of the Pittwater 21 DCP in accordance with Council's guidelines. This plan must include tasks to be completed prior to and during construction, as well as ongoing long-</p>

Internal Referral Body	Comments
	<p>term management, to minimise impacts to biodiversity values.</p> <p>The submitted Bushfire Assessment Report must be consistent throughout in terms of APZ requirements, i.e. whether the APZ is as per calculated distances on Page 12 OR is the whole of the property to be managed as an IPA.</p> <p>An Arborist Report must be provided with the application. Council notes that there are trees within 5m of the works. The report must identify the location, species, health and size of all trees within 5m of the proposed development and meet the following requirements:</p> <ul style="list-style-type: none"> • Prepared by a suitably qualified arborist with minimum AQF Level 5; • Prepared based on the actual plans and documentation submitted in support of the DA; • Take into account all above- and below-ground works and structures that are ancillary to the development, including the APZ; • A tree protection and management plan with specific tree protection measures to enable safe retention of all trees proposed for retention, including mapping Tree Protection Zones, Structural Root Zones and any encroachments. <p>A Landscape Plan, which is consistent with the plans/reports above, which incorporates a minimum of 80% native plantings consistent with Plant Community Types (PCT) found onsite.</p> <p>Recommendation REFUSAL</p>
NECC (Development Engineering)	<p>Supported subject to conditions</p> <p>The site is located within Geotechnical Hazard H1 Area, an "Acceptable Risk Management" Level can be achieved in accordance with the geotechnical report provided by White Geotechnical Group.</p> <p>The Access has been approved by council under the Section 139 of the Road Act 1993.</p> <p>No Development Engineering objection subject to conditions.</p> <p>Recommendation APPROVAL</p>
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.</p>
NSW Rural Fire Service –	<p>The proposal was referred to the NSW Rural Fire Service. The NSW</p>

External Referral Body	Comments
local branch (s79BA EPAA)	<p>Rural Fire Service has raised a number of issues with the Bushfire Threat Assessment Report prepared by Jon Delany dated 19 December 2018. The following issues were raised:</p> <p>The inappropriate use of Short Fire Run (SFR) Methodology:</p> <ul style="list-style-type: none"> The consultant has incorporated the SFR methodology to several aspects of the proposed development on the subject site. As stated in the NSW RFS methodology guide for SFR (dated May 2019) , <i>"The proposal will need to be supported by a Bush Fire Design Brief (BFDB) which includes the site particulars together with the methodology proposed, and the inputs and outputs from calculations to support the proposal."</i> A BFDB was not submitted for the use of the SFR for this application prior to lodgement to Council, or prior to when referred to the NSW RFS for comment. Notwithstanding, the SFR is not considered appropriate for the use in this setting due to the connectivity of the vegetation around the site. As also stated within the NSW RFS methodology for SFR <i>"A proposed SFR must not have connectivity with any other parcels of land containing vegetation capable of supporting a fully developed fire that would directly impact the assets."</i> The bush fire consultant has addressed in their report that a fully developed fire is possible to the northern aspect of the site. <p>The performance based modelling provided by the consultant was unable to be replicated by the NSW RFS.</p> <ul style="list-style-type: none"> The modelling provided by the consultant for the fully developed fire to the northern aspect was not able to be replicated by the NSW RFS. A head width greater than 48 metres (as nominated by the consultant) is not supported, with the proposed radiant heat modeled from this aspect exceeding 29kW/m2 based on the 44 metres setback vegetation. <p>On the basis of this information provided, the NSW RFS is not satisfied that the proposed development is sited outside of a radiant heat exposure of 29kW/m2, as proposed by the bush fire consultant.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 918894S_02 dated Friday, 14 September 2018). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0002651370-01 dated 14 Sep 2018).

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 (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

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:	8.5m	Chimney - 9.9m Roof - 9.8m Wall - 9.1m	16.47% 15.29% 7.05%	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.9 Preservation of trees or vegetation	Yes
5.9AA Trees or vegetation not prescribed by development control plan	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	No
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:	8.5m
Proposed:	Chimney - 9.9m Roof - 9.8m Wall - 9.1m

Percentage variation to requirement:	Chimney - 16.47% Roof - 15.29% Wall - 7.05%
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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.

Clause 4.6 Exceptions to development standards:

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

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

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

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

Comment:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

(b) the concurrence of the Secretary has been obtained.

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

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

(a) that compliance with the development standard is unreasonable or unnecessary in the

circumstances of the case, and

Comment:

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

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

- 'The proposed development has a roof ridge at 147.35m AHD along its southern wing, 7.1m above natural ground level at the western end up to 9.25m at its stepped down eastern end. This ridge point is 50m from the neighbouring property boundary to the south and 54m from the

street alignment'

- 'The building height limit for this site is 8.5m above natural ground level on the Height of Building Map. This means the roof structure exceeds the height limit by up to 0.75m at its eastern end. The highest wall height above natural ground level is 9.1m in the same location, exceeding the height limit by 0.6m',
- 'Due to the large distances between the building and neighbouring properties, and Minkara Road, the additional height shall cause no overshadowing problems or loss of view issues',
- 'A large portion of the site shall be left in its natural woodland state where canopy trees exceeding the height of the building will ensure the dwelling doesn't dominate the landscape'.

The proposal does not comply with the maximum building height development standard. An assessment of the plans provided shows that the chimney on the South Elevation has a maximum height of 9.9m above natural ground level, which is highest point of the building. The location of non-compliance with the height is where the land begins to naturally slopes away. The southern elevation chimney will be constructed of natural sandstone and the building will be colours and materials that will blend in with the natural environment of the site.

It is agreed that due to the proximity of the proposal to the street and adjoining properties as well as the landscaping to be retained on the site, that this non-compliance will not create an unreasonable impact with regards to view loss, overshadowing and bulk and scale. Overall, it is considered that demanding full compliance with Council's maximum height standard is unnecessary for this proposal.

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 will be below the height of the existing tree canopy on the site and uses building colours and materials that will harmonise with the natural environment. On sites that have little opportunity for trees or are visually dominated single storey buildings are preferred, however, this site is surrounded by dense bushland and trees and will be screened from the street and surrounding properties. In regards to the height of the dwelling, the proposal is consistent with the relevant criteria of desired character of the locality.

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

Comment:

Immediately to the west of the site are large single storey dwellings on cleared lots. To the north and south are one to two storey residential dwellings on more steeply sloping and vegetated lots, which are similar to the subject site. To the east of the site is Aveo Minkara Residential Aged Care Facility. Aveo Minkara Residential Aged Care Facility has buildings of varying heights from one to three stories with varying building bulk and scale. Aveo Minkara Residential Aged Care Facility is also surrounded by dense bushland which is similar to the subject site. The height and scale of the proposal is compatible with the sites and scale of development to the north, south and west which have similar site conditions to the subject site.

c) to minimise any overshadowing of neighbouring properties,

Comment:

Due to the proposed location of the dwelling, the proposal will not result in overshadow of the adjoining neighbouring properties.

d) to allow for the reasonable sharing of views,

Comment:

The proposed location of the dwelling and its distance to the adjoining sites will maintain a reasonable sharing of views.

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

Comment:

The site has a moderate slope from the rear western boundary to the front eastern boundary. From the rear and sides of the dwelling the proposal will present as a two stories, and three stories from the front. Excavation will be required to construct the basement level. A more sympathetic design could have been utilised to limit the amount of excavation on the site, however, this would have resulted in a larger building footprint. It is considered that the design of the proposal responds sufficiently to the natural topography of the site.

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

Comment:

The proposed building form provides a bulk, scale and design that will sit below the bushland and canopy trees that are to be retained on the site. The proposal will also use colours and materials that blend into the natural environment. The design will ensure that the proposal will not present an unreasonable visual impact on the natural environment, heritage conservation areas and heritage items.

However, it is considered that a reduced version of the proposed dwelling sited more appropriately to minimise unnecessary additional clearing for the APZ would be more suitable response to the site constraints. The size and location of the proposal is not supported due to impact on remaining native bushland, threatened species and their habitat from further clearing to satisfy bushfire APZ.

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 proposal is for a new residential dwelling which is permitted in the zone.

- *To maintain the rural landscape character of the land.*

Comment:

The proposal is for a residential dwelling. The majority of the site will remain undeveloped which is consistent with the surrounding sites and will maintain the rural landscape character of the land.

- *To provide for a range of compatible land uses, including extensive agriculture.*

Comment:

The proposal is permitted in the zone and compatible on the site.

- *To ensure that development in the area does not unreasonably increase the demand for public services or public facilities.*

Comment:

The proposed single residential dwelling will not 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:

Surrounding development consists of residential dwellings and an aged care facility. The proposal is consistent with the existing land uses and is likely to cause conflict between land uses within this zone and land uses within adjoining zones.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the RU2 Rural Landscape zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, 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 Development Determination Panel, for which Council has an exemption for dwelling houses that can be determined by the Development Determination Panel.

7.6 Biodiversity protection

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 Clause 7.6 Biodiversity protection of the Pittwater Local Environmental Plan 2014.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	Complies
Front building line	30m	44.2m	Yes
Rear building line	7.5m	Carport - 8.3m	Yes
Side building line	South - 7.5m	48.2m	Yes
Building envelope	South - 3.5m	Within envelope	Yes
	West - 3.5m	Within envelope	Yes
Landscaped area	94.15% or 20364.8m ²	94.34% (20,407 m ²)	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.6 Ingleside Locality	No	No
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.2 Bushfire Hazard	No	No
B3.11 Flood Prone Land	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
B4.18 Heathland/Woodland Vegetation	No	No
B5.1 Water Management Plan	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	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
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	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
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
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D6.1 Character as viewed from a public place	Yes	Yes
D6.3 Building colours and materials	Yes	Yes
D6.5 Front building line	Yes	Yes
D6.6 Side and rear building line	Yes	Yes
D6.7 Building envelope	Yes	Yes
D6.8 Landscaped Area - Non Urban General	Yes	Yes
D6.12 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes

Detailed Assessment

A4.6 Ingleside Locality

The proposed development and existing clearing/works on the site do not meet the desired character of the Ingleside Locality.

The locality aims to provide low impact residential development that is integrated with the landform and landscape. The existing and required clearing and excavation along with the minimal landscaping and large dwelling is not consistent with the desired future character of the locality.

The location of the proposal and the required APZ means that landscaping on the site such as canopy trees and native vegetation cannot be integrated into the design of the dwelling as per the desired character of the locality. Additionally, no landscape plan was provided with the application to show what landscaping will take place on the site and what trees and bushland is to be retained.

Furthermore, the development is to be designed to be safe from hazards. The application was referred to the NSW RFS, who raised several concerns with the Bushfire Assessment submitted.

The location, design and condition of the existing site are not consistent with Ingleside desired future character and an alternate design and location could provide a better outcome for the natural environment and provide a development that is consistent with the desired future character of the locality.

B4.18 Heathland/Woodland Vegetation

As detailed in the NECC (Bushland and Biodiversity) comments earlier in this report the proposal does not meet the requirements of the control.

This application was assessed against the objectives of PLEP Clause 7.6 Biodiversity, PDCP Clause B4.18 Heathland/Woodland Vegetation, and the NSW Biodiversity Conservation Act 2016. The property is also mapped as bushfire prone land and "Major Habitat" within Pittwater's wildlife corridor mapping. Any development application must consider proposal options which are compliant with applicable PLEP and PDCP controls, specifically:

- *Development shall retain and enhance habitat and wildlife corridors for threatened species, endangered populations, endangered ecological communities and other locally native species.*
- *Development shall not reduce or degrade habitat for locally native species, threatened species, endangered populations or endangered ecological communities.*

A substantial portion of the native intact bushland on the site was cleared prior to lodgement of this DA. The cleared area is located largely within the footprint of the proposed development. As such, there can be little consideration for ways to avoid and minimise impacts as per the application of mitigation hierarchy.

The proposed development will result in a substantial loss of native vegetation (including canopy trees) and wildlife habitat on the site. The proposal as submitted does not demonstrate that the objectives of relevant Natural Environment controls have been taken into account in designing and siting the development, nor is it evident that the proponent has made an effort to avoid direct or indirect impacts to the site's biodiversity values.

Given that the existing submission does not achieve compliance with PLEP and PDCP controls, the applicant is encouraged to consider a redesign of the proposal. It is noted that this DA includes additional impacts compared to the previous application. Any new proposal should incorporate a substantially reduced footprint (with reconsideration of the need for non-ancillary elements) and demonstrate feasible measures to avoid impacts to the site's biodiversity values.

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 Clause B4.18 Heathland/Woodland Vegetation of the PDCP.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

Refer to Assessment by Council's Natural Environment Unit elsewhere within this report.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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, 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
- Inconsistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

In summary, a detailed assessment has been required for the following specific issues:

- Bushfire Prone Land, the application was referred to the NSW RFS who raised concerns with the Bush Fire Assessment Report provided.
- Non-compliance with the biodiversity controls and legislation, Council's Natural Environment - Biodiversity Section cannot support the application due to non-compliances with the Clause 7.6 Biodiversity of the Pittwater LEP 2014, Clause B4.18 Heathland/Woodland Vegetation of the Pittwater DCP and the NSW Biodiversity Conservation Act 2016.
- Inadequate supporting information required by the controls and consideration for supporting biodiversity information, the insufficient and missing information includes the BDAR, Biodiversity Management Plan, Arborist Report, Bushfire Assessment Report and Landscape Plan.
- Building Height, the proposal breaches the control with a height of 9.9m.
- Ingleside Locality, the proposal does meet the Desired Future Character of the locality.

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is not suitable or appropriate development for the subject site. 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 DA2019/0055 for the Construction of a dwelling house on land at Lot 40 DP 28908,9 Minkara Road, BAYVIEW, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) and Section 4.15(1)(b)(i) Environmental Impacts of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of the Environmental Planning and Assessment Act 1979
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 Clause 7.6 Biodiversity protection of the Pittwater Local Environmental Plan 2014.
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 Clause A4.6 Ingleside Locality of the Pittwater 21 Development Control Plan.
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 Clause B4.18 Heathland/Woodland Vegetation of the Pittwater 21 Development Control Plan.
5. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.



NOTE: ALL WORKS SHALL COMPLY WITH BAL 29 OF AN/959,2009 Construction of Buildings in Bushfire Prone Areas and Section A3.7 of the NSW Rural Fire Service Addendum to Appendix 3 of Planning for Bushfire protection 2006.

NOTE: ASSET PROTECTION ZONE

[illegible]

NOTE: ALL WORKS SHALL COMPLY WITH THE BUILDING CODE OF AUSTRALIA

**Stephen Crosby & Assoc.
Pty. Ltd.**
SCOTLAND ISLAND
PO Box 204 Church Pt. NSW 2105

DWELLING
9 MINKARA ROAD
BAYVIEW, NSW
Lot 40 DP 28908

**SITE PLAN
STORMWATER**

2416 - DA 01 A

Water Constraints	
Landscaping	<p>The applicant must plant indigenous to the water use species of vegetation throughout 300 square meters of the site.</p>
Plumbing	<p>The applicant must install showerheads with a maximum rating of 1.5 l/min (< 1.5 l/min) in all showers in the development.</p> <p>The applicant must install a toilet flushing system with a maximum rating of 6 star in each toilet in the development.</p> <p>The applicant must install taps with a maximum rating of 5 star in the kitchen in the development.</p> <p>The applicant must install basin taps with a maximum rating of 6 star in each bathroom in the development.</p>
Alternative water	<p>Alternative tank</p> <p>The applicant must install a minimum tank of at least 40000 litres on the site. This alternative tank must meet, and be located in accordance with, the requirements of the Department of Environmental Affairs.</p> <p>The swimming pool must not have a volume greater than 15 m³ of water.</p> <p>The swimming pool must have a pool cover.</p> <p>The swimming pool must be outdoors.</p>
Outdoor Spa	<p>This spa must not have a volume greater than 27.7 megalitre.</p>

Author: Stephen Crosby & Assoc.
Pty. Ltd.

