

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 11 SEPTEMBER 2019



Ashleigh Sherry
Manager Business Systems and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 11 September 2019
in the Walamai Room, Civic Centre, Dee Why**

1.0	APOLOGIES & DECLARATIONS OF INTEREST	
2.0	MINUTES OF PREVIOUS MEETING	
2.1	Minutes of Development Determination Panel held 28 August 2019	
3.0	DEVELOPMENT DETERMINATION PANEL REPORTS	5
3.1	DA2019/0246 - 49 Greycliffe Street, Queenscliff - Alterations and additions to a dwelling house	5
3.2	DA2019/0483 - 4 Abernethy Street, Seaforth - Demolition works and construction of a new dwelling house.....	48
3.3	DA2019/0578 - 17 Golf Parade, Manly - Demolition works and construction of a garage	101
3.4	Mod2018/0542 - 7 Kalinya Street, Newport - Modification of Development Consent N0486/16 granted for Demolition of existing service station structure and construction of a new three storey residential flat building with basement car parking.....	136
3.5	DA2019/0380 - 72 Carrington Parade, Curl Curl - Demolition works and construction of a dwelling house	181

2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 28 AUGUST 2019

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 28 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	DA2019/0246 - 49 GREYCLIFFE STREET, QUEENSCLIFF - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Anna Williams
TRIM FILE REF	2019/498178
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 **approve** Development Consent to DA2019/0246 for alterations and additions to a dwelling house on land at Lot 20 DP 8373, 49 Greycliffe Street, Queenscliff, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0246
Responsible Officer:	Nick England
Land to be developed (Address):	Lot 20 DP 8373, 49 Greycliffe Street QUEENSCLIFF NSW 2096
Proposed Development:	Alterations and additions to 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:	Michael Bruno Sumner Susan Amanda Sumner
Applicant:	Michael Bruno Sumner Susan Amanda Sumner
Application lodged:	12/03/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	18/03/2019 to 03/04/2019
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 11.5%
Recommendation:	Approval
Estimated Cost of Works:	\$ 620,000.00

Executive Summary

The application consists of the alterations and additions to a dwelling house, which is located in an R2 Low Density Residential zone of the Warringah Local Environmental Plan 2011 (WLEP 2011).

Notification of the application resulted in one (1) submission being received, raising issue with visual privacy. This submission has now been withdrawn.

The application is referred to the Development Determination Panel (DDP) as the development is:

- a Class 1 building (single dwelling house); and
- exceeds by more than 10% the Height of Buildings development standard in WLEP 2011.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting

SITE DESCRIPTION

Property Description:	Lot 20 DP 8373 , 49 Greycliffe Street QUEENSCLIFF NSW 2096
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Greycliffe Street.</p> <p>The site is regular in shape with a frontage of 14m along Greycliffe Street and a depth varying between 36.8m and 40m. The site has a surveyed area of 515.4m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two-storey dwelling, detached garage and areas of rear deck. The dwelling, "San Marino", dates from the 1920's and is listed as an item of environmental heritage in WLEP 2011.</p> <p>The site has a southerly aspect with a significant slope,</p>

falling down to the frontage. Rock outcrops and vegetation occur to the rear of the site.

Adjoining and surrounding development is characterised by primarily with dwelling houses, interspersed with residential flat buildings.

Map:



The application proposes alterations and additions to the existing heritage dwelling house, "San Marino".

The additions are located to the rear of the existing dwelling and incorporates a two-story addition attached to the northern elevation of the dwelling, which includes a bedroom, en-suite and laundry to the ground floor and a kitchen /pantry and lounge to the upper level.

The alterations to the existing dwelling consist of internal works within the existing floor space for a new laundry (existing kitchen), two bathrooms and an en-suite. Three (3) additional windows are proposed, one (1) to the converted laundry on the west elevation and two (2) to the existing living room on the east elevation.

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 ¹	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 2011 applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 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, permits Council to request additional information and therefore consider the number of days taken in this assessment in light of this clause within the Regulations. However, 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</p>

Section 4.15 Matters for Consideration	Comments
	<p>(including fire safety upgrade of development). This clause is not relevant to this application.</p> <p>Clause 98 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>Clause 98 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>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.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	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.

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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments		
NECC (Coast and Catchments)	The proposed development has been assessed to comply with SEPP Coastal Management and is supported without condition. It is not likely to alter coastal processes to the detriment of the environment or other land and is not likely to reduce public amenity or existing access to and use of the foreshore.		
NECC (Riparian Lands and Creeks)	The proposed development is supported with conditions to comply with Warringah Development Control Plan (DCP) 2011 and the Coastal Management SEPP. The development must meet sediment and erosion control conditions throughout the duration of the works. The proposed development has been assessed, based on compliance with applied conditions, to cause no adverse impacts or changes to the identified waterways and riparian land.		
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS		
	Discussion of reason for referral		
	This application has been referred as it is a listed local heritage item being Item 1121 House known as "San Marino", 49 Greycliffe Street, Queenscliff , listed in Schedule 5 of Warringah Local Environmental Plan 2011.		
	Details of heritage items affected		
	Details of this heritage item, as contained within the Heritage Inventory are: Item 1121 House known as "San Marino", 49 Greycliffe Street, Queenscliff Statement of Significance A locally rare & representative example of an inter-war building in the mediterranean style. Historically shows the variety of architectural styles constructed in the inter-war years. Physical Description Two storey building with garage under & one projecting hipped roof garage. Stuccoed masonry walls with hipped tiled roof. Decorative treatment of wall elements. Recessed entrance with canopy capped with curved terracotta tiles.		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	Comment if applicable
	Australian Heritage	No	

Internal Referral Body	Comments		
	Register		
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	No	
	Consideration of Application		
	<p>This application is for alterations and additions to this listed heritage building. The application is supported by a Statement of Environmental Effects, which includes Statement of Heritage Impact, both prepared by Vaughan Milligan Development Consulting Pty Ltd. Details of External Finishes were also provided.</p> <p>The alterations and additions are primarily at the rear of the heritage house, however there are some internal alterations, mainly to connect the additions to the house. The site slopes up from Greycliffe Street and the existing Spanish Mission house is an elevated 2 storey house with hipped tiled roof. Internal alterations will not impact upon the heritage significance of the house (as its significance is embodied in its external aesthetic significance as an example of the Spanish Mission style of architecture).</p> <p>The proposal will not impact upon the presentation of this house when viewed from Greycliffe Street. The proposed extension has been designed in a contemporary style, not copying the Spanish Mission style. It also proposes to use recessive colours and materials, so that the addition will not compete with the white stuccoed heritage item. While the extension is quite bulky, it is considered that it will largely not be visible from Greycliffe street, given the elevated position of the existing house and the slope up from the street.</p> <p>The extension will be visible from the side and rear, however, these are not the principal elevation's of the heritage item and the use of different materials and colours will mean that the extension will appear as a separate dwelling, particularly given the depth and slope of the lot.</p> <p>While this design is not the optimum, it is considered that the primary significance of the heritage item will not be unacceptably adversely affected by the proposed rear addition. It is however recommended that a condition be imposed requiring before and after photographs of those parts of the heritage item which will be affected by the proposed works.</p> <p>Consider against the provisions of CL5.10 of WLEP 2011</p>		

Internal Referral Body	Comments
	<p>Is a Conservation Management Plan (CMP) Required? NO Has a CMP been provided? N/A Is a Heritage Impact Statement required? YES Has a Heritage Impact Statement been provided? YES (although within SEE)</p> <p>Further Comments</p> <p>COMPLETED BY: Janine Formica, Heritage Planner DATE: 3 June 2019</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.
Aboriginal Heritage Office	The Aboriginal Heritage Office has no objection to the proposed development, subject to condition.

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.A355190 dated 6 August 2019). The certificate indicates that the development will achieve the sustainability requirements

of the SEPP.

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 No 20—Hawkesbury-Nepean River (No 2—1997)

The proposed development is consistent with the aims and controls of this SEPP.

SEPP (Coastal Management) 2018

The site is subject to State Environment Planning Policy Coastal Management (2018) (the SEPP). Accordingly, an assessment under the relevant Clauses of the SEPP is provided below:

14 Development on land within the coastal use area

(1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:

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

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

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

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

Comment: The application complies with this requirement of the SEPP.

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.6m	11.5	No

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.4 Development on sloping land	Yes
Schedule 5 Environmental heritage	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.6m
Percentage variation to requirement:	11.5%

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 summary that the:

- bulk and scale of the proposal is consistent with existing development in Greycliffe Street and the surrounding locality;
- topography on the site makes it difficult for the proposal to comply;
- location of the existing dwelling restricts the location of the works to the steep rear portion of the

- site; and
- non-compliance will not result in any loss of amenity for adjoining residents.

These reasons are considered valid to warrant the variation and are consistent with the Objects of the Act. It is worthwhile to add that as the dwelling is a local item of environmental heritage, the location of the works are further constrained to only being possible at the rear, which is where the topography is at its steepest. However, the location of the additions are adequate to meet Object (f) of the Act, which is to responsibly manage the built heritage of the State.

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).

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment: The subject site and other surrounding land on the northern side of Greycliffe Street is constrained by steep topography, which has the result of accentuating the height of many of the existing buildings. The adjoining dwellings at No.47 and 51 Greycliffe Street are setback from their frontages at a distance of 9m and 25m respectively. The total height of these buildings on survey is set at RL 30m and RL 37.92m respectively.

The front setback of the proposed additions are between 4.5-17.6m from the frontage and have a total height of 32.7m RL.

Hence on a comparative basis, the proposal will be consistent with the height and scale of adjoining dwellings and has demonstrated consistency with this objective.

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

Comment: A detailed assessment of the proposal has demonstrated that there will be no adverse impact on adjoining properties in regard to visual impact, view loss, privacy or overshadowing. Therefore, this objective has been achieved.

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

Comment: The proposed development will be visible from the northern end of Queenscliff Beach. However, the development has been carefully designed to integrate with surrounding development and will result in no adverse impact when viewed from this coastal environment.

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

Comment: As stated previously, the proposed development will be visible from parts of Queenscliff Beach. However, the development has been carefully designed to integrate with surrounding development and will result in no adverse impact when viewed from this public place.

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 proposed works relate to additions to existing dwelling house. Hence, this objective is achieved.

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

Comment: Not applicable to the proposed development.

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

Comment: The proposed works will result in a slight increase in the overall area of landscaped open space on the site. Hence, this objective is achieved.

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. 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 Local Planning Panel, for which Council has an exemption for dwelling houses that can be determined by the Development Determination Panel.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	7.9m (west and east)	9	No
B3 Side Boundary Envelope	5m (east)	Breach of 1.6m (height) x 6.1m (length)	N/A	No
	5m (west)	Breach of 1.9m (height) x 1.8m (length)	N/A	No
B5 Side Boundary Setbacks	0.9m (east)	0.9m	N/A	Yes
	0.9m (west)	1.2m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	14.5m	N/A	Yes
B9 Rear Boundary Setbacks	6m	15.9m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	163m ² or 32%	20	No

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

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	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
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E8 Waterways and Riparian Lands	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The wall heights on the east and west elevation have a maximum height of 7.9m. This represents a 9% variation with the maximum requirement.

Merit consideration:

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

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

Comment: The rear extension is located behind the existing dwelling, which greatly reduces its visibility from the Greycliffe Street and other adjoining public areas. The extent of the variation on these elevations are relatively minor in scale and so when viewed from adjoining dwellings will have a limited visual impact. The development is hence consistent with this objective.

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

Comment: No significant area of tree canopy exists on the site or on adjoining areas, hence this objective is not applicable to the proposed development.

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

Comment: The extent of the non-compliance will result in no adverse loss of views from adjoining properties and hence this objective is achieved.

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

Comment: There will be no adverse impact on adjoining properties in regard to bulk and scale, privacy, overshadowing or view loss. Hence, the development is consistent with this objective.

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

Comment: The proposed addition provides an adequate response to the topography of the site, utilising greater setbacks on the upper level to minimise the breach of the wall height to an acceptable degree. The skillion roof will follow the slope of the land and no significant excavation is proposed. The development will hence meet the requirements of this objective.

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

Comment: The design of the roof for the additions to the existing house have been carefully chosen to provide an adequate response to the heritage character of this dwelling. The development is hence consistent with this objective.

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

B3 Side Boundary Envelope

Description of non-compliance

A breach of the side boundary envelope is proposed on the following elevations:

East: 1.6m (height) x 6.1m (length)

West: 1.9m (height) x 1.8m (length)

Merit consideration

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

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

Comment: The breach on the west elevation is relatively minor and relates to a small element of this facade. On the east elevation, the breach is also minor in proportion to the overall elevation and will not result in a building that visually dominant. The proposed development is therefore consistent with this objective.

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

Comment: No amenity impact in regard to solar access or privacy is caused as a result of the breach with the side boundary envelope.

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

Comment: The proposed additions provide an adequate response to the topography of the site with no significant excavations proposed.

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

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

A total of 163.5m² or 32% of the site, is set aside as landscaped open space. This represents a 20% variation with the minimum requirement.

The existing provision of landscaped open space on the site is 29%. Hence the development represents a 2% increase in the overall provision of landscaped open space in the site.

Merit consideration

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

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

Comment: There will be no loss in the existing provision of landscaped open space on the frontage site as a result of the proposed works and in effect a small increase in the overall level of landscaping. Therefore, this objective is achieved.

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

Comment: The proposed works will result in loss in the existing area of remnant native vegetation that exists along the rear boundary of the site. Hence this objective is achieved.

- *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: Sufficient area is provided on the site to achieve this objective.

- *To enhance privacy between buildings.*

Comment: The proposed additions have been adequately designed to ensure a reasonable level of visual privacy is provided to adjoining dwelling, consistent with this objective.

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

Comment: Sufficient area is provided on the site to achieve this objective.

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

Comment: Sufficient area is provided on the site to achieve this objective.

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

Comment: Sufficient area is provided on the site to achieve this objective.

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

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 \$6,200 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$620,000.

CONCLUSION

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects,

all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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

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

The land is constrained by two significant factors, being:

- steep topography; and
- the existing house being an item of environmental heritage.

Hence the works can only be located to the rear of the existing dwelling, where slope of the land is steepest. This has made full compliance with the standards and controls of Council difficult, resulting in non-compliances with the following standards and controls:

- Height of Buildings (WLEP 2011);
- Wall Heights (WDCP 2011); and
- Side Boundary Building Envelope (WDCP 2011).

Whilst a non-compliance with the Landscaped Open Space (LOS) and Bushland Setting of WDCP 2011 is also proposed, the works will in effect increase the existing LOS on the site. Despite these non-compliances, the proposal will not result in any adverse amenity impact to adjoining dwellings.

The proposed works have been sensitively designed to protect the heritage value of the existing dwelling.

The 11.5% variation to the Height of Buildings development standard will not result in any unreasonable amenity impacts to adjoining properties and the application has met the necessary statutory tests. The variation sought is hence acceptable under the circumstances.

In summary, the application has demonstrated compliance with the objectives of Council policies and is recommended for approval.

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

RECOMMENDATION

Council is satisfied that:

1) the applicant's written request under clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of clause 4.3 Height of Buildings 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 DA2019/0246 for Alterations and additions to a dwelling house on land at Lot 20 DP 8373, 49 Greycliffe Street, QUEENSCLIFF, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
NOV18 V1 Sheet 2.1	30 January 2017	JMR Building Contractors
NOV18 V1 Sheet 4.1	30 January 2017	JMR Building Contractors
NOV18 V1 Sheet 4.2	30 January 2017	JMR Building Contractors
NOV18 V1 Sheet 4.3	30 January 2017	JMR Building Contractors
NOV18 V1 Sheet 4.4	30 January 2017	JMR Building Contractors
NOV18 V1 Sheet 4.5	30 January 2017	JMR Building Contractors
NOV18 V1 Sheet 5.1	30 January 2017	JMR Building Contractors
NOV18 V1 Sheet 5.2	30 January 2017	JMR Building Contractors
NOV18 V1 Sheet 5.3	30 January 2017	JMR Building Contractors
NOV18 V1 Sheet 5.4	30 January 2017	JMR Building Contractors
NOV18 V1 Sheet 6.1	30 January 2017	JMR Building Contractors

Reports / Documentation – All recommendations and requirements contained

within:		
Report Title / No.	Dated	Prepared By
Preliminary Geotechnical Assessment No.MS31330A	4 January 2019	Jack Hodgson Consultants Pty Limited
BASIX Certificate No.A355190	6 August 2019	JMR Building

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:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
-	6 March 2019	Vaughan Milligan

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 \$6,200.00 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 \$620,000.00.

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. **Heritage Photographic Record**

A heritage photographic record is to be made of the property before any work commences on site. This should include photos of all parts of the building which will be altered as a result of these works and should also include a layout plan which identifies where the photos have been taken. This can be a digital record, but must be submitted to Council prior to any construction works commencing.

Reason: To ensure there is an historical record of this heritage item before changes are made. (DACHECPCC1)

7. **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.

8. **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 THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**9. 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 (DACNED06)

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK**10. 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.

11. Aboriginal Heritage

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection. (DACAHE01)

12. 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.

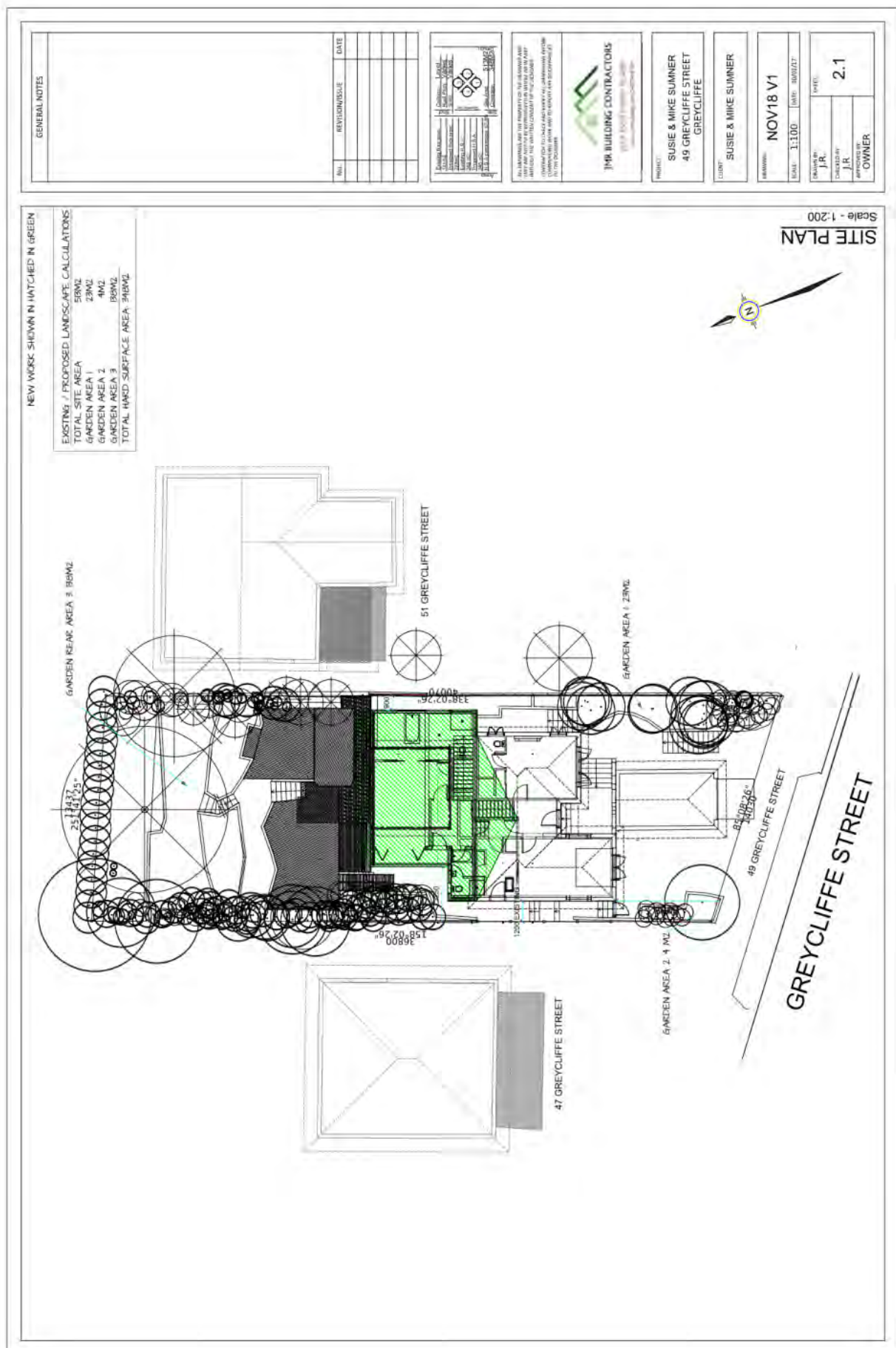
CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE**13. Removal of All Temporary Structures/Material and Construction Rubbish**

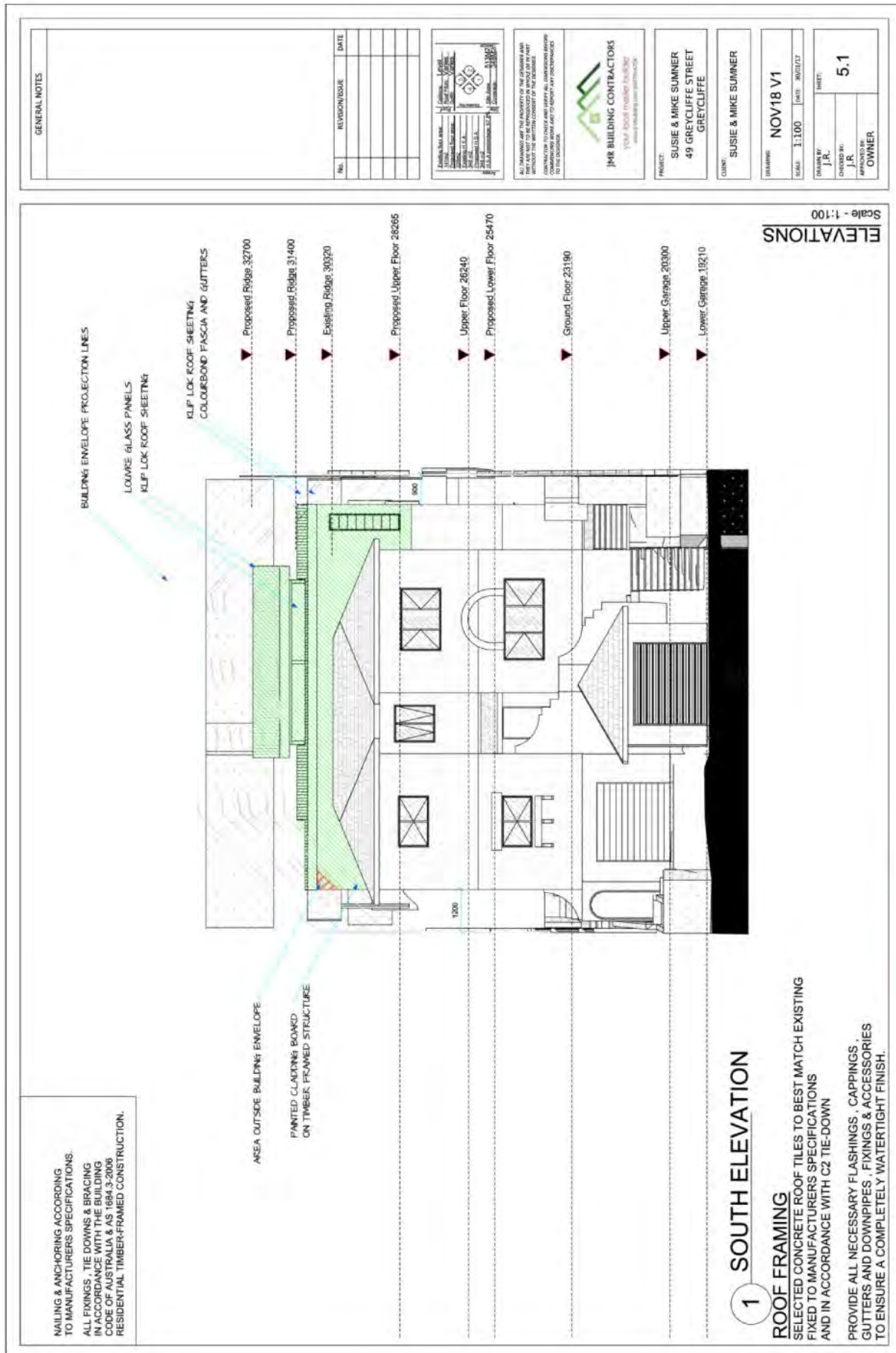
Once construction has been completed all silt and sediment fences, silt, rubbish, building debris,

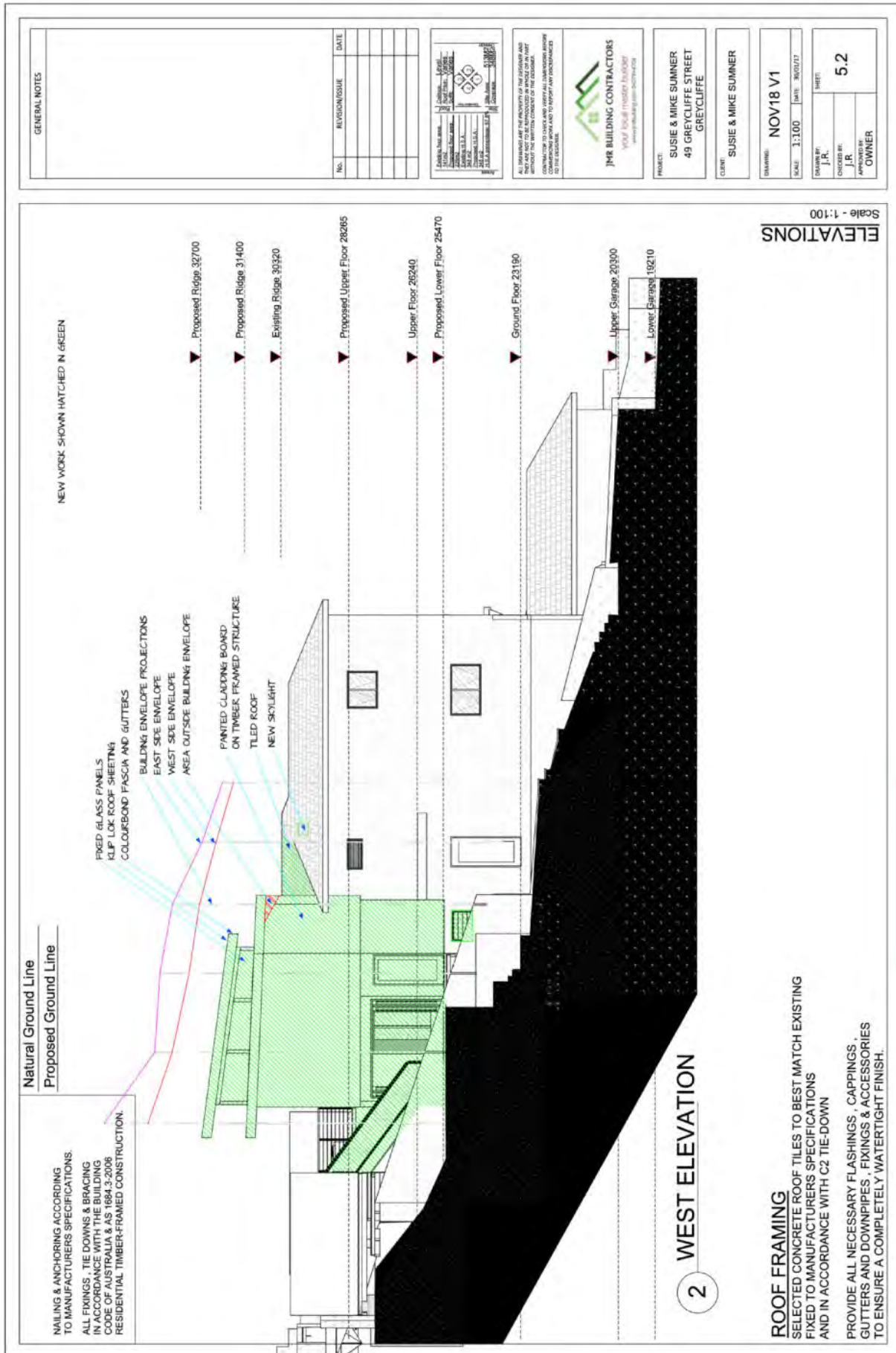
straw bales and temporary fences are to be removed from the site.

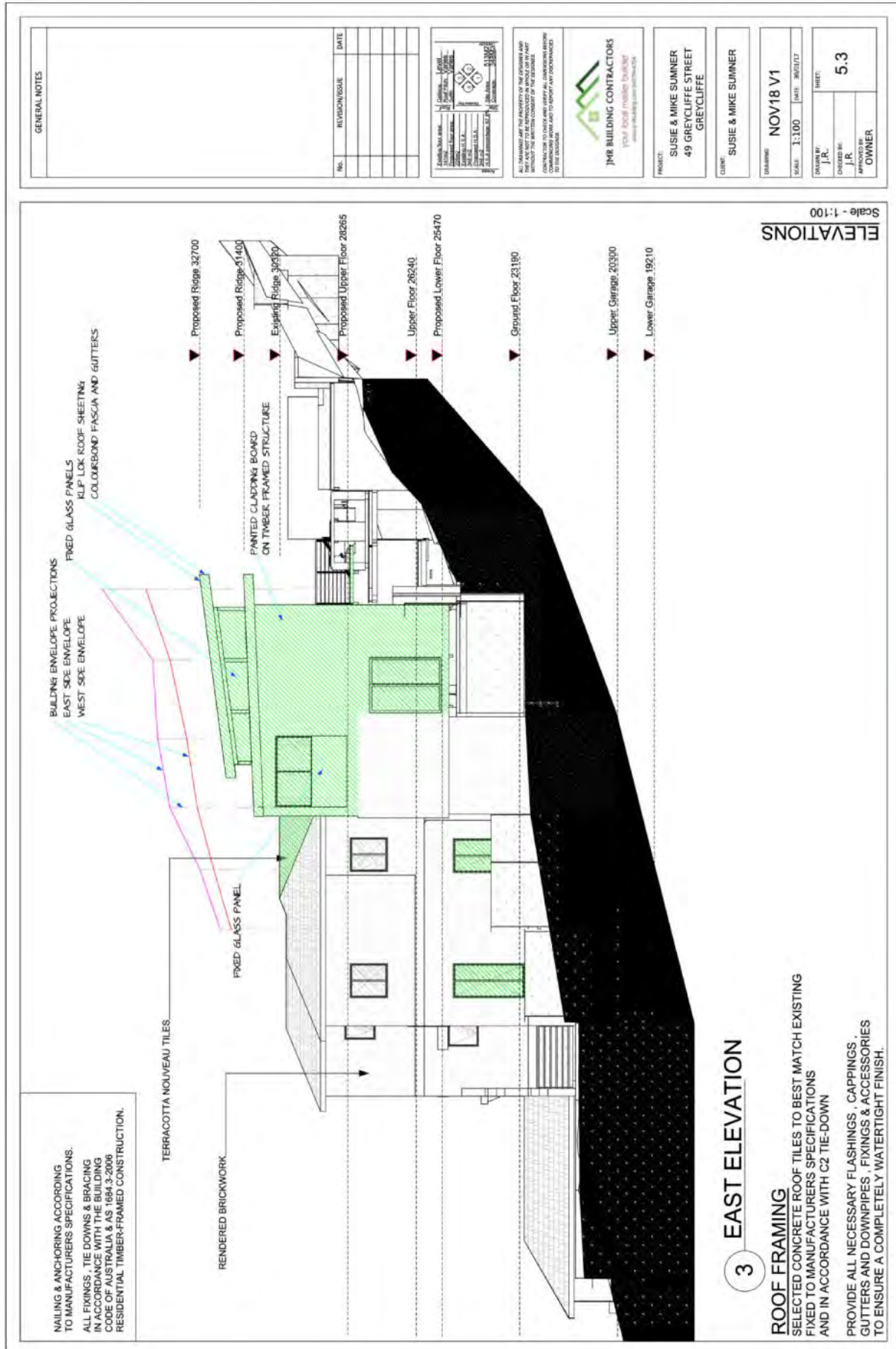
Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

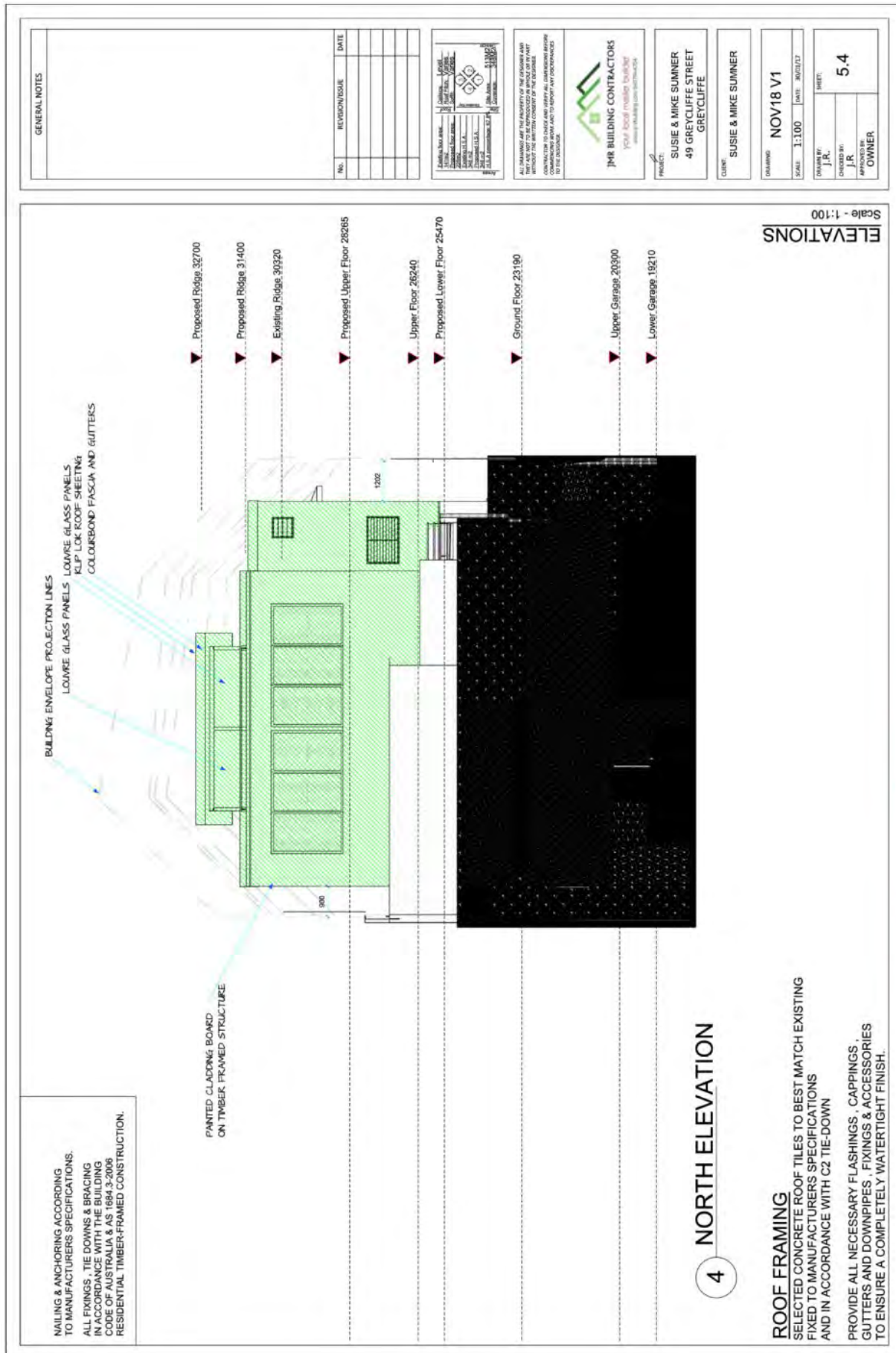
Reason: To ensure bushland management. (DACPLF01)











Vaughan Milligan Development Consulting Pty Ltd

APPENDIX 1

CLAUSE 4.6 – BUILDING HEIGHT

Vaughan Milligan Development Consulting Pty Ltd

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

49 GREYCLIFFE STREET, QUEENSCLIFF

**PROPOSED CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING
INCLUDING A NEW REAR EXTENSION**

**VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM BUILDING HEIGHT
CONTROL AS DETAILED IN CLAUSE 4.3 OF THE WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011**

For: Proposed construction of alterations and additions to an existing dwelling including a new rear extension
At: 49 Greycliffe Street
Owner: Susie and Mike Sumner
Applicant: Susie and Mike Sumner
C/- Vaughan Milligan Development Consulting Pty Ltd

1.0 Introduction

This written request is made pursuant to the provisions of Clause 4.6 of Warringah Local Environmental Plan 2011. In this regard it is requested Council support a variation with respect to compliance with the maximum building height as described in Clause 4.3 of the Warringah Local Environmental Plan 2011 (WLEP 2011).

2.0 Background

Clause 4.3 restricts the height of a building within this area of the Freshwater locality and refers to the building height noted within the "*Height of Buildings Map*."

The relevant building height for this locality is 8.5m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

Due to the siting of the existing development and the sloping topography of the site, the proposed new works will present a height of up to 9.6m above existing ground level, and will therefore present a 12.9% variation to the height control.

The controls of Clause 4.3 are considered to be a development standard as defined in the Environmental Planning and Assessment Act, 1979.

3.0 Purpose of Clause 4.6

The Warringah Local Environmental Plan 2011 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

49 Greycliffe Street, Queenscliff

32

Vaughan Milligan Development Consulting Pty Ltd

There is recent judicial guidance on how variations under Clause 4.6 of the LEP should be assessed. These cases are taken into consideration in this request for variation.

In particular, the principles identified by Preston CJ in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 118* have been considered in this request for a variation to the development standard.

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for alterations and additions to an existing dwelling which is consistent with the stated Objectives of the R2 Low Density Residential Zone, which are noted as:

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

As sought by the zone objectives, the proposal will provide for alterations and additions to an existing dwelling which are sensitive to the location and the topography of the locality.

The proposal includes modulated wall lines and a consistent palette of materials and finishes in order to provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum height control, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood.

5.0 Onus on Applicant

Clause 4.6(3) provides that:

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.*

Vaughan Milligan Development Consulting Pty Ltd

This submission has been prepared to support our contention that the development adequately responds to the provisions of 4.6(3)(a) & (b) above.

6.0 Justification of Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11* & *Samadi v Council of the City of Sydney [2011] NSWLEC 1199*.

Paragraph 27 of the judgement states:

Clause 4.6 of LEP 2012 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).

Precondition 1 - Consistency with zone objectives

The site is located in the R2 Low Density Residential Zone. The objectives of the R2 zone are noted as:

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

Comments

It is considered that the proposed development will be consistent with the desired future character of the surrounding locality for the following reasons:

- The proposal will be consistent with and complement the existing residential development within the locality.
- The proposed development respects the scale and form of other new development in the vicinity and therefore complements the locality.
- The setbacks maintain compatibility with the existing surrounding development.
- The proposal does not have any unreasonable impact on long distance views.

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Accordingly, it is considered that the site may be developed with a variation to the prescribed maximum building height control, whilst maintaining consistency with the zone objectives.

Precondition 2 - Consistency with the objectives of the standard

The objectives of Clause 4.3 are articulated at Clause 4.3(1):

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

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

Comments

Whilst the proposal will present a variation to the building height control as a result of the siting of the existing dwelling and sloping topography, the external form of the new works follows the site's slope, and the proposal is therefore considered to be in keeping with the objectives of Clause 4.3.

The proposed development will not result in any unreasonable impacts on adjoining properties in terms of views, privacy or overshadowing.

The proposed alterations and additions are considered to be suitably set back from the rear and side boundaries. The new works are sited to the rear of the existing dwelling, and will not be prominently viewed from Greycliffe Street. The proposed alterations and additions will not be overbearing when viewed from the street.

Given the proposal will not unreasonably impact on the amenity of neighbouring properties, we are of the view that the proposal is consistent with the objectives of the development standard.

Precondition 3 - To consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for additions and alterations to an existing dwelling, which are constrained by the sloping topography of the site and extent of the existing building.

Council's controls in Clause 4.3 provide a maximum building height of 8.5m.

It is considered that the proposal achieves the Objectives of Clause 4.3 and that the development is justified in this instance for the following reasons:

- The proposed works will maintain consistency with the general bulk and scale of residential development in the area and the character of the locality.

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- The proposal is constrained by the sloping topography of the site and the location of the existing dwelling. The new works are sited to the rear of the existing dwelling, and will therefore not be overbearing when viewed from the street.
- The proposed bulk and the overall scale of the new works will maintain amenity and appropriate solar access for the subject site and neighbouring properties.

In the *Wehbe* judgment (*Wehbe v Pittwater Council* [2007] NSWLEC 827), Preston CJ expressed the view that there are 5 different ways in which a SEPP 1 Objection may be well founded, and that approval of the Objection may be consistent with the aims of the policy. These 5 questions may be usefully applied to the consideration of Clause 4.6 variations: -

1. *the objectives of the standard are achieved notwithstanding non-compliance with the standard;*

Comment: Yes. Refer to comments under 'Justification of Proposed Variation' above which discusses the achievement of the objectives of the standard.

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

Comment: It is considered that the purpose of the standard is relevant, but the purpose is satisfied.

3. *the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

Comment: Compliance does not defeat the underlying object of the standard development; however, compliance would prevent the approval of an otherwise supportable development.

Furthermore, it is noted that development standards are not intended to be applied in an absolute manner; which is evidenced by clause 4.6 (1)(a) and (b).

4. *the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

Comment: Not applicable.

5. *the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Comment: The development standard is applicable to and appropriate to the zone.

For the above reasons it would therefore be unreasonable and unnecessary to cause strict compliance with the standard.

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Precondition 4 - To consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

Council's controls in Clause 4.3 provide a maximum building height of 8.5m for the subject development.

Due to the siting of the existing development, the proposal will provide a building height of 9.6m above existing ground level.

The development is justified in this instance for the following reasons:

- Compliance with the building height control is constrained by the siting of the existing development on the site, together with the sloping topography of the site.
- The development will maintain a compatible scale relationship with existing residential development in the area. By being sited to the rear of the dwelling, the alterations and additions will not be prominently viewed from the public domain. In addition, the proposal will not be overbearing when viewed from neighbouring properties.
- The extent of the proposed new works where they are not compliant with Council's maximum height control do not present any significant impacts in terms of view loss for neighbours, loss of solar access or unreasonable bulk and scale.
- The proposed new work provides for improved amenity to the new additions to the existing dwelling and is considered to promote good sustainable design and enhance the residential amenity of the buildings' occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act which is a suitable environmental planning ground which justifies the flexible application of the development standard.

Having regard to the above, it is considered there are sufficient environmental planning grounds to justify a variation of the development standard for maximum building height.

In the recent 'Four2Five' judgement (*Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*), Pearson C outlined that a Clause 4.6 variation requires identification of grounds that are particular to the circumstances to the proposed development. That is to say that simply meeting the objectives of the development standard is insufficient justification of a Clause 4.6 variation.

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary (subjective) opinion which was a matter for her alone to decide. It does **not** mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are "sufficient environmental planning grounds to justify contravening the development standard", it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

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The recent appeal of *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 is to be considered. In this case the Council appealed against the original decision, raising very technical legal arguments about whether each and every item of clause 4.6 of the LEP had been meticulously considered and complied with (both in terms of the applicant's written document itself, and in the Commissioner's assessment of it). In February of this year the Chief Judge of the Court dismissed the appeal, finding no fault in the Commissioner's approval of the large variations to the height and FSR controls.

While the judgment did not directly overturn the *Four2Five v Ashfield* decision an important issue emerged. The Chief Judge noted that one of the consent authority's obligation is to be satisfied that "the applicant's written request has adequately addressed ...that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case ...and that there are sufficient environmental planning grounds to justify contravening the development standard." He held that this means:

"the Commissioner did not have to be satisfied directly that compliance with each development standard is unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the applicant's written request has adequately addressed the matter in subclause (3)(a) that compliance with each development standard is unreasonable or unnecessary".

Accordingly, when assessed against the relevant Objects of the Environmental Planning & Assessment Act 1979, (NSW) outlined in s1.3, the following environmental planning grounds are considered to be sufficient to allow Council to be satisfied that a variation to the development standard can be supported:

- The proposed additions to the dwelling are stepped to follow the sloping topography of the site and results in a dwelling which is compatible in scale to its surrounding neighbours, which promotes the orderly & economic use of the land.
- Similarly, the proposed additional floor area will provide for an appropriate level of family accommodation and improved amenity within a built form which is compatible with the streetscape of Greycliffe Street, which also promotes the orderly and economic use of the land.
- The proposal is considered to promote good design and amenity to the local built environment as appropriate views, solar access and privacy will be maintained for the neighbouring properties.

The above are the environmental planning grounds which are the circumstance which are particular to the development which merit a variation to the development standard.

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7.0 Conclusion

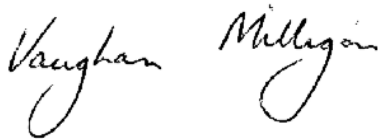
This development proposed a departure from the maximum building height development standard, with the proposed alterations and additions to the existing dwelling to provide a maximum building height of 9.6m.

This variation occurs as a result of the siting of the existing dwelling and sloping topography of the site.

This objection to the maximum building height specified in Clause 4.3 of the Warringah LEP 2011 adequately demonstrates that the objectives of the standard will be met.

The bulk and scale of the proposed development is appropriate for the site and locality.

Strict compliance with the maximum building height control would be unreasonable and unnecessary in the circumstances of this case.



VAUGHAN MILLIGAN

Town Planner

Grad. Dip. Urban and Regional Planning (UNE)

ITEM 3.2**DA2019/0483 - 4 ABERNETHY STREET, SEAFORTH -
DEMOLITION WORKS AND CONSTRUCTION OF A NEW
DWELLING HOUSE****REPORTING MANAGER****Steve Findlay****TRIM FILE REF****2019/498198****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 **approve** Development Consent to DA2019/0483 for demolition works and construction of a new dwelling house on land at Lot 1 DP 1227525, 4 Abernethy Street, Seaforth, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0483
Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot 1 DP 1227525, 4 Abernethy Street SEAFORTH NSW 2092
Proposed Development:	Demolition works and construction of a new dwelling house
Zoning:	Manly LEP2013 - Land zoned E3 Environmental Management
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Mark Boyce McLeay Alice Mary Deboos
Applicant:	Mark Boyce McLeay Alice Mary Deboos
Application lodged:	15/05/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	27/05/2019 to 10/06/2019
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 12.9%
Recommendation:	Approval
Estimated Cost of Works:	\$ 968,000.00

EXECUTIVE SUMMARY

This report involves consideration of a proposal for demolition works and the construction of a dwelling house on the subject site.

The new 3 storey dwelling-house comprises four bedrooms, an internal lift, garage and hardstand car-parking space.

The site is a large (1695m²) waterfront parcel of land, which is densely vegetated for the majority of the site and steeply sloping, having a fall of 21m from the top to bottom, where the site is bordered by

Powder Hulk Bay in Middle Harbour.

The proposal is permissible with consent in the E3 Environmental Management zone under Manly Local Environmental Plan 2013. The proposal does not comply with the building height development standard of 8.5m under the LEP. Therefore, the applicant has lodged a request under Clause 4.6 to vary the standard.

Having regard to the steepness of the site, the non-compliance is largely unavoidable and the design response displays a minimisation of impact of natural features of the site and there are no unreasonable impacts on adjoining or nearby properties. The application has demonstrated that compliance with the height standard is unreasonable, for the reasons detailed in this report, therefore, the Clause 4.6 variation is supported.

The proposal involves minor variations to the built form controls under the Manly Development Control Plan 2013 in relation to wall height, number of storeys, front setbacks and side setbacks. The variations were found to be generally consistent with the relevant objectives and requirements. In this regard, the proposal will not detrimentally impact on the amenity of neighbouring properties, the streetscape or the character of the foreshore.

The proposed development was notified and no submissions were received.

The proposed redevelopment represents a modernised and improved built form on the site and is compatible and consistent with surrounding residential developments.

The application is recommended for approval subject to conditions.

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 - Zone E3 Environmental Management

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Local Environmental Plan 2013 - 5.7 Development below mean high water mark
 Manly Local Environmental Plan 2013 - 6.2 Earthworks
 Manly Local Environmental Plan 2013 - 6.4 Stormwater management
 Manly Local Environmental Plan 2013 - 6.5 Terrestrial biodiversity
 Manly Local Environmental Plan 2013 - 6.8 Landslide risk
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area
 Manly Development Control Plan - 3.1.1 Streetscape (Residential areas)
 Manly Development Control Plan - 3.3.1 Landscaping Design
 Manly Development Control Plan - 3.3.2 Preservation of Trees or Bushland Vegetation
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 3.4.3 Maintenance of Views
 Manly Development Control Plan - 3.9 Mechanical Plant Equipment
 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 - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)
 Manly Development Control Plan - 4.1.8 Development on Sloping Sites

SITE DESCRIPTION

Property Description:	Lot 1 DP 1227525 , 4 Abernethy Street SEAFORTH NSW 2092
Detailed Site Description:	<p>The site is legally identified as Lot A in Deposited Plan 394478, known as No. 4 Abernethy Street, Seaforth. The site is located within the E3 Environmental Management zone and accommodates a three-storey detached dwelling house.</p> <p>The site is irregular in shape and has a site area of 1,695m². The eastern boundary measures 21.08m, the northern boundary measures 120.09m, and the southern side boundary measures 92.35m, The rear western boundary measuring approximately 42.5m adjoins Powder Hulk Bay in Middle Harbour.</p> <p>The front eastern site area is a public footpath that connects the driveway to Abernethy Street. To the north is No.6 Abernethy Street, and to the south is No.2 Abernethy Street.</p> <p>The existing dwelling is located on a near level platform at RL 22.5 metres, then the site has a steep fall of approximately 21 metres to Powder Hulk Bay to the west.</p> <p>The property currently contains a three-storey detached dwelling towards the front section of the site, with parking in the detached carport and designated hardstand area. The middle and rear of the property contains very dense vegetation and rock outcrops. An inclinator from the existing driveway area leads from the dwelling house to the waters edge of Powder Hulk Bay at the rear of the site. A detached</p>

metal shed is located at the rear of the site along the southern boundary with a boat shed in the south-western corner of the property.

Surrounding properties consists of multi-level dwellings on steep topography, within densely landscaped settings.