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DWELLING

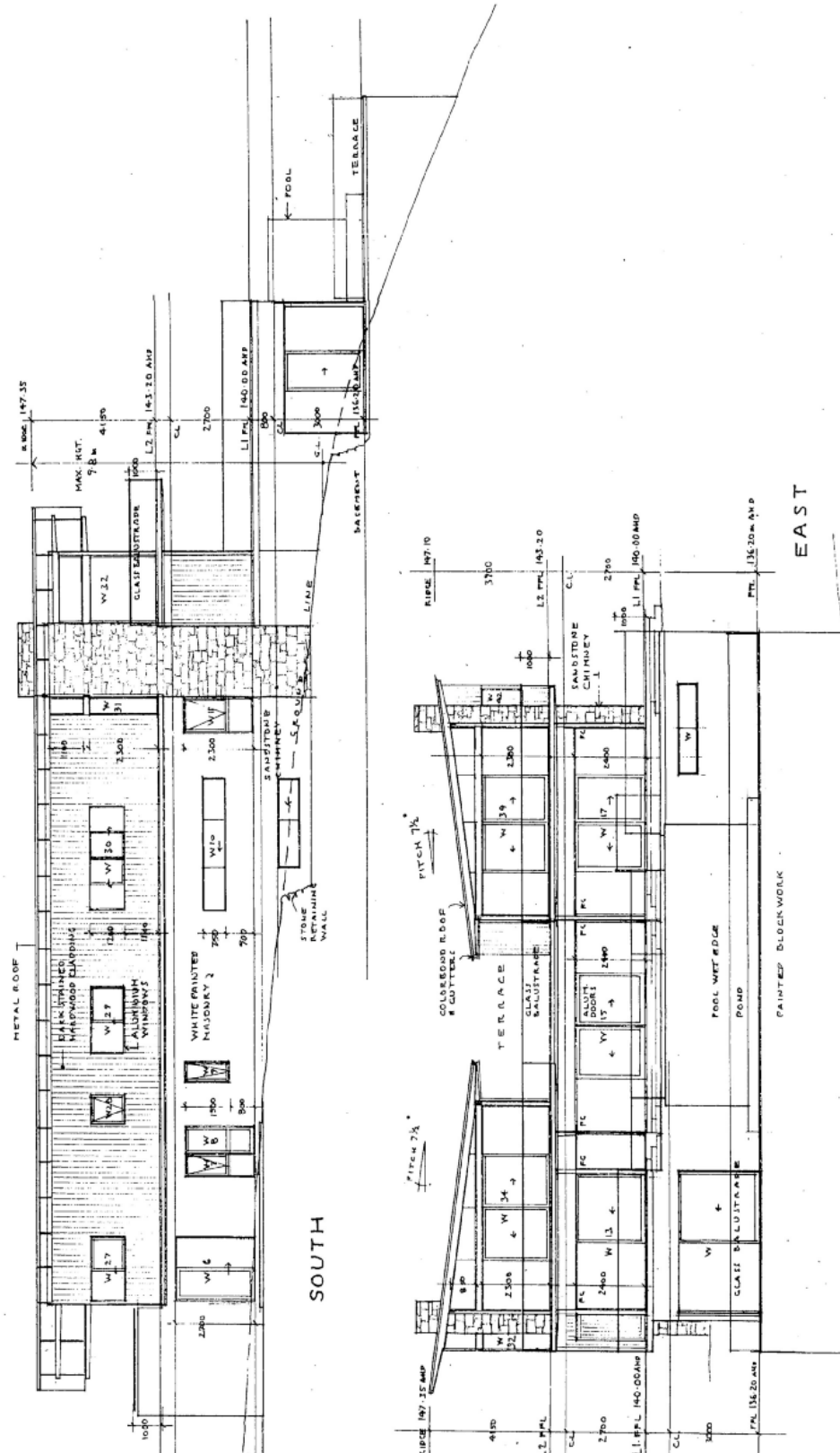
**9 MINKARA ROAD
BAYVIEW, NSW
Lot 40 DP 28908**

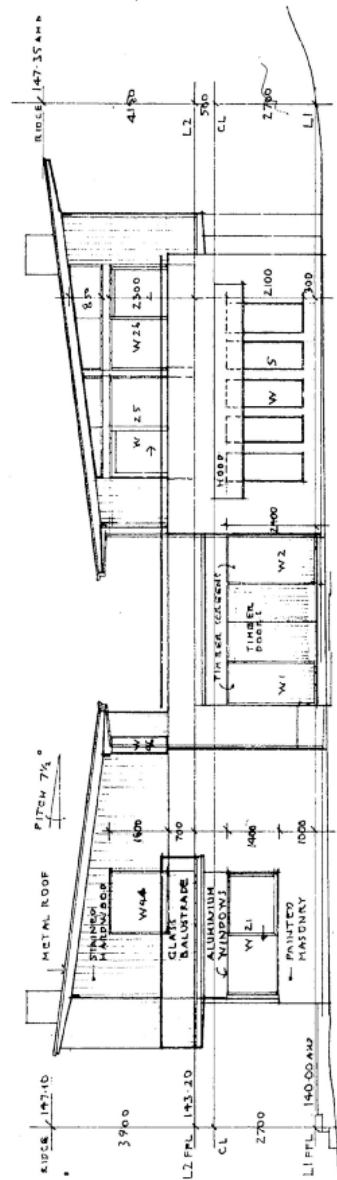
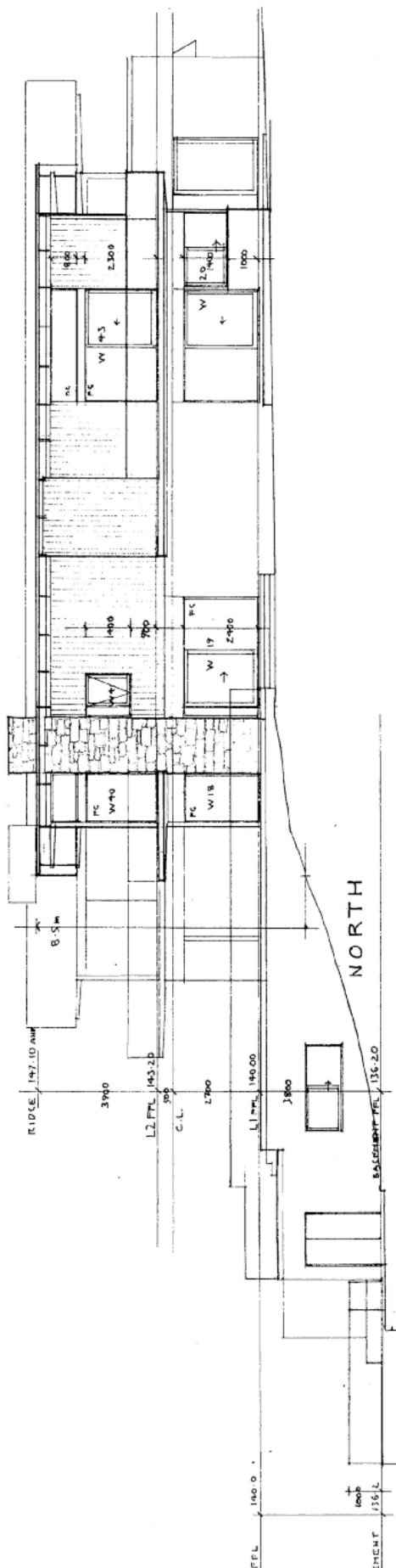
For J. DICK

ELEVATIONS
SOUTH & EAST

Serial	1100 A.Y A.2
Date	AUGUST 2018
Drawn	B.G.
Drawn by	Signature

2416 - DA 06A





Founders
**Stephen Crosby & Assoc.
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DWELLING

**9 MINKARA ROAD
BAYVIEW, NSW
Lot 40 DP 28908**

BY J. DICK

Drinking ELEVATIONS

NORTH & WEST

Score **1,100 A Y A 2**
A. 27110 W. 300 A. 6

DATE: AUGUST 2010

2416 - DA 07A

Clause 4.6 Variation Request Clause 4.3 Height of Buildings

7 MINKARA ROAD, BAYVIEW Lot 40 DP 28908

Date: 22nd July 2019

Prepared By: Stephen Crosby & Associates Pty. Ltd.
PO Box 204, Church Point, NSW 2105

For: J. Dick

INTRODUCTION

This Clause 4.6 request is submitted to Northern Beaches Council in support of Development

Application no. 2019/0055 for a proposed new dwelling house, with swimming pool and spa, and driveway and carport at 9 Minkara Rd Bayview.

Clause 4.6 of the Pittwater Local Environmental Plan 2014 enables Northern Beaches Council to grant consent to the development even though the dwelling contravenes a development standard. The clause aims to provide flexibility in applying certain development standards to achieve better outcomes for and from the development.

This Clause 4.6 variation request relates to the development standard for height under clause 4.3 of the Pittwater LEP 2014.

This clause 4.6 variation request demonstrates that compliance with the height standard is unreasonable and unnecessary in the circumstances of this case, and there are sufficient environmental planning grounds to justify contravention of the standard.

This clause 4.6 variation request demonstrates that the proposed development:

- Satisfies the objectives for development standard clause 4.3 PLEP 2014 Building Height,
- Satisfies the objectives of the RU2 Rural Landscape zone under PLEP 2014,
- Is consistent with applicable state and regional planning policies,
- Provides for a better planning outcome,
- Has sufficient environmental planning grounds to permit the variation, and
- Is in the public interest.

The DA may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.3 of the Pittwater LEP 2014.

VARIATION TO CLAUSE 4.3 HEIGHT OF BUILDINGS

Clause 4.3(2) of the Pittwater LEP 2014 states, "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". The maximum height on this map for this site is 8.5m.

In accordance with the definition of "building height" in PLEP 2014 the proposed development has a maximum building height of 9.8m, noted in Council's assessment Ref 2019/392742, being the tallest part of the proposed southern roof ridge from the ground. The variation to the PLEP maximum height is 1.3m for the building, and 1.4m for the chimney noted in definitions of building height as excluded.

JUSTIFICATION FOR CONTRAVENTION OF THE DEVELOPMENT STANDARD

Clause 4.6(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant 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) there are sufficient environmental planning grounds to justify contravening the development standard.

Clause 4.6(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicants 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(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY

The objectives of the standard are achieved notwithstanding non-compliance with the standard. The objectives of the standard are:

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

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

(c) to minimise any overshadowing of neighbouring properties,

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

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

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

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

The proposal is for a residential dwelling house of two to three stories, stepping down the site and excavated into the hillside to maintain the building height limit of 8.5m. The variation to the height standard is for a small section of the southern facade at its eastern end where the wall height exceeds the 8.5m height limit by 0.4m, and the roof eaves overhang exceeds the 8.5m height limit by 1.3m. The chimney on the south facade exceeds the height limit by 1.4m however chimneys are excluded from building height as defined in the PLEP 2014.

The bulk and scale of the proposed dwelling house is consistent with other larger residential dwellings on the larger Rural Landscape zoned site in the immediate vicinity, and the AVO Aged Care Facility opposite the site, where residential buildings are of two to three stories.

The proposed residential dwelling house shall sit into the hillside with its roof ridges below the tree canopy and 54m from the street alignment. The existing woodland vegetation to be retained on site beyond the required bushfire asset protection zone shall ensure the dwelling is screened from the road and properties on the other side of Minkara Road.

The ridge point that exceeds the 8.5m building height limit is 50m from the neighbouring property boundary to the south and the retained existing natural woodland vegetation shall screen the

dwelling from this site.

By creating a dwelling house of two to three stories the accommodation can be provided on a reduced footprint thereby reducing the extent of asset protection zones and maximising the extent of existing natural vegetation to be retained on site.

The proposal includes environmental measures such as rainwater harvesting and reuse, sustainable effluent irrigation reducing the environmental impact.

The proposal is not in any heritage or conservation area.

The proposal includes one standard residential driveway crossing, approved by Council's Engineering Department, with no other impacts of pedestrian or traffic movement in the neighbourhood.

As, such, the proposal's height, whilst seeking a variation to the height control, still results in a development which is consistent with the expectations for land in the Bayview, and remains consistent with the desired character of the Ingleside locality.

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

The proposal is considered compatible with the height and scale of nearby development with many two storey residential dwellings in the locality and the Minkara Aged Care Facility across Minkara Road having up buildings to three stories in height.

The significant distances between the proposed dwelling and its site boundaries, and adjoining buildings, reduces the visual significance of the height variation affecting a small part of one of the two wings of the building.

The significant existing tree cover between the site of the proposed dwelling house and the lot boundaries shall ensure the building will only be visible in small part, if at all, from neighbouring properties rendering it compatible with the other buildings in this bush locality.

The design, siting, scale and proposed uses result in an overall development which is capable of existing together in harmony with its immediate and wider environment, being adjacent to natural environment, as well as residential properties in the surrounding area.

Harmony is achieved between the proposed development and surrounding land uses, as well as the character of the area through height, bulk and scale, which are sympathetic to development in the locality.

The development proposes to maintain the existing natural woodland vegetation beyond the areas of the site to be used for the residence with its required bushfire asset protection zone (APZ), the on-site wastewater drain field, driveway and carport.

The proposal has been designed to be compatible with its context and surrounding development and is therefore consistent with the Planning Principle for compatibility. The proposed development is in harmony with the buildings surrounding it and will not have any undue physical impacts on surrounding sites.

Objective (c) to minimise any overshadowing of neighbouring properties.

The proposal will not result in any overshadowing of neighbouring properties due to the large distances, over 50m to the lot boundaries to the east and south, and the rising slope of the site to the west.

Therefore, the variation to the height limit does not result in any overshadowing on neighbouring properties.

Objective (d) to allow for the reasonable sharing of views.

Due to the location of this site being just below the Bayview ridgeline, the proposed development, and the minor variation to the height limit, do not result in any view impacts, allowing for the reasonable sharing of views.

The proposal does not interrupt or obstruct any significant views to or from the site or Minkara Road, making the proposed development consistent with this objective.

Objective (e) to encourage buildings that are designed to respond sensitively to the natural topography.

The proposed development has been designed to respond sensitively to the natural topography, which slopes steeply away from a level area just below the escarpment along the western site boundary. The dwelling house has been designed to step down the site to respond to the topography as can be seen on the Northern and Southern Elevations on drawings 2416 - DA06A and DA07A.

Dropping the building in the south-west corner to comply with the building height control would create an amenity issue for the occupants as it would create a step in the finished floor levels between the kitchen and adjacent dining room on the ground floor. This would be replicated above in the main bedroom and bathroom and dressing room above on the first floor.

The height variation is largely limited to minor roof elements and can be seen on the South Elevation on drawing 2416 - DA06A.

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

Creating a dwelling house of two to three stories allows the accommodation to be provided on a reduced footprint thereby reducing the extent of asset protection zones and the impact on the natural environment.

The site is not in a heritage conservation area, and does not contain heritage items.

COMPLIANCE WITH CLAUSE 4.3(2D) of PLEP 2014

Clause 4.3(2D) of PLEP 2014 states:

(2D) Despite subclause (2), development on land that has a maximum building height of 8.5m shown for that land on the Height of Buildings Map may exceed the height of 8.5m, but not be more than 10.0m if:

- (a) the consent authority is satisfied that the portion of the building is minor, and
- (b) the objectives of this clause are achieved, and

(c) the building footprint is situated on a slope in excess of 16.7 degrees, and

(d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

The subject site, whilst meeting most of the criteria, does not meet the criterion under (2D) (c) therefore the maximum building height is 8.5m for the site.

However, given the proposal meets the majority of the criteria and only falls short of item (c) to a minor extent, it is considered that this is a further reason, specific to this site, which renders compliance with the 8.5m development standard unreasonable and unnecessary in the circumstances of this case.

Clause 4.3(2D)

The maximum permitted height for development on this site is 8.5m under the Height of Buildings Map. The maximum height of the proposed development is 9.8m and therefore does not exceed 10.0m.

Objective (a) the consent authority is satisfied that the portion of the building is minor.

The extent of the variation is minor, and is for a minor portion of the roof elements in the S-E corner of the dwelling.

Objective (b) the objectives of this clause are achieved.

Refer to CLAUSE 4.6(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY.

Objective (c) the building footprint is situated on a slope in excess of 16.7 degrees.

The dwelling has been sited to minimise impacts of the natural environment of the site and whilst the slope of the site in the area of the dwelling does not exceed 16.7 degrees the slope immediately adjacent to the dwelling exceeds 20 degrees. It is considered weight should be given to the varying sloping nature of the site in determining that compliance with the 8.5m height standard is unreasonable.

Objective (d) the buildings are sited and designed to take into account the slope of the land to minimise the need for cut and fill by designs that allow the building to step down the slope.

The proposal has been sited and designed to take into account the slope of the land to minimise the need for cut and fill and to minimise impacts on the natural vegetation.

Given the proposal meets the majority of the criteria and only falls short of item (c) to a minor extent it is considered that this is further reason, unique to this site, which renders compliance with the 8.5m development standard unreasonable in the circumstances of the case.

CLAUSE 4.6(3)(b) ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

In our opinion there are sufficient environmental planning grounds to justify contravening the maximum height development standard in Clause 4.3 of PLEP 2014. Those grounds are:

Ground 1: Environmental site constraints.

As outlined previously in this report and the Statement of Environmental effects submitted with the DA, the extent of development on this site is limited by a number of environmental constraints. These include:

- Significant natural vegetation including canopy trees and ground cover plants.
- The steeply sloping topography on a large part of the site.
- Bushfire constraints.
- Effluent disposal and irrigation constraints.
- Visual impact considerations.

The proposal has sought to deal with the issues raised by each of these constraints. In doing so, meeting the requirements of the future occupants whilst also responding to these constraints results in a minor variation to the height limit. The amenity of future occupants is afforded by minimising level changes for the ground and upper floor, but requires a minor variation of the height limit to achieve it.

Ground 2: Minimising impact on the natural environment.

The main driver in the proposed development's design has been the need to maintain the unique and distinct landforms and landscape features of the site. Measures to minimise the developments overall impact include:

- Rainwater storage and reuse systems, including swimming pool water filtration for reuse,
- Sustainable on-site effluent treatment and irrigation
- Minimising the development envelope and hence, ecological footprint.

The result is a development design which results in a minor height variation to the height limit by addressing key environmental issues affecting the site.

Ground 3: Compliance with Clause 4.3(2D) of PLEP 2014

Given the proposal meets the majority of the criteria and only falls short of item (c) to a minor extent it is considered that this is further reason, unique to this site, to support a variation to the 8.5m building height limit. Compliance with the 8.5m height limit is unreasonable and unnecessary in the circumstances of this case.

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 the objectives of the development standard.

The proposed development is consistent with the objectives of the height of buildings standard in clause 4.3, for the reasons discussed previously in CLAUSE 4.6(3)(a) COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY.

Consistency with the objectives of the zone.

The proposed development is consistent with the underlying objectives of the RU2 Rural

Landscape zone. The primary driver of the variation is the result of designing a dwelling house with minimal impact on the natural environment whilst maximising occupant amenity. The large majority of the site shall be left in its natural bushland state, with adequate vegetation screening to minimise the visual impact on the development on neighbouring sites or public spaces like Minkara Road.

The provision of a single family home with its associated amenities shall have a minimal impact on public services or public facilities in the area, and shall have a minimal impact of vehicle traffic along Minkara Road. Road access has been approved by Council with a previous consent for a driveway and vehicle crossing into Minkara Road.

The location of the proposed dwelling and swimming pool, with the asset protection zone, will have a positive impact on bushfire protection for neighbouring properties by providing a water source for fire fighting and reducing fuel loads in the immediate vicinity.

The proposed development is of good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying the requirement that the proposal, and the height limit standard variation, are in the public interest.

Overall public interest.

The proposed development is considered to be in the public interest for the following reasons:

- Dwelling houses are a specifically permissible use of the site and consistent with the character of the Ingleside locality.
- The proposal includes bushfire protection and mitigation measures such as water tanks and a swimming pool providing a water source for fire fighting.
- The resultant dwelling with its wastewater irrigation area and asset protection area reduces bushfire fuel loads and provides a bushfire buffer to neighbouring residential properties including the Minkara Aged Care Facility across Minkara Road.

On the basis of the above, we believe that the consent authority can be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the development standard for building height contained in clause 4.3 of the PLEP 2014, and with the objectives of the RU2 Rural landscape zone under the PLEP 2014.

CONCLUSION

The assessment above demonstrates that compliance with the maximum building height development standard in Clause 4.3 of the PLEP 2014 is unreasonable and unnecessary in the circumstances of this case and that the justification is well founded. It is considered that the variation allows an orderly and economic use and development of the land, and that the structure is of good design that will reasonably protect and improve the amenity of the surrounding built environment.

This clause 4.6 variation demonstrates that, notwithstanding the variation to the maximum building height development standard, the proposed development:

- Satisfies the objectives of the development standard for height of buildings in clause 4.3 of PLEP 2014,
- Satisfies the objectives of the RU2 Rural Landscape zone under PLEP 2014,
- Provides for a better outcome,
- Has sufficient environmental planning grounds to permit the variation, and

- Is in the public interest.