Map:



SITE HISTORY

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

- Development Application (**DA1999/0343**) for an inclinor was approved on the 26/07/1999
- Development Application (**DA2016/179.1**) for a boundary realignment between Number 2 and Number 4 Abernethy Street, Seaforth was approved on 22/07/2016

PROPOSED DEVELOPMENT IN DETAIL

The application seeks approval to demolish the existing three-storey dwelling and carport on the site and construct a new three-storey dwelling, detached garage and car-parking hardstand.

The proposed dwelling will comprise of the following:

Ground Floor:

- Detached single garage
- Hardstand parking area
- Entry along the south-western façade of the dwelling
- Bedroom No. 4
- Bathroom

- Laundry
- Store room
- Indoor garden
- Lift and stairs leading to the upper levels

First Floor:

- Bedroom No. 1 with ensuite and walk-in-robe
- Bedroom No. 2
- Bedroom No. 3
- Bathroom
- Study
- Lift and stairs leading to the upper and lower levels

Second Floor:

- Front terrace
- Main entry to the dwelling along the north-western façade of the dwelling
- Family room
- Open plan living, dining and kitchen area
- Toilet
- Rear terrace

External Finishes:

- Sandstone cladding
- Concrete walls
- Painted timber fascia
- Timber framed windows
- Timber framed awning
- Timber framed parapet wall
- Timber cladding
- Timber entry door
- Glass balustrade
- Aluminium framed window
- Aluminium framed sliding doors
- Skylights

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 Matters for Consideration	Comments
Section 4.15 (1) (a)(iii) – 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>Division 8A 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>Clauses 54 and 109 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>Clause 92 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>Clauses 93 and/or 94 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>Clause 98 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>Clause 98 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 (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 Matters for Consideration	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is 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 R Coffey, dated 21/03/2019). The report stated that the bushfire attack level of the site is "BAL 12.5". The Bush Fire Report recommendations ensure the development is to be constructed to the minimum standards required in accordance with the guidelines of *Planning for Bushfire Protection 2006*.

The recommendations of the Bush Fire Report have been included as part of the recommended conditions of consent.

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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The Arborist's Report submitted with the application is noted.</p> <p>The plans indicate removal of one tree (Tree 4), which is a dead tree. All other trees are proposed for retention.</p> <p>The proposed works affect previously disturbed land and retain existing natural landscape and rock features.</p> <p>No objections are raised subject to conditions as recommended.</p>
NECC (Bushland and Biodiversity)	The proposal has been assessed against Clause 6.5 (Terrestrial Biodiversity) of Manly LEP 2013. The new dwelling and associated structures are proposed to be located within the existing development

Internal Referral Body	Comments
	footprint. One protected tree is proposed to be removed. The property is currently well vegetated, with viable on-site canopy to be retained.
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018, Sydney Harbour Catchment Regional Environment Plan, 2005 and Sydney Harbour Foreshores and Waterways Area Development Control Plan, 2005. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>12 Development on land within the coastal vulnerability area</p> <p><i>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:</i></p> <ul style="list-style-type: none"> (a) <i>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</i> (b) <i>the proposed development:</i> <ul style="list-style-type: none"> (i) <i>is not likely to alter coastal processes to the detriment of the natural environment or other land, and</i> (ii) <i>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</i> (iii) <i>incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and</i> (c) <i>measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.</i> <p><u>Comment:</u></p> <p>The proposed development meets Clauses 12 and 15 of the Coastal Management SEPP (Clauses 13 and 14 do not apply). As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>The proposed development also meets the requirements of the Sydney Harbour REP and DCP, and relevant clauses of the Manly LEP and DCP. The impacts on the coastal and riparian environment have been assessed as acceptable subject to conditions.</p>

Internal Referral Body	Comments
NECC (Development Engineering)	Development Engineering has no objection to the proposed development subject to the following recommended conditions of consent.
NECC (Riparian Lands and Creeks)	The riparian concerns have been addressed under the Coast and Catchments referral.

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	A referral response was received from the Aboriginal Heritage Office on the 2 July, 2019. The referral response stated there is no Aboriginal heritage concerns for the site and has recommended a standard condition be included within the consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1007185S and 6 May 2019). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 1007185S and 6 May 2019).

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

Commitment	Required Target	Proposed

Water	40	Pass
Thermal Comfort	Pass	Pass
Energy	50	Pass

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 subject site is identified as being located within the Coastal Use Area under the provisions of SEPP (Coastal Management) 2018. Upon review of the application, Council can be satisfied of the matters prescribed by clauses 12 and 15 of this policy.

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	9.6m (RL31.98)	12.9%	No
Floor Space Ratio	FSR: 0.4:1	FSR: 0.14:1	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.7 Development below mean high water mark	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes

Detailed Assessment

Zone E3 Environmental Management

The development proposed is found to be consistent with the following outcomes of the E3 Environmental Management zone:

- To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.
- To provide for a limited range of development that does not have an adverse effect on those values.
- To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.
- To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.
- To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.
- To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.

The proposed development is found to have an acceptable impact on significant vegetation on the site, as assessed by Council's Landscape Officer and Biodiversity in the comments elsewhere in this report. The documentation accompanying the application contains sufficient information for Council to be satisfied that the development will protect and manage canopy trees and significant environmental features on the site and will be consistent with surrounding developments.

4.6 Exceptions to development standards

Description of Non-compliance:

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Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.6m
Percentage variation to requirement:	12% (1.1m)

Assessment of Request to vary a Development Standard:

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

Clause 4.6 Exceptions to Development Standards

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

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

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

Comment:

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

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

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

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

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

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

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

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

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

Comment:

The Applicant's written request (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 states:

- *"Compliance with the development standards is unreasonable and unnecessary as the proposal will have limited impact on the streetscape presentation.*
- *The proposed new dwelling is of a similar bulk and scale as the existing dwelling on the site and within a similar location • The proposed new dwelling will be screened by the dense vegetation on the site.*
- *The proposal will therefore not be visible from the foreshore of Powder Hulk Bay in Middle Harbour.*
- *Exceedance of the height control will not create additional building bulk that results in unreasonable environmental amenity impacts in terms of*
- *overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in this bulk would not create additional benefit for adjoining properties or the locality".*

Therefore the applicants written request argues, in part:

- The proposed breach relates to the steep topography of the site;
- The proposed breach does not result in any unreasonable overshadowing of adjoining properties;
- The proposed breach does not result in any view loss impacts from the public domain;
- The proposed breach does not result in any loss of privacy for neighbouring properties;
- The proposed breach does not result in any adverse visual impact given the overall improved articulated nature of the dwelling, and due to the dense vegetation surrounding the site;
- The proposed breach does not detract from compliance with the E3 Management Zone objectives.

In the circumstances of the steep site conditions and the existence of important environmental features, variation of the development standard of 8.5m, while continuing to allow for a dwelling house that limits the excavation of the site to protect significant environmental rock outcrops, is not considered unreasonable. The overall height of the development on the site is to be reduced as part of the development from RL32.180 to RL31.980 (reduction of 0.2m), compared to the existing dwelling, thereby minimising the overall building height impact.

It is agreed that the breach is largely unavoidable due to the considerable slope of the land and that the non-compliance will not result in any unreasonable impacts to any surrounding properties.

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

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 E3 Management 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 development is for the construction of a new three (3) level dwelling house with a flat style roof. Whilst there is an increase in the building height of the proposed dwelling house from 8.8m to 9.6m, the proposed overall height of the development has been reduced from RL32.180 to RL31.980 (reduction of 0.2m) due to the flat style roof form. This flat style roof design assists to minimise the overall height of the development. See Figure 1 below.

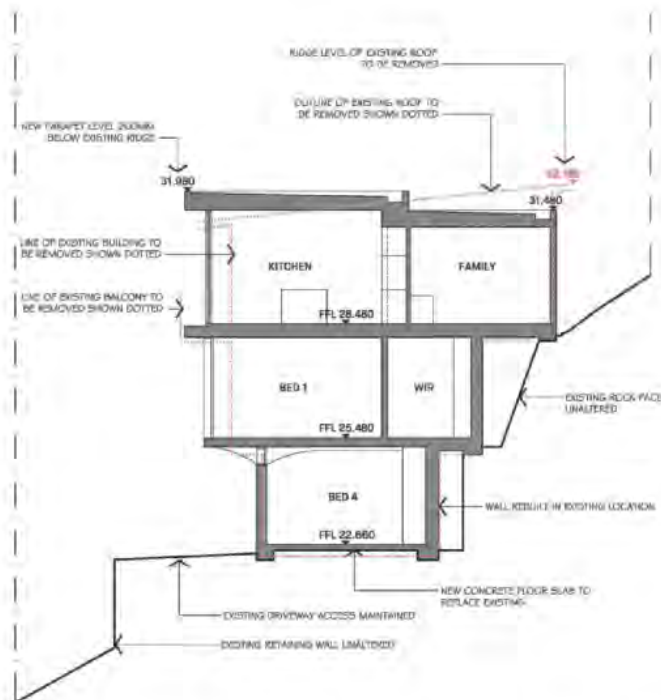


Figure 1. Shows the minimal change to the building height and bulk and scale of the proposed development (in black outline), when compared to the existing dwelling house (in red outline).

The proposals building height and flat roof design reflects the established built form character of the immediate Abernethy Street area where multi-level, and non-complying building heights are prevalent due to the steep topography of the land and difficulty with pedestrian and vehicular access.

As such, despite the non-compliance with the height of building development standard, the proposed development is consistent with, and complementary to existing development in the locality, particularly in relation to height, roof form and character.

The development satisfies this objective.

b) to control the bulk and scale of buildings,

Comment:

The proposed development breaches the maximum roof height control with the MDCP 2013. However, the proposed development is compliant with the floor space ratio set by the MLEP 2013, which controls bulk and scale.

The building height non-compliance is located at the south-western edge of the roofline and wall plane of the second floor and is relatively minor in size.

The bulk and scale proposed development will continue to be a similar representation of the existing three (3) storey development when viewed from properties to the north-west and south-east, as demonstrated in Figure 2 and 3 below.

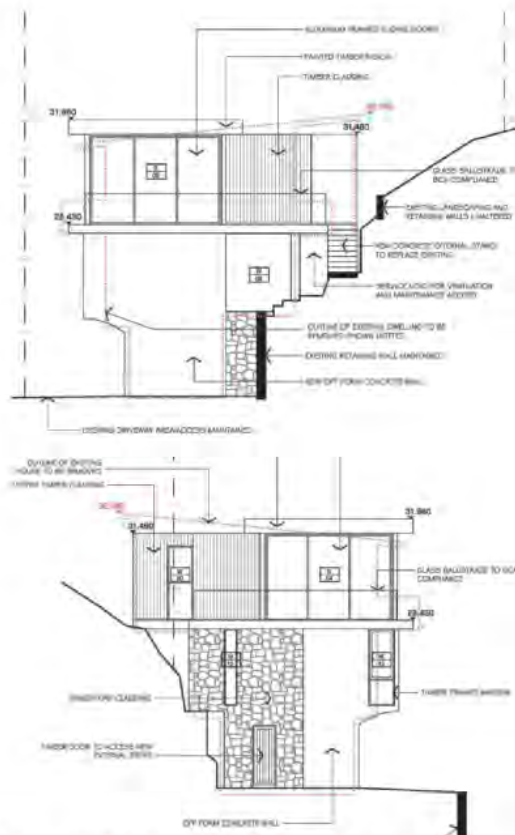


Figure 2. Shows the similar building bulk when viewed from the south-east.
north-west.



Figure 3. Shows the similar building bulk when viewed from the north-west.

Therefore, due to the topography of the site, the variety of built forms along Abernethy Street, and the similarity of the bulk and scale to the existing dwelling house, the non-compliance is considered to be relatively minor and does not unreasonably conflict with the height and scale of surrounding and nearby development. In this context, the proposed height is considered to be compatible.

The development satisfies this objective.

c) to minimise disruption to the following:

- (i) views to nearby residential development from public spaces (including the harbour and foreshores),
- (ii) views from nearby residential development to public spaces (including the harbour and foreshores),
- (iii) views between public spaces (including the harbour and foreshores),

Comment:

It is acknowledged that the non-compliance along the south-western edge of the proposed roof, and the second floor wall plane, do not impact the viewing angle from the properties to the north,

No.6 Abernethy Street, or south, No.2 Abernethy Street. The sweeping range of views available from the internal areas and terraces of both properties which remain intact.

The height non-compliance does not have an unreasonable impact upon the existing views from the opposite side of Abernethy Street due to the higher placement/vantage point of these properties.

Therefore, the height non-compliance does not result in any loss of views to, from, or between public or private spaces.

The development satisfies this objective.

d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,

Comment:

The application includes shadow diagrams which are certified by the architect (see Plan No. ABER-DA-900 dated 1 May 2019 as prepared by Nick Bell Architects). The diagrams indicate that the development will not cast any additional shadow over the neighbouring property to the south (No.2 Abernethy Street) between 9.00am and 12.30pm on 21 June.

Given the finding in this clause, the development satisfies this objective.

e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.

Comment:

The proposal is designed to maintain the topographical features of the site by not excavating into the significant rock outcrops that exist on the site. The proposals design with high quality external finishes and open style balcony areas, provides a more "stepped" look when viewed from neighbouring properties. The proposal reflects the established built form character of the immediate Abernethy area where multi-level, variable stepped houses are prevalent, due to the steep topography of the land and difficulty with pedestrian and vehicular access.

The extensive existing landscaping has been retained and will soften and filter the built form. Therefore, the proposal will be sufficiently softened by the existing landscaped setting.

The development satisfies this objective.

Zone objectives

The underlying objectives of the E3 Management Zone zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*

Comment:

The proposal seeks to construct the new dwelling house on a similar footprint to the existing dwelling-house, to minimise the impact on the significant vegetation or environmental features of

the site. The proposal has reasonable measures to ensure ecological, scientific, cultural and aesthetic protection, subject to conditions.

As such, the development is consistent with this stated objective.

- *To provide for a limited range of development that does not have an adverse effect on those values.*

Comment:

The proposal for a new dwelling house is compliant with the numerical requirement for Floor Space Ratio under the Manly LEP 2013. The landscaping design will preserve the existing trees on the site. The landscaping softens and screens the built form when viewed from the neighbouring sites and the Powder Hulk Bay water foreshore.

The natural bushland to be retained will ensure that the proposed dwelling house sits within a natural setting and below the existing tree canopy.

As such, the development is consistent with this stated objective.

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*

Comment:

The proposed dwelling has no unreasonable impact on existing tree canopies. The Arboricultural Impact Assessment prepared by Margot Blues Consulting Arborist and submitted with this application identifies that a tree (T4) is to be removed due to the tree being assessed as "dead". All other existing trees and native bushland on the site will be retained.

Therefore, the size and scale of the proposal and retention of significant trees and vegetation will ensure the proposal will not not dominate scenic qualities of the foreshore.

As such, the development is consistent with this stated objective.

- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*

Comment:

The proposal will be a low-impact development and has been designed to respond sensitively to the steep topography. The dwelling house will provide the occupants an increased level of amenity without causing unreasonable impacts to adjoining neighbours or to the site itself. The development does not result in any adverse impact on native trees, in addition to the proposal requiring minimal excavation for the supporting posts and foundations.

The Arboricultural Impact Assessment prepared by Margot Blues Consulting Arborist identifies that there is only tree (T4) to be removed due to the tree being assessed as "dead". All other existing trees and native bushland on the site will be retained.

There is no works proposed in the foreshore area, or below the high water mark of Powder Hulk Bay, therefore there is no negative impact as a result of the proposal.

As such, the development is consistent with this stated objective.

- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*

Comment:

The proposal involves appropriate landscaping and is compliant with the landscaped open space control required by the Many DCP 2013. Subject to conditions, the proposal will be consistent with this objective.

As such, the development is consistent with this stated objective.

- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Comment:

The development will be of a similar bulk and scale to the existing dwelling house and surrounding dwellings.

Landscaping is to be retained and will screen and soften the proposed built form. The design has a more open feel with high quality natural finishes responding to the natural natural vegetated context in which the site is located. The development will retain the existing foreshore vegetation and continue to maintain the existing trees for the wildlife corridors. Significant rock outcrops on the site are to be retained as part of this proposal.

The bulk and scale is consistent with the surrounding area and the existing landscaping has been retained, meaning the development will not dominate the existing bushland environment.

Privacy, amenity and solar access are provided for within the proposed development. Therefore, the proposed development will have a negligible impact on surrounding residences.

As such, the development is consistent with this stated objective.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E3 Management zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) Assessment

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

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 Local Planning Panel, for which Council has an exemption for dwelling houses that can be determined by the Development Determination Panel.

5.7 Development below mean high water mark

The application does not involve any works below mean high water mark.

6.2 Earthworks

A Geotechnical Assessment, prepared by GeoEnvironmental Pty Ltd, Report Number 19/0893, dated May 2019 was submitted with the application. This report and its recommendations are included within the draft conditions to ensure there are no adverse impacts to surrounding properties resulting from the proposed excavation.

Accordingly, Councils Landscape and Biodiversity officers have concluded that the impact of the earthworks will not unreasonably impact or disrupt vegetation on the property.

6.4 Stormwater management

Subject to conditions recommended by Council's Development Engineers, stormwater will be appropriately managed on the site.

6.5 Terrestrial biodiversity

An Arboricultural Impact Assessment Report (Margot Blues Consulting Arborist dated 6 May 2019) was submitted with the application. Councils Landscaping and Biodiversity officers have assessed the proposal and consider the impact of the development on the existing biodiversity to be reasonable, subject to the imposed conditions.

6.8 Landslide risk

A Geotechnical Assessment, prepared by STS GeoEnvironmental, Report No. 19/0893, dated May 2019 was submitted with the application. This report and its recommendations are included within the draft conditions to ensure there is no adverse impacts to the surrounding properties resulting from the proposal on sloping land.

6.9 Foreshore scenic protection area

The proposed new dwelling house and garage is supported as the footprint of the development is consistent with the footprint (area of disturbance) associated with the existing dwelling, the proposed works are not visually dominant, and are consistent with the design criteria of the control.

Overall, the proposed development will achieve consistency with the provisions of this control.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1659sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwellings per 1150sqm	1 dwelling on 1695sqm	-	Yes
4.1.2.1 Wall Height	NW: 8m (based on gradient 1:4)	9.13m	14%	No
	SE: 8m (based on gradient 1:4)	8.87m	11%	No

4.1.2.2 Number of Storeys	2	3	-	No
4.1.2.3 Roof Height	Parapet Height: 0.6m	0.5m	-	Yes
	Pitch: maximum 35 degrees	Flat Roof	-	Yes
4.1.4.1 Street Front Setbacks	6m	4.8m	20%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	North 1.1m (Family Room) (Based on wall height 3.3m)	1.693m (Family)	-	Yes
	North 2.06m (Pantry) (Based on wall height of 6.2)	2.458m (Pantry)	-	Yes
	North 1.06m (Terrace) (Based on wall height 3.2m)	0.947 (Terrace)	10.6%	No
	South 2.96m (Living) (based on wall height of 8.9m)	3.736m (Living)	-	Yes
	Windows: 3m	2.304m (South west)	23.2%	No
4.1.4.4 Rear Setbacks	8m	77.6m	-	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space 60% of site area 995.4sqm	85.4% (1448.4sqm)	-	Yes
	Open space above ground 25% of total open space 362.1sqm	13% (47.5sqm)	-	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% of open space 579.36sqm	94% (1361.5sqm)	-	Yes
	4 native trees	>4 trees	-	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	39.9sqm	-	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	-	-	N/A
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
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
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
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
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.1.1 Streetscape (Residential areas)

The proposed dwelling house will be located well below the street level and is not readily visible from the public domain due to the steep rock embankment and existing vegetation. Any impact in terms of streetscape will be to the users of the properties that access the shared driveway No. 2 Abernethy Street and No. 4 Abernethy Street.

The proposed new dwelling is of a similar bulk and scale as the existing dwelling on the site, with a modernised and updated appearance which will improve the visual amenity for the surrounding properties utilising the shared driveway.

Therefore, the proposed works demonstrate compliance with the objectives of the streetscape control.

3.3.1 Landscaping Design

The proposal does not include the removal of any significant landscape features. The current native vegetation at the front and rear of the site remains unchanged.

3.3.2 Preservation of Trees or Bushland Vegetation

The submitted Landscape Plan (Landscape Plan ABER-DA-940 dated 01/05/2019) shows one tree (T4) is to be removed as part of the proposed development. The Arboricultural Impact Assessment prepared by Margot Blues Consulting Arborist and submitted with this application, identifies that tree (T4) is to be removed due to the tree being assessed as being "dead". All other existing trees and native bushland on the site will be retained.

Therefore, the proposal is not to the detriment of any existing flora and fauna in the local area and is consistent with the objectives of the control.

3.4.1 Sunlight Access and Overshadowing

The proposal will result in no additional overshadowing impacts to the adjoining properties of No. 2 and No. 6 Abernethy Street.

3.4.2 Privacy and Security

Whilst the proposal complies with the requirements of the Privacy and Security control, an assessment of the proposed development is considered against the underlying Objectives of the Control as follows:

- ***To minimise loss of privacy to adjacent and nearby development by:***
 - ***appropriate design for privacy (both acoustical and visual) including screening betw***
 - ***mitigating direct viewing between windows and/or outdoor living areas of adjacent b***

Comments:

The proposal is appropriately designed to maintain the privacy of the subject site and adjoining properties.

Whilst the subject site is located 1.639m from the northern boundary (adjoining No.6 Abernethy Street), the proposed dwelling is to be constructed at a much lower level in the topography, with the existing windows of No. 6 Abernethy street being elevated and orientated over the proposed dwelling. The windows of the new dwelling house have been positioned and designed to not directly overlook adjoining properties, rather, the orientated is to the west towards Powder Hulk Bay.

The second floor north-eastern terrace will not create any unreasonable privacy impacts to No. 6 Abernethy Street due to the lower topography of the subject site, combined with natural screening from the existing rock face and dense vegetation on the side boundary.

There is no additional impact to No.2 Abernethy Street due to the lower siting of No.2 Abernethy Street on the escarpment.

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

Comments:

The proposal will allow sufficient privacy and sunlight access to the subject site and adjoining properties.

- ***To encourage awareness of neighbourhood security.***

Comments:

Existing opportunities for passive surveillance are retained.

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.

3.4.3 Maintenance of Views

The proposed new dwelling house will be located on a similar footprint and demonstrating a similar building envelope to the existing dwelling house on the site. Therefore, the proposed new dwelling house will not result in the loss of views to Powder Hulk Bay from the surrounding properties, or from the public domain.

3.9 Mechanical Plant Equipment

The placement of the proposed lift within the existing dwelling house footprint will ensure there is no adverse amenity impacts to the surrounding sites.

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

Description of non-compliance

The site has a gradient steeper than 1:4, therefore the DCP requires a wall height of 8.0m. The proposal includes a wall height of 8.87m at the rear of the site and 9.13m to the front of the site.

The proposed new dwelling is three (3) storeys in height, where the requirement is a maximum of two (2) storeys.

The proposal has a flat roof design which complies with the requirements of the roof height control.

Therefore, a merit assessment for the variation in the storeys and the southern wall height has been undertaken.

Merit consideration:

With regard to the consideration for a variation, the development is considered against the Objectives of Clause 4.3 Height of Buildings of the MLEP 2013 as follows:

- ***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 development provides a detached dwelling house with a flat roof form. This flat roof form, with minor wall height variations due to the topography of the property, are the breaching elements of the proposed development.

Many of the properties along the Abernethy escarpment and within the immediate vicinity

include similar roof forms and building heights variations, including the adjacent property at No 6 Abernethy Street, which reaches a higher reduced level.

As such, despite the non-compliance with the height of building development standard, the proposed development is consistent with existing development in the locality, particularly in relation to height, roof form and character.

- ***To control the bulk and scale of buildings.***

Comment:

The proposed development involves a non-compliance with the maximum wall height for the north-eastern and south-western elevation. However, this variation is heavily influenced by the steeply sloping topography of the site, and the need to not adversely impact, excavate or remove the existing natural features on the site such as the rock faces, rock outcrops and canopy trees. It is also important to note that the proposed development is compliant with the floor space ratio set by the MLEP 2013, which controls bulk and scale.

The dwelling is sufficiently set back from all boundaries and the wall height breach is not unreasonable. The proposal retains extensive landscaped areas and canopy trees. The non-compliance with the wall height will have a negligible impact on view sharing from nearby public land or surrounding private property, and will not result in any unreasonable amenity impacts on the subject site or adjacent sites.

The proposal is compliant with the floor space ratio standard which controls bulk and scale and does not impact upon the building footprint or landscaped open space. As such, the bulk and scale of the development is satisfactory.

- ***To minimise disruption to the following:***

- ***views to nearby residential development from public spaces (including the harbour and foreshores)***
- ***views from nearby residential development to public spaces (including the harbour and foreshores)***
- ***views between public spaces (including the harbour and foreshores).***

Comment:

Due to the topography of the area and the siting of the proposed works, it is not anticipated that the proposal will give rise to any unreasonable or detrimental view loss from surrounding properties. Therefore, the proposed development is adequately designed and sited so as not to result in unreasonable impacts upon views to, from, or between public or private spaces.

- ***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 dwelling.***

Comment:

The proposal has been designed in a manner that does not unreasonably nor detrimentally create additional overshadowing to adjoining and nearby properties. The design of the dwelling house is such that it does not impact on sunlight to neighbouring properties.

The shadow diagrams that accompany the application demonstrate consistency with Clause 3.4.1 Sunlight Access and Overshadowing of the MDCP 2013.