As such, the Development Application may be approved with the variation as proposed in accordance with the flexibility allowed under clause 4.6 of the PLEP 2014.

STEPHEN CROSBY

ITEM 3.2 **DA2019/0519 - 37 CARRINGTON PARADE, CURL CURL -
CONSTRUCTION OF A DWELLING HOUSE**

REPORTING MANAGER **Steve Findlay**
TRIM FILE REF **2019/468881**
ATTACHMENTS **1 Assessment Report**
 2 Site Plan & Elevations

PURPOSE

To refer the attached application for determination as required under adopted delegations of the Charter.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0519 for construction of a dwelling house on land at Lot 26 DP 14040, 37 Carrington Parade, Curl Curl, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0519
Responsible Officer:	Phil Lane
Land to be developed (Address):	Lot 26 DP 14040, 37 Carrington Parade CURL CURL NSW 2096
Proposed Development:	Construction of a dwelling house
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:	Karen Lea Ingram
Applicant:	Darren Steven Ingram
Application lodged:	24/05/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	05/06/2019 to 19/06/2019
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 1,889,280.00

EXECUTIVE SUMMARY

Based on a detailed assessment of the proposal against the applicable planning controls, it is considered that the proposal is suitable and appropriate development for the subject site.

The proposed development demonstrated compliance with a majority of the relevant built form controls of the WLEP 2011 and WDCP 2011 with the exception of the side boundary envelope and landscape open space controls. Both these variations have been considered given the unique constraints of the site including the lot configuration, slope (18% grade) and double street frontages to Carrington Parade and Beach Street.

Views was a issue given the location of the site opposite Curl Curl Beach, South Curl Curl Ocean Pool

and the ocean. A detailed analysis under Clause D7 Views of the WDCP 2011 from the townhouse development at 2 Beach Street, in particular from 35/2 and 36/2 Beach Street. It was established that a small portion of the overall view would be lost which contains the South Curl Curl ocean pool from these properties, however views of Curl Curl Beach, the ocean and North Curl Curl Headland would be maintained, ensuring consistency with Clause D7 Views and the view sharing Principles of Tenacity Consulting Pty Ltd. vs Warringah Council.

Privacy was another planning consideration and another issue raised by adjoining and surrounding properties. Given the orientation of the dwelling to the north and north-east to capture the views, privacy to the eastern neighbouring property at 36 Carrington Parade needed to be addressed. Windows on the eastern elevation due to their location will need to be obscured or fitted with external louvers. Additionally, the first floor balcony will be fitted with a privacy screen (for a portion) and the side access stairs on the eastern elevation will be lowered to ensure reasonable amenity is maintained. Privacy concerns from the townhouses at 2 Beach Street were also addressed with the obscuring of the glazing for the clerestory windows (southern elevation).

Building bulk and the lack of design merit were raised within the submissions. A review of the built form controls demonstrated compliance with the building height, wall height, side setback, front boundary setback with variations to the side boundary envelope and landscape open space. It is noted that dwellings within Carrington Parade and the surrounding streets of Curl Curl are large developments normally 2 or 3 storeys with variations to the built form controls of either the WLEP 2011 and/or WDCP 2011. An example of such development is the dwelling at 38 Carrington Parade, which is the western adjoining property to the subject. This development was subject of DA2011/0979 - Demolition works and construction of dwelling house) and was granted variations to the building height, wall height, side boundary envelopes and landscape open space. Therefore, it is considered that the proposed dwelling is consistent with Clause D9 Building Bulk of WDCP 2011 and surrounding developments within the vicinity.

The proposed development will require substantial excavation given the design and the slope of the land. A geotechnical report was submitted with the application and recommendations within this report concluded that a dilapidation report would be required for the adjoining properties/dwellings at 36 and 38 Carrington Parade. A condition has been included to ensure this outcome within the draft conditions for the panel's consideration.

Given all considerations, submissions, variations and analysis of the proposal, it is considered the proposed development should be approved.

The application has been assessed against the Environmental Planning and Assessment Act 1979 (EP&A Act 1979), Environmental Planning and Assessment Regulations 2000 (EP&A Regulations 2000), relevant Environmental Planning Instruments (EPIs) and Council policies. The outcome of this assessment is detailed within this report.

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

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 Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D7 Views

SITE DESCRIPTION

Property Description:	Lot 26 DP 14040 , 37 Carrington Parade CURL CURL NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the southern side of Carrington Parade and the northern side of Beach Street, Curl Curl (double street frontage).</p> <p>The site is irregular in shape with a frontage of 21.45m along Carrington Parade and 1a depth of 18.29m along Beach Street. The block has a depth of 22.205m along the eastern side boundary and 32.33m along the western side boundary. The site has a surveyed area of 474m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a part two/part three storey art deco dwelling with landscaped gardens.</p> <p>The site slopes from the Beach Street frontage down to the Carrington Street frontage with a slope of 18%.</p> <p>The site has limited vegetation with low shrubs and lawns.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by single storey and two/three storey dwellings with landscaped gardens and associated outbuildings/structures. On the southern side of Beach Street is a townhouse development (38 townhouses) which is located a minimum of 4 metres above the street level.</p>

Map:



SITE HISTORY

CDC2019/0081 - Demolition of the existing dwelling house was approved on 14 February 2019

PROPOSED DEVELOPMENT IN DETAIL

The proposed development is for the construction of a part two/part three storey dwelling-house and landscape works as follows: -

Lower Ground Floor Plan

- Workshop
- Double garage with turnable
- Gym
- Games room
- Store
- Cellar
- Powder room
- Lift

Ground Floor Plan

- Entry
- Rumpus
- Media
- Storage
- Guest room
- Water closet
- Study
- Three (3) bedrooms with built in robes
- Two (2) bathrooms

- Laundry
- Lift
- Front Balcony

First Floor Plan

- Lounge/living/meals/kitchen
- Pantry
- Powder room
- Lift
- Master bedroom with walk in robe and ensuite
- Rear balcony
- Front balcony

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	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the</p>

Section 4.15 Matters for Consideration'	Comments
	Building Code of Australia (BCA). This matter has been addressed via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) 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 development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

Name:	Address:
Gayle May McCarthy	36 Carrington Parade CURL CURL NSW 2096
Carole Judith Anderson	36 / 4 Beach Street CURL CURL NSW 2096
Ms Belinda Jane Zoeller	35 / 4 Beach Street CURL CURL NSW 2096
Mr Joshua James Robert	2 / 1 A Fairlight Street MANLY NSW 2095

Name:	Address:
Zoeller	

The following issues were raised in the submissions:

- Views
- Building Bulk (lack of design merit)
- Landscape open space
- Front setback/streetscape
- Excavation
- Solar access
- Privacy

The matters raised within the submissions are addressed as follows:

- **Views**

Comment: A detailed analysis was undertaken from surrounding and adjoining properties, including a site inspection from all properties where Council received a submission. A detailed analysis was undertaken from No. 35/2 & 36/2 Beach Street, Curl Curl. Please refer to assessment under Clause D7 Views section of this report.

In summary, the proposed dwelling is considered to satisfy Clause D7 Views and the view sharing principles (Four (4) point test) of Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140 and it is considered that the issues raised do not warrant refusal of the proposal. However, special conditions have been imposed which require a survey(s) at critical stages of the development to confirm the height of the building, including the lower ground level, first floor level and the roof frame to ensure that the dwelling is constructed in accordance with the submitted plans.

- **Building Bulk (lack of design merit)**

Comment: Issues were raised in relation the visual bulk and lack of design merit of the proposed development, notably the width, number of storeys and height of the building. In addition, the position of the dwelling in relation to the eastern and southern boundaries, which reduces the existing view corridor to South Curl Curl swimming pool to the townhouses at 35/2 and 36/2 Beach Street.

A review of the relevant built form controls of the Warringah Local Environmental Plan 2011 (WLEP 2011) and the Warringah Development Control Plan 2011 (WDCP 2011) was undertaken and it is noted that the proposal is compliant with the exception of Clause B3 Side Boundary Envelope and D1 Landscape Open Space of WDCP 2011. It is noted that the variations to the side boundary envelopes are to the front portion of the first floor level which faces Carrington Parade and not the southern facing elevation which faces Beach Street (which also faces the townhouses at 35/2 and 36/2 Beach Street). The building from the southern elevation (Beach Street) is fully compliant with the front boundary setback (secondary frontage), building envelope, wall height and building height (overall).

Issues were also raised concerning the northern and eastern elevations and a lack of stepping

of the building as it rises with each progressive level of the building. A detailed review of the northern and eastern elevations demonstrates that the dwelling steps back up to 2.7m from the side eastern boundary and 8.1m to 11.1m from the northern front boundary as the balcony extends out on the first floor level.

Given the usual configuration of the site (double street frontage - Carrington Parade/Beach Street, north boundary approximately 21m in width, southern boundary 18.29m in width, eastern side boundary 22.2m in length and then the western side boundary 32.33m in length) and combined with a slope of 18% from Beach Street down to Carrington Parade, it is considered that the proposed design demonstrates sufficient design merit.

Additional concerns of privacy can be suitable addressed with the installation of privacy screens, obscured glazing and lowering of the eastern side footpath. It is considered that the privacy screen and obscured glazing of specific windows on the eastern elevation of the dwelling will allow for adequate visual relief while ensuring satisfactory amenity to 36 Carrington Parade (property to the east), thus ensuring general compliance with Clause D9 Building Bulk of the WDCP 2011.

It is noted that the applicant has included the driveway (reinforced turf driveway) in their landscape calculations. The amount of proposed landscaping as submitted by the applicant is 41.2% (195.2sqm), included the turfed driveway, however this will be excluded from the calculations and so the landscaping will be 34.5% (163.4sqm). It is noted that 38 Carrington Parade was also approved (DA2011/0979 - Demolition works and construction of dwelling house) with variations to the building height, wall height, side boundary envelopes and a landscape open space of 38% (178.2%). A detailed analysis under Clause D1 Landscape open space and bushland settings of WDCP 2011 has considered that the proposed design and landscaping demonstrates sufficient merit consideration to this variation subject to the deletion of the bin bay area (northeast corner of the site) to increase landscaping. This will be conditioned to ensure this outcome.

Given the above, it is considered that the proposed dwelling demonstrates sufficient landscaping (subject to condition), articulation, relief and spatial separation from adjoining and surrounding dwellings to ensure compliance with Clause D9 Building Bulk (WDCP 2011). It is considered that this issue does not warrant refusal subject to condition(s).

- **Non-compliant Rear Setback**

Comment: Issues were raised stating that the proposed dwelling is non-compliant with Clause B9 Rear Boundary Setbacks of the WDCP 2011. The site has double street frontage with Carrington Parade being the primary street frontage and Beach Street being the secondary street frontage. The proposed dwelling demonstrates compliance with the setback to each respective street frontage and therefore the rear boundary setback control is not applicable in this assessment.

Given the above, it is considered that the proposed dwelling demonstrates compliance with Clause B7 Front Boundary Setbacks of the WDCP 2011 and that this issue does not warrant refusal and/or further amendment via condition(s).

- **Non-compliant Landscape Open Space**

Comment: As mentioned previously, issues were raised that the proposed landscaped open space is non-compliant. The proposed landscaping as stated by the applicant is 41.2%

(195.2sqm), included the turf driveway, however this will be excluded from the calculations and so the landscaping is actually 34.5% (163.4sqm). It is noted that 38 Carrington Parade was also approved (DA2011/0979 - Demolition works and construction of dwelling house) with variations to the building height, wall height, side boundary envelopes and landscape open space of 38% (178.2%). A detailed analysis under Clause D1 Landscape open space and bushland settings of WDCP 2011 has considered that the proposed design and landscaping demonstrates sufficient merit consideration to this variation subject to the deletion of the bin bay area (northeast corner of the site) to increase landscaping. This will be conditioned to ensure this outcome.

Given the above, it is considered that the proposal development demonstrates compliance with Clause D1 Landscape Open Space and Bushland settings of the WDCP 2011 and that this issue does not warrant refusal subject to condition(s).

- **Front Setback and Streetscape**

Comment: The proposed dwelling is located forward of the dwelling at 36 Carrington Parade by approximately 4.1m, however, it demonstrates compliance with the front boundary setback control of 6.5m (Clause B7 Front Boundary Setback of the WDCP 2011) with a setback of 6.515m.

The dwelling from the front southern elevation will appear as a part single/part two storey and from the front northern elevation as a part two/part three dwelling house which is articulated, modulated, spatial separated from the adjoining dwellings and has varying setbacks with landscaped elements ensuring the proposal demonstrates compliance with the front setbacks, while addressing the streetscape. It is noted that it is non compliant with Clause B3 Side Boundary Envelope and Clause D1 Landscape Open Space, which have been addressed, and it is considered that given the unusual lot configuration and slope of the allotment that there is sufficient grounds, coupled with the good design that variations to these merit considerations and clauses can be supported in this instance.

Given the above, it is considered that the proposed development demonstrates general compliance with the relevant built form controls of the WLEP 2011 and WDCP 2011 and sufficient grounds for variations side boundary envelope and landscape open space controls and that issue does not warrant refusal and/or further amendment via condition(s).

- **Excessive Excavation**

Comment: Concerns were raised about the depth and amount of excavation from the site for the proposed dwelling. The proposed depth is up to 4.2m and the site has been investigated by the applicants Geotechnical Engineers with the appropriate reports/assessments and recommendations to ensure the protection of not only the site but that of surrounding properties/dwellings.

It is considered that, given the depth of the excavation and the medium strength rock (sandstone) that is expected to occur at shallow depths, subsoil investigation (drill rig holes) with results varying from 700mm - 7.5m depth according to the Geotechnical Investigation by AW Geotechnics, that a dilapidation survey of the adjacent buildings (No. 36 and No. 38 Carrington Parade) should be required through conditions and that the recommendations within the assessment by the Geotechnical Engineer are undertaken to ensure the structural stability and safety.

Given the above, it is considered that subject to the above recommendations and condition(s), that the proposal will have minimal impacts on the adjoining and surrounding properties.

- **Solar Access**

Comment: Issues were raised about solar access to the yard fronting Beach Street (between the proposed dwelling and southern secondary frontage - Beach Street). The requirements of private open space for a dwelling is follows:-

Dwelling Type	Area and Minimum Dimensions per dwelling
Dwelling houses (including dual occupancy) and attached dwellings with 3 or more bedrooms.	A total of 60m ² with minimum dimensions of 5 metres.

The distance from the dwelling to this secondary frontage is 3.527m and therefore this area cannot be considered as the private open space. It is considered that given the double street frontage and other areas on the site including landscape gardens and lawns that there are sufficient areas which receive direct solar access for recreation and relaxation.

Given the above, it is considered that the proposal demonstrates compliance with Clause D6 Access to Sunlight in accordance with the WDCP 2011 and that this issue does not warrant refusal and/or further amendment via condition(s).

- **Loss of Privacy**

Comment: Issues were raised in relation to privacy for adjoining properties to the east and south of the subject property. The adjoining property to the east (No. 36 Carrington Parade) had concerns about privacy from the upper balcony on the first floor level and lower balcony on the ground floor level on the eastern elevation and the associated windows on the eastern elevation. It is considered that the proposed first floor balcony may create some privacy issues and it is considered that a privacy screen should be fitted to the eastern outermost edge for a minimum of 2.0m length (commencing at the southern end) with a minimum height of 1.65m above the first floor level.

The eastern facing windows (W30, W17 and W16) will be conditioned to be obscured glazing.

In relation to the stairs along the eastern side of the dwelling, the applicant has reviewed the submission(s) and has provided the following statement:-

"The highest point on these stairs is adjacent to the middle area of the home at No 36, the attached photo (4092) indicates that there is a small window to this area which appears to be screened. I would be happy to drop these steps down closer to natural ground level (say 3 steps) and can provide a privacy screen to the boundary fence if required."

A condition will be added to drop the height of stairs to be closer to natural ground level by 0.5m, ensuring reasonable amenity for both parties.

A review of the plans for the ground floor level (RL13.42) and the plans for 36 Carrington Parade (CDC2017/0458 - Minor alteration to an existing dwelling) show the sunroom at (RL14.2) at 36 Carrington Parade, which may translate to privacy issues for both parties. It is noted that the sunroom at 36 Carrington Parade is fitted with an internal blind and windows on the ground floor at 37 Carrington Parade will be fitted with similar devices, it is therefore considered reasonable levels of privacy/amenity can be maintained.

Issues were raised by No. 35/2 and No. 36/2 Beach Street about privacy from the the clerestory windows on the southern elevation within the roof design. A condition will imposed for obscured glazing to be fitted to these windows to ensure reasonable amenity is maintained for both parties.

Given the above, it is considered that subject to the condition(s) as mentioned above and contained in the recommendation attached to this report, there will be a satisfactory level of amenity between the proposed development and the adjoining and surrounding properties and that this issues does not warrant refusal subject to condition(s).

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	Warringah Development Control Plan 2011 E4 Wildlife Corridors applies to the land. The applicant is to demonstrate that the objectives have been met, including reconstruction of habitat in non vegetated areas of wildlife corridors that will sustain the ecological function of a wildlife corridor and that, as far as possible, represents the combination of plant species and vegetation structure of the original 1750 vegetation community.
NECC (Coast and Catchments)	The proposed application is supported without condition. The property is a significant distance from the areas impacted by coastal erosion and inundation. The development will also not impact access to a beach or headland. Therefore, it can be determined that the application meets the requirements of sections 13, 14 and 15 of SEPP Coastal Management.
NECC (Development Engineering)	The proposed development does not require OSD based on location at base of catchment adjacent ocean. No objections are raised to the proposed development, subject to conditions.
NECC (Riparian Lands and Creeks)	No objection to the proposed development subject to the conditions as recommended.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1011340S_02 dated 20 May 2019). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0003871449-02 dated 19 May 2019).

The BASIX Certificate indicates that the development will achieve the following:

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	90

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

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

SEPP (Coastal Management) 2018

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

10 Development on certain land within coastal wetlands and littoral rainforests area

"(1) The following may be carried out on land identified as "coastal wetlands" or "littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:

- (a) the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
- (b) the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
- (c) the carrying out of any of the following:*
 - (i) earthworks (including the depositing of material on land),*
 - (ii) constructing a levee,*
 - (iii) draining the land,*
 - (iv) environmental protection works,*
 - (d) any other development."*

Comment: Not applicable to the site.

11 Development on land in proximity to coastal wetlands or littoral rainforest

"(1) Development consent must not be granted to development on land identified as "proximity area for coastal wetlands" or "proximity area for littoral rainforest" on the Coastal Wetlands and Littoral Rainforests Area Map unless the consent authority is satisfied that the proposed development will not significantly impact on:

- (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or*
- (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest."*

Comment: Not applicable to the site.

12 Development on land within the coastal vulnerability area

"Development consent must not be granted to development on land that is within the area identified as "coastal vulnerability area" on the Coastal Vulnerability Area Map unless the consent authority is satisfied that:

- (a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) the proposed development:*
 - (i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and*

- (ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
- (iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazard."*

Comment: At the commencement of this Policy, no Coastal Vulnerability Area Map was adopted and therefore no coastal vulnerability area has been identified.

Not applicable.

13 Development on land within the coastal environment area

"(1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

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

Comment: The proposed works are unlikely to cause an adverse impact upon the matters identified in this clause. The proposal is located wholly within the subject site and does not discourage public access or amenity along the foreshore area nor impact on natural foreshore processes.

"(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

- (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
- (c) if that impact cannot be minimised—the development will be managed to mitigate that impact."*

Comment: The proposal has been designed in such a way that it satisfies the relevant matters identified in this clause.

14 Development on land within the coastal use area

"(1) (a) has considered whether the proposed development is likely to cause an adverse impact on the following:

- (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*

- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
(iv) Aboriginal cultural heritage, practices and places,
(v) cultural and built environment heritage, and
(b) is satisfied that:
(i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
(ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
(iii) 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 proposal does not impact upon the existing and safe access to and along the foreshore. The visual amenity from private and public space is not adversely effected and the surrounding area consists of examples of similar developments.

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

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

Comment: Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.
As such, the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.3m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Land Use Table	Yes
Part 4 Principal development standards	Yes

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
Part 6 Additional Local Provisions	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	6.8m	N/A	Yes
B3 Side Boundary Envelope	5.0m (east)	0.36m for a distance of 2.2m*	7.2%	No
	5.0m (west)	0.6m for a distance of 4.5m*	12%	No
B5 Side Boundary Setbacks	0.9m (east)	1.24m - 2.78m	N/A	Yes
	0.9m (west)	1m - 1.1m	N/A	Yes
B7 Front Boundary Setbacks (Primary frontage - Carrington Parade)	6.5m	6.515m - 8.568m	N/A	Yes
B7 Front Boundary Setbacks (Secondary frontage - Beach Street)	3.5m	3.527m - 5.537m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (189.6sqm)	35.6% (168.9sqm) **	4.4% (20.7sqm)	No

* Until compliance is met along the respective elevation.

** Landscape Plan submitted by Eco Design proposed 41.2% (195.2sqm), however the permeable (turfed) driveway cannot be included in this calculations. In addition, the bin enclosure will be deleted (by condition) as the green roof is also not included in the landscape open space calculations.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
Part B Built Form Controls	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
Part C Siting Factors	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Part D Design	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
Part E The Natural Environment	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B3 Side Boundary Envelope

Description of non-compliance

The proposal exceeds the side boundary envelope control by 0.36m at the eastern elevation (at the southernmost end) for a distance of 2.2m until compliance is met and 0.6m at the western elevation (southernmost end) for a distance of 4.5m until compliance is met.

Merit consideration

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

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

Comment: It is considered that the resultant development is consistent with the surrounding residential development within the vicinity. The design demonstrates sufficient articulation and demonstrates good setbacks to all side boundaries ensuring compliance with this merit consideration.

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

Comment: It is considered that the resultant development is consistent with the surrounding residential development within the vicinity, notably Nos. 36 and 38 Carrington Parade in overall height. The design is sufficiently articulated and demonstrates good setbacks to all boundaries ensuring adjoining properties will enjoy adequate light, solar access and privacy (subject to conditions).

Given the above, it is considered that the proposal will demonstrate compliance with this merit consideration.

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

Comment: The proposed development has demonstrated adequate articulation and variation to the design, notably stepping down the site. It is considered that the resultant development responds adequately to the topography of the site.

Given the above, it is considered that the proposal will demonstrate compliance with this merit consideration.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in S1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The proposal as submitted demonstrated a landscape open space of 41.2% (195.23sqm), however this calculation included a reinforced turf driveway (which is to be excluded). In addition, the bin enclosure area in the northeast corner will also be deleted, thus increasing the landscape open space to 35.6% (168.9sqm).

Merit consideration

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

- *To enable planting to maintain and enhance the streetscape.*

Comment:

The site retains a 6.5m primary front boundary setback to Carrington Parade and a 3.5m

secondary front boundary setback to Beach Street, which will be both utilised as a landscaped front gardens, thus enhancing the streetscape. In addition, the bin enclosure area in the north-east corner will be deleted, enabling additional planting to maintain and enhance the streetscape.

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

Comment:

Presently the site has no significant trees. The landscape plan which accompanies this application indicates the planting of numerous species of flora which will contribute to providing new vegetation and habitat for wildlife.

- *To provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.*

Comment:

The landscaped areas of the site are sufficient to enable to establishment of flora of varying scale and species.

- *To enhance privacy between buildings.*

Comment:

Despite not achieving the minimum quantum of landscaped open space, the development will not cause any unreasonable nor adverse privacy impacts (subject to conditions) upon adjoining and surrounding dwellings.

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

Comment:

The site retains sufficient scope for outdoor recreational opportunities.

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

Comment:

The site retains sufficient scope for service functions.

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

Comment:

The site has a sufficient provision of landscaped open space and the rainwater tank/onsite detention system will properly facilitate water management.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in S1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the

proposal is supported, in this particular circumstance.

D7 Views



View looking north over the subject site from 35/2 Beach Street

Merit Consideration

View loss was raised as a concern by the owners of the following properties:

- 35/2-4 Beach Street
- 36/2-4 Beach Street

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

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

Comment:

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

1. Nature of the views affected

"The first step is the assessment of the views to be affected. Water views are valued more

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

Comment to Principle 1:

35/2-4 Beach Street

Comment: A site inspection was undertaken from this property, which is a part two/part three storey townhouse located on the southern side of Beach Street. The townhouse currently has water views due to the location/height of the building and the site is elevated above the southern side of Beach Street. The view in question is the view of South Curl Curl ocean swimming pool which is currently achieved via a view corridor between the existing dwelling at 37 Carrington Parade (subject site) and 36 Carrington Parade (dwelling to the east of the subject site).

36/2-4 Beach Street

Comment: A site inspection was also undertaken from this property, which is a part two/part three storey townhouse located on the southern side of Beach Street. The townhouse currently has water views due to the location/height of the building and the site is elevated above the southern side of Beach Street. The view in question is the view of South Curl Curl ocean swimming pool which is currently achieved via a view corridor between the existing dwelling at 37 Carrington Parade (subject site) and 36 Carrington Parade (dwelling to the east of the subject site).

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:

35/2-4 Beach Street

Comment: The view is achieved over the northern front boundary from a standing and sitting position.

36/2-4 Beach Street

Comment: The view is achieved over the northern front boundary from a standing and sitting position.

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:

35/2-4 Beach Street

Comment: The view is achieved over the northern front boundary from a standing and sitting position from the lounge/living room on the ground floor, the kitchen on the mid-level and bedroom on the first floor level. Given the current views obtained from this property/townhouse, it is considered that the view loss is appropriately assessed as **minor**.

36/2-4 Beach Street

Comment: The view is achieved over the northern front boundary from a standing and sitting position from the lounge/living room on the ground floor, the kitchen on the mid-level and bedroom on the first floor level. Given the current views obtained from this property/townhouse, it is considered that the view loss is appropriately assessed as **minor**.

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:

35/2-4 Beach Street

Comment: As stated above, the view is achieved over the northern front boundary from a standing and sitting position from the lounge/living room on the ground floor level, kitchen on the mid level and bedroom on the first floor. The view loss is assessed as **minor** given the the expansive views of the ocean, Curl Curl Beach including the interface of the ocean and beach, views of North Curl Curl Headland.

It is noted that a portion of their current view, being South Curl Curl Pool, will be lost between the existing dwellings at Nos. 36 and 37 Carrington Parade by the proposed dwelling. The proposed dwelling is compliant with the relevant built controls of the WLEP 2011 and WDCP 2011 in relation to the southern elevation, which faces the objectors property. Additionally, it is noted there are variations to the side boundary envelopes and landscape open space, however the dwelling is considered to be consistent with other dwellings within the vicinity and the views of the ocean, beach and headland will be maintained from this property.

Given the above, it is considered that view sharing is provided and is reasonable.

36/2-4 Beach Street

Comment: As stated above, the view is achieved over the northern front boundary from a standing and sitting position from the lounge/living room on the ground floor level, kitchen on the mid level and bedroom on the first floor. The view loss is assessed as **minor** given the expansive views of the ocean, Curl Curl Beach including the interface of the ocean and beach, views of North Curl Curl Headland.

It is noted that a portion of the current view, being South Curl Curl Pool, will be lost between the existing dwellings at Nos. 36 and 37 Carrington Parade by the proposed dwelling. The dwelling is compliant with the relevant built controls of the WLEP 2011 and WDCP 2011 in relation to the southern elevation, which faces the objectors property. Additionally, it is noted that there are variations to the side boundary envelopes and landscape open space, however the dwelling is considered to be consistent with other dwellings within the vicinity and the views of the ocean, beach and headland will be maintained from this property.

Given the above, it is considered that view sharing is reasonable.

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

Comment:

The proposal demonstrates innovative design solutions to ensure the overall proposal will improve the urban environment.

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

Comment:

The proposal will be sited below the existing canopy trees within the vicinity, ensuring compliance with this merit consideration.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011/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 supported, in this particular circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$18,893 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,889,280.

CONCLUSION

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

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

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

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, other documentation supporting the application and the public submissions, and the conclusion is that the proposal does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties. A number of conditions have been imposed which lessen the impacts and are contained within the recommendation.

A detailed views analysis was completed to assess consistency with Clause D7 Views of the WDCP 2011 and was established that the existing view of South Curl Curl swimming pool between the existing dwelling at 37 Carrington Parade (subject site) and the dwelling to the east at 36 Carrington Parade will be impacted, however, the proposed design demonstrates appropriate levels of compliance with the controls when viewed from the south (fronting Beach Street), including the overall building height, wall height, front boundary setback side setback and side boundary envelope control.

The variations to the side boundary envelope and landscape open space controls of the WDCP 2011 were assessed as justifiable and consistent with other variations granted to other new dwelling house developments within the vicinity, in particular DA2011/0979 - Demolition works and construction of a dwelling house at 38 Carrington Parade, which has variations to the building height, wall height, side boundary envelope and landscape open space.

The townhouses at 35/2 and 36/2 Beach Street will maintain expansive views of the ocean, Curl Curl Beach and North Curl Curl headland views which are unaffected by the proposed development. It is concluded that the view loss is minor (overall) from these three (3) storey townhouses which have an elevated position both above Beach Street, but also above the subject site and the proposed development.

Issues in relation to building bulk (lack of design merit), landscape open space, front setback/streetscape, excavation, solar access and privacy have also been considered and addressed within this report. Suitable conditions will ensure reasonable privacy/amenity can be maintained to adjoining and surrounding properties. Additionally, a condition will be added for a dilapidation report to be undertaken for 36 and 38 Carrington Parade prior to works commencing to ensure the condition of those properties is recorded and that compliance with the recommendations within the geotech report will ensure stability and safety of buildings/property.

Given all considerations, submissions, variations and analysis of the proposal, it is considered that subject to the recommended conditions, the proposed development should be approved.

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/0519 for Construction of a dwelling house on land at Lot 26 DP 14040, 37 Carrington Parade, CURL CURL, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
565.101	15 May 2019	Urban Harmony
565.102	15 May 2019	Urban Harmony
565.103	15 May 2019	Urban Harmony
565.104	15 May 2019	Urban Harmony
565.105	15 May 2019	Urban Harmony

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Investigation	8 April 2019	AW Geotechnics

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

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

Landscape Plans

Drawing No.	Dated	Prepared By
L - 01	23 May 2019	Ecodesign

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	19 March 2019	Darren Ingram

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

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

2. Prescribed Conditions

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

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

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

the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:

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

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

Reason: Legislative Requirement

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than

\$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) 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.
- (j) 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.

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

 - (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
 - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in 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

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$18,892.80 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$1,889,280.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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.

5. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition

work commencing, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

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

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

6. Stormwater Disposal

The Applicant is to demonstrate stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's Warringah Water Management Policy PL850. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

7. Amendments to the approved plans

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

- The bin enclosure area is to be deleted and replaced with suitable landscaping (at ground level).

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

8. Structural Adequacy and Excavation Work

Excavation work is to ensure the stability of the soil material of adjoining properties, the protection of adjoining buildings, services, structures and / or public infrastructure from damage using underpinning, shoring, retaining walls and support where required. All retaining walls are to be structurally adequate for the intended purpose, designed and certified by a Structural Engineer, except where site conditions permit the following:

- a) maximum height of 900mm above or below ground level and at least 900mm from any property boundary, and
- b) Comply with AS3700, AS3600 and AS1170 and timber walls with AS1720 and AS1170.

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

Reason: To provide public and private safety.

9. **Vehicle Crossings Application**

A Driveway Levels and Formwork Inspections Application shall be made with Council subject to the payment of the fee in accordance with Council's Fees and Charges. The fee includes all Council inspections relating to the driveway construction and must be paid.

Approval of the application by Council is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

10. **Revised Landscape Plan**

Prior to the issue of a Construction Certificate, a revised Landscaping Plan is to be provided to the Principal Certifying Authority that shows a minimum of 50% locally native vegetation species (as per species listed in the Native Gardening Booklet available on Council's website)

Reason: To maintain native vegetation in accordance with relevant Natural Environment LEP/DCP controls.

11. **Compliance with Standards**

The development is required to be carried out in accordance with all relevant Australian Standards.

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

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

12. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

13. **Privacy Screen**

A 1.65 metre privacy screen (measured from finished floor level) is to be erected for length of 2m commencing at southern end of the outermost eastern edge of the first balcony located off the lounge room as shown on the approved plans. The privacy screen shall be of fixed panels or louver style construction (with a maximum spacing of 20mm), in materials that complement the design of the approved development.

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

Reason: In order to maintain privacy to the adjoining / nearby property. (DACPLC06)

14. Sydney Water "Tap In"

The approved plans must be submitted to the Sydney Water Tap in service, prior to works commencing, to determine whether the development will affect any Sydney Water assets and/or easements. The appropriately stamped plans must then be submitted to the Certifying Authority 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.

15. Dilapidation Survey

A dilapidation survey of adjacent buildings (at a minimum No. 36 Carrington Parade No. 38 Carrington Parade, Curl Curl) must be conducted prior to any site work. The lateral extent of the survey must cover the likely "zone of influence" of any excavation or construction induced vibration. The survey must be properly documented. The dilapidation report must be submitted to Council and the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Proper management of records.

16. Obscured Glazing - Eastern Elevation Windows and Southern Elevation Windows

The following windows are to be frosted and/or treated with obscured glazing treatment to ensure privacy and amenity of the adjoining property to the east (No. 36 Carrington Parade):

- o First floor (W30) adjacent to the stairwell
- o Ground floor (W16) adjacent to the stairwell
- o Window (W17) adjacent to the entry on the ground floor

Additionally, the (W33) within the roof area facing the street (southern elevation) are to be frosted and/or treated with obscured glazing/treatment to ensure privacy and amenity of the properties to the south (Nos. 35/2 and 36/2 Beach Street).

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

Reason: In order to maintain privacy to the adjoining / nearby property. (DACPLC06)

17. Stairs - eastern elevation

The external stairs located between the dwelling and the eastern side boundary adjacent to the entry are to be lowered by 0.5m.

Reason: Amenity and privacy.

18. Waste Management Plan

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

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

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

Sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004).

Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

21. **Road Reserve**

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

Reason: Public Safety.

22. **Vehicle Crossings**

The provision of one vehicle crossing 3.0 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/ 01 and specifications. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

23. **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 Certifying Authority.

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

24. **Survey Certificate**

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

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

(b) At ground level and first floor 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 Certifying Authority.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans. (DACPLE01)

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

Measures used for erosion and sediment control on building sites are to be adequately maintained at all times and must be installed in accordance with Council's Specifications for Erosion and Sediment Control. All measures shall remain in proper operation until all development activities have been completed and the site fully stabilised.

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

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

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

26. **Stormwater Disposal**

The Applicant shall submit a certificate from a suitably qualified person that the stormwater drainage works have been constructed/installed in accordance with all relevant Australian Standards and Codes. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation Certificate.

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

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

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

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

Reason: To ensure bushland management. (DACPLF01)

28. **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 Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: Proper identification of buildings.

29. **Waste Management Confirmation**

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

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

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

30. **Control of Weeds**

Prior to the completion of works, all priority weeds (as listed under the Biosecurity Act 2015) are to be removed/controlled within the subject site using an appropriately registered control method. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>). All environmental weeds are to be removed and controlled. Refer to Council website http://www.pittwater.nsw.gov.au/environment/noxious_weeds

Reason: Weed management.

31. **No Planting Environmental Weeds**

No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

32. **Landscape Plan to be Implemented**

Landscaping is to be implemented in accordance with the approved Landscape Plan (as amended). The new landscaping is to be approved as completed by the accredited certifier upon issue of the Occupation Certificate unless further conditions regarding the completion timeframe are imposed. This landscaping is to then be maintained for the life of the development.

Reason: To ensure the site is landscaped.



ITEM 3.3	DA2019/0464 - 20 RICHMOND ROAD, SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Matthew Edmonds
TRIM FILE REF	2019/468954
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6 - Height of Buildings 4 Clause 4.6 - Floor Space Ratio

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 and floor space ratio.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0464 for alterations and additions to a dwelling house on land at Lot A DP 402252, 20 Richmond Road, Seaforth, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0464
Responsible Officer:	Maxwell Duncan
Land to be developed (Address):	Lot A DP 402252, 20 Richmond Road SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - 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:	Stephen Kenneth Grist Dominga Analyn Cabangon Grist
Applicant:	Stephen Kenneth Grist
Application lodged:	09/05/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	21/05/2019 to 04/06/2019
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 16.4% 4.4 Floor space ratio: 20.3%
Recommendation:	Approval
Estimated Cost of Works:	\$ 756,000.00

EXECUTIVE SUMMARY

The application proposes a variation to both the Height of Buildings and Floor Space Ratio development standards of more than 10%. As such, the application is referred to the Development Determination Panel.

Council received two submissions relating to view loss from the adjoining properties to the west (No. 17 and 19 David Place). A third submission was received raising concerns in regards to shadowing, stormwater and boundary fencing.

Height poles were erected on site as part of the assessment for view loss. As noted in the view loss

analysis in the report the impact of the proposal as amended is deemed to be minor.