- ***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 new dwelling house continues to be nestled under the existing canopy trees on the site. The submitted Landscape Plan (Landscape Plan ABER-DA-940 dated 01/05/2019) shows that one tree (T4) is to be removed as part of the application. However, the Arboricultural Impact Assessment prepared by Margot Blues Consulting Arborist and submitted with this application identifies that a tree (T4) is to be removed due to the tree being assessed as "dead". All other existing trees and native bushland on the site will be retained and will continue to soften and screen the proposed dwelling house.

Therefore, the proposal will not be detrimental to existing flora and fauna on the site and is consistent with the objectives of the control.

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

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

Clause 4.1.4.1 of the Manly DCP requires the dwelling to be setback at least 6.0m from the front boundary or be consistent with the prevailing building line in the street.

Clause 4.1.4.2 requires development to be setback at least one third of the adjoining wall height.

Clause 4.1.4.2 of the Manly requires windows to be setback at least 3.0m from side boundaries.

The development proposed the following:

- Front setback - 4.8m, 20% variation with the numeric control.
- Northern windows - 2.304m, 23.2% variation to the numeric control.
- Northern Side setback (dwelling house)- 1.85m (ground floor) 0.947m (First Floor) and 0.5m (Second Floor terrace does not comply), up to 47% to the numeric control.
- Northern Side setback (garage)- 0.3m (garage) complies with the numeric control.
- Southern Side Setback (dwelling House) - 3.667m - 4.821m, complies with 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:

- ***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.***

Comments:

The proposal's presentation to the street is obscured by the siting of the dwelling house on the downward slope of Abernethy Street escarpment and the existing dense vegetation and canopy trees. Whilst the proposed development involves a variation to the front setback control, it

cannot be seen from the Abernethy street level. However, the external appearance of the proposed development will improve the visual amenity of the subject site as viewed from the shared driveway.

The proposal reflects the established built form character of Abernethy Street, where multi-level, variably stepped houses are prevalent, due to the steep topography of the land and the difficulty with pedestrian and vehicular access.

- ***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.***

Comments:

The footprint of the proposed development is constrained by the topography and natural features of the site. Amenity considerations to No. 2 and No. 6 Abernethy Street, including privacy, solar access and maintenance of views are all maintained as part of this proposed development.

The garage is to be constructed over the footprint of the existing carport. The garage location is also constrained by the topography of the site and the significant rock face on the northern boundary. This rock face screens and shields the garage from the adjoining property.

The existing large existing parking roof structures will be removed, and an open hardstand space will be created as part of the proposal providing a more open feel.

The second floor terrace is sited well below the neighbouring property, being obscured by dense boundary vegetation and boundary fencing.

The new dwelling house does not orientate any habitable room windows directly to the north facing side boundary. The subject site displays an irregular shaped block with windows within 3 metres of the kinked section of the south-western side boundary. However, these windows do not directly face a neighbouring dwelling house, rather they are orientated to the view lines of Powder Hulk Bay.

- ***To promote flexibility in the siting of buildings.***

Comments:

The new dwelling house is significantly constrained by the steep topography and significant natural features such as rock faces, rock outcrops and canopy trees. The design and location of the dwellings footprint responds to the environmental constraints of the site and has considered the differing topography levels and potential amenity impacts on neighbouring properties, see Photos 1 and 2 below.



Photo 1. Higher topography of No. 6 Abernethy Street when viewed from subject site existing carport structure.

Photo 2. Lower topography of No. 2

when viewed from the subject site

- **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.

Comments:

The proposed development is consistent with the numerical control for landscaped open space. The development maintains a substantial portion of the site as natural landscaped areas. Significant trees, rock outcrops and vegetation are to be maintained in the front and rear setback areas. These existing trees to be retained provide a mature tree canopy that screen and soften the built form.

- **To assist in appropriate bush fire asset protection zones.**

Comments:

The site is identified as being Bush Fire Prone Land. A Bush Fire Risk Assessment Report prepared by Bushfire Planning and Design was submitted with this application. The Bush Fire Risk Assessment Report concludes that:

"that the development satisfies the Objectives and Performance requirements of the Building Code of Australia, Planning for Bushfire Protection 2006 and Australian Standard AS3959, 2009."

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

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

Vehicular access is provided via the shared driveway at the end of Sangrado Street, which leads to the current car parking area.

The proposed development includes a new detached garage in place of the existing carport and a hardstand parking area to the north-western side of the dwelling house. The car parking arrangement allows vehicles to enter and leave the site in a forward direction.

The parking areas is located against the existing rock face adjacent the north-western boundary area, and is not able to be seen from the street. The parking structures are minimal in size and scale, therefore reducing the visual impact on neighbouring properties to the north and south.

4.1.8 Development on Sloping Sites

The subject site is highly irregular in shape and has a fall of over approximately 21.0m from the front of the subject site to Powder Hulk Bay at the rear. However, the development is to be constructed on the near level platform towards upper part of the site. The design of the dwelling house minimises site disturbance and hugs the existing rock face to ensure there is minimal loss of significant natural features (rock outcrops) and natural vegetation. The new dwelling house is sufficiently articulated with a variety of high quality materials and open terrace areas minimising the visual bulk and scale of the dwelling.

The application is also supported by a Geotechnical Assessment prepared by GeoEnvironmental Pty Ltd, Report Number 19/0893, dated May 2019. This report and its recommendations are included within the draft conditions to ensure there is no adverse impacts to the surrounding properties resulting from the proposed excavation.

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 \$9,680 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$968,000.

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

This report provides a detailed assessment of the Development Application for a new dwelling house at 4 Abernethy Street, Seaforth.

Public Exhibition

The public exhibition of the application resulted in no submissions.

Referrals

The application was referred to seven (7) internal departments and external authorities and there were no objections raised subject to conditions.

Assessment of the Proposal

The assessment of the proposed development against the provisions of MLEP 2013 found that the proposal does not comply with the 'Height of Buildings' Development Standard under the MLEP 2013 which permits a maximum building height of 8.5m within the E3 Environmental Management zone.

In this case, the non-compliance is located at the south-western edge of the roofline and wall plane of the second floor level. Whilst the building height variation is significant, the overall height of the development is below the existing RL32.180 at RL31.980 (reduced by 0.2m). The non-compliance is largely unavoidable due to the steep slope of the site and the need to avoid impacts on the natural

features of the site such as rock outcrops and canopy trees.

The applicant has provided sufficient justification for the departure from the development standard in that compliance with the standard is unreasonable in the circumstances of this highly constrained site and the encroachment does not result in any unreasonable impacts to surrounding residential properties and .

In addition, the assessment of the proposed development against the provisions of the Manly DCP 2013 has found that the proposal does not comply with a number of controls, i.e wall height, side boundary setback and front boundary setback. Given the constraints on the development by virtue of the escarpment location and the presence of significant environmental features, some flexibility in applying these controls is necessary. There will not be any unreasonable amenity impacts on adjoining properties and the proposal will be consistent with the vegetated character of Abernethy Street and the Locality.

Recommendation - Approval

In summary, the proposal is recommended for approval as the siting and design of the dwelling house and associated parking and access is site responsive and logical and will not result in any unreasonable amenity impacts on surrounding developments or the streetscape and foreshore character.

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, 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 DA2019/0483 for Demolition works and construction of a new dwelling house on land at Lot 1 DP 1227525, 4 Abernethy 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
Site Plan Rev. B	01.05.2019	Nick Bell Architects
Roof Plan Rev. B	01.05.2019	Nick Bell Architects
Ground Floor Plan Rev. B	01.05.2019	Nick Bell Architects
First Floor Plan Rev. B	01.05.2019	Nick Bell Architects
Second Floor Plan Rev. B	01.05.2019	Nick Bell Architects
Sections A & B Rev. B	01.05.2019	Nick Bell Architects
SE and NW Elevation Rev. B	01.05.2019	Nick Bell Architects
NE and SW Elevation Rev. B	01.05.2019	Nick Bell Architects
Demolition Plan Rev. B	01.05.2019	Nick Bell Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment Report	May 2019	STS GeoEnvironmental
Arboricultural Impact Assessment Report	06 May 2019	Margot Blues Consulting Arborist
Bushfire Risk Assessment Report	21 March 2019	R Coffey, FPA Australia, Certified Practitioner Practitioner Certification No-PBD-PA-09328

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
Landscape Plan Rev. B	0.1.05.2019	Nick Bell Architects

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.

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 \$9,680.00 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 \$968,000.00.

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**

Plans indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments, shall be submitted prior to the issue of the Construction Certificate. The plans must indicate the provision of a scour and erosion control in accordance with Council's Manly Specification for on site Stormwater Management. Stormwater shall be conveyed from the site to Ocean.

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 the development.

7. **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.

8. **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.

9. **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)

10. **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 THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

11. **Tree protection**

(a) Existing trees which must be retained

- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
- ii) Trees located on adjoining land

(b) Tree protection

- i) No tree roots greater than 30mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 30mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with the Arboricultural Impact Assessment dated 4 April 2019 prepared by Margot Blues Consulting Arborist and AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

12. **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

13. 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.

14. Removing, Handling and Disposing of Asbestos

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

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

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

15. Traffic Control During Works

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual and to the satisfaction of the Principal Certifying Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety

16. Waste Management During Development

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

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

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

17. Protection of rock and sites of significance

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

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

Reason: Preservation of significant environmental features.

18. **Aboriginal Heritage**

If in undertaking excavations or works any Aboriginal site or object is, or is thought to have been found, all works are to cease immediately and the applicant is to contact the Aboriginal Heritage Officer for Northern Beaches Council, and the Cultural Heritage Division of the Department of Environment and Climate Change (DECC).

Any work to a site that is discovered to be the location of an Aboriginal object, within the meaning of the National Parks and Wildlife Act 1974, requires a permit from the Director of the DECC.

Reason: Aboriginal Heritage Protection. (DACAHE01)

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

19. **Stormwater Disposal**

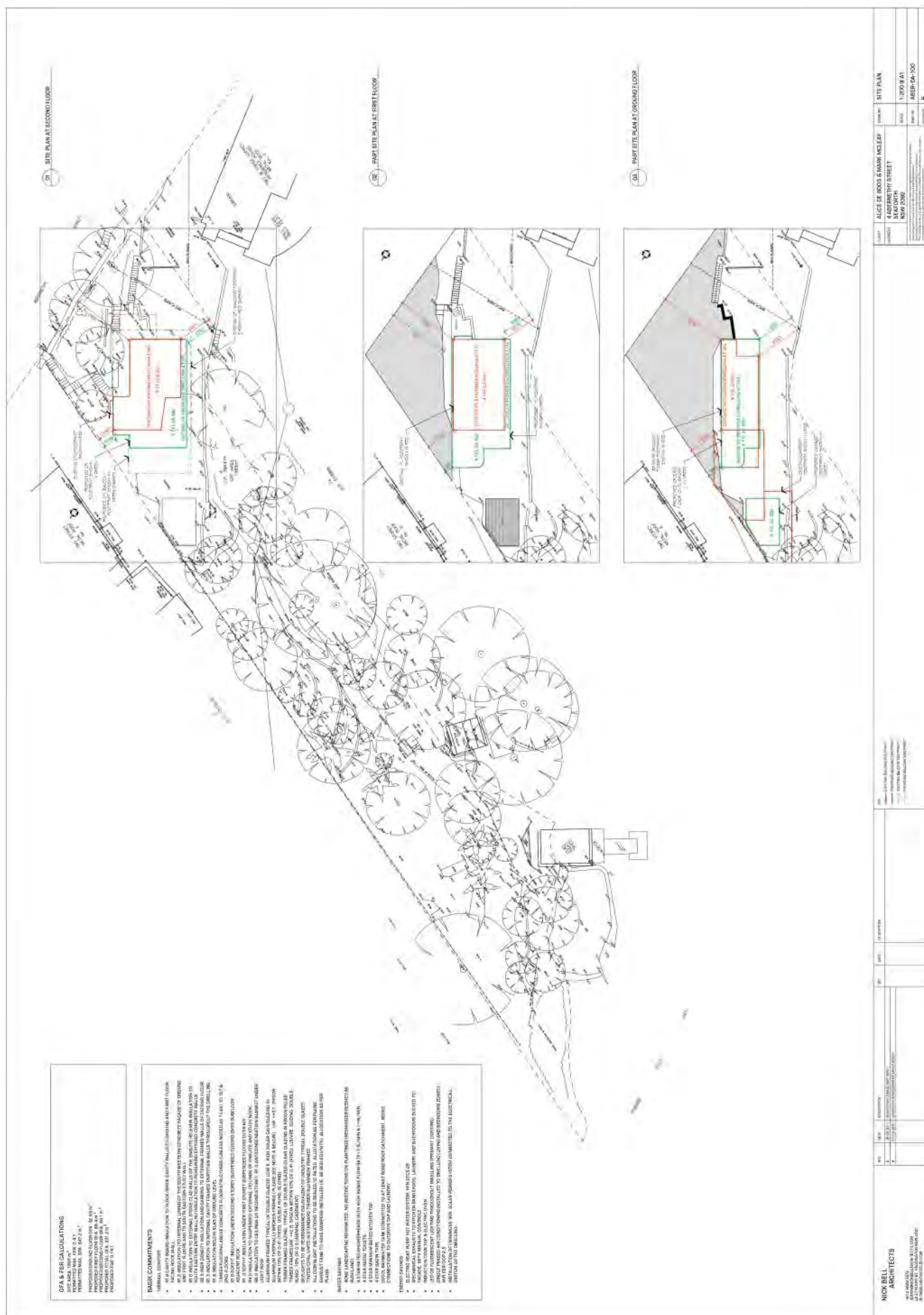
The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

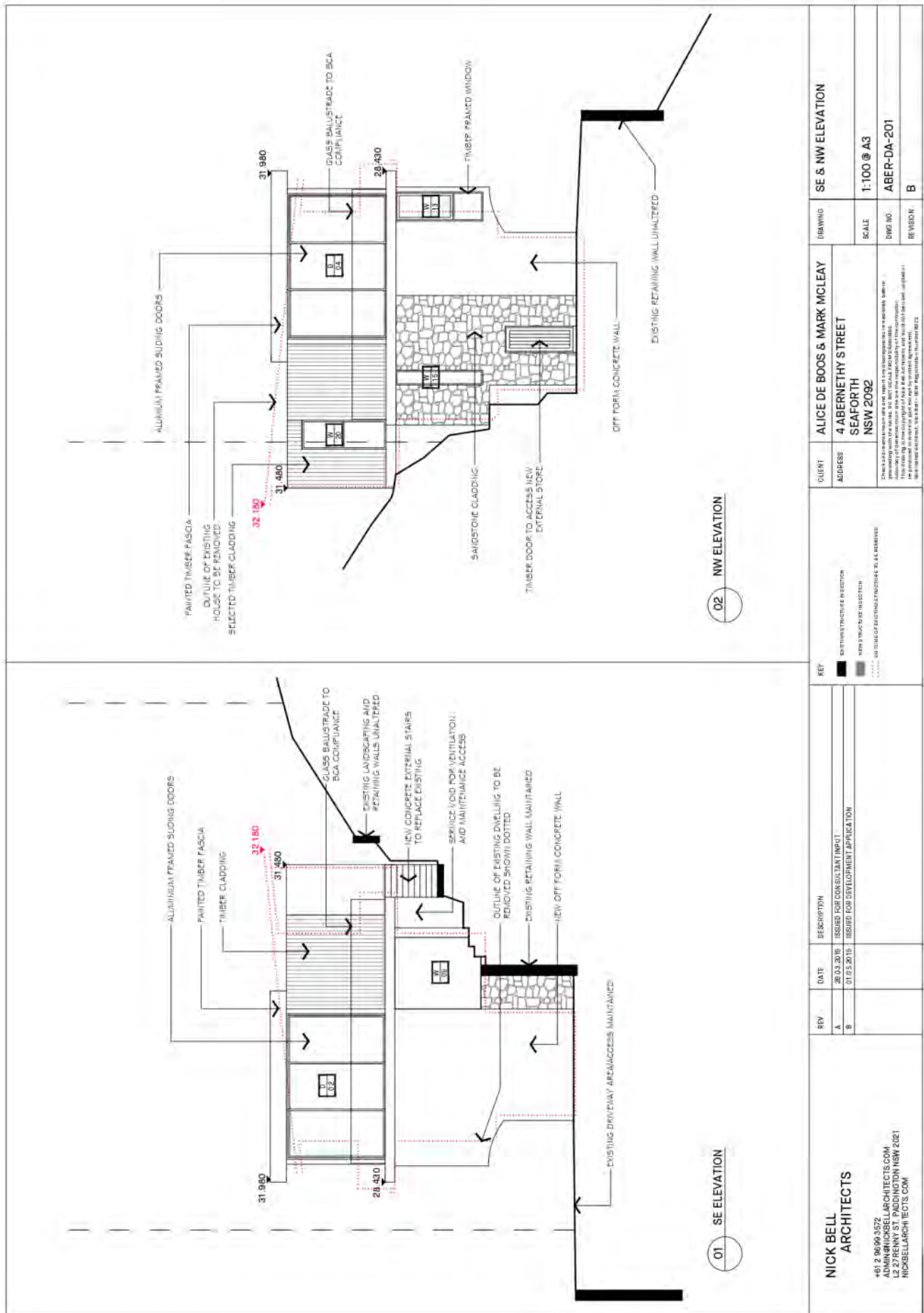
Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

20. **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.







APPENDIX 1

CLAUSE 4.6 – BUILDING HEIGHT

4 Abernethy Street, Seaforth

REQUEST FOR VARIATION TO HEIGHT OF BUILDINGS DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6(3) OF MANLY LEP 2013

Clause 4.3 – Building Height

Clause 4.3 of the Manly LEP 2013 and the associated map prescribe a maximum building height of 8.5 metres for this site. The proposal seeks to demolish the existing 3-storey dwelling on the site and construct a new 3-storey dwelling and detached garage with a maximum height of 9.32 metres, providing a non-compliance with this control. The percentage variation is 9.65%.

The proposal therefore seeks to vary the building height development standard.

The objectives of Clause 4.3 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.*

The zoning of the land is E3 Environmental Management. The objectives of the E3 zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*

- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of the Manly Local Environmental Plan 2013 allows for exceptions of Development Standards. The objectives of this Clause 4.6 are:

- (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.*

The clause goes on to state:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard*

- (4) *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.*

This document constitutes the written request referred to in Clause 4.6(3) in relation to the proposal's breach of the height of building development standard.

The NSW Department of Planning and Infrastructure (DP&I) provides guidance on how to prepare Clause 4.6 variations; 'Varying development standards: A Guide' (August 2011). This written request to vary the standards is based on the DP&I's Guide.

Clause 4.6(3) and 4.6(4)

The proposal is considered against the four matters required to be established under Clause 4.6.

1. Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:

The most common way of establishing that compliance with a standard is unreasonable and unnecessary is to establish that the objectives of the standard are met, even though the standard is not complied with: see *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245. This objection relies on this method. Compliance with the objectives of the height standard is addressed under Point 4 below.

In addition, the following points are raised:

- Compliance with the development standards is unreasonable and unnecessary as the proposal will have limited impact on the streetscape presentation.

- The proposed new dwelling is of a similar bulk and scale as the existing dwelling on the site and within a similar location
- The proposed new dwelling will be screened by the dense vegetation on the site. The proposal will therefore not be visible from the foreshore of Powder Hulk Bay in Middle Harbour.
- Exceedance of the height control will not create additional building bulk that results in unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in this bulk would not create additional benefit for adjoining properties or the locality.

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

The components proposed above the height control are:

- The upper third storey of the dwelling.

Given the consistency of the proposal against the zone objectives and height objectives (see **Point 4 below regarding both**), in my opinion there are sufficient environmental planning grounds to justify contravening the development standard.

The proposed height breach will meet the objectives of the building height development standard in that it will provide a building height and roof form that is consistent with the topographic landscape and prevailing building height. The proposal will preserve the environmental amenity of neighbouring properties, public spaces and Middle Harbour in terms of sharing of views and provision of adequate sunlight access. The proposal will be compatible with the height, bulk and scale of the desired future character of the locality.

The proposed height can be achieved without adverse impacts for the following reasons:

- The proposal will not result in the loss of views from surrounding development;
- The proposal will not result in unreasonable overshadowing of adjoining properties;
- The proposal will provide a development, which has been designed to ensure that the visual and acoustic privacy of adjoining properties is maintained; and
- The proposal will provide a development, which is consistent with the scale of the adjoining developments and is of an appropriate visual bulk for the locality.

The proposal will provide a suitable design and of suitable amenity in terms of the built environment and represents the orderly and economic use and development of land, which are identified as objects of the Act (Section 1.3 of the EP&A Act, 1979) and the building envelope and design of the proposal responds appropriately to the unique opportunities and constraints of the site.

The aspect of the development that breaches the height control, i.e. the third storey of the dwelling, can be justified as the proposal provides a consistent scale with neighbouring development. This can be described as an environmental planning ground because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (*Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 1097 at [42]).

Reduction in the height will not result in improved amenity for adjoining properties. The lack of impact on adjoining properties in terms of solar access, privacy, view loss and visual bulk establishes sufficient planning grounds (*Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [94(c)] and *Randwick City Council v Micaul Holdings Pty Ltd* at [34]).

3. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3):

The written request adequately addresses the matters referred to above by Clause 4.6(3).

4. 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:

The proposal will be in the public interest as it meets the objectives of the height development standard as follows:

Objective (a) seeks 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 new dwelling is of a similar bulk and scale as the existing dwelling on the site. The proposed new dwelling will have a compliant FSR.

The proposal achieves a high standard of architectural design. The external appearance of the proposed development will improve the amenity of the subject site as viewed from the shared driveway.

The high standard of colours, finishes and materials assists in providing a high quality urban design outcome.

The proposed new dwelling will be screened by the dense vegetation on the site. The proposal will therefore not be visible from the foreshore of Powder Hulk Bay in Middle Harbour.

Objective (b) seeks to control the bulk and scale of buildings,

Comment: As mentioned above, the proposed new dwelling is of a similar bulk and scale as the existing dwelling on the site and within a similar location. The proposed new dwelling will have a compliant FSR.

Objective (c) seeks 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 proposed new dwelling will not result in the loss of views from the public domain or surrounding properties.

Objective (d) seeks 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: As demonstrated in the shadow diagrams submitted with this DA the proposed development will not result in any additional overshadowing to the adjoining properties.

Objective (e) seeks 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 site is zoned E3 Environmental Management under the provisions of the Manly Local Environmental Plan (MLEP) 2013.

The proposed development has been designed and sited and will be managed to avoid adverse environmental impact.

The height and bulk of the proposed dwelling has regard to the existing vegetation and topography of the site.

The proposed new dwelling will be screened by the dense vegetation on the site. The proposal will therefore not be visible from the foreshore of Powder Hulk Bay in Middle Harbour.

The zoning of the property is E3 Environmental Management and the objectives of the zone are:

- *To protect, manage and restore areas with special ecological, scientific, cultural or aesthetic values.*
- *To provide for a limited range of development that does not have an adverse effect on those values.*
- *To protect tree canopies and provide for low impact residential uses that does not dominate the natural scenic qualities of the foreshore.*
- *To ensure that development does not negatively impact on nearby foreshores, significant geological features and bushland, including loss of natural vegetation.*
- *To encourage revegetation and rehabilitation of the immediate foreshore, where appropriate, and minimise the impact of hard surfaces and associated pollutants in stormwater runoff on the ecological characteristics of the locality, including water quality.*
- *To ensure that the height and bulk of any proposed buildings or structures have regard to existing vegetation, topography and surrounding land uses.*

The proposal is consistent with the aims and objectives of the zoning in the following manner:

- The proposal involves the construction of a new dwelling in the same location on the site as the existing dwelling.
- The height and bulk of the proposed new dwelling has regard to the existing vegetation, topography and surrounding land uses.
- The proposed new dwelling is a low impact residential use that will not negatively impact the nearby foreshore, geological features and bushland.

The proposal includes removing the dead tree from the north-eastern part of the site. The Arboricultural Impact Assessment prepared by Margot Blues Consulting Arborist submitted with this DA recommends that this tree be removed (T4) due to the tree being assessed as dead. All other existing trees and native bushland on the site will be retained. Refer to the Landscape Plan prepared by Nick Bell Architects submitted with this DA. The proposal will therefore protect the flora and fauna on the subject site.

As demonstrated above, the proposed development will be in the public interest because it is consistent with the objectives of the height development standard and the objectives of the E3 zone.

In addition, the above demonstrates that compliance with the control is unreasonable and unnecessary in the circumstances of this case.

Conclusion

The consistency of the development with the zone objectives and the objectives of the height standard and the lack of impact arising is sufficient grounds to support that breach and confirms the lack of necessity for the development to comply. This therefore demonstrates sufficient environmental planning grounds to justify contravening the standard.

In addition, the resultant development will be in the public interest as it complies with the objectives of the zone and the objectives of the development standard.

Despite the breach with the standard, the proposal is consistent with the objects of Section 1.3 of the EP& A Act, 1979 (formerly 5(a)(i) and (ii) of the Act), which are to encourage development that promotes the social and economic welfare of the community and a better environment, to promote and coordinate orderly and economic use and development of land and to promote good design and amenity of the built environment.

In the context of other requirements of Clause 4.6, it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

This submission is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to support the variation.