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

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4.2 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 - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.8 Development on Sloping Sites

SITE DESCRIPTION

Property Description:	Lot A DP 402252 , 20 Richmond Road SEAFORTH NSW 2092
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Richmond Road.</p> <p>The site is irregular in shape with a frontage of 12.19m along Richmond Road and an average depth of 44.3m. The site has a surveyed area of 713.8m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house.</p>

The site slopes steeply from the front to the rear of the site approximately 8m.

The subject site is located within the foreshore scenic protection area.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by dwelling houses.

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.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for alterations and additions to the existing dwelling house, including:

- First floor addition, incorporating;
 - Living/dining room
 - Rear balcony
 - Lounge room
 - Storeroom
- Ground floor alterations.
- Double garage.
- Deck alterations.

- Demolition.
- Associated landscaping.
- Fencing.

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	None applicable.
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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent. / This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration'	Comments
	Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
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 development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 3 submission/s from:

Name:	Address:
Stuart Rathborne	19 David Place SEAFORTH NSW 2092
Robert Wulff	17 David Place SEAFORTH NSW 2092
Mr Paul Andrew Burke	82 Edgecliffe Esplanade SEAFORTH NSW 2092

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

- **Building Height**
- **View Loss**
- **Privacy**
- **Stormwater**

The matters raised within the submissions are addressed as follows:

- **Building Height**

Comment:

The matter of non-compliance with the Height of Buildings Development Standard is addressed in detail elsewhere in this report (refer to Clause 4.6 Exceptions to Development Standards under the MLEP 2013 section of this report). In summary, the assessment of this application has found that the development achieves consistency with the underlying objectives of Clause 4.3 and Clause 4.6 of the MLEP 2013 and that compliance with the standard is unreasonable and unnecessary and that there is sufficient environmental planning grounds to justify and support the variation in this instance.

- **View Loss**

Comment:

Concern was raised in regards to view loss from neighbouring properties to Sydney Harbour. The proposal has been assessed against the view loss provisions under Clause 3.4.3 of the Manly DCP and the Land and Environment Court Case of *Tenacity Consulting Pty Ltd v Warringah Council* (2004) NSWLEC 140 in this report (refer to Cl. 3.4.3 Maintenance of Views under the MDCP 2013 section of this report). In summary, the proposed development does not cause unreasonable view loss to and from public and private open spaces.

- **Solar Access**

Comment:

Concern was raised about resulting shadowing impacts to the adjoining property to the east. The proposal has been assessed against the Sunlight Access and Overshadowing provisions under Clause 3.4.1 of the Manly DCP in this report. In summary, the proposal complies with the relevant provisions and underlying objectives under Clause 3.4.1 of the Manly DCP.

- **Stormwater**

Comment:

The application was referred to Council's development engineers for comment in regards to stormwater management. Suitable conditions have been imposed as part of this recommendation to ensure adequate stormwater management for the dwelling house and adjoining properties.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Aboriginal Heritage Office	No objection is raised against the proposal.

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 (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A345969).

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

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject property is located within the Sydney Harbour Catchment therefore the provisions of this plan apply to this development.

An assessment of the proposal against Clause 2(1) (aims of the SREP), Clause 13 (nominated planning principles) and Clause 21 (relating to biodiversity, ecology and environmental protection) has been undertaken. The proposal is considered to be consistent with the above provisions of the SREP. Given the scale of the proposed modification and the works proposed referral to the Foreshores and Waterways Planning and Development Advisory Committee was not considered necessary.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.7m	16.4%	No
Floor Space Ratio	FSR: 0.4:1 285.52m ²	FSR: 0.48:1 343.5m ²	20.3%	No

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
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.7m
Percentage variation to requirement:	16.4%

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.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

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

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

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

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

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

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

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

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

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

Comment:

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

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

"a. Previous excessive excavations prevent compliance with the numerical height control. When the natural slope of the land is considered, the proposed works comply with the control and it is a more accurate representation of the actual impact of the proposed development;
b. The building does not exceed two stories;
c. A low-pitched roof has been proposed to reduce the overall height of the development;
d. The site is steeply sloping making numerical compliance with height control more difficult.
e. The building height and roof form is consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality;
f. The proposed works will not create any negative impacts on any adjoining properties"

The above mentioned reasons provided within the Applicant's written request are well founded in that the dwelling house will maintain consistency with surrounding development residential development and will not result in any unreasonable amenity impacts for neighbouring properties. It is acknowledged that the subject site has been previously excavated which results in a significant drop across the land, leading to the significant non-compliance for the rear portion of the proposed first floor. The development has been designed to ensure the visual integrity of the existing pattern of development and amenity through the use of low roof pitch and articulation from the ground floor.

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 R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the 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 proposed building height of the dwelling house is reasonable given the fall of land, the existing building and the height of other existing dwelling houses within the street. The proposed height of the building is minimised by low roof pitch and articulation on all sides of the development. The visual impact upon the streetscape will be negligible and not unreasonable in this residential setting.

b) to control the bulk and scale of buildings,

Comment:

The proposed bulk and scale of the building relates favourably to the topography of the site. The works will allow for an appropriate relationship and spatial separation with surrounding development. The visual bulk of the dwelling as viewed from the street is not adverse or unreasonable.

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 impact on views from the proposed development are considered acceptable, having regard to *Tenacity Consulting V Warringah [2004] NSWLEC 140*.

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 solar impacts of this aspect of the development are minimal and acceptable in terms of their impact on habitable rooms of the adjoining properties and public open space.

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 height of building non-compliance does not create unreasonable impacts over land in recreation or environmental protection zones, that might conflict with bush land and surrounding land uses.

Zone objectives

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

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

Comment:

The proposal will maintain the existing residential use of the site.

It is considered that the development satisfies this objective.

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

Comment:

Not applicable.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, 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 where the variation is not greater than 10%. Following the release of PS-003, Council received correspondence from a delegate of the Secretary which granted Council staff, for a period of 30 months from 24 May 2019, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary a development standard by more than 10%.

Description of non-compliance:

Development standard:	Floor Space Ratio
Requirement:	FSR: 0.4:1 285.52m ²
Proposed:	FSR: 0.48:1 343.5m ²
Percentage variation to requirement:	20.3%

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.

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

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

"g) The additional floor area which is to be constructed over the existing ground floor or existing hard surfaces provides for an orderly and economic use and development of the land. It also promotes good design and amenity of the built environment.

h) The natural environment will be protected by maintaining the existing soft landscaped area. A

reduction in the FSR by reducing first floor addition would not increase the landscaped area of the proposal;

i) The proposed FSR, bulk and scale of the development is consistent with the existing and desired streetscape character in the locality and is generally in keeping with the FSR, bulk and scale of the existing adjoining and nearby approved buildings;

j) The proposal maintains an appropriate visual relationship between new development and the existing character and landscape of the area;

k) The proposed alterations and additions are not excessive or large in size, they do make the dwelling into a more pleasant and livable space for the occupants. Compliance with the standard would limit improvement to the dwelling;

l) This proposed development is in the public interest because it is consistent with the objectives of the development standard for Floor space ratio and the objectives for development in the R2 Zone."

The proposed request argues that the increase in gross floor area is contained within the existing footprint/envelope of the subject site. As such there is no loss of landscape open space from the increase gross floor area. It is also noted by the applicant the size and scale of the works are consistent with that of neighbouring properties, and as such there is no discernible or unreasonable visual impact upon the streetscape.

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 R2 Low Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The bulk and scale of the proposed is deemed reasonable when viewed from the street. The development will present as a two storey dwelling house from the street. The proposed development is suitably articulated, with a reduced first floor additions to ensure the bulk and scale of the dwelling is suitably minimised.

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:

Existing landscape features to the front and rear of the site will be retained. No other important landscape features are proposed for removal as part of these works.

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

Comment:

The proposed development will allow for greater water views to become available to occupants of the subject site, without unreasonably impacting upon views currently enjoyed from neighbouring properties. The proposed development will sit appropriately within the the residential setting in a manner that is consistent with the character and landscape of the area.

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

Comment:

The proposed development is appropriately design so as to ensure no unreasonable amenity impacts including privacy, solar access and view sharing arise. The proposed development will furthermore minimise adverse environmental impacts on the use and enjoyment of adjoining land and the public domain.

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

Comment:

Not applicable.

Zone objectives

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The proposal will maintain the existing residential use of the site.

It is considered that the development satisfies this objective.

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

Comment:

Not applicable.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, 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 where the variation is not greater than 10%. Following the release of PS-003, Council received correspondence from a delegate of the Secretary which granted Council staff, for a period of 30 months from 24 May 2019, the ability to assume the Secretary's concurrence for Class 1 buildings which seek to vary a development standard by more than 10%.

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 713.8m²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	North: 8m (based on gradient 1:4)	8.8m	10%	No
	South: 8m (based on gradient 1:4)	8.9m	10.5%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	1.2m	-	Yes
	Pitch: maximum 35 degrees	15 degrees	-	Yes
4.1.4.1 Street Front	Prevailing building line / 6m	12.3m, consistent	-	Yes

Setbacks		with prevailing setback		
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.93m (based on northern wall height)	0m- 2.55m	100%	No
	2.96m (based on southern wall height)	1.15m - 2.3m	62%	No
	Windows: 3m	1.5m - 2.3m	50%	No
4.1.4.4 Rear Setbacks	8m	10.1m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% (442.8m ²) of site area	55% (396.2m ²)	8.4%	No
	Open space above ground 25% (99m ²) of total open space	10.8% (43m ²)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% (158.8m ²) of open space	57% (228m ²)	-	Yes
4.1.10 Fencing	1m, 1.5m with 30% transparency	1m	-	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.10 Fencing	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.4.2 Privacy and Security

Merit consideration:

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

Objective 1) To minimise loss of privacy to adjacent and nearby development by:

- appropriate design for privacy (both acoustical and visual) including screening between closely spaced buildings; and
- mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings.

Comment:

The proposed first floor deck off the living room has a setback of 11.9 metres from the rear boundary, consistent with the rear setback control. The deck is orientated to allow views to be enjoyed towards Middle Harbour. The adjoining property to the rear No. 82 Edgecliffe Esplanade, while located between the subject site and Middle Harbour, will not be unreasonably impacted from a visual privacy perspective. The significant change of level between properties ensures a direct view over the top of the No. 82 Edgecliffe Esplanade and not to private open space. Further, as noted previously the deck is setback 11.9m from the rear boundary, with suitable physical separation between properties. Reasonable visual privacy is maintained between the subject site and neighbouring properties.

Objective 2) To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.

Comment:

The proposed deck and north-east elevation windows on the first floor allow for solar access to the primary living rooms of the dwelling without unreasonably compromising visual privacy to and from adjoining properties.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The development will allow for passive surveillance of the street.

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.

3.4.3 Maintenance of Views

Merit Assessment

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

Comment:

The proposed development allows for adequate view sharing for both the 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).

Comment:

As a result of public exhibition of the development application, Council received two submission from neighbouring properties raising view loss as a concern (Nos. 17 and 19 David Place, Seaforth).

An assessment of view loss has also been undertaken with reference to the View Loss Planning Principle developed by the NSW LEC in the matter of *Tenacity Consulting v Warringah Council* [2004] NSWLEC 140.

To assist Council in its assessment of the application, Council requested the applicant erect height poles on 26 June 2019.

The Applicant subsequently erected height poles with certification of the height and location of the poles provided by a Registered Surveyor on 31 July 2019. The location of the height poles is exhibited below:



"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."

No. 17 David Place, Seaforth

No. 19 David Place, Seaforth

Similarly to No. 17 David Place, the nature of the view affected from this property would be harbour (water) views and headland views to the east. Views of the land water interface are affected. The Views are filtered through existing residential development and vegetation. Views are currently taken from over the top of the subject site dwelling house.

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:

No. 17 David Place, Seaforth

The views affected from this property are over the rear boundary. The views are over the top and to the side of the subject dwelling house. Views are obtained from a standing and sitting position from living rooms, bedrooms and private open space at ground and first floor level.

No. 19 David Place, Seaforth

The views affected from this property are over the rear boundary. The views are over the top and to the side of the subject dwelling house. Views are obtained from a standing and sitting position from living rooms, bedrooms and private open space at ground and lower ground floor level.

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 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 to Principle 3:

No. 17 David Place, Seaforth

This property currently has substantial water views to the east and south east, the Spit bridge and North and South Head. Views are enjoyed from the master bedroom and ground floor living room and adjoining balcony. Water views currently enjoyed from the ground floor living room and balcony would be impacted to a minor extent. Views of the Spit bridge, North and South head and the majority of water views would be retained. Views from the first floor master bedroom and balcony would be impacted to a negligible extent.



Photo 1- Ground Floor Balcony

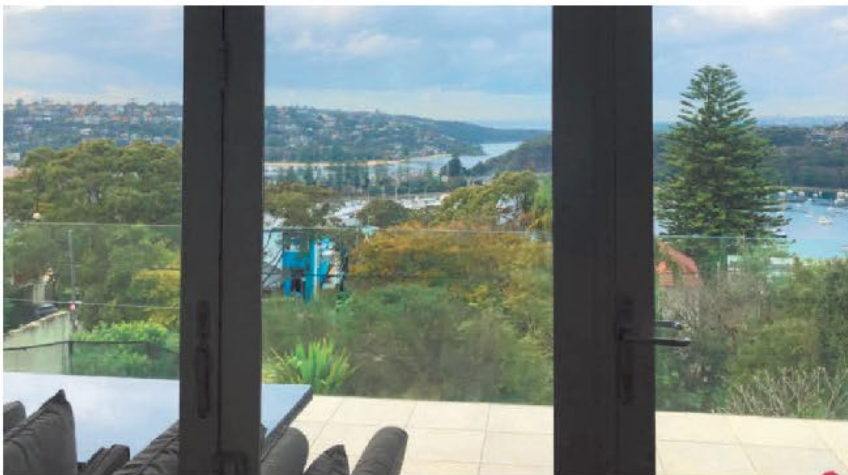


Photo 2- Ground Floor Living Room



Photo 3- First Floor Bedroom



Photo 4- First Floor Bedroom

No. 19 David Place, Seaforth

The property currently has substantial water views to the east and south east, the Spit Bridge and North and South Head. The views are enjoyed from the ground floor living rooms and balconies and lower ground floor rumpus room and outdoor living area. The views are currently obtained over the top and to the side of the existing dwelling house. The views from both the ground floor and lower ground floor will both be impacted a minor extent, the existing water views are expected to be retained in their majority.



Photo 5- Ground Floor Living

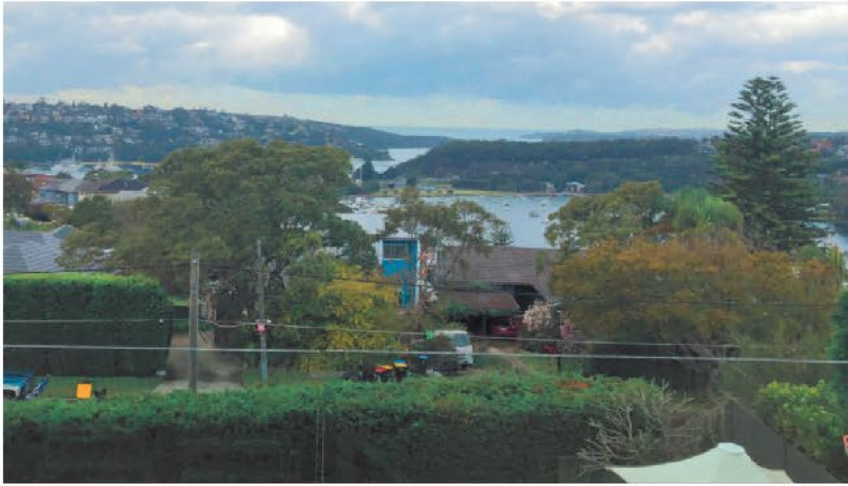


Photo 6 - Ground Floor Balcony



Photo 7- Lower Ground Floor living

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:

In considering the totality of impact it is noted that proposal is non-compliant with the Height of Buildings and the Floor Space Ratio development standards under Manly LEP 2013. The development provides compliance with the front and rear setback controls, with only a minor variation to the side boundary setback on the northern and southern side of the dwelling house. These minor variations have been considered and supported based upon the development achieving consistency with the underlying objectives of Clause 4.1.4.2 of the Manly DCP. As noted above, the loss of views from both No. 19 and 17 David Place ranges from negligible to minor. The proposal ensures highly valued views including water, beach and the land water interface are retained from all affected properties.

Given the above, it is considered that the proposal is acceptable and viewing sharing is achieved.

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.

Comment:

The proposed development will not allow for any unreasonable future view creep.

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.

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

This clause relies upon the objectives of Clause 4.3 under MLEP 2013. An assessment of the proposal against the objectives of Clause 4.3 has been provided within this report. This assessment has found the proposal to be consistent with the objectives of Clause 4.3.

4.1.4 Setbacks (front, side and rear) and Building Separation

Description of non-compliance

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 2.93m from the northern boundary, 2.96m from the southern boundary. Further new windows facing side boundaries are to be setback at least 3m from the side boundary.

The development proposes the following:

Northern side setback- 0m- 2.55m (100% variation to the numeric control).

Southern side setback- 1.15- 2.3m (62% variation to the numeric control).

Windows- 1.5m- 2.3m (50% variation to the numeric control).

Merit consideration:

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

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The proposed side setback are consistent with those of the neighbouring properties along the eastern side of the street.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposed works maintains suitable levels of privacy and solar access for adjoining properties. In regards to views, the proposed will largely retain existing water views from neighbouring properties to the west.

Objective 3) To promote flexibility in the siting of buildings.

Comment:

Flexibility is promoted in this circumstance as there are no unreasonable amenity impacts that will result on neighbouring properties.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposed development maintains a compliant area for landscaped open space and retains significant landscape features on site.

Objective 5) To assist in appropriate bush fire asset protection zones.

Comment:

The subject site is not located in a bushfire zone.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.2 of the Manly DCP requires at least 60% (442.8m²) of site area be total open space. The development proposes 55% (396.2m²), non-compliant with the numeric control. This represents a 8.4% variation to the numeric 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 retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposed development proposes a minor reduction of landscaped open space, however no important landscape features are proposed to be removed.

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 is consistent with the landscaped open space control. Existing trees are retained on 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 reduction of landscaping does not unreasonably compromise the amenity of adjoining properties.

Objective 4) To maximise water infiltration on-site with porous landscaped areas and surfaces and minimise stormwater runoff.