Clare Findlay
aSquare Planning Pty Ltd

Date: 10 May 2019



ITEM 3.3	DA2019/0578 - 17 GOLF PARADE, MANLY - DEMOLITION WORKS AND CONSTRUCTION OF A GARAGE
REPORTING MANAGER	Anna Williams
TRIM FILE REF	2019/498211
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 floor space ratio.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0578 for demolition works and construction of a garage on land at Lot 1 DP 217958, 17 Golf Parade, Manly, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0578
Responsible Officer:	Kelsey Wilkes
Land to be developed (Address):	Lot 1 DP 217958, 17 Golf Parade MANLY NSW 2095
Proposed Development:	Demolition works and construction of a garage
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	John Thomas Hoffman Kim Blackburn Hoffman
Applicant:	Stewart Design Studio
Application lodged:	05/06/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	18/06/2019 to 02/07/2019
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.4 Floor space ratio: 28%
Recommendation:	Approval
Estimated Cost of Works:	\$ 36,000.00

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 subject application seeks to increase an existing floor space ratio non-compliance, resulting in a variation of 28%. The application has been referred to the DDP as the development is a class 1 and 10 building and seeks to vary a development standard by over 10%.

The application has received one (1) submission relating to stormwater disposal which has been addressed through conditions. With the increase in FSR being largely due to storage within the garage and garage roof void, the applicant argues that the proposal offers an improved design which achieves consistency with the existing precedent and streetscape character where garage development prevails.

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 - 4.4 Floor space ratio
 Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.8 Waste Management
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 1 DP 217958 , 17 Golf Parade MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of Lot 1 within DP 217958 and is located on the southern side of Golf Parade, Manly.</p> <p>The site is regular in shape with a frontage of 6.095m along Golf Parade and a secondary frontage to Rolfe Street. The site has a depth of 43.52m and a surveyed area of 259.3m².</p> <p>The site is located within the G1 General Residential Zone and accommodates an existing two storey semi-detached dwelling, small storage shed and a detached carport accessible via Rolfe Street. .</p> <p>The site is virtually flat with a slight fall of 0.57m between the</p>

secondary frontage to Rolfe Street and the primary frontage to Golf Parade.

The site is characterised by areas of lawn and low lying shrubs. One mature, locally native tree is located within the road reserve adjoining Rolfe Street.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential development of varying sizes, ages and architectural styles. Adjoining properties consist of predominantly semi-detached dwellings with detached garages or carports with nil side and nil secondary frontage setbacks to Rolfe Street.

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 application seeks approval for alterations and additions to an existing dwelling house including:

- Demolition of the existing single carport and attached storage shed
- Construction of a new single garage. The proposal will have the appearance of a double garage, with a single car space and bin storage on the western elevation and bike storage within the eastern elevation. The new garage will be accessible via the secondary frontage to Rolfe Street.

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>Division 8A 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 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 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>

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 1 submission/s from:

Name:	Address:
Mr Robert Adrian Wilde	19 Golf Parade MANLY NSW 2095

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

- Stormwater disposal
- Waterproofing of garage

The matters raised within the submissions are addressed as follows:

- The objector raised concerns regarding the disposal of stormwater from the subject site at 17 Golf parade, Manly, stating that the existing stormwater currently flows into his site at adjoining 19 Golf Parade and the addition of the garage may exacerbate this. The objector is also concerned about the lack of existing stormwater discharge resulting in water pooling on his driveway.

Comment:

In order to ensure stormwater is disposed of appropriately and in accordance with Council's stormwater policy under the MDCP, a condition has been included in this consent which requires the applicant to provide a stormwater management plan to the principal certifying authority demonstrating compliance with the relevant requirement, prior to the issue of any construction certificate.

- The objector raised concerns regarding potential dampening of the proposed garage wall as it adjoins his garage to the west. The objector requests that the wall be waterproofed, or measures be taken to avoid potential rising damp issues.

Comment:

The development will be required to comply with the Building Code of Australia as a standard condition of consent which will address the waterproofing of structures as required.

REFERRALS

Internal Referral Body	Comments
NECC (Bushland and Biodiversity)	The proposed development has been assessed against SEPP (Coastal Management) - Coastal Management Area. The proposal is consistent with the control objectives.
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and also been assessed against requirements of the Manly LEP and DCP.</p> <p>12 Development on land within the coastal vulnerability area</p> <p><i>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:</i></p> <p>(a) <i>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</i></p> <p>(b) <i>the proposed development;</i></p>

Internal Referral Body	Comments
	<p>(i) <i>is not likely to alter coastal processes to the detriment of the natural environment or other land, and</i></p> <p>(ii) <i>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</i></p> <p>(iii) <i>incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and</i></p> <p>(c) <i>measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.</i></p> <p><u>Comment:</u></p> <p>The subject property has been included under the 'Coastal Environment Area' map but not been included on the 'Coastal Use Area' and 'Coastal Vulnerability Area' Maps under State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) and in regard to CM SEPP the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p>
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following condition consent.
NECC (Riparian Lands and Creeks)	<p>The application has been assessed in consideration of the Coastal Management Act 2016 and State Environmental Planning Policy (Coastal Management) 2018. It has also been assessed against requirements of the Manly LEP and DCP.</p> <p>The proposed development meets Clauses 14 and 15 of the Coastal Management SEPP.</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 (Coastal Management) 2018

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

13 Development on land within the coastal environment area

- (1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
- (a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) *coastal environmental values and natural coastal processes,*
 - (c) *the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

The proposal was referred to Council's Riparian Lands and Creeks and Coast and Catchment bodies who raised no issues with the proposal, stating the development is unlikely to cause adverse impact on the coastal environment area.

- (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:

Council as the consent authority has undertaken a full assessment of the proposal and is satisfied that the development has been designed in a way which minimises and avoids unreasonable impact on any of the processes listed in subclause 1.

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

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:

With consideration to the above, Council is satisfied that the proposal is unlikely to cause increased risk of coastal hazards on the subject site or other land.

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	4.5m	N/A	Yes
Floor Space Ratio	FSR: 0.6:1	FSR: 0.77:1	28%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes

Clause	Compliance with Requirements
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes

Detailed Assessment

4.4 Floor space ratio

The proposed development results in an increase in FSR from 0.75:1 (existing) to 0.77:1 (proposed) failing the 0.6:1 requirement.

See Clause 4.6 - Exceptions to development standards for a detailed assessment.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1
Proposed:	0.77:1
Percentage variation to requirement:	28%

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:

Compliance with Clause 4.4 Floor Space Ratio is unreasonable and unnecessary in this particular circumstance due to site constraints which result in vehicular access being located within the secondary frontage to Rolfe Street and the existing precedent of nil setback garage development along this frontage. Despite the numerical non-compliance, the proposed development achieves the objectives of the Clause.

By addressing these objectives, the report provided by the applicant argues that the exception be supported for the following reasons:

- *The proposed roof form and street facade has been designed to achieve consistency with the existing streetscape on the northern side of Rolfe Street. The proposal also achieves consistency by proposing nil side and secondary street frontage setbacks, as typical of existing garages along the northern side of Rolfe Street. The proposed development will have a positive impact on the street in terms of bulk, scale, materials and colour as it will assist to complete the homogeneous style of existing garage development along the northern side of Rolfe Street. For this reason, the proposal can be considered to be consistent with the existing and desired streetscape character.*
- *The proposed addition will not impact existing views and view corridors from surrounding properties as there are no significant views over or across the subject site or surrounding development. There are also no public views over or across the site.*
- *The proposal will serve as an improvement upon the existing circumstance as 17 Golf Parade is one of the few properties with a secondary frontage to Rolfe Street that does not match the existing pattern of garage development. The proposed roof form, facade, height and bulk is consistent with the existing street pattern.*
- *Largely due to the orientation of the site, the proposal achieves compliance in terms of solar access to adjacent development and the garage has been designed to consider the privacy between the subject site and adjoining sites. The proposal is consistent with existing development to the west and the approved garage development at the adjoining property to the east which is also consistent with existing garage development along the northern side of Rolfe Street.*

Planner Comment:

Following a full assessment of the proposal, it is considered that the above points of argument accompanying the request to vary a development standard consistently reflect the situation of the site and proposed addition. Architectural plans indicate that the proposed addition has been designed and located to achieve consistency with the precedent set for garages along the northern side of Rolfe Street. An inspection of the site confirms this precedent and it is considered that the proposal would be a complementary addition to the existing streetscape and provide improved amenity and security for the subject occupants. It was also identified that the proposal will have minimal impact on adjoining and surrounding properties, or when viewed from a public space and overall, achieves consistency with the existing and desired streetscape character.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor Space Ratio development standard and the objectives of the R1 General Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

As represented within architectural plans, the proposed garage has been designed with a facade and roof form consistent with existing garage development along the northern side of Rolfe Street. The height, bulk and scale of the proposal is also typical of surrounding garage

development and the proposal functions to compliment and reinforce the existing and desired streetscape character. For this reason, it is considered that the proposal achieves this objective.

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

Comment:

Site constraints including narrow lot frontages and prevalence of semi-detached dwellings along the southern side of Golf Parade means that car parking can not be appropriately located within the primary street frontage. Consequently, car parking for these sites is consistently located within the secondary frontage to Rolf Street and this is acknowledged to be the most appropriate location for such development. In the case of 17 Golf Parade, it is considered that the proposal appropriately responds to the constraints of the site by locating parking within the Rolfe Street frontage and although this addition results in an increase in FSR, the building density and bulk in relation to the site area is considered reasonable and consistent with the precedent set. The proposal is considered to be an improvement on the existing parking arrangement as it provides secure parking and storage for the occupants coupled with appropriate and practical design. No impact on views or view corridors have been identified as a result of siting the proposal, that being from the subject site, adjoining sites, surrounding sites or from a public place. The application does not propose to remove any vegetation or landscape features of significance. The development therefore, ensures that any important landscape and town features will not be obscured.

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

Comment:

When viewed from the streetscape, the northern side of Rolfe Street is dominantly characterised by garages with nil side and nil secondary frontage setbacks. The subject site is one of the last remaining properties that does not match the existing pattern of garage development along this frontage. The proposal will assist to complete the homogeneous style of existing garage development along the street and therefore, successfully maintains an appropriate visual relationship between the proposal 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,

Comment:

The proposal achieves compliance in terms of privacy and solar access and was referred to the relevant Council referral bodies which determined that the proposal is of substantially low environmental impact when considering the use of enjoyment of adjoining land and the public domain.

During the notification period, a total of one submission was received which raised concerns regarding Stormwater disposal. The application was referred to Council's Development Engineers who recommended approval, subject to conditions. In order to demonstrate appropriate disposal of stormwater in accordance with Council's requirements and address the objectors concerns and request, an additional condition has been included in this consent to provide a Stormwater Management Plan.

e) to provide for the viability of business zones and encourage the development, expansion and

diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.

Comment:

The site is not identified as a business zone and is not considered to impact on any business zone. This objective is therefore, not applied.

Zone objectives

The underlying objectives of the R1 General Residential zone are:

- To provide for the housing needs of the community
- To provide for a variety of housing types and densities
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R1 General Residential zone.

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

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

Planning Circular 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 Floor space ratio Development Standard is assumed by the Local Planning Panel, for which Council has an exemption for dwelling houses that can be determined by the Development Determination Panel.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 259.3m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 6.5m (based on flat land)	4.53m	N/A	Yes
	S: 6.5m (based on flat land)	4.63m	N/A	Yes
	E: 6.5m (based on flat land)	4.52m	N/A	Yes
	W: 6.5m (based on flat land)	4.52m	N/A	Yes
4.1.2.2 Number of Storeys	2	1	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	1.9m	N/A	Yes

	Pitch: maximum 35 degrees	29 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Primary frontage - Prevailing building line	36.38m, consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	0.93m (based on wall height)	0m	100%	No
	Secondary street frontage: Prevailing setback	0m, consistent with prevailing setback	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	48%	13%	No
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	40%	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	123sqm	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	5.99m extending for whole width of secondary frontage	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	1 space	N/A	No

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.1 Residential Development Controls	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes

Detailed Assessment

3.8 Waste Management

A condition has been added to this consent to ensure the requirements and objectives of this Clause are met.

4.1.3 Floor Space Ratio (FSR)

The proposed development results in an increase in FSR from 0.75:1 (existing) to 0.77:1 (proposed) failing the 0.6:1 requirement.

See Clause 4.6 – Exceptions to development standards for a detailed assessment.

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

The proposed garage has nil setback to the secondary frontage of Rolfe Street and a nil setback to both east and west side boundaries. The proposal has been considered on merit as it fails the numerical requirements of the Clause.

The proposed garage has been designed to achieve consistency with the existing streetscape on the northern side of Rolfe Street. Garages along this frontage are characterised as having nil side setback and nil setback to the street. Each typically has the appearance of a double garage with a gabled roof and pitches sloping from a central ridge line. The proposal will compliment the existing character of Rolfe Street and will result in a positive outcome in terms of design and overall consistency. Shadow diagrams and an inspection of the site confirms that the amenity of adjoining properties will be reasonably maintained in terms of solar access and privacy. The proposal is considered an improvement on the existing carport as it provides secure car parking for the occupants which is consistent with the prevailing character and setbacks for garages on the northern side of Rolfe Street. When considering the existing semi-detached dwelling and the narrow width of the lot, the location and design of the proposed garage despite a number of numerical non-compliance's, is most appropriate in this particular circumstance.

4.1.5 Open Space and Landscaping

The site fails the total open space requirement being 55% of the site area. The proposed addition

presents a total open space of 48%, a shortfall from the 52% which currently exists. As the existing total open space is non-compliant, the addition of a garage which improves the streetscape while only slightly reducing the total open space, is considered a positive outcome in this particular circumstance. In addition to this, the loss in total open space does not involve the removal of significant vegetation and maintains a sufficient level of amenity to the subject site and adjoining sites in terms of solar access and privacy. For these reasons, the minor reduction to total open space is supported on merit.

4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

The proposal fails to comply with a number of requirements under this clause. Each non-compliance has been addressed below and given merit consideration.

The proposal fails to comply with 4.1.6.1 c) *the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.*

Comment:

The proposed garage extends for the entire width of the narrow 6 meter secondary frontage to Rolfe Street. With consideration to the precedent set for garage development on the northern side of Rolfe Street and the narrow lot which makes it unreasonable and unnecessary to request numerical compliance, the proposal is supported on merit due to its design and location which achieves consistency with the existing streetscape character.

The proposal fails to comply with 4.1.6.1 d) *In relation to the provision of parking for dwelling houses, Council may consider the provision of only 1 space where adherence to the requirement for 2 spaces would adversely impact on the streetscape or on any heritage significance identified on the land or in the vicinity.*

Comment:

The proposal matches existing parking on site by providing one car space within the western portion of the garage and the inclusion of bike storage within the eastern portion. While the site has provision for two car parking spaces, the proposal does not reduce the existing car parking arrangement and in fact results in a better outcome as it achieves consistency with the existing streetscape and maintains the desired future of the locality. The design also results in improved amenity for the occupants.

Compensating additional site area in order to provide two car parking spaces would significantly reduce the total and landscaped open space on site and increase visual bulk and scale and is not considered necessary in this particular circumstance.

Following a full assessment, it is considered that the proposal is designed in a way which provides adequate parking, is consistent with prevailing garage development and is of visual compatibility, therefore resulting in a positive outcome for the occupants, the surrounding sites and the streetscape.

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

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

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- 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 4.4 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 DA2019/0578 for

Demolition works and construction of a garage on land at Lot 1 DP 217958, 17 Golf Parade, MANLY, 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
1905/DA01 - Cover Sheet and Site Analysis (Site plan existing)	5 June 2019	Stewart Design Studio
1905/DA02 - Ground floor plan existing	5 June 2019	Stewart Design Studio
1905/DA03 - First floor plan existing	5 June 2019	Stewart Design Studio
1905/DA04 - Site plan and roof plan proposed	5 June 2019	Stewart Design Studio
1905/DA05 - Ground floor plan proposed	5 June 2019	Stewart Design Studio
1905/DA09 - Garage roof void plan proposed	24 July 2019	Stewart Design Studio
1905/DA06 - Sections proposed	5 June 2019	Stewart Design Studio
1905/DA07 - Elevations proposed	5 June 2019	Stewart Design Studio
1905/DA201 - Site Plan proposed	5 June 2019	Stewart Design Studio

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) 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 sewerred areas or managed on-site in unsewerred areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

FEES / CHARGES / CONTRIBUTIONS

4. Security Bond

A bond (determined from cost of works) of \$1,000 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

5. **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 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.

6. **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.

7. **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.

8. **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.

9. **Stormwater management**

Prior to the issue of any construction certificate, a stormwater management plan shall be

provided to the Principal Certifying Authority demonstrating compliance with Council's stormwater management policy.

Reason: to ensure stormwater is disposed of appropriately in order to minimise impact on surrounding land.

10. **Waste management**

A Waste Management Plan demonstrating compliance with Council's Waste management Guidelines is to be provided to the Principal Certifying Authority prior to the issue of any construction certificate.

Reason: To demonstrate sound waste management practices that will reduce, reuse and recycle resources.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

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

12. **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

13. **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.

14. **Vehicle Crossings**

The provision of one vehicle crossing 4 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N 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.

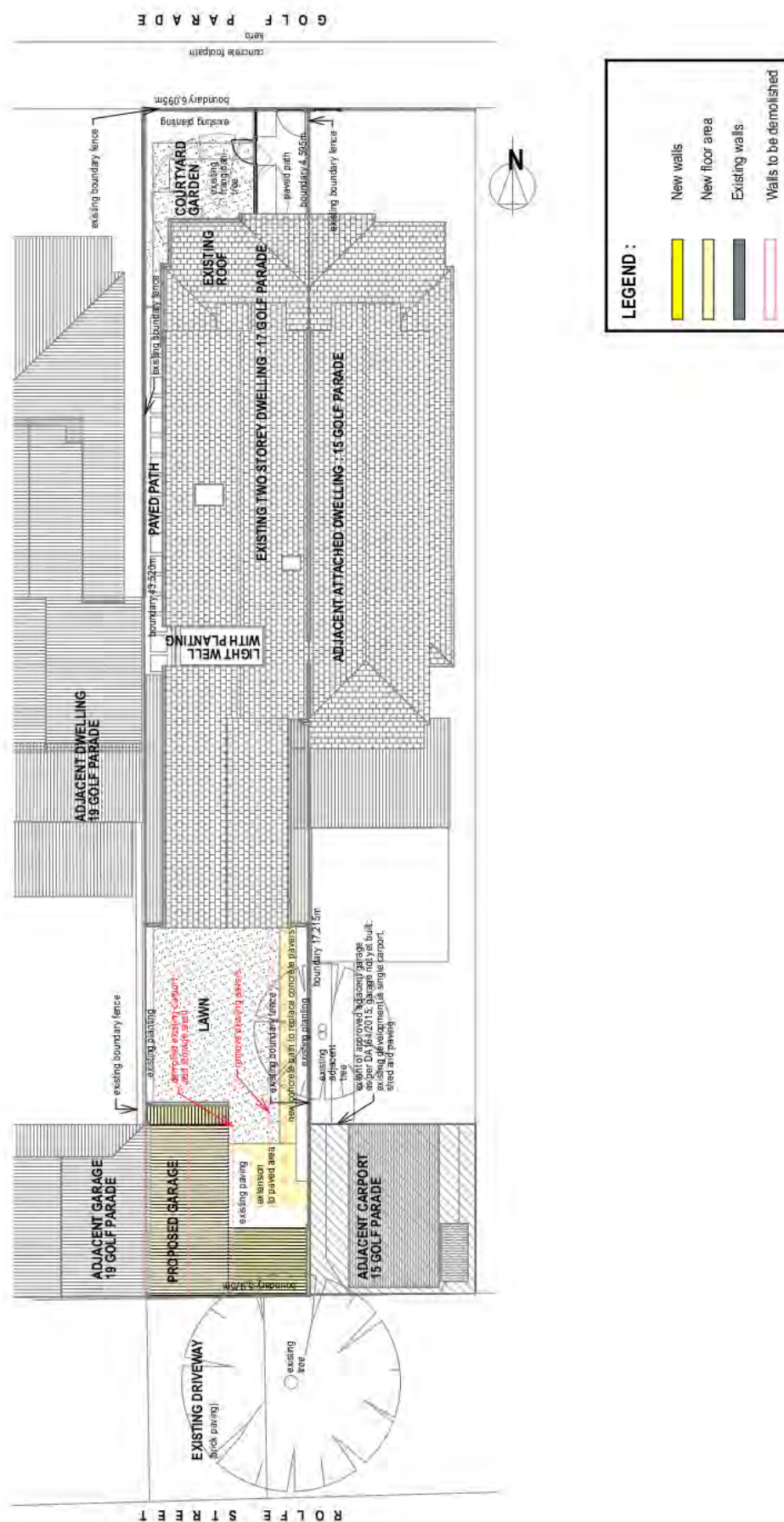
Reason: To facilitate suitable vehicular access to private property.

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

15. **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.

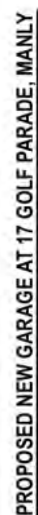
Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.



DA NOTIFICATION DRAWINGS : SITE PLAN PROPOSED PROPOSED NEW GARAGE AT 17 GOLF PARADE, MANLY

Scale: 1:200	Drawing No: 1905/ DA201	Plot Date: 5/6/19
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LAKESIDE ROAD, NARRABEEN, NSW, 2101 • TELEPHONE 02 9984 9836/0403 069 606 • EMAIL isa@bigpond.net.au



REQUEST FOR EXCEPTION TO A DEVELOPMENT STANDARD**AS PER CLAUSE 4.6 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013 IN RELATION TO
CLAUSE 4.4 – DEVELOPMENT STANDARD FOR FLOOR SPACE RATIO****1. INTRODUCTION**

This written request is made pursuant to the provisions of Clause 4.6 of the Manly Local Environmental Plan 2013 (the LEP). A variation is sought in relation to the floor space ratio development standard of Clause 4.4 of the LEP for proposed demolition of existing carport and shed and construction of a proposed new garage.

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.

(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 Director-General has been obtained.

(5) In deciding whether to grant concurrence, the Director-General must consider :

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
(b) the public benefit of maintaining the development standard, and (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if :

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note. When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E3 Environmental Management or Zone E4 Environmental Living.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) This clause does not allow development consent to be granted for development that would contravene any of the following :

- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
- (c) clause 5.4.

An exception to a development standard is required because the development application seeks approval for proposed alterations to an existing building and the existing building does not comply with the height of buildings development standard of Clause 4.3(2) of the LEP as this control did not apply at the time of construction of the existing structure.

2. THE DEVELOPMENT STANDARD AND THE VARIATION SOUGHT

Clause 4.4 – Floor space ratio

Clause 4.4 The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

According to Manly LEP 4.5 *floor space ratio* is defined as “the ratio of the gross floor area of all buildings within the site to the site area” (where gross floor area is “the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor”).

In addition, the definition of ‘gross floor area’ as defined in the dictionary of the LEP means

“the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,
but excludes:
 - (d) any area for common vertical circulation, such as lifts and stairs, and
 - (e) any basement:
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
 - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
 - (h) any space used for the loading or unloading of goods (including access to it), and
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and
 - (j) voids above a floor at the level of a storey or storey above.”

The site has an allowable floor space ratio of 0.60 of site area. The site area is 259.30m² and therefore the maximum allowable gross floor area is 155.58m². The existing gross floor area is 201.22m². The proposed new total gross floor area = 197.08m² which is 4.14m² less than the existing gross floor area since the existing storage shed is proposed to be demolished. The area of the proposed new garage is 24.83m² but this area is not to be included in the gross floor area since the space is not fully enclosed (has two open sides) and is also considered to be “car parking to meet any requirements of the consent authority” as per the definition of GFA in the LEP. The required parking provision noted in the Manly DCP 2013 is 2 cars. The existing floor space ratio of 0.78 exceeds the current development standard of 0.60 but the proposal includes a decrease in GFA resulting in a reduction of the existing FSR. The proposed new floor space ratio will be 0.76 expressed as a ratio of the site area.

Note that the area of the proposed roof void above the garage – shown in the drawings to be used for storage – should not be included as gross floor area since the maximum height of the space at the apex is 1.65m. Clause 3.8.2.2 of the **NCC 2019** states that *Heights of rooms and other spaces must be not less than—*
(e)(ii) a non-habitable room— a height of not less than 2.1 m for at least two-thirds of the floor area of the room or space.
Since the entire roof void has a height of 1.65m or less, no part of this space should be included in floor area calculations.

3. THE OBJECTIVES OF THE DEVELOPMENT STANDARD

The purpose of the floor space ratio standard is stated in the objectives in Clause 4.4(1) of the LEP as follows:

Clause 4.4 (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.

4. ACHIEVEMENT OF THE OBJECTIVES OF THE STANDARD

Despite the numeric non-compliance, the proposed development will achieve the objectives of the floor space ratio development standard.

The first relevant objective is to ensure that the bulk and scale of development is consistent with the existing and desired streetscape character. The proposal is consistent with the character of the existing streetscape. The proposed roof form and street facade has been designed to achieve consistency within the Rolfe Street streetscape. Existing development along the northern side of Rolfe Street is typically garages with nil side setbacks and nil setback to the street boundary. With the exception of properties at each end of Rolfe Street, in each instance, the Rolfe Street boundary is the rear boundary to the property. Typically, the street façades of the garages are gabled with the roof pitches sloping from a central ridgeline (centre of each rear boundary) to gutters on the side boundaries. The proposed development will have a positive impact on the street in terms of bulk, scale, materiality and colour as it will assist to complete the homogenous style of existing garage development along the street. It must be noted that the adjacent property (attached dwelling to the subject dwelling), 15 Golf Parade, has approved development consent for a garage development with similar street facade. That consent is described in DA164/2015. It is the intention of the adjacent owner to build that approved garage at the same time as the proposed carport at 17 Golf Parade. The proposed development is considered to be consistent with the existing streetscape. Generally, the surrounding existing development is consistent with the desired streetscape character, therefore the proposed development can be considered to be consistent with the desired streetscape character.

The second relevant objective is to control building density and bulk in relation to site area to ensure that development does not obscure important landscape and townscape features. The proposed additions will not impact existing views and view corridors from surrounding properties. There are no significant views over or across the subject site for surrounding development. There are no public views over or across the site.

4

The third relevant objective is to maintain an appropriate visual relationship between new development and the existing character and landscape of the area. The proposal will serve as an improvement upon the existing circumstance as 17 Golf Parade is one of the few properties along Rolfe Street that does not match the existing street pattern along the rear boundary with frontage to Rolfe Street. The proposed roof form and street facade has been designed to achieve consistency within the Rolfe Street streetscape. The proposed development is consistent with the existing street pattern in terms of height and bulk.

The fourth relevant objective is to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain. The proposal achieves compliance in terms of solar access to adjacent development. The design has carefully considered privacy between the subject development and adjacent development. The development is consistent with the existing development on the adjacent site to the west and the existing and proposed development (as per current approved DA 164/2015) on the adjacent site to the east.

5. IS COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

Most properties along the south side of Golf Parade have rear street access to Rolfe Street and most have detached garages or carports at the rear that are developed with nil side and rear setbacks. Most properties in the local area have existing development that exceeds the allowable FSR. The FSR of the existing and proposed development at 17 Golf Parade is consistent with that of existing surrounding development in the neighbourhood. The FSR of the existing development at 17 Golf Parade is 0.78. The proposal results in a slight decrease to the FSR such that the resultant FSR will be 0.76. The existing development was lawfully built as complying development in terms of the SEPP (Exempt and Complying Development Codes) 2008 some years ago. Compliance with the development standard is unreasonable and unnecessary in the circumstances of this case.

6. ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD?

Yes. The proposal will be consistent with the relevant aims and objectives of the LEP and the objectives for the R1 General Residential zone. The proposal will result in the amenity of surrounding properties (in terms of view sharing, solar access and privacy) being maintained or improved.

7. WILL THE PROPOSED DEVELOPMENT BE IN THE PUBLIC INTEREST?

In accordance with Clause 4.6(4)(a), development consent must not be granted to a development that contravenes a development standard unless Council is satisfied in relation to certain matters as follows:

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 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 Director-General has been obtained.

The matters required to be addressed in sub clause (3) are addressed above. The objectives of the R1 General Residential Zone are as follows :

- To provide for the housing needs of the community within a low density residential environment.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The public interest is considered in terms of compliance and consistency with the objectives and planning controls, including State and Regional Planning Policies, applicable to a proposed development.

The objectives of the R2 General Residential Zone are addressed as described below:

To provide for the housing needs of the community within a low density residential environment. The continued use of the land for a single residential dwelling with the addition of a detached garage is consistent with this objective.

To enable other land uses that provide facilities or services to meet the day to day needs of residents. The existing land use remains un-changed.

8. IS THE EXCEPTION TO THE DEVELOPMENT STANDARD WELL FOUNDED?

The bulk, form and design is appropriate in terms of compatibility with the bulk, scale and character of the surrounding development.

It will not result in an adverse impact on the present amenity of neighbouring properties particularly in relation to views, privacy and solar access.

For the reasons outlined in this submission, the objectives of the standard and the objectives of the R1 General Residential Zone will be met. The exception to the floor space ratio standard is considered to be well founded and Council as the consent authority can be satisfied for the reasons outlined, that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives of the zone.

ITEM 3.4

**MOD2018/0542 - 7 KALINYA STREET, NEWPORT -
MODIFICATION OF DEVELOPMENT CONSENT N0486/16
GRANTED FOR DEMOLITION OF EXISTING SERVICE STATION
STRUCTURE AND CONSTRUCTION OF A NEW THREE STOREY
RESIDENTIAL FLAT BUILDING WITH BASEMENT CAR
PARKING**

REPORTING MANAGER **Matthew Edmonds**
TRIM FILE REF **2019/498229**
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** Mod2018/0542 for Modification of Development Consent N0486/16 granted for Demolition of existing service station structure and construction of a new three storey residential flat building with basement car parking on land at Lot 1 DP 536852, 7 Kalinya Street, Newport, subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2018/0542
Responsible Officer:	Penny Wood
Land to be developed (Address):	Lot 1 DP 536852, 7 Kalinya Street NEWPORT NSW 2106
Proposed Development:	Modification of Development Consent N0486/16 granted for Demolition of existing service station structure and construction of a new three storey residential flat building with basement car parking.
Zoning:	R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Antonia Livotti Antonino Livotti Yolanda Miloni
Applicant:	Boston Blyth Fleming Pty Ltd
Application lodged:	09/10/2018
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New multi unit
Notified:	17/10/2018 to 03/11/2018
Advertised:	20/10/2018
Submissions Received:	4
Clause 4.6 Variation:	Nil
Recommendation:	Approval

ASSESSMENT INTRODUCTION

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

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;

- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.3 Height of buildings
Pittwater Local Environmental Plan 2014 - 4.5A Density controls for certain residential accommodation
Pittwater 21 Development Control Plan - B6.1 Access driveways and Works on the Public Road Reserve
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.7 Private Open Space
Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.12 Landscaped Area - General

SITE DESCRIPTION

Property Description:	Lot 1 DP 536852 , 7 Kalinya Street NEWPORT NSW 2106
Detailed Site Description:	<p>The subject site is identified as 7 Kalinya Street, Newport (Lot 1, Deposited Plan 536852). The site is a corner allotment; the primary boundary of the subject site is oriented towards the west and adjoins the Kalinya Street road reserve while the secondary (Le. southern) boundary adjoins the Queens Parade Road Reserve. The northern and eastern boundaries adjoin other residential sites.</p> <p>The subject site currently contains two different land uses that are as follows:</p> <ul style="list-style-type: none"> . The eastern-most part of the site contains a two storey detached dwelling house; and . The remainder of the site is occupied by a former service station; which is currently occupied by a vehicle repair workshop ("Easy Automotive"). <p>The two separate uses are internally segregated by a fence, however the site has not been subdivided.</p> <p>The subject site has an area of 1242m² and would have originally contained an east-to-west (i.e. rear-to-front) slope of approximately five metres. The topography of the site has however been modified, with significant excavation within the western part of the site to create a level area upon which the service station is situated. The maximum elevation difference between the natural ground level and the floor</p>

level of the service station is approximately four metres.

The subject site is zoned as an R3 Medium Density Residential zone under Pittwater Local Environment Plan (PLEP) 2014. The north, east and western boundaries adjoin sites that are also R3 zoned, while the southern boundary adjoins a 81 Neighbourhood Centre zone. A large number of other zones are located within the immediate surroundings, and are as follows:

- A 82 Local Centre zone is located approximately 30m west of the subject site;
- RE1 Public Recreation zones are located approximately 40m northwest, 120m southeast and 160m east of the subject site at their nearest respective points;
- A W1 Natural Waterways zone is located to the west and south of the subject site, and is approximately 90m from the subject site at its nearest point;
- An E2 Environmental Conservation zone is located approximately 100m west of the subject site;
- E4 Environmental Living zones are located approximately 100m south, 120m northwest, 130m southeast, 150m southeast and 230m north of the subject site at their nearest respective points;
- R2 Low Density Residential zones are located approximately 130m north and 160m east of the subject site at their nearest respective points;
- IN4 Working Waterfront zones are located approximately 130m west and 230m northwest of the subject site at their nearest respective points;
- W2 Recreational Waterways zones are located approximately 130m west and 190m south of the subject site at their nearest respective points; and
- An SP2 Infrastructure (Educational Establishment) zone is located approximately 190m southeast of the subject site at its nearest point.

The subject site is affected by Class 5 Acid Sulphate Soils, however no other major issues and/or hazards were identified. A review of the title did not identify any easements or restrictions that affect the subject site. The subject site does not contain a heritage item nor is it within a heritage conservation area, though it is in close proximity to a number of heritage items, the closest of which is the Newport Arms Hotel (otherwise known as "The Newport") which is approximately 50m southwest of the subject site.

Development on adjoining sites to the north and east predominately consists of residential flat buildings; the site to the west (on the opposite side of Kalinya Street) consists of

a hotel (the Metro Mirage Hotel) while the 40m wide Queens Parade road reserve to the south contains both road corridors and a public car park. With regard to the large number of surrounding zones, development within the wider area is quite varied and consists of the following:

- Development to the northeast consists predominately of residential flat buildings;
- Development to the southeast consists predominately of detached dwelling houses; and
- Development to the south and west is highly diversified, and contains a large food and drink premises (The Newport), marinas, sailing clubs and a range of smaller commercial developments.

Map:



SITE HISTORY

Council records reveal the following history relevant to this Section 4.55 application:

Development Application no. N0486/16

Application of existing service station structure and construction of a new three-storey residential flat building with basement car parking.

The application was determined by way of approval under delegated authority on 6 November 2017.

PROPOSED DEVELOPMENT IN DETAIL

The modification application seeks the following works:

- Re-location of the access driveway from a central location along Kalinya Street to the north western corner of the site off Kalinya Street;
- As a result of the relocated driveway access, the basement car parking level has been

reconfigured. No changes to the approved number of parking spaces and no objection from Council's Waste Officer in regard to location of bins.

- Material changes to all four (4) facades of the building;
- Increased GFA of all eight (8) units;
- The increased GFA will not change the overall building footprint of the development however will create the following changes to the building facade:
 - Ground Level: Due to the relocation of the access driveway, the terrace of Unit G02 will be re positioned to along the entire width of the western facade of the unit.
 - Level 1: increase the length of the wall along the southern elevation by 3.5m and increase the length of the wall along the northern elevation by 2.3m.-
 - Level 2: increase the length of the wall along the southern elevation by 4.3m and increase the length of the wall along the northern by 2.7m
- Reconfiguration of the internal layout of all eight (8) units;
- Reconfiguration of the lobby including re-location of stairs and lift at ground, first and second levels;
- Changes to the size of the private open space for all eight (8) units and relocation of planter boxes;
- Addition of two (2) new terraces along the northern elevation. One at ground floor and one directly above at first floor level. Both measuring 15sqm
- A revised Stormwater Management Plan for the site which shows the connection of the basement sump to the kerb in Kalinya St in lieu of the original approval to connect to the existing Council stormwater pit;
- Re-design of pedestrian access along the southern (rear) elevation including widening of the path and bench seating. This results in a reduction of landscaped area for the site; and
- Relocation and increase in height of the lift overrun located on the roof.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

- An assessment report and recommendation has been prepared and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for N0486/16, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55 (2) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55 (2) - Other Modifications	Comments
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Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under N0486/16.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application N0486/16 did not require concurrence from the relevant Minister, public authority or approval body.
(c) it has notified the application in accordance with:	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environmental Plan 2011 and Pittwater Development Control Plan.
(i) the regulations, if the regulations so require, or	
(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 96 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of	Pittwater 21 Development Control Plan applies to this

Section 4.15 'Matters for Consideration'	Comments
any development control plan	proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider Prescribed conditions of development consent. These matters have been addressed via a condition in the original 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 documentation was submitted with the original 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. 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 in the original 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 in the original 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 matter has been addressed via a condition in the original consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the 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	The site is considered suitable for the proposed

Section 4.15 'Matters for Consideration'	Comments
site for the development	development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” 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:
Ms Rita Ingegerd Jansson-Ericsson	6 / 2 A Queens Parade NEWPORT NSW 2106
Mr Terrence Robert Mabb	7 / 6 Queens Parade NEWPORT NSW 2106
Mr Francis Arthur Buttle	8 / 6 Queens Parade NEWPORT NSW 2106
Felicity Monica Sinton	1 / 2 A Queens Parade NEWPORT NSW 2106

During the assessment of this development application four (4) submissions were received from nearby properties which raised the following objections / concerns to the development:

- Built Form
- Form of development sought
- Boundary wall between site and 2A Queens Parade
- Construction Impacts and Timing

Built Form

A submission received requested that the top floor of the building and the lift overrun does not impede on existing views of Pittwater.

Comment

The height of the overall development remains relatively consistent with the parent development consent, which was deemed to have no unacceptable impact on any existing provision of views. It is acknowledged that the roof height of this development is marginally higher, and includes a lift overrun and plant area (whereas the parent DA didn't).

Given the orientation of the site and the alignment of the development with surrounding buildings, it is not considered that the building will give rise to any adverse or unreasonable view loss impacts. The development also sits comfortably beneath the maximum permissible height applying to the land which ensures minimal impacts.

Form of development sought

A submission received raised concern that additional residential accommodation in the area could give rise to an additional shortage in car parking.

Comment

The use of the site for the purpose of residential accommodation has been approved on the site and may be commenced at any time.

Boundary wall between site and 2A Queens Parade

A submission received raised concern about the boundary wall between the subject site and 2A Queens Parade being potentially damaged during demolition and / or construction works.

Comment

This matter has been addressed in the parent development application and need not be revisited for the purpose of this Section 4.55 (2) application.

The parent development consent includes a condition (35) which reads:

In the event that the fence along the eastern boundary (i.e. the boundary separating the site and the access-handle driveway to 2A Queens Parade) is to be demolished, any replacement fence along that boundary is to be no higher than 1.8 metres above ground level. The design/appearance and colours/materials of any such fence shall be consistent with applicable controls within Parts D10.14 (Fences - General) and D1 0.4 (Building colours and materials) of Pittwater 21 DCP.

This condition remains applicable to the development if this current application is to be approved.

Construction Impacts and Timing

A submission received raised tradespeople car parking, dust from demolition and queried the commencement date of the development. The submission also requested that the dilapidation report be required via condition of consent.

Comment

The onus to provide car parking to tradespeople for a private development is not on Council, as suggested in the submission received. Relevant standards exist and have been enforced via condition of consent on the parent DA to mitigate dust particles entering adjoining properties. Council has no indication as to when the development may or may not commence demolition / construction.

A dilapidation report has been conditioned in the parent development consent (see condition 19).

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<i>The modification proposal in view of the landscape outcome for the streetscape and site is acceptable subject to the completion of the nominated landscape works.</i>

Internal Referral Body	Comments
	<p><i>Council's Landscape section has assessed the proposal against the following Pittwater 21 DCP 2014 Control: C1.1 Landscaping</i></p>
NECC (Development Engineering)	<p>The proposed driveway grades from the property boundary to the basement do not comply with AS/NZS2890.1:2004. This issue has been raised by Council's Traffic Engineer. The application includes a revised stormwater management plan for the site which shows the connection of the basement sump to the kerb in Kalinya St in lieu of the original approval to connect to the existing Council stormwater pit. This connection is not supported and the plan must be amended to connect the basement sump to the Council pit.</p> <p>Development Engineers cannot support the modification due to insufficient information to address clauses B5.10 and B6.2 of Council's DCP.</p> <p>Additional Information submitted 20/06/2019</p> <p>The proposed driveway grade is satisfactory. The proposed driveway width is to be 5.5 metres wide which is conditioned as per the request of Council's Traffic Engineer. The amended stormwater plans have addressed the previous concern. The revised Geotechnical report also satisfies the relevant DCP controls.</p> <p>Development Engineers raise no objections to the proposal subject to the following requirements.</p> <p>The stormwater management plans listed in the consent N0486/16 under heading Plans:, is to be replaced with</p> <ul style="list-style-type: none"> Stormwater Management Plan, prepared by Taylor Consulting, Drawing No. Sheet 1/B, dated January 2019 Stormwater Management Plan, prepared by Taylor Consulting, Drawing No. Sheet 2, dated 2 July 2016 <p>The Risk Analysis & Assessment listed in the consent under the heading Plans:, is to be replaced with</p> <ul style="list-style-type: none"> Risk Analysis & Management Report, prepared by Jack Hodgson Consultants Pty Limited, Report No. MT 31504, dated 2 July 2018 <p>The deletion of conditions 15 and 16</p> <p>Amend condition 7 as follows.</p> <p>The applicant must obtain written confirmation from Council that all</p>

Internal Referral Body	Comments
	<p>works in the road reserve have been completed in accordance with the conditions of the Roads Act Approval.</p> <p>The following new conditions of consent are to be included.</p> <p>Planner Comment: Supported, subject to conditions.</p>
Strategic and Place Planning (Urban Design)	<p><i>The proposed modification which includes lift overrun (additional height) demonstrates sufficient concealment to overrun and other roof structures when viewed from a public space. The additional height remains within the height control and as such can be supported.</i></p>
Traffic Engineer	<p>Previous Comments:</p> <p>Carpark:</p> <p>The car park is generally in accordance with AS2809.1:2004, however the driveway layout raises concern. The applicant has proposed a 3.0m wide driveway without a waiting bay at the top or bottom of the driveway access. This would suggest that a vehicle, once accessing the driveway from the road, would have to reverse back onto the road should a vehicle already be travelling up the ramp. This is deemed an unsafe scenario, especially as parking either side of the driveway would further inhibit a drivers sight distance.</p> <p>Further, the grades along the driveway are not in compliance with the Australian Standards or Council's design standards. The driveway must have a grade no greater than 1:20 for the first 6.0m from the boundary into the site. This is not the case with the submitted drawings.</p> <p>Additionally, Council will need to see a signage and line marking plan, to be approved by the Local Traffic Committee for the alteration of parking signage along the frontage of the property. This can be conditioned as part of the DA should approval be granted.</p> <p>Waste Collection:</p> <p>The location and collection method for waste services does not appear to have been addressed. based on street collection, the parking arrangements would need to be configured to enable safe and efficient collection of waste. Insufficient detail has been provided.</p> <p>Based on the above, the Traffic Team cannot support the proposed modification in its current state.</p>
Traffic Engineer	<p>The application seeks modification of internal elements whilst essentially keeping within the approved building envelope. However, the external configuration would suggest the applicant is seeking relocation of the driveway from a central location to the northern most end of the property.</p> <p>Traffic:</p> <p>No change to yield relates to no change to generation from the site. No objections are raised.</p>

Internal Referral Body	Comments
	<p>Pedestrian: No change to accessibility to the site. No objections are raised.</p> <p>Car park: The layout is deemed in accordance with AS2890.1:2004. The applicant is to ensure the crossover matches the width of the driveway from the boundary to the road (5.5m wide). Development Engineers to provide necessary conditions.</p> <p>Waste Services: The area in front of the site is occupied by perpendicular parking spaces. The applicant is to ensure these spaces are kept free on waste collection days to ensure servicing of the site is satisfactory. Conditions will be added to this effect.</p> <p>Planner Comment: Supported, subject to conditions.</p>
Waste Officer	The modification application was reviewed by Council's Waste Officer who raised no objection to the proposal.
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

The provisions of SEPP 55 - Remediation of Land - was addressed and conditioned accordingly in the parent development consent and Assessment Report. The works sought under this application do not change the previous assessment undertaken, and the conditions imposed remain.

Accordingly, no further assessment is required for the purpose of this Section 4.55 application.

SEPP 65 - Design Quality of Residential Apartment Development

This subject Section 4.55 (2) application seeks to modify the built form and, to a lesser extent, layout of an approved residential flat building that had previously been assessed against the requirements of the State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development. Given the changes that are proposed, it is prudent for the purpose of this application to establish that the development still adequately meets the requisite provisions outlined in the Policy.

Clause 4 of *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* (SEPP 65) stipulates that:

(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

(a) the development consists of any of the following:

- (i) the erection of a new building,*
- (ii) the substantial redevelopment or the substantial refurbishment of an existing building,*
- (iii) the conversion of an existing building, and*

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings.

As previously outlined the proposed development is for the erection of a part 2 / part 3 storey residential flat building development plus basement car parking for the provisions of 8 self-contained dwellings.

As per the provisions of Clause 4 outlining the application of the policy, the provisions of SEPP 65 are applicable to the assessment of this application.

As previously outlined within this report Clause 50(1A) of the Environmental Planning and Assessment Regulation 2000 requires the submission of a Design Verification Certificate from the building designer at lodgement of the development application. This documentation has been submitted.

Clause 28 of SEPP 65 requires:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design review panel, and*
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and*
- (c) the Apartment Design Guide.*

DESIGN REVIEW PANEL

Northern Beaches Council does not have an appointed Design Review Panel.

DESIGN QUALITY PRINCIPLES

Principle 1: Context and Neighbourhood Character

Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.

Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment:

The design of the proposed development is of a quality and finish that is responsive and contributory to the natural and built character of Kalinya Street and Queens Parade. The development will visually be a welcome addition in an otherwise predominantly dated streetscape and will suitably engage with surrounding developments and open spaces to be non-offensive and consistent with the neighbourhood character.

The proposed design has landscaping throughout and a natural themed material palette that will complement the organic curves of the built form and surrounding landscapes.

It is considered that the development is a well designed building that responds to and enhances the quality of the area, streetscape and neighbourhood, and therefore satisfies Principle 1.

Principle 2: Built Form and Scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.

Comment:

The proposed development is of an appropriate scale and height for the site commensurate to the applicable controls and the surrounding developments. The development is non-offensive when viewed from adjoining sites and the public domain and suitably aligns with surrounding buildings.

It is considered that the development satisfies Principle 2.

Principle 3: Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.

Comment:

The proposed development is envisioned to be a high-quality, luxury development as evidenced by the size of each apartment and the landscape and material treatment throughout the building; and therefore it is considered that a high level of amenity for residents will be achieved. The density of the development (8 apartments) is considered to be appropriate for the site and is not considered to be an over-development. The density of the development can be sustained via the provision of car parking and public transport, and employment opportunities within a relatively close proximity.

Therefore, it is considered that the development satisfies Principle 3.

Principle 4: Sustainability

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment:

The proposed development encompasses appropriate and sufficient sustainability features to ensure the development is an ecologically sustainable development.

Therefore, it is considered that the development satisfies Principle 4.

Principle 5: Landscape

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment:

The proposed development is accompanied by a detailed landscape plan and planting schedule. The landscaping has been integrated as a primary element of the design and results in an attractive development with a good amenity. The development and accompanying landscape will significantly enhance the landscape character of the streetscape and neighbourhood and will be enjoyed by both occupants and the public.

Therefore, it is considered that the development satisfies Principle 5.

Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

Comment:

The development provides a high-level of amenity for occupants of the development by virtue of large apartments, sufficient storage and large outdoor entertaining areas with accompanying landscaping and outlooks.

Therefore, it is considered that the development satisfies Principle 6.

Principle 7: Safety

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment:

The development satisfactorily addresses safety both in the public domain and in the development. The design allows for opportunities of casual surveillance over Kalinya Street, Queens Parade and the open-air Council carpark to the east of the site.

Therefore, it is considered that the development satisfies Principle 7.

Principle 8: Housing Diversity and Social Interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment:

The development provides 2 and 3 bedroom apartments which is considered sufficient for different demographics to find accommodation to suit their living needs. Opportunities for social interaction between residents is available in the communal corridors and entrance pathway.

Therefore, it is considered that the development satisfies Principle 8.

Principle 9: Aesthetics

Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.

The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment:

The aesthetic of the development is considered a superior design response within the Newport locality that will significantly enhance the surrounding public domain. The design of the building is discussed in detail throughout this report.

It is considered that the development satisfies Principle 9.

APARTMENT DESIGN GUIDE

The following table is an assessment against the criteria of the Apartment Design Guide (ADG) as required by SEPP 65.

Development Control	Criteria / Guideline	Comments
Part 3 Siting the Development		

Site Analysis	Does the development relate well to its context and is it sited appropriately?	The development relates well to its context and is sited appropriately within the Newport Locality.
Orientation	Does the development respond to the streetscape and site and optimise solar access within the development and to neighbouring properties?	The development responds well to the existing streetscape of Kalinya Street and Queens Parade. The proposal demonstrates that the required level of solar access is achieved for the proposed units.
Public Domain Interface	<p>Does the development transition well between the private and public domain without compromising safety and security?</p> <p>Is the amenity of the public domain retained and enhanced?</p>	<p>Southern boundary (Queens Parade): The development provides for an active frontage along Queens parade through the extension of approved balconies along the southern elevation. As a result of the internal modifications, at ground level, level 1 and level 2, the development also proposes larger openable glass doors onto the new balconies allowing for increased active and passive surveillance.</p> <p>Western boundary (Kalinya Street): The western elevation contains elevated balconies and windows which provide adequate passive and active surveillance and overlook the public domain. The proposed modifications to the original consent do not alter the existing outcomes for the amenity of the public domain.</p>
Communal and Public Open Space	<p>Appropriate communal open space is to be provided as follows:</p> <ol style="list-style-type: none"> 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% 	<p>Consistent The development does not provide 25% of the site area of communal open space in the form of communal gardens and</p>

direct sunlight to the principal usable parts of the communal open space for a minimum of 2 hours between 9 am and 3pm on 21 June (mid winter)

the like (despite having a 49% landscaped area - including the allowable 6% variation under the DCP).

However, in Objective 3D-1 of the ADG, there is an exception provision which reads:

Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:

- *provide communal spaces elsewhere such as a landscaped roof top terrace or a common room*
- *provide larger balconies or increased private open space for apartments*
- *demonstrate good proximity to public open space and facilities and/or provide contributions to public open space.*

As established further below in this table, the development provides each apartment private balconies that are significantly larger than required (up to 5 times larger) which provides for excess outdoor space for occupants of the development.

The site also benefits from close proximity to public open space (Dearin Reserve, Trafalgar Park, waterways etc) and public transport.