Comment:

The development proposes sufficient porous area to allow adequate stormwater management across the site.

Objective 5) To minimise the spread of weeds and the degradation of private and public open space.

Comment:

As noted above, the development proposes sufficient porous area to ensure the potential spread of weeds and degradation of the private open space.

Objective 6) To maximise wildlife habitat and the potential for wildlife corridors.

Comment:

The subject site is not in the close vicinity of any wildlife corridors or habitats.

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.

4.1.8 Development on Sloping Sites

The majority of works are within the existing building footprint, and as such no significant changes to the topography of the site are south. Accordingly, the development satisfies this objective.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$7,560 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$756,000.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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

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

RECOMMENDATION

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 development standard and clause 4.4 Floor Space Ratio development standard, 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.

Accordingly Council as the consent authority grant Development Consent to DA2019/0464 for Alterations and additions to a dwelling house on land at Lot A DP 402252, 20 Richmond Road, SEAFORTH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan - Site Analysis Plan	October 2018	Raven Fisher and Associates Pty Ltd
Lower Ground floor Plan	October 2018	Raven Fisher and Associates Pty Ltd
Ground Floor Plan	October 2018	Raven Fisher and Associates Pty Ltd
First Floor Plan	October 2018	Raven Fisher and

		Associates Pty Ltd
North West Elevation	October 2018	Raven Fisher and Associates Pty Ltd
South West Elevation and Section B-B	October 2018	Raven Fisher and Associates Pty Ltd
North East Elevation and Section A-A	October 2018	Raven Fisher and Associates Pty Ltd
South East Elevation	October 2018	Raven Fisher and Associates Pty Ltd
Materials and Finishes Schedule	6 May 2019	Raven Fisher and Associates Pty Ltd
Demolition Plan	October 2018	Raven Fisher and Associates Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A345969	6 May 2019	Raven Fisher and Associates Pty Ltd

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

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

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Dwg No. 10/ Stormwater Management Plan	October 2018	Raven Fisher and Associates Pty Ltd

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

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

2. Prescribed Conditions

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

(iii) stating that unauthorised entry to the work site is prohibited.

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

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

(i) in the case of work for which a principal contractor is required to be appointed:

- A. the name and licence number of the principal contractor, and
- B. the name of the insurer by which the work is insured under Part 6 of that Act,

(ii) in the case of work to be done by an owner-builder:

- A. the name of the owner-builder, and
- B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

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

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

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

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

Reason: Legislative Requirement

3. General Requirements

(a) Unless authorised by Council:

Building construction and delivery of material hours are restricted to:

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) 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.
- (j) 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.

- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.

- (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

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

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in 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

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$7,560.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$756,000.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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.

5. **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 to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

6. **Stormwater Disposal**

Stormwater shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003.

Details demonstrating that the existing approved system can accommodate the additional flows or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

7. **External Finishes to Roof**

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

8. Subject site

All works including that of the proposed garage and roof are to be contained wholly within the subject site.

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

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

9. Boundary Survey

A boundary survey, prepared by a Registered Surveyor, shall be provided as evidence that all buildings/works are within the appropriate property, easement boundaries and rights of carriageway. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any construction certificate.

Reason: To ensure the accurate location of buildings in relation to boundaries, easements and rights of way.

10. Boundary Fencing

No approval is provided for any boundary fence. No consent has been provided by the owners of the common boundary.

Reason: To ensure compliance with the Dividing Fences Act 1991

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. Road Reserve

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

Reason: Public Safety.

12. 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)] and
- 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.
- The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

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

13. **Stormwater Disposal**

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

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



ABBREVIATIONS		NOTES		LEGEND		EXISTING NEIGHBOURING BUILDING		PREVAILING WINDS		EXISTING VEHICLE ENTRY	
al	aluminium	pf	paint finish		EXISTING TREES/ TREES TO BE RETAINED		EXISTING CONCRETE		PREVAILING WINDS		EXISTING VEHICLE ENTRY
br	brick	re	reinforcing		EXISTING REINFORCING		PROPOSED RED ROOF		PROPOSED BLUE ROOF		PROPOSED BLUE ROOF
blg	building	sk	skylight		EXISTING SKYLIGHT		PROPOSED BLUE ROOF		PROPOSED BLUE ROOF		PROPOSED BLUE ROOF
bic	brickwork	st	stair		EXISTING STAIR		PROPOSED BLUE ROOF		PROPOSED BLUE ROOF		PROPOSED BLUE ROOF
bri	brick veneer	sl	solar tube		EXISTING SOLAR TUBE		PROPOSED BLUE ROOF		PROPOSED BLUE ROOF		PROPOSED BLUE ROOF
bs	brickwork	sp	solar panel		EXISTING SOLAR PANEL		PROPOSED BLUE ROOF		PROPOSED BLUE ROOF		PROPOSED BLUE ROOF
cab	cabinet	stl	stair landing		EXISTING STAIR LANDING		PROPOSED BLUE ROOF		PROPOSED BLUE ROOF		PROPOSED BLUE ROOF
clg	ceiling	ss	stainless steel		EXISTING STAINLESS STEEL		PROPOSED BLUE ROOF		PROPOSED BLUE ROOF		PROPOSED BLUE ROOF
clg	ceiling	tr	timber		EXISTING TIMBER		PROPOSED BLUE ROOF		PROPOSED BLUE ROOF		PROPOSED BLUE ROOF
con	concrete	tr	telephone service		EXISTING TELEPHONE SERVICE		PROPOSED BLUE ROOF		PROPOSED BLUE ROOF		PROPOSED BLUE ROOF
cpt	carpet	tr	timber		EXISTING TIMBER		PROPOSED BLUE ROOF		PROPOSED BLUE ROOF		PROPOSED BLUE ROOF
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13 August 2019

REQUEST TO VARY A DEVELOPMENT STANDARD - CLAUSE 4.3 HEIGHT OF BUILDINGS**PURSUANT TO CLAUSE 4.6 OF THE MANLY LOCAL ENVIRONMENT PLAN.**

- 1. What is the name of the environmental planning instrument that applies to the land?**
 - Manly Local Environmental Plan 2013
- 2. What is the zoning of the land?**
 - R2 Low Density Residential, as per Manly LEP 2013
- 3. What are the objectives of the zone?**
 - To provide for the housing needs of the community within a low-density residential environment.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- 4. What is the development standard being varied? e.g. FSR, height, lot size**
Under what clause is the development standard listed in the environmental planning instrument?
 - Clause 4.3 Height of buildings
- 5. What are the objectives of the development standard?**
 - Clause 4.3 Height of buildings

(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,

(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.
- 6. What is the numeric value of the development standard in the environmental planning instrument?**
 - Clause 4.3 Height of buildings - 8.5m (l)
 -
- 7. What is proposed numeric value of the development standard in your development application?**
 - Clause 4.3 Height of buildings - 9.645m

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8. What are the environmental planning grounds that justify contravening the development standard?

- The proposed works satisfy the objectives of the Manly LEP 2013.
- The proposal will result in an acceptable bulk and scale and density while not adversely impacting on the amenity of the locality and will meet desired future character outcomes.
- The proposed works satisfies the development standard as outlined below.

9. Why is compliance with the standard unreasonable or unnecessary?

Compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The special circumstances in this case are as follows:

- a) Previous excessive excavations and the steeply sloping site prevent compliance with the numerical height control. When the natural slope of the land is considered, the proposed works comply with the control. The natural slope of the land is a more accurate representation of the actual impact of the proposed development;
- b) By limiting the proposed scale of the development to two stories it ensures that the proposed building height does not obscure important landscape and townscape features.
- c) The building height and roof form is consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality;
- d) The use of low-pitched roofs ensures that the proposal does not obstruct any views from adjacent and nearby development residents;
- e) The proposal allows adequate sunlight to penetrate and provide solar access to public and private open space and to the windows of habitable rooms of adjacent residential dwellings;
- f) The neighbouring residents will be protected from loss of privacy (both acoustical and visual) through the use of privacy screens, raised sill heights, and obscure glass to the first-floor windows;
- g) The proposal encourages awareness of neighbourhood security, by providing opportunities for passive surveillance from dwelling and to the dwelling from the street. The entrances to the dwelling are visible and the landscaping does not significantly obscure sightlines between the dwelling and the street.
- h) In maintaining the existing landscaped areas, the proposal minimises adverse environmental impacts. The use or enjoyment of adjoining land and the public domain will not be impacted upon;
- i) The breach in the height control is a numerical noncompliance only. The proposed design provides for an orderly and economic use and development of the land. It also promotes good design and amenity of the built environment.
- j) The natural environment will be protected by maintaining the existing soft landscaped area.
- k) The proposed height, bulk and scale of the development is consistent with the existing and desired streetscape character in the locality and is generally in keeping with the height, bulk and scale of the existing adjoining and nearby approved buildings;
- l) The proposal maintains an appropriate visual relationship between new development and the existing character and landscape of the area;
- m) The proposed alterations and additions are not excessive or large in size, they do make the dwelling into a more pleasant and livable space for the occupants. Compliance with the standard would limit improvement to the dwelling;
- n) This proposed development is in the public interest because it is consistent with the objectives of the development standard for height and the objectives for development in the R2 Zone.

13 August 2019

REQUEST TO VARY A DEVELOPMENT STANDARD - CLAUSE 4.4 FLOOR SPACE RATIO

PURSUANT TO CLAUSE 4.6 OF THE MANLY LOCAL ENVIRONMENT PLAN.

- 1. What is the name of the environmental planning instrument that applies to the land?**
 - Manly Local Environmental Plan 2013
- 2. What is the zoning of the land?**
 - R2 Low Density Residential, as per Manly LEP 2013
- 3. What are the objectives of the zone?**
 - To provide for the housing needs of the community within a low-density residential environment.
 - To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- 4. What is the development standard being varied? e.g. FSR, height, lot size**
Under what clause is the development standard listed in the environmental planning instrument?
 - Clause 4.4 Floor Space Ratio
- 5. What are the objectives of the development standard?**

The objectives of this clause are as follows:

Clause 4.4 Floor space ratio

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

 - (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,
 - (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
- 6. What is the numeric value of the development standard in the environmental planning instrument?**
 - Floor Space Ratio - (0.4:1) or 285.52 m²
- 7. What is proposed numeric value of the development standard in your development application?**
 - Floor Space Ratio - (0.47:1) or 336.12m²
- 8. What are the environmental planning grounds that justify contravening the development standard?**
 - The proposed works satisfy the objectives of the Manly LEP 2013.
 - The proposal will result in an acceptable bulk and scale and density while not adversely impacting on the amenity of the locality and will meet desired future character outcomes.
 - The proposed works satisfies the development standard as outlined below.

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13 August 2019

9. Why is compliance with the standard unreasonable or unnecessary?

Compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The special circumstances in this case are as follows:

- a) By limiting the proposed scale of the development to two stories it ensures that it does not obscure important landscape and townscape features.
- b) The use of low-pitched roofs ensures that the proposal does not obstruct any views from adjacent and nearby development residents;
- c) The proposal allows adequate sunlight to penetrate and provide solar access to public and private open space and to the windows of habitable rooms of adjacent residential dwellings;
- d) The neighbouring residents will be protected from loss of privacy (both acoustical and visual) through the use of privacy screens, raised sill heights, and obscure glass to the first-floor windows;
- e) The proposal encourages awareness of neighbourhood security, by providing opportunities for passive surveillance from dwelling and to the dwelling from the street. The entrances to the dwelling are visible and the landscaping does not significantly obscure sightlines between the dwelling and the street.
- f) The proposal minimises adverse environmental impacts on the use or enjoyment of adjoining land and the public domain;
- g) The additional floor area which is to be constructed over the existing ground floor or existing hard surfaces provides for an orderly and economic use and development of the land. It also promotes good design and amenity of the built environment.
- h) The natural environment will be protected by maintaining the existing soft landscaped area. A reduction in the FSR by reducing first floor addition would not increase the landscaped area of the proposal;
- i) The proposed FSR, bulk and scale of the development is consistent with the existing and desired streetscape character in the locality and is generally in keeping with the FSR, bulk and scale of the existing adjoining and nearby approved buildings;
- j) The proposal maintains an appropriate visual relationship between new development and the existing character and landscape of the area;
- k) The proposed alterations and additions are not excessive or large in size, they do make the dwelling into a more pleasant and livable space for the occupants. Compliance with the standard would limit improvement to the dwelling;
- l) This proposed development is in the public interest because it is consistent with the objectives of the development standard for Floor space ratio and the objectives for development in the R2 Zone.

ITEM 3.4	DA2018/1830 - 1 ADEN STREET, SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2019/468982
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

PURPOSE

To refer the attached application for determination as required under adopted delegations of the Charter.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2018/1830 for alterations and additions to a dwelling house on land at Lot 4 DP 17574, 1 Aden Street, Seaforth, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2018/1830
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Responsible Officer:	David Auster
Land to be developed (Address):	Lot 4 DP 17574, 1 Aden Street SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Stuart John Harrington Lisa Marie Harrington
Applicant:	Cargo Design

Application lodged:	16/11/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	05/12/2018 to 11/01/2019
Advertised:	24/11/2018
Submissions Received:	4
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Estimated Cost of Works:	\$ 1,402,425.00
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ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon 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 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 - 4.1.4 Setbacks (front, side and rear) and Building Separation

Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features

SITE DESCRIPTION

Property Description:	Lot 4 DP 17574 , 1 Aden Street SEAFORTH NSW 2092
Detailed Site Description:	<p>The site is a generally rectangular shaped lot on the western side of Aden Street, with a surveyed area of 613.4sqm. The site slopes from front to rear and also from north to south, with an approximate fall from the north eastern (front) corner down to the rear south western corner of 6m.</p> <p>There is an existing one to two storey dwelling on site, with a single garage and a single carport located on a nil setback to the southern side boundary.</p> <p>Surrounding development consists generally of detached dwellings. The unusual subdivision pattern means that the site is adjacent to a battle axe driveway to the north, to two rear boundaries to the south (the subject site's side boundary), and a neighbour's side boundary to the rear.</p>

Map:



SITE HISTORY

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

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

PROPOSED DEVELOPMENT IN DETAIL

The proposed alterations and additions include the following works:

Upper level addition

The new upper level will be set to the northern side of the building, and be comprised of two bedrooms, two ensuites, and walk in wardrobe.

Ground level

The alterations to the existing ground floor level include a rear extension that creates a split level to better connect with the rear yard. The extension is comprised of a new living area and kitchen. Minor alterations will also be made to the existing front bedroom and entry, including a new porch and entry path. The existing rear balcony located off the dining room will be reduced in size.

Garage

The existing single garage and carport will be replaced by a double car garage, and the driveway widened to match.

Rear yard

A new pool is proposed in the rear yard, along with decking, and a 'BBQ terrace' area located off the new ground floor living area. Retaining walls and a small patio area near the rear boundary are also proposed.

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	None applicable.
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)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>

Section 4.15 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 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 development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

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

Name:	Address:
Mr Michael John Hughes Mrs Nicolette Emma Hughes	58 Ponsonby Parade SEAFORTH NSW 2092
Jeff Hudson	60 Pondsby Parade SEAFORTH NSW 2092
Jan Hudson	60 Ponsonby Parade SEAFORTH NSW 2092
Mr Michael John Day	56 Ponsonby Parade SEAFORTH NSW 2092

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

- Shadows
- Pool and pool plant location, height, materials, noise
- Privacy
- Height of building
- Storm water
- Landscaping
- Location of western wall
- Paved area on western boundary
- Area marked ??? on western elevation
- Rear boundary fence
- Parapet design
- Waste sorting area
- Plans not available on Council website
- Landscape plan inconsistent with landscape officer recommendations

The matters raised within the submissions are addressed as follows:

- **Shadows**
Concerns were raised that the shadow diagrams submitted were wrong, and that the new additions would significantly reduce solar access to an upstairs bathroom window, upstairs robe and rumpus skylights, and outdoor entertaining area at number 58 Ponsonby Parade.

Comment:

The shadow diagrams submitted appear to be correct. The shadows are cast from the roofs of the additions. Additional overshadowing of neighbours is generally minimal, and it is noted that the neighbouring properties to the south, being both significantly lower and to the south of the generally expected building area are particularly vulnerable to overshadowing. The new upper level has been located to the northern side of the subject site, which minimises overshadowing to the south, and is generally compliant with the built form controls including height, with minor exceptions to wall height and setback on the northern elevation (which further helps minimise overshadowing impacts to the south), and only a minor new side setback non-compliance created by the new southern parapet at the lower level. The proposal complies with the minimum requirements for solar access under the DCP, and the issue is not considered to warrant refusal or amendment of the application.

- **Pool and pool plant location, height, materials, noise**
Concerns were raised with the height of the proposed pool, the location of the pool plant equipment and subsequent noise impacts, and the proposed building materials.

Comment:

The pool will be up to 1.8m high at the south western corner, due to the sharp drop off in the topography towards the southern boundary in the rear yard area. The landscape plans provided with the application include screen planting along the southern side boundary of Pinnacle Lilly Pillies, with a mature height of 5m. Council's Landscape Officer has recommended a condition requiring native screen planting along the western boundary capable of attaining 3 metres in height, and planted no more than 1 metre apart, and at pot size 300mm minimum. It is recommended that this condition be extended to the southern side setback also, to ensure the proposed screen planting take place. The visual impacts of the height of the pool will be sufficiently mitigated by this planting along the southern side setback.

The pool plant is located beneath the deck at the eastern end of the new pool. A condition of consent is recommended requiring that all sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB (A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environment Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997.

With regard to privacy impacts, the pool includes only a coping around the southern and western sides, and is not a more usable deck area. The deck at the eastern end of the pool includes a privacy screen along the southern elevation, and the privacy impacts of the proposal are not considered to be unreasonable, when the screen planting along the southern setback is taken into account.

Given the above considerations, subject to the recommended conditions of consent, the issues are not considered to warrant refusal of the application.

- **Privacy**

The rear neighbour and the two neighbours to the south, 56, 58 and 60 Ponsonby Parade, have all raised concerns regarding privacy.

Comment:

56 Ponsonby

Concerns were raised with the proposed south facing upper level windows 25, 26 and 27. Sill heights of 2m were suggested. These three windows are the bedroom window (25), a hallway window at the top of the stairs (26) and a window above the void area above the bottom of the stairs and adjacent to the hallway.

None of the three are considered to be high use rooms, with high impacts on privacy. They are set well back from the southern side boundary (7.6m - 8m). The site has views to the south west towards the city, which the upper level windows are designed to take advantage of. Window 25 is shown on the plans with a sill height of 600mm. A 2m sill height is not considered reasonable given the views available, and the nature of the topography and subdivision pattern, which means that the southern neighbour's private open spaces will always be located below the subject site.

The applicant has agreed to a 1.3m sill height for the master bedroom window 25. This is considered a reasonable compromise, as it will still allow for casual horizontal views from the bedroom towards the city, but generally block any casual downwards viewing towards the southern neighbours from the majority of the bedroom. Window 26 is shown on the plans with a 1.4m sill height, which is considered reasonable given its location near the stairs, as opposed to a living area or similar where occupants are likely to spend any significant amount of time. Window 27 is shown with a sill height of 1m. However, this window has a void in front of it, which is also adjacent to the hallway. Any occupants will not be able to stand closer than 1.7m to the inside of the window, and as such, the 1m sill height will be more than adequate to prevent downwards viewing towards the southern neighbours.

A condition is recommended requiring the bedroom window (25) to have a minimum sill height of 1.3m, and windows 26 and 27 to have sill heights as shown on the plans. Subject to this condition, privacy is considered to be maintained to a reasonable level.

58 Ponsonby

Concerns were raised with the proposed pool, deck areas, Ground floor windows 12, 13 and 14, and the upper level windows 24, 25, and 26. It was suggested that the pool be moved at least

3m to the east, lowering the pool, removing southern and western coping, and providing privacy screening along the southern and western pool edges, providing screens to balconies decks and/or removing them, and providing minimum sill heights of 2m to the upper level windows.

With regard to the pool, the coping around the southern and western sides is not an area that would be expected to have people standing on with any regularity. A privacy screen is proposed on the southern side of the deck adjoining the pool to the east, and screen planting to a mature height of 5m is proposed along the southern boundary between the pool and the boundary. Further screening around the edges of the pool is not considered warranted.

The rear decking is located generally close to the existing ground level, and steps down to the south in accordance with the topography, and includes the above mentioned privacy screen on the southern edge adjacent to the pool. Given the cross fall of the site to the south and the subdivision pattern there is always likely to be some level of overlooking towards the south from the private open space area to the rear of the dwelling at 1 Aden Street. Screen planting to a reasonable height has been proposed (and will be confirmed by condition of consent) along the southern side boundary, that will maintain privacy to a reasonable level. The Ground floor level deck located off the dining room is an existing deck that is to be reduced in size by the development. This deck will therefore become less usable, and the privacy impacts reduced by the proposal. No privacy screen is recommended by condition.

Window 14 is an existing window to be retained. Windows 12 and 13 are similar to the existing rear facing windows and doors located off the dining room. These windows face directly into the rear yard of 1 Aden Street, and are not considered to be unreasonable in this regard. Windows 25 and 26 have been discussed above, and a condition is recommended to raise the sill height of window 25 to 1.3m above the finished floor level to prevent casual downwards viewing to the south. Window 24 adjoins window 25 (located in the corner of the upper level bedroom). However, window 24 faces directly to the rear, and on an angle to the south is between 10.5m and 18m from the southern side boundary, and further again to the private open space of the southern neighbour. Given the viewing angle and distance to the southern neighbour's private open space from this rear facing window, no further sill height condition is recommended. The above condition will allow the applicants to raise it to match the 1.3m sill height of window 25 if desired, but are not required to by the condition.

60 Ponsonby

Concerns were raised with the west facing windows of the new upper level bedroom. Opaque glass or some form of fixed shutters or louvres were suggested. The proposed west facing upper level windows are window 24 from the bedroom (this adjoins window 25 on the south western corner of the room), and window 23 from the walk in wardrobe.

As above, the bedroom and walk in wardrobe are considered to be low use rooms with accordingly low privacy impacts. These windows are located 17.5m from the rear boundary, with existing mature canopy trees in the rear yard to be retained, and further screen planting to a minimum height of 3m proposed along the rear boundary. To have these windows made opaque or require some sort of screening given the distance from the boundary is not considered to be a reasonable expectation in a residential area. The new upper level windows are orientated looking over the private open space of the subject site, and are from low use rooms. No conditions are recommended in this regard, and these windows are not considered to result in any unreasonable privacy impacts.

Subject to the conditions discussed above, privacy is considered to be maintained to a reasonable level to all three properties who made submissions, and to all other surrounding neighbours.

- **Height of building**

Concerns were raised that the proposal does not comply with the 8.5m height limit.

Comment:

The concerns appear to have arisen from the southern elevation which has included a height plane located above the southern side of the building, with the new upper level to the north appearing to breach this height limit when viewed on that elevation. The building height is measured from a point directly below each part of the building, matching the topography of the land, and in this case the highest point of the building will be 8.4m high (the south western corner of the new upper level). The alterations and additions are therefore fully compliant with the height limit even at the highest point, and in general are well below the height limit.

The concerns are considered to be satisfied in this regard.

- **Storm water**

Concerns were raised with storm water runoff from the property.

Comment:

Council's Engineer has assessed the proposal, and noted that no on-site detention system is required, as the development does not propose more than 50sqm of additional impervious area. A condition has been provided requiring that storm water be disposed of to an existing approved system or in accordance with the relevant Northern Beaches Council storm water management policy, with details to be submitted prior to issue of any construction certificate.

Subject to this condition, the issue is considered to be reasonably satisfied.

- **Landscaping**

Concerns were raised that the landscaping need to ensure privacy is maintained along the southern boundary, but at the same time did not impact on the existing bamboo screening along the boundary at number 58 Ponsonby Parade.

Comment:

The proposed landscape plan includes planting along the side setback area of Lily Pillies with a mature height of 5m. This will sufficiently mitigate privacy concerns from the rear deck and pool area. There appears to be a contradiction in requests from the objector, as any screen planting of a sufficient height to provide privacy screening along the southern elevation (given the slope of the land) is likely to overshadow planting immediately to the south. The existing bamboo planting along the boundary is already established. Given the expressed desire for privacy planting on the subject site, the screen planting on the subject site is considered to generally satisfy the concerns to a reasonable degree.

- **Location of western wall**

Concerns were raised that the location of the western wall extension along the southern side of the building is in a different location on different plans.

Comment:

The concerns appear to have arisen as a result of the difference between the wall location and the roof location. The plans do not appear to have any inconsistencies in this regard.

- **Paved area on western boundary**

Concerns were raised with the proposed paved BBQ located on a nil setback to the western boundary.

Comment:

This area is proposed on a nil setback to the rear boundary, and includes paving and a BBQ on the plans. Given that the proposal includes decking and new BBQ area that is wholly compliant with the setback controls and located just off the new living area of the dwelling, the secondary BBQ area within the rear setback area is considered unnecessary. It is located near to the neighbouring bedroom windows.

Given that this area is within the rear setback area, and does not comply with the rear setback control, and is near the neighbouring bedroom windows potentially causing noise concerns, the area is recommended for deletion by condition of consent.

Subject to this condition, the concerns are considered to be reasonably satisfied in this regard.

- **Area marked ??? on western elevation**

Concerns were raised with an area marked with question marks.

Comment:

The applicant has suggested this was on a draft plan given to the neighbour, and was a reminder to check the pool fence requirements before submitting. The question marks are not included on the plans submitted to Council for consideration.

- **Rear boundary fence**

Concerns were raised that no details had been provided regarding the proposed 1.8m fence along the rear boundary. A timber lapped and capped fence was suggested.

Comment:

On the rear boundary, the plans note "Fence (1.8m High) Timber". On the side boundaries the plans note Metal Fences of various heights. The applicant stated in response to this concern that 1.8m fences are exempt development. This is true, though there are other conditions on fences under SEPP (Exempt and Complying Development Codes) 2008. As no details have been provided on the plans with which to make a full assessment, a condition is recommended stating that no fencing is approved as part of this application, but that fencing may be constructed in accordance with the exempt provisions and the Dividing Fences Act, which enables neighbours to have a say in the construction of the fence.

Subject to this condition, the concerns are considered to be reasonably satisfied.

- **Parapet design**

Concerns were raised with the angle of the southern parapet from a visual amenity point of view, from 56 Ponsonby Parade. A horizontal parapet was requested instead.

Comment:

The proposed southern parapet falls at a minor angle which is not considered to be visually unattractive or to create any unreasonably amenity impacts. However, the applicant has suggested they are happy to make the change as requested by the neighbour. As such, a condition is recommended requiring the plans to be amended prior to issue of a construction certificate. The issue is considered to be reasonably satisfied in this regard.

- **Waste sorting area and south western deck**

Concerns were raised that the waste sorting area identified plans and existing south western deck are adjacent to the southern boundary, though the submission did not specify why this was an issue.

Comment:

The waste sorting area is a temporary measure during demolition and construction, and will be hidden from the neighbours by the existing southern wall which is also to be retained. The existing southwestern deck adjacent to the southern boundary is also to be retained. The location of these areas is not therefore considered to create any new concerns. The issue is not considered to warrant refusal or amendment to the application.

- **Plans not available on Council website**

Concerns were raised that some of the plans were not available on the Council website.

Comment:

The internal floor plans and sections were not put on the Council website. This is in accordance with Council policy, and is for security and privacy reasons so that floor plans of dwellings are not available on line. The plans are available to view at Council offices. The issue has not prevented a full assessment being carried out, and is not considered to warrant amendment or refusal of the application.

- **Landscape plan inconsistent with landscape officer recommendations**

Concerns were raised that the landscape plan was inconsistent with the condition of consent recommended by Council's Landscape Officer, for 3m high screen planting along the western boundary, because there are two gaps in the landscaped area created by the proposed secondary BBQ area, and the retaining wall. Further concern was raised with the species of Lily Pillies proposed along the rear boundary.

Comment:

The condition provided by the Landscape Officer will override the landscape plan, and ensure species are selected that are at least 3m in height. Further, the secondary BBQ area is recommended for deletion by a separate condition of consent, and will allow for further screen planting in this area. The retaining wall does not preclude planting in front of this wall.

The dwelling itself is located well back from the rear boundary, and is not considered to result in any unreasonable privacy impacts. The condition provided by the landscape officer is considered to be more than adequate to protect privacy to a reasonable degree in that direction. The issue is not considered to warrant refusal or amendment of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The landscape component of the proposal is acceptable subject to the protection of existing trees and vegetation, and the completion of landscaping.

Internal Referral Body	Comments
	Council's Landscape section have assessed the application against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls and Development Types.
NECC (Development Engineering)	<p>The application proposed an extension on the existing building.</p> <p>The total increase of the impervious area is less than 50 square meters.</p> <p>As such, no OSD is required in this development.</p> <p>However, there is no Stormwater management plan has been submitted.</p> <p>Development Engineer has placed a stormwater condition to manage the impact of the stormwater runoff from the property to the downstream properties.</p> <p>Second, the applicant proposed to raise the crossover with slot gutter on Aden Street.</p> <p>However, it does not comply with Council's Policy on road reserve. It may lead a trap hazard to the pedestrian and road users.</p> <p>If the applicant proposed to amend the internal driveway to suit their design, it is not an option to amend the gutter and road pavement on Aden Street to accommodate a private development.</p> <p>As such, please be advised that the amendment of the gutter will not be approved in this consent.</p> <p>In regard, Development Engineer has no objection to the application subject to the following conditions of consent.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

(SREPs)

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A325689). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007

Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

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

Comment:

The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.4m	N/A	Yes

Floor Space Ratio	FSR: 0.45:1	FSR: 0.32:1	N/A	Yes
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Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 613.4sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 50sqm	1	N/A	Yes
	Dwelling Size: 90sqm	198sqm	N/A	Yes
4.1.2.1 Wall Height	N: 6.9m (based on gradient 1:15)	7.4m	6.8%	No
	S: 7.0m (based on gradient 1:15)	6.1m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	N/A (parapet)	N/A	N/A
	Parapet Height: 0.6m	Nil (matches roof)	N/A	Yes
	Pitch: maximum 35 degrees	Flat or less than 35 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	6.9m, and consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N 2.4m - New upper level	2m	16.7%	No
	S - 1.3m - New garage	900mm	30.8%	No
	2m - New parapet	1.5m	25%	No
	Windows: 3m	2m	33%	No
4.1.4.4 Rear Setbacks	8m	Nil - patio area All other works	100% N/A	No Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	61.5% (377.6sqm)	N/A	Yes
	Open space above ground less than 25% of total open space	Nil	N/A	Yes

4.1.5.2 Landscaped Area	Landscaped area 35% of open space	69.5% (262.7sqm)	N/A	Yes
4.1.5.3 Private Open Space	18sqm	305sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.2m (14.985m frontage)	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	1.8m	42%	No
	1m curtilage/1.5m water side/rear setback	1.2m/1.5m	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban 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	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
Storeys & Roof Height)		
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.4.3 Maintenance of Views

The application states that the upper level addition has been located to the northern side of the site to maintain a view corridor through the site. The development is generally compliant with the applicable built form controls, with a minor non-compliance with the side setback and wall height control on the northern side, but is fully compliant with the overall height control. No submissions were received in relation to view loss, and a site inspection did not identify any potentially unreasonable view loss as a result of the proposal.

4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)

Description of non-compliance

The proposed northern wall height to the first floor is non-compliant by up to 500mm (7.4m with a maximum requirement of 6.9m).

Merit consideration:

With regard to the consideration for a variation, the development is considered against the LEP objectives for Clause 4.3 Height of Buildings:

(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 proposed non-compliant wall heights relate only to the first floor addition, and result generally from the new flat roof design. Despite the non-compliance with the wall height control, the overall building height is compliant and the dwelling steps with the cross fall topography of the site to remain generally significantly below the 8.5m.

b) to control the bulk and scale of buildings,

Comment:

The proposed dwelling is not of unreasonable bulk or scale and maintains consistency with existing development in the surrounding area.

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 result in unreasonable disruption to views to, from or between residential development and public spaces. No submissions raised concerns in this regard, and no unreasonable view loss was identified as part of the site inspection.

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 does not result in excessive additional building bulk and will not cause any unreasonable overshadowing impacts, as demonstrated by the shadow diagrams provided with the application. The first floor addition is set to the northern side of the site, which minimises impacts to the south in this regard.

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:

N/A

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.

4.1.4 Setbacks (front, side and rear) and Building Separation

Description of non-compliance

The proposed development does not comply with the minimum side boundary setback requirement. The northern wall of the first floor addition will be 2m from the north side boundary (2.4m requirement based on the wall height). The windows in this wall will also be set 2m back from the northern boundary (3m requirement). Further, the plans also indicate a paved patio/seating area on a nil setback to the rear boundary. On the southern side, the new garage wall will be setback 900mm from the boundary (1.3m requirement), and the new southern parapet above the existing walls will be setback a minimum of 1.5m (2m requirement).

Merit consideration:

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

Objective 1) To maintain and enhance the existing streetscape including the desired spatial proportions of the street, the street edge and the landscape character of the street.

Comment:

The proposed non-compliances with the side and rear setback controls will not significantly impact on the spatial proportions of the street, the street edge and the landscape character of the street. The proposal is fully compliant with the front setback control.

Objective 2) To ensure and enhance local amenity by:

- *providing privacy;*
- *providing equitable access to light, sunshine and air movement; and*
- *facilitating view sharing and maintaining adequate space between buildings to limit impacts on views and vistas from private and public spaces.*
- *defining and adding character to the streetscape including the provision of adequate space between buildings to create a rhythm or pattern of spaces; and*
- *facilitating safe and adequate traffic conditions including levels of visibility around corner lots at the street intersection.*

Comment:

The proposed development is considered to achieve this objective for the following reasons:

There will be no unreasonable privacy impacts. The proposed windows on the northern elevation of the new upper level are all from low-use rooms (bedroom/bathrooms/walk in robe), and the difference of 1m setback to the side boundary will make no significant difference in this regard.

Adequate levels of light, sunshine and air movement and able to be maintained on the site and adjacent properties. The non-compliance with the side setback occurring on the northern side is adjacent to driveways to the north, and the new upper level has been located to the northern side of the site to minimise solar access impacts to the southern neighbours, and to maintain view a view corridor through the site. The existing streetscape character will not be impacted in any unreasonable way. The southern setback of the new garage wall will be generally behind the existing boundary wall to be retained, and the new southern parapet will also maintain the existing wall setbacks. These elements are not considered to result in any unreasonable impacts to neighbours.

There will be no significant impacts to existing traffic conditions or vehicle sightlines.

The proposed paved patio/seating area on a nil setback to the rear boundary is not supported, as it is an unnecessary treatment to an area in the rear setback area, that may potentially create privacy concerns given the difference in levels between the properties. The dwelling will be well serviced in this regard by the other proposed decks off the rear of the house. A condition of consent is therefore recommended deleting this element.

Objective 3) To promote flexibility in the siting of buildings.

Comment:

The proposed flexibility will not result in unreasonable impacts on the streetscape or the amenity of the locality. The development is consistent with the objectives of the control and the flexibility is satisfactory in this circumstance, particularly given the development is for alterations and additions to the existing dwelling.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and particularly in relation to the nature of any adjoining Open Space lands and National Parks; and*
- *ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposed development will maintain ample landscaped area, well exceeding the minimum requirements. This is adequate to maintain the landscape character of the locality. The works in general are responsive to the topography of the site, which falls from north to south and front to rear.

Objective 5) To assist in appropriate bush fire asset protection zones.

Comment:

Site is not identified as being bush fire prone.

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

4.1.9 Swimming Pools, Spas and Water Features

Description of non-compliance

The proposed swimming pool will be up to 1.8m above the existing ground level at the highest point.

Merit consideration

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

Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;

Comment:

The proposed pool location allows for significant screen planting in the southern side setback, which will prevent any unreasonable overlooking to the south. No decking has been included around the southern and western sides of the pool, which will further limit opportunities for overlooking of the southern neighbours. The pool is also set well back from the western boundary, and will not create any unreasonable privacy concerns in that direction. The pool filter is to be located beneath the deck to the east of the pool. A condition of consent will require noise from the filter to be maintained at a level no

higher than 5dBa measured at the boundary.

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

Comment:

The proposed swimming pool is located within the rear yard, and will not be visible from the street frontage. It will have no significant impacts on the established character of the locality.

Objective 3) To integrate landscaping

Comment:

Landscaping is proposed to the side and rear of the swimming pool and associated decking. The proposal will meet the numeric control for landscape open space across the site. The existing and proposed screen planting along the southern and western boundaries will mitigate the visual impact of the swimming pool from surrounding properties.