Accordingly, it is considered sufficient alternatives to communal open space are provided

		by the development.												
Deep Soil Zones	<p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² – 1,500m²</td><td>3m</td></tr> <tr> <td>Greater than 1,500m²</td><td>6m</td></tr> <tr> <td>Greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	Less than 650m ²	-	7%	650m ² – 1,500m ²	3m	Greater than 1,500m ²	6m	Greater than 1,500m ² with significant existing tree cover	6m	<p>Consistent</p> <p>The development provides greater than 7% total area for deep soil zones.</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
Less than 650m ²	-	7%												
650m ² – 1,500m ²	3m													
Greater than 1,500m ²	6m													
Greater than 1,500m ² with significant existing tree cover	6m													
Visual Privacy	<p>Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> <tr> <td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr> </tbody> </table> <p><i>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of rooms.</i></p> <p><i>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</i></p>	Building height	Habitable rooms and balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>Consistent</p> <p>Sufficient spatial separation to allow for visual privacy has been achieved in the design of the development.</p>
Building height	Habitable rooms and balconies	Non-habitable rooms												
Up to 12m (4 storeys)	6m	3m												
Up to 25m (5-8 storeys)	9m	4.5m												
Over 25m (9+ storeys)	12m	6m												
Pedestrian Access and entries	<p>Do the building entries and pedestrian access connect to and addresses the public domain and are they accessible and easy to identify?</p> <p>Large sites are to provide pedestrian links for access to streets and connection to destinations.</p>	<p>Consistent</p> <p>The pedestrian access to the building off of Queens Parade is clearly identifiable from the public domain and is considered to be a safe and suitable location.</p>												
Vehicle Access	Are the vehicle access points designed and located	Consistent												

	to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes?	The vehicular access point to the development in the north-western corner is the most logical position and has been supported by Council's Traffic Engineer, subject to conditions of consent being imposed.
Bicycle and Car Parking	<p>For development in the following locations:</p> <ul style="list-style-type: none"> On sites that are within 80m of a railway station or light rail stop in the Sydney Metropolitan Area; or On land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street.</p> <p>Parking and facilities are provided for other modes of transport.</p> <p>Visual and environmental impacts are minimised.</p>	<p>Consistent</p> <p>The development provides a compliant provision of off-set and garaged car parking as detailed later in this report.</p>
Part 4 Designing the Building		
Amenity		
Solar and Daylight Access	<p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space:</p> <ul style="list-style-type: none"> Living rooms and private open spaces of at least 70% of apartments in a building are to receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter 	<p>Consistent</p> <p>6 of the 8 apartments proposed achieve at a minimum of 2 hours direct sunlight between 9am and 3pm in mid-winter.</p>
Natural Ventilation	<p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents by:</p> <ul style="list-style-type: none"> At least 60% of apartments are naturally 	<p>Consistent</p> <p>6 of the 8 apartments proposed achieve natural cross ventilation, equating to 75% of all dwellings in</p>

	<p>cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</p> <ul style="list-style-type: none">• Overall depth of a cross-over or cross-through apartment must not exceed 18m, measured glass line to glass line.	the building.												
Ceiling Heights	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>If located in mixed used areas</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr></table>	Minimum ceiling height		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	<p>Consistent</p> <p>The development achieves satisfactory floor to ceiling heights throughout the building.</p>
Minimum ceiling height														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Attic spaces	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
If located in mixed used areas	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Apartment Size and Layout	<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m2 each.</p> <p>A fourth bedroom and further additional bedrooms</p>	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	<p>Consistent</p> <p>The development proposes 4 x 2 bedroom apartments, and 4 x 3 bedroom apartments, each with 2 bathrooms. Therefore, the minimum apartment size for a 2 bedroom apartment will be 75m², and 95m² for a 3 bedroom.</p> <p>The apartments in the development range from 94m² to 133m², and each comply with the minimum</p>		
Apartment type	Minimum internal area													
Studio	35m ²													
1 bedroom	50m ²													
2 bedroom	70m ²													
3 bedroom	90m ²													

	<p>increase the minimum internal area by 12m² each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. Habitable room depths are limited to a maximum of 2.5 x the ceiling height.</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space).</p> <p>Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none">• 3.6m for studio and 1 bedroom apartments• 4m for 2 and 3 bedroom apartments <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	apartment size and layout requirement.															
Private Open Space and Balconies	<p>All apartments are required to have primary balconies as follows:</p> <table><tr><th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr><tr><td>Studio apartments</td><td>4m²</td><td>-</td></tr><tr><td>1 bedroom apartments</td><td>8m²</td><td>2m</td></tr><tr><td>2 bedroom apartments</td><td>10m²</td><td>2m</td></tr><tr><td>3+ bedroom apartments</td><td>12m²</td><td>2.4m</td></tr></table> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>	Dwelling Type	Minimum Area	Minimum Depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	<p>Consistent</p> <p>Each apartment in the development is afforded a primary balcony with a minimum area of between 18m² to 64m² with a minimum depth of 2.4m, thereby satisfying the requirement.</p>
Dwelling Type	Minimum Area	Minimum Depth															
Studio apartments	4m ²	-															
1 bedroom apartments	8m ²	2m															
2 bedroom apartments	10m ²	2m															
3+ bedroom apartments	12m ²	2.4m															
Common Circulation and Spaces	<p>The maximum number of apartments off a circulation core on a single level is eight.</p> <p>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.</p>	<p>Consistent</p> <p>Maximum number of apartments per level is 3.</p>															
Storage	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <table><tr><th>Dwelling Type</th><th>Storage size volume</th></tr><tr><td>Studio apartments</td><td>4m²</td></tr></table>	Dwelling Type	Storage size volume	Studio apartments	4m ²	<p>Consistent</p> <p>Each apartment in the development is afforded with sufficient storage both in the apartment</p>											
Dwelling Type	Storage size volume																
Studio apartments	4m ²																

	<table><tr><td>1 bedroom apartments</td><td>6m²</td></tr><tr><td>2 bedroom apartments</td><td>8m²</td></tr><tr><td>3+ bedroom apartments</td><td>10m²</td></tr></table>	1 bedroom apartments	6m ²	2 bedroom apartments	8m ²	3+ bedroom apartments	10m ²	itself and within the car parking level.
1 bedroom apartments	6m ²							
2 bedroom apartments	8m ²							
3+ bedroom apartments	10m ²							
	At least 50% of the required storage is to be located within the apartment.							
Acoustic Privacy	Noise sources such as garage doors, driveways, service areas, plant rooms, building services, mechanical equipment, active communal open spaces and circulation areas should be located at least 3m away from bedrooms.	Consistent The building is designed in a manner that avoids any unreasonable acoustic intrusion into bedrooms.						
Noise and Pollution	Siting, layout and design of the building is to minimise the impacts of external noise and pollution and mitigate noise transmission.	Consistent The siting, layout and design of the building is sufficient to minimise the impacts of external noise and pollution and to mitigate noise transfer.						
Configuration								
Apartment Mix	Ensure the development provides a range of apartment types and sizes that is appropriate in supporting the needs of the community now and into the future and in the suitable locations within the building.	Consistent The apartment mix of 2 and 3 bedrooms is considered to be appropriate for the context of the site and will contribute to supporting the needs of the community at present and in future.						
Facades	Ensure that building facades provide visual interest along the street and neighbouring buildings while respecting the character of the local area.	Consistent The proposed building incorporates planted balconies at each level terracing back up the site to reduce the perceived bulk and scale of the building. The proposed development is a refined form of a previously approved residential flat building of a superior aesthetic. The facade treatments of the building, combined with materiality and landscaping will significantly enhance the streetscape and will add						

		visual interest to the street whilst respecting the character of the area.																																			
Roof Design	Ensure the roof design responds to the street and adjacent buildings and also incorporates sustainability features. Test whether the roof space can be maximised for residential accommodation and open space.	Consistent The roof design of the development is appropriate in screening plant equipment and restricting the use of the space for residential accommodation and open space purposes.																																			
Landscape Design	Was a landscape plan submitted and does it respond well to the existing site conditions and context.	Consistent The development application is accompanied by a detailed landscape plan which responds to the topography of the site and the context of the site. The landscape plan submitted is considered to be fundamental to the aesthetic appeal of the development.																																			
Planting on Structures	<div>When planting on structures the following are recommended as minimum standards for a range of plant sizes:</div> <table><tr><th>Plant type</th><th>Definition</th><th>Soil Volume</th><th>Soil Depth</th><th>Soil Area</th></tr><tr><td>Large Trees</td><td>12-18m high, up to 16m crown spread at maturity</td><td>150m³</td><td>1,200mm</td><td>10m x 10m or equivalent</td></tr><tr><td>Medium Trees</td><td>8-12m high, up to 8m crown spread at maturity</td><td>35m³</td><td>1,000mm</td><td>6m x 6m or equivalent</td></tr><tr><td>Small trees</td><td>6-8m high, up to 4m crown spread at maturity</td><td>9m³</td><td>800mm</td><td>3.5m x 3.5m or equivalent</td></tr><tr><td>Shrubs</td><td></td><td></td><td>500-600mm</td><td></td></tr><tr><td>Ground Cover</td><td></td><td></td><td>300-450mm</td><td></td></tr><tr><td></td><td></td><td></td><td></td><td></td></tr></table>	Plant type	Definition	Soil Volume	Soil Depth	Soil Area	Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent	Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent	Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent	Shrubs			500-600mm		Ground Cover			300-450mm							Consistent The development proposes various planting on structure locations of varying scales and depth (generally 800mm). The dimensions of these planter boxes is sufficient to enable the establishment and maturity of shrubbery and small plants.
Plant type	Definition	Soil Volume	Soil Depth	Soil Area																																	
Large Trees	12-18m high, up to 16m crown spread at maturity	150m ³	1,200mm	10m x 10m or equivalent																																	
Medium Trees	8-12m high, up to 8m crown spread at maturity	35m ³	1,000mm	6m x 6m or equivalent																																	
Small trees	6-8m high, up to 4m crown spread at maturity	9m ³	800mm	3.5m x 3.5m or equivalent																																	
Shrubs			500-600mm																																		
Ground Cover			300-450mm																																		

	Turf		200mm	
Universal Design	Developments are to achieve a benchmark of 20% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features.			Consistent At least 20% of the apartments in the development incorporate the Livable Housing Guidelines silver level universal design features.
Adaptive Reuse	New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.			Not Applicable No part of the existing buildings on site are proposed to be reused as an element of this proposal.
Mixed Use	Can the development be accessed through public transport and does it positively contribute to the public domain? Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable.			Not Applicable The development is for a residential flat building and does not proposed any mixed use.
Awnings and Signage	Locate awnings along streets with high pedestrian activity, active frontages and over building entries. Awnings are to complement the building design and contribute to the identity of the development. Signage must respond to the existing streetscape character and context.			Not Applicable The development does not propose any awnings or signage.
Performance				
Energy Efficiency	Have the requirements in the BASIX certificate been shown in the submitted plans?			Consistent A set of architectural plans has been submitted to accompany the application which includes the requirements of the BASIX Certificate referred to earlier in this report.
Water Management and Conservation	Has water management taken into account all the water measures including water infiltration, potable water, rainwater, wastewater, stormwater and groundwater?			Consistent The application is accompanied by sufficient water management and conservation methods.
Waste Management	Supply waste management plans as part of the development application demonstrating safe and convenient collection and storage of waste and recycling.			Consistent The application is accompanied by a satisfactory waste management plan.
Building Maintenance	Incorporates a design and material selection that ensures the longevity and sustainability of the			Consistent The material palette of the

	building.	development is considered to be appropriate contextually and commensurate to the scale of the building to ensure that it can be maintained and remain durable in longevity.
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STANDARDS THAT CANNOT BE USED TO REFUSE DEVELOPMENT CONSENT

Clause 30 of SEPP 65 Standards that cannot be used as grounds to refuse development consent or modification of development consent states that:

(1) If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:

- (a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,*
- (b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,*
- (c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.*

Note. *The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.*

Comment: The proposed modification application satisfies the design criteria above and is recommended for approval subject to conditions.

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and*
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.*

(3) To remove doubt:

- (a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and*
- (b) the design criteria specified in subclause (1) are standards to which clause 79C (2) of the Act applies.*

Note. *The provisions of this clause do not impose any limitations on the grounds on which a consent authority may grant or modify development consent.*

Comment: Adequate regard has been given to the matters raised under subclause (2) and the application is recommended for approval subject to conditions..

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 767336M_04 dated 27 July 2018). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0003008090 dated 27 July 2018).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	35	38

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

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.8m	8.5m*	-	Yes

*note: see discussion in Clause 4.3 of this report regarding the difference in building height between the 'Approved' and 'Proposed' measurements.

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
4.5A Density controls for certain residential accommodation	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

Between the assessment of the parent development application and this subject modification application, the methodology of measuring building height pursuant to Clause 4.3 of the PLEP 2014 has been refined based on Court findings.

The site is subject to an 8.5m height control measured from existing ground level pursuant to the Clause 4.3 PLEP 2014. In the circumstances of this assessment, it is important to note that the site has been excavated to a depth of approximately 4.4m to be level with Kalinya Street to the west.

The parent development assessment measured '*existing ground level*' from the excavated levels across the site, which resulted in an abrupt portion of the building exceeding the requisite 8.5m height limit by up to 1.3m. Scarce detail of the building height is demonstrated on the previously approved plans, however it is extrapolated that the building reached approximately RL25.20 (extrapolated as a ceiling level has been marked on the plan, rather than the roof ridge). The variation was consequent of an excavated step in the topography. Notwithstanding this 15.3% departure from the development standard, the development application was found worthy of approval.

In the circumstances of this current modification application, a different approach has been taken in measuring building height based on Court findings.

The modified built form of this modification application has a roof level of RL25.35, and a lift overrun level of RL26.75.

In the case *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070 and *Stamford Property Services Pty Ltd v City of Sydney & Anor* [2015] NSWLEC 1189 it is made apparent that the measure of *existing* building height should relate to the levels and natural topography of the site, and not relate to artificially modified levels (such as those achieved through excavated).

Therefore, in measuring the *existing* ground level of a site, reliance must be placed upon known levels of the site which can be relied on to interpolate the natural slope of the land. In the circumstances of this case, and the proximity of the site to Pittwater (150m west and 230m south), it is evident that the natural land form prior to any development would likely rise in a north-easterly direction away from the waters edge. This is further evidenced by the gradient and levels of the surrounding road network and sites.

Thereby, for the purpose of this assessment, *existing ground level* is interpolated from survey points are the perimeter of the site as detailed on the architectural plans accompanying the development

application. In measuring the building height using this methodology, the development remains wholly beneath the requisite 8.5m building height plane measured from *existing ground level*.

Accordingly, given compliance achieved with the development standard, no further assessment on the matter is required.

4.5A Density controls for certain residential accommodation

The density of the development has not changed from the previous proposal and accordingly, no further assessment on the provisions of Clause 4.5A is required as a part of this application.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	Kalina Street - 6.5m or established building line, whichever is greater	- minimum 2.9m to courtyard walls - minimum 5.4m to front building line	- 4.5m to GF terraces - 7.2m+ to building	Yes
Secondary Front Building line	Queens Parade - Half the primary setback, subject to assessment of variations.	Minimum 4.5m	6.5m (minor balcony encroachments at 4.8m)	Yes
Rear building line	Residential flat buildings and multi dwelling housing - East Where wall heights exceed 3m above existing ground level the minimum distance from any point of the external wall and any side/rear boundary shall be in accordance with this formula: $S = 3 + \frac{H-2}{4}$ S = Distance (metres) H = Height of the wall at that point (measured in metres above existing ground level)	Minimum 4.5m	4.75m	No
Side building line	As above	North - 4.025m	4.5m	Yes
Building envelope	North - 4.2m @ 45 degrees	Within envelope	Within envelope	Yes
	East - 4.2m @ 45 degrees	Within envelope	Within envelope	Yes
Landscaped area	50% (619.5m ²)	48.7% (604m ²)	45% (559m ²)	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B2.5 Dwelling Density and Subdivision - Medium Density Residential	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 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
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	No	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.15 Storage Facilities	Yes	Yes
C1.20 Undergrounding of Utility Services	Yes	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C5.21 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D9.17 Scenic Protection Category One Areas	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	Yes	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	Yes	Yes
D10.12 Landscaped Area - General	No	Yes
D10.14 Fences - General	Yes	Yes
D10.16 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

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

The proposed modification application was referred to Council's Traffic Engineer with comments received on 13 December 2018. The following concerns were raised:

- The applicant has proposed a 3.0m wide driveway without a waiting bay at either the top or bottom of the driveway access. This suggest that the a vehicle accessing the driveway from the road would have to reverse back onto the road should a vehicle already be travelling up the ramp. This is deemed an unsafe scenario, especially as parking either side of the driveway would inhibit a drivers sight distance.
- Further, the grades along the driveway do not comply with the Australian Standards for Council's design standards. The driveway must have a grade no greater than 1:20 for the first 6.0m from the boundary into the site.
- Additionally Council will need to see a signage and line marking plan, to be approved by the Local Traffic Committee for the alterations of parking signage along the front of the property. This can be conditioned as part of the DA should approval be granted.

Waste Collection:

The location and collection method for waste services does not appear to have been address 21 December 2018: An additional information letter was sent to the applicant with the above information

6 February 2019: Information was received from the applicant regarding the above traffic issues stating I

- Amended plans nominating the required 1:20 gradient for the first 6 metres of driveway within the property boundary.
- Plans nominating a line marked waiting bay in the basement with the plans showing a B99 vehicle entering and passing a waiting B85 vehicle in the line marked waiting bay.
- Traffic lights are provided at the top and bottom of the ramp which is quite common and acceptable given the low number of vehicle movements anticipated for a development of this size.

- This submission also includes a carpark line marking plan S96 – R001 to Kalinya Street with such plan providing for a garbage truck collection bay facilitating bin collection from the adjacent bin holding area located along this street frontage.

25 February 2019:

Comments were received from Council's Traffic Engineer which are not supportive of the amended plans and information submitted to Council on 6 February. Comments below

- The applicant does not appear to have addressed the passing bay at the entry to the car park. A minimum 5.5m width is required for the first 6.0m of the site to allow a vehicle wait whilst another vehicle is exiting.
- The waiting bay in the basement is adequate.
- The proposed disability spaces on-street are non-compliant.
- The waste truck accessing between the spaces is not deemed satisfactory as it poses a safety risk to the mobility impaired users.
- A 'No Parking; (Specify waste collection days and times)' is recommended. The applicant will need to provide a swept path to determine the number of spaces required for the 10.8m waste truck to park parallel to the kerb. The signs will then be positioned to accommodate this.

An email exchange took place between Council Traffic Engineers and the applicant during March 2019 with Council's Engineer providing the required changes. On 10 April 2019 a revised driveway option was sent to Council by the applicant requesting comments.

12 April 2019:

Council's Traffic Engineer provided comments stating that they were satisfied with the general layout and that Council's Development Engineers need to be satisfied with the ramp grades. Email sent to Council's Development Engineers requesting comments on ramp grades as per request from Traffic Engineer.

9 May 2019:

Comments received from Council's Development Engineer requesting full set of amended plans indicating required amendments.

15 May 2019:

Full set of amended plans requested from applicant by Council. Email sent to applicant on 22 May requesting timeframe for when amended plans will be submitted to Council.

7 June 2019:

Final amended plans submitted to Council for comment.

25 July 2019:

Following comments received from Council's Traffic Engineer

Traffic:

No change to yield relates to no change to generation from the site. No objections are raised.

Pedestrian:

No change to accessibility to the site. No objections are raised.

Car park:

The layout is deemed in accordance with AS2890.1:2004. The applicant is to ensure the crossover matches the width of the driveway from the boundary to the road (5.5m wide). Development Engineers to provide necessary conditions.

Waste Services:

The area in front of the site is occupied by perpendicular parking spaces. The applicant is to ensure these spaces are kept free on waste collection days to ensure servicing of the site is satisfactory. Conditions will be added to this effect.

26 July 2019:

Following comments received from Council's Development Engineer:

- The proposed driveway grade is satisfactory. The proposed driveway width is to be 5.5 metres wide which is conditioned as per the request of Council's Traffic Engineer. The amended stormwater plans have addressed the previous concern. The revised Geotechnical report also satisfies the relevant DCP controls. Development Engineers raise no objections to the proposal subject to conditions being imposed in the consent.

The amended changes are supportable.

C1.3 View Sharing

The proposed development is not considered to obscure any views enjoyed by surrounding properties to an extent greater than that of the approved development, and therefore no further assessment on the matter is required.

C1.7 Private Open Space

Requirement:

Minimum area of 15% of the floor area of the dwelling (not including the floor area of garages or internal laundries), with no dimension less than 2.5 metres and a grade no steeper than 1 in 10 (10%).

Dwellings are to be designed so that private open space is directly accessible from living areas enabling it to function as an extension of internal living areas.

Ground floor units are to have a minimum area of private open space of 30sq.m and with no dimension less than 4 metres.

Private open space areas are to have good solar orientation (i.e. orientated to the north-east or north-west where possible). Where site or slope constrains this orientation, the private open space area must have access to some direct sunlight throughout the year (see Solar Access and Natural Light).

Proposed:

Unit No.	Required	Proposed	Complies

G01 (Ground level)	30m ²	31m ²	Yes
G02 (Ground level)	30m ²	27m ²	No
G03 (Ground level)	30m ²	37m ²	Yes
101 (Level 1)	20m ²	43m ²	Yes
102 (Level 1)	14.1m ²	30m ²	Yes
103 (Level 1)	20m ²	29m ²	Yes
07 (Level 2)	19.05m ²	50m ²	Yes
08 (Level 2)	17.25m ²	64.5m ²	Yes

The private open space proposed for seven of the eight units complies with the minimum private open space area prescribed in the Pittwater 21 DCP. Unit G02 proposes 27sqm, falling 3sqm short of the required private open space area. Whilst this creates a 10% variation, the proposed private open space is considered acceptable as the terrace is capable of satisfying DCP requirements regarding solar access and visual privacy.

The subject modification proposes two (2) new terraces along the northern elevation servicing Unit G01 (Ground level) and Unit 101 (level 1). Both terraces measure 15sqm and are located off kitchen living areas. The location of these terraces will create a non-compliance with the minimum side setback control of 4.5m creating a 1.7m side setback. The location of these terraces is considered a poor planning outcome in regard to acoustic and visual privacy towards the existing residential flat building located to the north of the subject site. The private open space proposed for Unit G01 and Unit 101 along the western elevation fronting Kalinya Street is considered adequate and complies with the minimum private open space required under the ADG.

A condition deleting the terraces at ground and first floor along the northern elevation is included in the consent.

D10.8 Side and rear building line (excluding Newport Commercial Centre)

Requirement:

For residential flat buildings:

- Setbacks are to be 3m if wall heights are 3m or less;
- Where wall heights exceed 3m above natural ground level, the minimum distance from any point of the external wall and any side/rear boundary wall shall be in accordance with the formula:

$$S = 3 + \frac{H - 2}{4}$$

Side Setback:

- North side: 4.75m
- South side: secondary front setback - already assessed.

Proposed:

- 1.72m - Ground floor and first floor terrace - northern elevation (63.8% variation)

- 4.5m - northern building line (5.3% variation)

Merit Assessment:

The modification application proposes terraces at ground floor and first floor providing a 1.72m setback from the northern boundary. The proposed terraces are considered a poor planning outcome due to the proximity to the adjoining residential flat building to the north at 10 Kalinya Street and is anticipated to have a detrimental impact on the residential amenity including visual and acoustic privacy of the occupiers. The non-compliant setback will also result in a further reduction of the landscaped open space area which is further reduced as part of the subject modification. This is discussed in more detail within the report.

The deletion of the terraces proposed along the northern elevation at ground and first floor is considered to maintain a generous level of private open space for future occupiers of Unit G01 (ground floor) and Unit 101 (first floor) complying with the private open space requirements outlined in the ADG whilst complying with Council's side setback controls.

The required setback for the development is 4.75m. The modification application maintains the existing (approved) setback of 4.5m from the northern wall of the development to the northern boundary. Whilst this creates a 5.3% variation to the control, this is considered minor and will result in a development which achieves the desired future character of the Newport Locality and ensures a reasonable level of amenity is maintained to neighbouring properties.

D10.12 Landscaped Area - General

The subject modification application proposes a landscaped area of approximately 559sqm, which accounts for 45% of the lot area and would create a variation to the minimum 50% requirement stipulated by the DCP. Variations permitted to the DCP cannot be applied to the proposal as they relate to dwelling houses and not residential flat buildings.

The proposed non-compliance would be relatively minor, and would constitute a 10% (i.e 62sqm) variation to the control. The level of landscaped open space has been reduced by approximately 22sqm during the assessment process as a result of changes required by Council's traffic engineers in regard to the proposed grades along the driveway not complying with the Australian Standards and Council's design standards. Council's Traffic Engineers also required a waiting bay be located at either the top or bottom of the access driveway to provide safe access to and from the site. Amended plans were received by Council on 20 June 2019 with Council's Traffic Engineer response received on 25 July 2019 approving the amended scenario.

The reduction in landscaped open space to the original approved development is also a result of the reduction in turfed area along the eastern elevation which provides pedestrian access to the rear of the development. The subject modification application proposes to replace the turfed area with a wider impervious pathway consisting of terrabond gravel. Whilst this reduces the overall landscaped open space calculation for the site, the proposal retains adequate planting along the eastern elevation of the site to maintain privacy towards the adjoining property and along part of the southern elevation adjacent to G03.

As discussed in the report, the location of the terrace at ground floor level is not supported and is therefore recommended for removal. The terrace measures 15sqm. As a result additional LOS (15sqm) afforded by the proposal due to the removal of the terrace, the overall LOS proposed for the development is 46% (574sqm) providing a 9.2% variation.

Given the size of the site, the visual impacts associated with the the non-compliance would likely to be negligible, especially as the provision of landscaped/deep soil areas along both Kalinya Street and Queens Parade would provide generous opportunities for landscaping that would be consistent with surrounding development and in accordance with the DCP and ADG. Furthermore, the proposed site layout would be consistent with the outcomes of DCP Part D10.12.