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

Comment:

Not applicable, as the subject site is not located in bushfire 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 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 effect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

A monetary contribution of \$14,024 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,402,425.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;

- 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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2018/1830 for Alterations and additions to a dwelling house on land at Lot 4 DP 17574, 1 Aden Street, SEAFORTH, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA02 Rev 1	November 2018	Cargo Design
DA03 Rev 1	November 2018	Cargo Design
DA04 Rev 1	November 2018	Cargo Design
DA05 Rev 1	November 2018	Cargo Design
DA06 Rev 1	November 2018	Cargo Design

DA07 Rev 1	November 2018	Cargo Design
DA08 Rev 1	November 2018	Cargo Design
DA09 Rev 1	November 2018	Cargo Design
DA10 Rev 1	November 2018	Cargo Design
DA11 Rev 1	November 2018	Cargo Design
DA14 Rev 1	November 2018	Cargo Design
DA01E	20/9/18	Sprout Landscape Architecture
DA02E	20/9/18	Sprout Landscape Architecture

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

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

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

2. Prescribed Conditions

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

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
 - (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and

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

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

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

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

Reason: Legislative Requirement

3. **General Requirements**

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until

the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.

- (c) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (d) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (e) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.
- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No building, demolition, excavation or material of any nature and no hoist, plant and machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) 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.
- (j) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)
- (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) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
 - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including

but not limited) to:

- (i) Swimming Pools Act 1992
 - (ii) Swimming Pools Amendment Act 2009
 - (iii) Swimming Pools Regulation 2008
 - (iv) Australian Standard AS1926 Swimming Pool Safety
 - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
 - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
 - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in 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.

4. **Fencing**

No specific boundary fencing is approved as part of this application.

This condition does not prevent fencing being constructed in accordance with the provisions of SEPP (Exempt and Complying Development Codes) 2008, the Dividing Fences Act 1991, and the Swimming Pools Act 1992 as required.

Reason: Lack of detail with regard to fencing.

FEES / CHARGES / CONTRIBUTIONS

5. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$14,024.25 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$1,402,425.00.

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

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

The Northern Beaches Section 7.12 Contributions Plan 2019 may be inspected at 725 Pittwater Rd, Dee Why and at Council's Customer Service Centres or alternatively, on Council's website at www.northernbeaches.nsw.gov.au

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

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

6. **Security Bond**

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

7. **Stormwater Disposal**

Stormwater shall be disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003.

A certificate is to be provided to the Principal Certifying Authority with the Construction Certificate application by a qualified Civil Engineer that the existing approved system can accommodate the additional flows or provide drainage plans demonstrating compliance with Council's requirements.

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

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

8. Amendments to the approved plans

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

- The paved BBQ area with seating and retaining walls at the rear of the property near the north west corner of the site, adjacent to the rear boundary, is not approved and is to be deleted from the plans.
- The southern elevation parapet (coloured green on drawing DA09) above the Existing Dining and Existing Bedroom on the Ground Floor Plan (drawing DA05), is to be made horizontal, stepping down as required from RL64.115 at the eastern end to RL63.740 at the western end.
- Window W.25 (south facing from Masterbed 1 on the new upper level) is to have a minimum sill height of 1.3m above finished floor level.
- South facing windows W.26 and W.27 are to have minimum sill heights as shown on the approved drawing DA11 (1.4m for W.26 and 1m for W.27).
- The sill height of W.24 (west facing from Masterbed 1 on the new upper level) may be raised to match the sill height of W.25 if desired by the applicant, but is not a requirement.

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

Reason: To ensure development minimises unreasonable impacts upon surrounding land.

9. Vehicle Driveway Gradients

Driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in Council's Minor Works Policy. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate

Reason: To ensure suitable vehicular access to private property

10. Waste Management Plan

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

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

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

11. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

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

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

12. External Finishes to Roof

The external finish to the roof shall have a medium to dark range (BCA classification M and D) in order to minimise solar reflections to neighbouring properties. Any roof with a metallic steel finish is not permitted.

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

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

13. 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 Certifying Authority 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 TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. Road Reserve

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

Reason: Public Safety.

15. 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 Certifying Authority.

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

16. Tree and vegetation protection

A) Existing trees and vegetation shall be retained and protected as follows:

- i) all trees and vegetation within the site, nominated on the plans for retention, excluding exempt trees under the relevant planning instruments of legislation,
- ii) all other trees and vegetation located on adjoining properties,
- iii) all road reserve trees and vegetation,

B) Tree protection shall be generally undertaken as follows:

- i) all tree protection shall be in accordance with AS4970- 2009 Protection of Trees on Development Sites, with particular reference to Section 4,
- ii) removal of existing tree roots greater than 25mm is not permitted without consultation with a AQF Level 5 Arborist,
- iii) any tree roots exposed during excavation with a diameter greater than 25mm within the tree

protection zone must be assessed by an Arborist. Details including photographic evidence of works undertaken shall be submitted by an AQF Level 5 Arborist to the Certifying Authority,

- iv) to minimise the impact on trees and vegetation to be retained and protected, 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) no tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a Project Arborist on site,
- vi) all structures are to bridge tree roots greater than 25mm diameter unless directed by a AQF Level 5 Arborist on site,
- vii) excavation for stormwater lines is not permitted within the tree protection zone, without consultation with a AQF Level 5 Arborist,
- viii) should either or all of v) vi) and vii) occur during site establishment and construction works, a AQF Level 5 Arborist shall provide recommendations for tree protection measures. Details including photographic evidence of works undertaken shall be submitted by the Arborist to the Certifying Authority,
- ix) tree pruning to enable construction shall not exceed 10% of any tree canopy, and shall be in accordance with AS4373-2009 Pruning of Amenity Trees.

Reason: to retain and protect significant planting on development and adjoining sites.

17. **Survey**

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 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 Certifying Authority.

Reason: To determine the height of buildings under construction comply with levels shown on approved plans. (DACPLE01)

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

18. **Landscape works**

Landscaping is to be implemented in accordance with the plans DA01 (E) and DA02 (E), prepared by Sprout Landscape Architecture, inclusive of the following requirement:

- i) the proposed BBQ terrace in the vicinity of existing Gum E02 shall be elevated (no fill) to preserve the natural ground level and existing tree roots, as no arboricultural impact assessment has been provided to report on the impact to E02 nor to justify fill over the existing natural ground levels,
- ii) native screen planting along the western boundary capable of attaining 3 metres in height, and planted no more than 1 metre apart, and at pot size 300mm minimum.
- iii) native screen planting along the southern boundary capable of attaining 5 metres in height, and planted no more than 1 metre apart, and at pot size 300mm minimum.

Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the plans and inclusive of any conditions of consent.

Reason: to ensure that the landscape treatments are installed to provide landscape amenity.

19. Condition of retained vegetation

Prior to the issue of an Occupation Certificate, a report prepared by an AQF Level 5 Arborist (or equivalent), shall be submitted to the Certifying Authority, assessing the health and impact of trees and vegetation required to be retained as a result of the proposed development, including the following information:

- a) Compliance to Arborist recommendations for tree protection and 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: to ensure compliance with the requirement to retain and protect significant planting on development sites.

20. Stormwater Disposal

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

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

21. Garbage and Recycling Facilities

All internal walls of the storage area shall be rendered to a smooth surface, coved at the floor/wall intersection, graded and appropriately drained to the sewer with a tap in close proximity to facilitate cleaning.

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

Reason: To prevent pollution of the environment and to protect the amenity of the area.
(DACPLF03)

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

22. Landscape maintenance

All landscape components are to be maintained for the life of the development.

A maintenance program is to be established. If any landscape materials/components or planting under this consent fails, they are to be replaced with similar materials/components and species to maintain the landscape theme in accordance with the landscape plan.

Reason: to maintain local environmental amenity and ensure landscaping continues to soften the built form.

23. Environmental and priority weed control

All weeds are to be removed and controlled in accordance with the Biodiversity Conservation Act 2016.

Reason: preservation of environmental amenity.



ALLOWABLE FSR:	1:0.45
SITE AREA:	613.4 SQM
MAX. ALLOWABLE GROSS FLOOR AREA:	276 SQM
PROPOSED GROSS FLOOR AREA:	198 SQM
5% OPEN SPACE REQUIREMENT:	337.37 SQM
PROPOSED OPEN SPACE:	409 SQM
35% PROPOSED AREA REQUIREMENT:	143.15 SQM
PROPOSED LANDSCAPED AREA:	215 SQM

01 SITE & ROOF PLAN 1:200

SITE & ROOF PLAN

CARGOdesign

1 ADEN STREET, SEAFORTH • LOT 4 DP17574

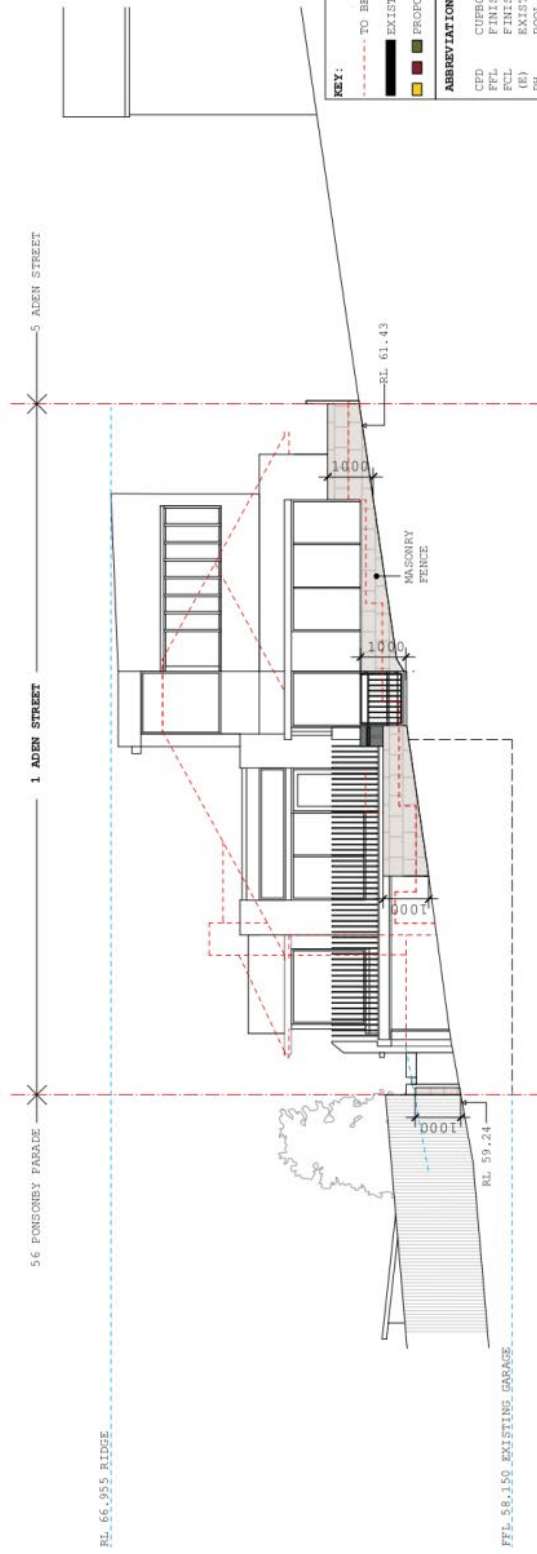
DEVELOPMENT APPLICATION NOVEMBER 2018

REV. 1

DA02

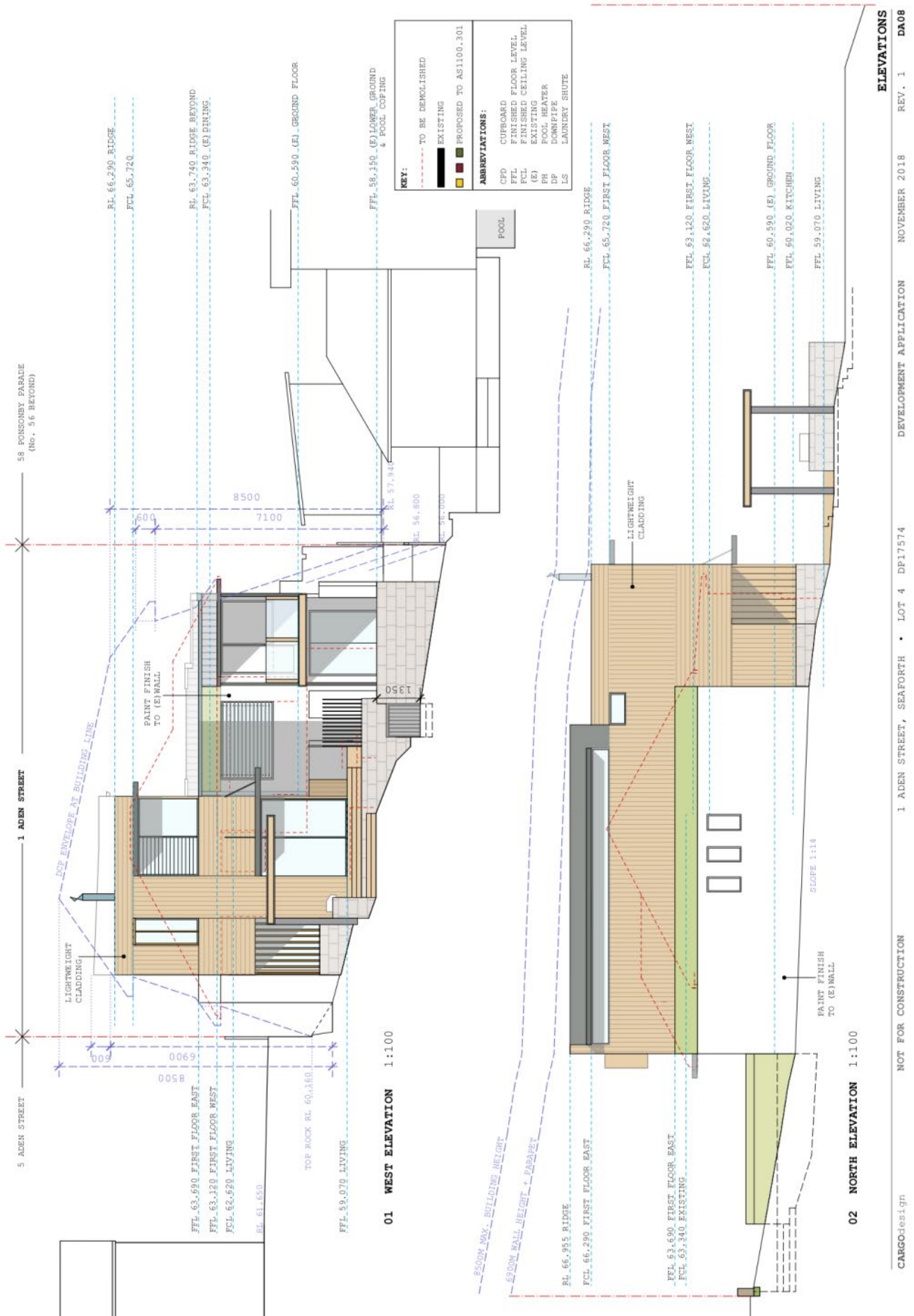


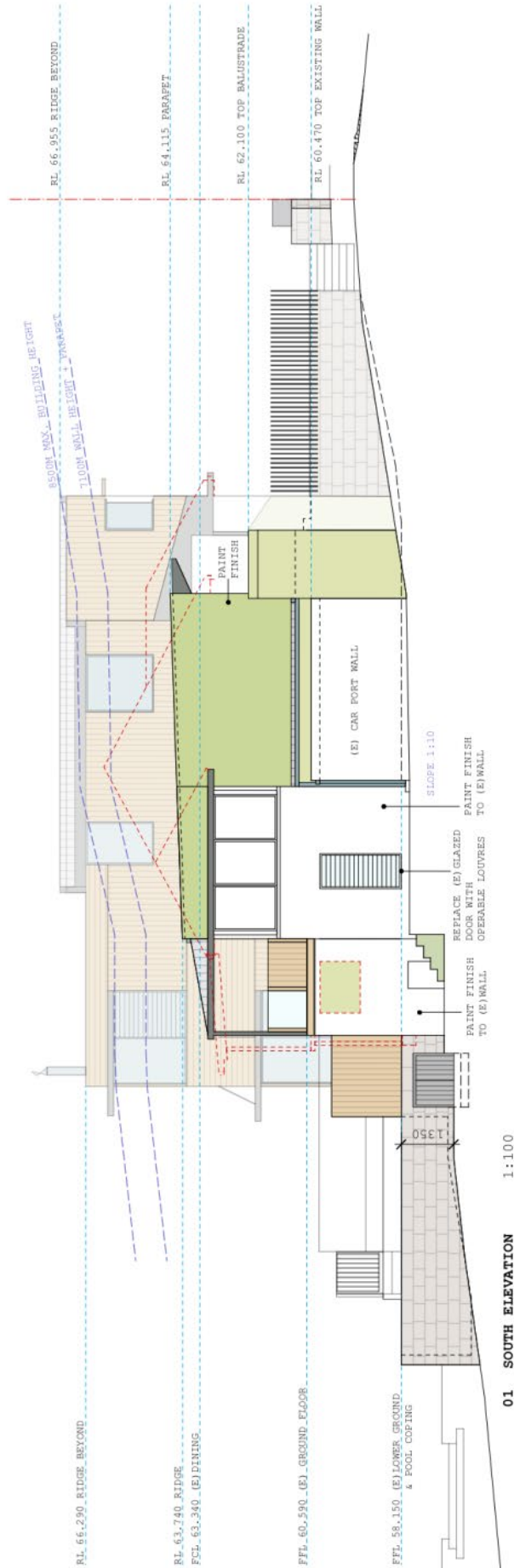
01 EAST ELEVATION 1:100



02 EAST ELEVATION (STREET) 1:100

KEY:	TO BE DEMOLISHED
	EXISTING
	PROPOSED TO AS1100.301
ABBREVIATIONS:	
CFD	CURBOARD
FFL	FINISHED FLOOR LEVEL
FCL	FINISHED CEILING LEVEL
(E)	EXISTING
PH	POOL HEATER
DP	DOWNSPIPE
LS	LAUNDRY SHUTE





01 SOUTH ELEVATION 1:100

KEY:		
---	TO BE DEMOLISHED	
---	EXISTING	
---	PROPOSED TO AS1100.301	
ABBREVIATIONS:		
CPD	CUPBOARD	
FFL	FINISHED FLOOR LEVEL	
FCL	FINISHED CEILING LEVEL	
EX	EXISTING	
PH	POOL HEATER	
DP	DOWNSPIPE	
LS	LAUNDRY SHUTE	

ELEVATIONS			
CARGO-design	NOT FOR CONSTRUCTION	1 ADEN STREET, SEAFORTH • LOT 4 DP17574	NOVEMBER 2018 REV. 1 DA09