The non-compliance is therefore considered reasonable and is supported.

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

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 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, 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

Overall, the proposal will provide an improved design outcome and amenity for the future occupiers of

the development. The proposal will appropriately address both street frontages whilst making a positive contribution to the streetscape. The outcome is one of a high design and improved amenity while satisfying the objectives of the zone and being consistent with the desired future of the locality.

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

Accordingly, the application is recommended for approval subject to conditions.
It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2018/0542 for Modification of Development Consent N0486/16 granted for Demolition of existing service station structure and construction of a new three storey residential flat building with basement car parking, on land at Lot 1 DP 536852,7 Kalinya Street, NEWPORT, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
DA002	August 2018	PBD Architects
DA100	June 2019	PBD Architects
DA101	June 2019	PBD Architects
DA102	August 2018	PBD Architects
DA103	August 2018	PBD Architects
DA104	August 2018	PBD Architects
DA200	5 June 2019	PBD Architects
DA201	August 2018	PBD Architects
DA202	August 2018	PBD Architects
DA203	August 2018	PBD Architects
DA300	August 2018	PBD Architects
DA600	August 2018	PBD Architects
DA601	August 2018	PBD Architects
DA602	August 2018	PBD Architects
DA603	August 2018	PBD Architects

DA604	August 2018	PBD Architects
Stormwater Management Plan Drawing No. Sheet 1/B	January 2019	Taylor Consulting Civil and Structural Engineers
Stormwater Management Plan Drawing No. Sheet 2	January 2016	Taylor Consulting Civil and Structural Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Report No. 767336M_04	27 July 2018	Brian Teplicanec Consultancy
Nathers Certificate No. 0003008090	27 July 2018	Brian Teplicanec Consultancy
Access Report	23 July 2018	Building Control Group
BCA Report	23 July 2018	Building Control Group
Stage 2 Environmental Site Assessment Report	30 July 2018	Environmental Investigation Services
Risk Analysis and Management Report	2 July 2018	Jack Hodgson Consultants Pty Limited
Remediation Action Plan	30 July 2018	Environmental Investigation Services
Stormwater Management Plan	17 July 2018	Taylor Consulting Civil and Structural Engineers

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
101 Issue D	25 July 2018	Site Image Landscape Architects
102 Issue D	25 July 2018	Site Image Landscape Architects
103 Issue C	25 July 2018	Site Image Landscape Architects
104 Issue B	5 July 2018	Site Image Landscape Architects
501 Issue A	22 June 2018	Site Image Landscape Architects
502 Issue A	22 June 2018	Site Image Landscape Architects
Waste Management Plan		
Drawing No.	Dated	Prepared By
Operational Waste Management Plan	27 July 2018	Elephants Foot Recycling Solutions

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

B. Add Condition 23 under C. Matters to be satisfied Prior to the Issue of a Construction Certificate

The applicant must provide an addendum to the Traffic and Parking Assessment Report dated 4 July 2018 and prepared by Terraffic Pty Ltd to support the resultant changes to the modification application indicated on approved Plan No. DA101, dated June 2019 and Plan No. 100, dated June 2019, both prepared by PBD Architects as part of this modified consent.

Reason: To ensure compliance with the relevant Australian Standards and consistency with the Traffic and Parking Assessment Report submitted with the subject modification application.

C. Modify Condition 7 to read as follows:

The applicant must obtain written confirmation from Council that all works in the road reserve have been completed in accordance with the the conditions of the Road Act Approval.

D. Prior to the issue of a Construction Certificate amended plans are to be submitted to the Certifying Authority indicating the deletion of the terrace along the northern elevation at ground level accessible from Unit G01 and the deletion of the terrace along the northern elevation at first floor level accessible from Unit 101.

Reason: To provide reasonable acoustic and visual privacy to the adjoining property at 10 Kalinya Street.

E. Delete Condition 15 under C. Matters to be satisfied Prior to the Issue of a Construction Certificate

F. Delete Condition 16 under C. Matters to be satisfied Prior to the Issue of a Construction Certificate











ITEM 3.5**DA2019/0380 - 72 CARRINGTON PARADE, CURL CURL -
DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING
HOUSE****REPORTING MANAGER****Steve Findlay****TRIM FILE REF****2019/498588****ATTACHMENTS**

- 1 Assessment Report**
- 2 Appendix 1**
- 3 Site Plan & Elevations**

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **refuse** Development Consent to DA2019/0380 for demolition works and construction of a dwelling house on land at Lot 1 DP 366860, 72 Carrington Parade, Curl Curl, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0380
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 1 DP 366860, 72 Carrington Parade CURL CURL NSW 2096
Proposed Development:	Demolition works and 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:	Nea Mary Der Sarkissian Berge Anthony Der Sarkissian
Applicant:	Berge Anthony Der Sarkissian
Application lodged:	15/04/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	02/05/2019 to 16/05/2019
Advertised:	Not Advertised
Submissions Received:	9
Clause 4.6 Variation:	Nil
Recommendation:	Refusal
Estimated Cost of Works:	\$ 990,000.00

EXECUTIVE SUMMARY

This report involves consideration of a proposal for demolition works and the construction of a dwelling house on the subject site.

The site contains a modest single storey dwelling on a corner allotment and the proposal is for a substantial two storey (three level) dwelling.

The site is in a location in which there are view corridors for dwellings on the southern side of Gardere Avenue to the west of the site and nearby dwellings on the northern side of Gardere Avenue, generally to the north and north-west.

The proposal was the subject of a pre-lodgement meeting and advice was provided to reduce the size and scale of the dwelling and address view sharing.

The proposal involves variations to the built form controls under the Manly Development Control Plan 2013 in relation to wall height, front setbacks, side boundary envelope and landscaped open space. The variations were found to result in a bulk and amenity impact that is inconsistent with the relevant objectives and requirements.

The proposed development was notified and 9 submissions were received.

The proposed redevelopment represents an over-development of the site and an extent of built form on the site that is incompatible and inconsistent with surrounding residential developments. Furthermore, the proposal would result in view impacts that are unsatisfactory and a resultant view sharing that is unreasonable.

Therefore, the application is recommended for refusal.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B7 Front Boundary Setbacks
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - D11 Roofs
Warringah Development Control Plan - D12 Glare and Reflection

SITE DESCRIPTION

Property Description:	Lot 1 DP 366860 , 72 Carrington Parade CURL CURL NSW 2096
Detailed Site Description:	<p>The subject site consists of an allotment located on the western side of Carrington Parade and on the southern side of Gardere Avenue.</p> <p>The site is irregular in shape with a frontage of 5.398m along Carrington and a frontage of 25.198m along Gardere Avenue. The site has a surveyed area of 280.9m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a dwelling house on site.</p> <p>The site is relatively flat and contains landscaped area to the western part of the site.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by residential development along Carrington Parade and Gardere Avenue..</p>

Map:



SITE HISTORY

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

Pre-Lodgement Meeting - PLM2018/0076

Notes provided for this meeting raised a number of issues for the applicant to consider. This

particularity related to views, setbacks, building envelope and landscaped area.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for demolition works and the construction of a dwelling house. In detail, the proposal includes the following:

Lower Level

- Mechanical Plant, store and cellar
- Store and cellar

Ground Floor

- Entry
- Three bedrooms (main with ensuite)
- Bathroom
- Store
- Double garage

First Floor

- TV room
- Laundry
- WC
- Kitchen
- Dining/living
- Internal courtyard

The proposal also includes a roof terrace and landscaping.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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 the Environmental Planning and Assessment Act 1979

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 9 submission/s from:

Name:	Address:
Mr Ian Murray Sheppard	3 Gardere Avenue CURL CURL NSW 2096
Ms Linda Hodge	64 Beaconsfield Street NEWPORT NSW 2106
Barry John Hodge Lynda Lillian Hodge	5 Gardere Avenue CURL CURL NSW 2096
Mr Gregory Crawford	8 Gardere Avenue CURL CURL NSW 2096
Symons Goodyer Pty Ltd	PO Box 673 BALGOWLAH NSW 2093
Mr Cameron Graeme Inchley Nicole Louise Gemmell	4 Gardere Avenue CURL CURL NSW 2096
Andrew Michael Callaghan Carol Anne Callaghan	7 Gardere Avenue CURL CURL NSW 2096
Mr David Mayo Webb	2 Gardere Avenue FRESHWATER NSW 2096
Mr John William Marsh	6 Beverley Place CURL CURL NSW 2096

The following issues were raised in the submissions:

- **Impact on views**
- **Non-compliance with planning controls including setbacks and landscaped open space**
- **Excessive height for the extent of the property (although it is noted that the building height is compliant)**
- **Size and magnitude of the development; overdevelopment; unsuitable for beachside environment; visual bulk; not in keeping with surrounding architectural amenity**
- **Roof top terrace- feature on terrace that would be above the building height and privacy issues cause by the terrace**
- **Lack of vacant space on the block**
- **Lack of opportunity to install photovoltaic cells**
- **Lack of safety at the Carrington Parade and Gardere Avenue intersection as a result of the proposed development (including lack of visibility for drivers); Lack of visibility for cars entering and exiting Gardere Avenue**
- **Excavation and request for dilapidation reports if further geotechnical investigation shows that the proposal can be supported**
- **Lack of consistency with setbacks with Gardere Avenue and Carrington Parade**
- **Colour of roof materials, request for non-reflective colours**

The matters raised within the submissions are addressed as follows:

- **Impact on views**
Comment:
The proposal is considered to have an unreasonable impact on views as a result of the lack of view corridors provided through the northern and eastern sections of the site, and due to the associated non-compliances with planning controls. This is further discussed in this report under *D7 Views*.
- **Non-compliance with planning controls including setbacks and landscaped open space**
Comment:
The numerical non-compliance with each of these controls has been considered on its merits

against the underlying objectives of the relevant clauses. Largely as a result of bulk, visual impact and impact on amenity (particularly views), the merit consideration in regard to each planning control has found the proposal to be unacceptable.

- **Excessive height for the extent of the property (although it is noted that the building height is compliant)**
Comment:
It is accepted that the building height is compliant, but it is also agreed that the height contributes to an overall bulk that is unacceptable in its current form.
- **Size and magnitude of the development; overdevelopment; unsuitable for beachside environment; visual bulk; not in keeping with surrounding architectural amenity**
Comment:
The proposal does not comply with requirements for wall height, building envelope, setbacks and landscaped area. Whilst the site is a constrained site, due to its small size, narrow width and corner location, the impacts are indicative of an overdevelopment of the site and the unsuitability of the proposal for this constrained site. This is further discussed under *D9 Building Bulk*, in this report.
- **Roof top terrace- feature on terrace that would be above the building height and privacy issues caused by the terrace**
Comment:
The proposed roof terrace complies with the building height standard. The proposal would not have any unreasonable impact on privacy due to sufficient physical separation between the terrace and neighbouring living spaces.
- **Lack of vacant space on the block**
Comment:
The significant non-compliance with the landscaped open space requirement is not supported. This is further assessed under *D1 Landscaped Open Space and Bushland Setting*.
- **Lack of opportunity to install photovoltaic cells**
Comment:
This matter does not result in an inconsistency with any relevant policy or legislative requirements. As such, this is not a reason for refusal.
- **Lack of safety at the Carrington Parade and Gardere Avenue intersection as a result of the proposed development (including lack of visibility for drivers)/Lack of visibility for cars entering and exiting Gardere Avenue.**
Comment:
It is agreed that greater setbacks to Carrington Parade and Gardere Avenue would result in better visibility and safety.
- **Excavation and request for dilapidation reports if further geotechnical investigation shows that the proposal can be supported**
Comment:
The geotechnical report lodged with the application is deficient. This is not a reason for refusal as a condition could be imposed, if the application is deemed worthy of approval.
- **Lack of consistency with setbacks with Gardere Avenue and Carrington Parade**
Comment:
The proposal is not consistent with the prevailing setback at either street. This contributes to a visual impact and amenity impact that is unreasonable.

- **Colour of roof materials, request for non-reflective colours**

Comment:

A condition would be imposed to require non-reflective colours if the application was deemed worthy of approval. As such, this is not a reason for refusal.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The site contains little by way of existing landscape features. The proposed planting of native species is generally supported, however it is noted that the proposal is non-compliant with regard to the quantum of landscaped open space, which is left to planning assessment.</p> <p>The landscape plans also indicate that the surrounding road verge is to be planted with native species. Whilst a nice gesture, it is not considered practical in terms of maintenance and liability, particularly in relation to sight lines.</p> <p>The proposal should not rely on the external public land to provide an adequate landscape setting. It is recommended that the verge remain turfed. Further comment may be sought from Council's Roads Assets section with regard to the acceptability of the proposed planting in the verge as the relevant asset manager of this component.</p> <p>If the proposal is to be approved, recommended conditions have been included.</p>
NECC (Bushland and Biodiversity)	<p>The site is mapped as a Wildlife Corridor under Warringah DCP 2011, and therefore clause E4 Wildlife Corridors applies to the land. While the landscape area requirement cannot be met due to small lot size, the development has provided a landscape plan that will to some extent reconstruct 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 dune heath community.</p> <p>These comments refer to the subject lot only, and do not relate to the proposed verge planting.</p>
NECC (Coast and Catchments)	<p>12 Development on land within the coastal vulnerability area</p> <p><i>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:</i></p> <p>(a) <i>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</i></p> <p>(b) <i>the proposed development:</i></p>

Internal Referral Body	Comments
	<p>(i) <i>is not likely to alter coastal processes to the detriment of the natural environment or other land, and</i></p> <p>(ii) <i>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</i></p> <p>(iii) <i>incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and</i></p> <p>(c) <i>measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazards.</i></p> <p><u>Comment:</u> The subject land has not been included on the Coastal Vulnerability Area Map under State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP) and in regard to CM SEPP the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018 and relevant coastal issues under the Warringah LEP and DCP.</p>
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.
NECC (Riparian Lands and Creeks)	The proposed development is supported with conditions to comply with the SEPP Coastal Management. The development must meet sediment and erosion control conditions throughout the duration of the works. The proposed development has been assessed, based on compliance with applied conditions, to cause no adverse impact on the integrity and resilience of the biophysical and ecological environment of the lagoon, particularly water quality
Traffic Engineer	No concern is raised on the traffic generation resulting from the proposal. Further traffic and parking related assessment is to be undertaken by the responsible assessment officer.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	

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. 984836S).

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:

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 not likely to cause an adverse impact upon the matters identified in this clause. The proposed alterations and additions do 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:

Council is satisfied the proposed works are designed, and can be managed, to avoid adverse impacts based upon the 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 will not be adversely effected and the surrounding area consists of examples of similar developments.

The proposed works are not likely to cause an adverse impact upon the matters identified in this clause.

A condition of consent has been placed to stop works and report the findings to the AHO if any Aboriginal Engravings or Relics are unearthed.

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.

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	8.5m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements

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

Detailed Assessment

6.2 Earthworks

Further information is required from the geotechnical investigation in regard to the depth of excavation and associated recommendations. However, as a result of the preliminary report providing support for the development, it is considered that this additional information could be required through a condition of consent.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	8.1m	N/A	No (see comments)
B3 Side Boundary Envelope	South- 5m	Outside	N/A	No (see comments)
	West - 5m	Within	N/A	Yes
B5 Side Boundary Setbacks	0.9m	0.9m	N/A	Yes
	0.9m	0.9m	N/A	Yes
B7 Front Boundary Setbacks- East	6.5m	2.33m	N/A	No (see comments)
B7 Front Boundary Setbacks - North (exception for secondary street)	3.5m	0m-3.6m	N/A	No (see comments)
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	16.4% (46m ²)	N/A	No (see comments)

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	No
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	No	No
D8 Privacy	Yes	Yes
D9 Building Bulk	No	No
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	No	No
D12 Glare and Reflection	No	No
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

Detailed Assessment

B1 Wall Heights

Description of non-compliance

The proposal does not comply with the 7.2m control for wall height. In this regard, the proposal involves a wall height of up to 8.1m.

Merit consideration:

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

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

Comment:

The proposed wall height contributes to a visual impact that is not appropriate when viewed from adjoining properties and in the streetscape. This is as a result of the visual dominance of

continuous walls with a lack of setback from the street. In particular, the section of continuous wall that has a nil or negligible setback to Carrington Parade and Gardere Avenue is unsatisfactory.

The proposal **does not comply** with this objective.

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

Comment:

The proposal complies with the development standard for building height and this level would be generally below the existing tree canopy level.

The proposal **complies** with this objective.

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

Comment:

As further discussed under Clause *D7 Views*, the proposal would result in an impact that varies from being minor to severe. This impact is not a reasonable outcome for view sharing.

The proposal **does not comply** with this objective.

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

Comment:

Along with the setbacks to Gardere Avenue and Carrington Parade that do not comply with the controls, the proposed design of the walls would contribute to a visual impact and particularly an impact on views toward the ocean for neighbouring properties that has not been minimised.

The proposal **does not comply** with this objective.

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

Comment:

The proposal does not provide an appropriate response to the topography, given the slope of the site towards Carrington Parade. In particular, the presentation of and impact caused by the front section of the dwelling is unreasonable due to the lack of stepping, modulation or setback to correspond with the slope.

The proposal **does not comply** with this objective.

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

Comment:

The design does not result in a satisfactory outcome for view sharing. The roof and walls have not adequately provided for view sharing corridors for neighbouring properties. As such, the non-compliant wall height has not provided sufficient scope for a roof design that is acceptable for view sharing.

The proposal **does not comply** with this objective.

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

B3 Side Boundary Envelope

Description of non-compliance

The proposal does not comply with the 5.0m control for side boundary building envelope at the southern elevation. In this regard, the proposal involves a non-compliance in the form of a diminishing triangle for a length of 7.5m at the front section of the southern elevation.

Merit consideration

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

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

Comment:

Although some modulation is provided at the south-eastern corner of the dwelling in the form of an angled window, the envelope non-compliance will contribute to a visually dominant presentation of the dwelling to Carrington Parade.

The proposal **does not comply** with this objective.

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

Comment:

The proposed envelope non-compliance would not result in any unreasonable impact on light, solar access or privacy. This is as a result of the sufficient orientation and separation of windows as well as the maintenance of opportunity for solar access to the east for the neighbouring dwelling.

The proposal **complies** with this objective.

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

Comment:

The proposal does not provide an appropriate response to the topography, given the slope the site towards Carrington Parade. In particular, the presentation of and impact caused by the front section of the dwelling is unreasonable due to the lack of stepping, modulation or setback to correspond with the slope.

The proposal **does not comply** with this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

B7 Front Boundary Setbacks

Description of non-compliance

The proposal does not comply with the 6.5m control for front setbacks. In this regard, the proposal involves a 2.33m to Carrington Parade.

The proposal also does not comply with the 3.5m allowed for secondary frontages. In this regard, the proposal involves a setback of Nil to 3.6m to Gardere Avenue.

The 3.5m exception for secondary frontages requires consideration of the character of the secondary street and the predominant setbacks within the secondary street. In consideration of this, the proposed setback is inconsistent with the prevailing building setbacks in the street.

Merit consideration:

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

- *To create a sense of openness.*

Comment:

The lack of setback to each street frontage and the continuous walls within this setback, provide a situation in which the majority of the site is taken up by building. This is also shown by the Floor Space ratio (as defined by the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*) of 1:1. Furthermore, the proposal involves a non-compliant landscaped area and does not provide stepping and sufficient modulation at the upper level to assist in achieving a sufficient sense of openness.

The proposal **does not comply** with this objective.

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

Comment:

The proposal is significantly non-compliant with the 40% control under the Warringah DCP for

landscaped open space and does not match the average prevailing building line at either street frontage. Despite the site being a relatively small corner allotment, this does not provide an appropriate integration of into the existing building pattern or landscape elements of the area.

The proposal **does not comply** with this objective.

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

Comment:

The lack of landscaped area and the closeness of the building bulk to each street frontage would diminish the visual quality of the streetscapes and the surrounding area.

The proposal **does not comply** with this objective.

- *To achieve reasonable view sharing.*

Comment:

The non-compliant front setback leads to unacceptable view loss to properties on the opposite side of Gardere Avenue. This includes loss of views to the ocean and north head, as further discussed under D7 Views.

The proposal **does not comply** with this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

D1 Landscaped Open Space and Bushland Setting

Description of non-compliance

The proposal does not comply with the 40% Landscaped Open Space requirement. In this regard, the proposal involves a landscaped open space of 16.4% (46m²).

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 proposal involves one small section of landscaping to the front of the site and a small section of landscaping to the north-western corner of the site. The extent of this landscaping is not sufficient for the presentation of the development at either Carrington Parade or Gardere Avenue. In particular, the siting of the development toward the north-eastern corner of the site restricts potential for an adequate integration of planting at both Carrington parade and Gardere

Avenue.

The proposal **does not comply** with this objective.

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

Comment:

As a result of the significant numerical non-compliance, the proposal does not provide for a reasonable enhancement of area for vegetation or habitat for wildlife.

The proposal **does not comply** with this objective.

- *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 areas of landscaped open space do not have sufficient dimensions so as to allow for the establishment of natural features that could adequately mitigate the height, bulk and scale of the development. In particular, the small section of landscaping at the north-eastern corner of the site does not provide large enough area of spacing or landscaping to reduce the presentation of bulk at each street.

The proposal **does not comply** with this objective.

- *To enhance privacy between buildings.*

Comment:

The proposal does not result in any unreasonable privacy impact and as such further landscaping is not necessary for the purpose of mitigating impact on privacy.

The proposal **complies** with this objective.

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

Comment:

The proposal involves terrace areas that assist in providing an appropriate outcome for the outdoor recreational opportunity of occupants.

The proposal **complies** with this objective.

However, it is noted that an alternative design with the private open space area outside the building envelope may provide opportunity to reduce building bulk and impact on views to a more acceptable level.

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

Comment:

The proposal involves area toward the rear of the site that would allow for service functions including clothes drying.

The proposal **complies** with this objective.

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

Comment:

Council's Stormwater engineer has provided the proposed is acceptable subject to conditions.

The proposal **complies** with this objective, subject to conditions.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

D7 Views

Note: The following assessment in relation to views is to be read in conjunction with the Appendix of View Impact photos attached to this report.

Merit consideration

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 for each of the following neighbouring properties:

2 Gardere Avenue

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:

The views affected involve ocean views over the top of the existing building at 72 Carrington Parade as well as land-water interface views through the northern side of the subject site. The views over the top of the existing building includes uninterrupted view of the horizon and the water views to the north are partially interrupted by trees along the foreshore.

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:

The views are obtained from both a sitting and standing position, and are over the eastern side boundary.

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:

The proposal would have an impact on views from a living area and a deck toward the front of 2 Gardere Avenue. The impact from the living area involves interrupting the majority of the existing water view from both standing and sitting position. The remaining water view from the living room would be a glimpse of water through the pine trees to the north of the subject site. The deck area is north of the this living area and so the angle would maintain a water view through the subject site that is slightly more than a glimpse. The extent of water view lost across these two areas results in a qualitative assessment that the view impact across the whole property is **severe**.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The impact on the view corridor on the northern side of the subject site, arises from a non-compliance with the front setback control (including the exception to the front setback for secondary street frontages) and wall height. Given that the **severe** impact arises as a result of non-compliance with these controls, the view sharing outcome is assessed as **unreasonable**.

3 Gardere Avenue

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:

The views affected involve beach and ocean views to the front of the existing building at 72 Carrington Parade. There are also partial views of North Head over the top of the existing dwelling and full views of North Head to the front of the dwelling.

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:

The views are obtained from both a sitting and standing position, and are over the front boundary.

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:

The proposal would have an impact on views from a living and kitchen area toward the front of 3 Gardere Avenue. The impact from this area involves interrupting water view from both standing and sitting position. Depending on the view angle and window viewed from, there is a range of view impact from complete obliteration of the view of North Head to substantial retention of the view. Overall, the impact on the whole of the property is **minor-moderate**.

4. Reasonableness of the proposal that is causing the impact

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

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

Comment to Principle 4:

The impact on the view corridor on the northern side of the subject site, arises from a non-compliance with the front setback control and wall height. Given that the minor-moderate impact arises as a result of non-compliance with these controls, the view sharing outcome is assessed as **unreasonable**.

4 Gardere Avenue

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:

The views affected involve ocean views over the top of the existing building at 72 Carrington Parade as well as land-water interface views through the northern side of the subject site. The views over the top of the existing building include a view of the horizon and the water views to the north are partially interrupted by trees along the foreshore.

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:

The views are obtained from both a sitting and standing position, and are over the eastern side boundary.

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:

The proposal would have an impact on views from a deck toward the front of 4 Gardere Avenue. The impact from this area involves interrupting a substantial water view from both standing and sitting position. The view corridor toward the north of the subject site will remain, however, this is interrupted by existing pine trees. The extent of water view results in a qualitative assessment that the view impact for this property is **moderate**.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The impact on the water view through the subject site, arises partly from a non-compliance with the secondary street setback control and wall height. Given that the moderate impact arises as a result of non-compliance with these controls, the view sharing outcome is assessed as **unreasonable**. Furthermore, a more skilful design to provide a greater view corridor through the north of the site and could provide the applicant with the same development potential with a reduced impact on views.

5 Gardere Avenue

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:

The views affected involve ocean views to the front of the existing building at 72 Carrington Parade and views to North Head that are over the top of the existing 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:

The views are obtained from both a sitting and standing position, and are over the front

boundary.

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:

The proposal would have an impact on views from a living and kitchen area toward the front of 5 Gardere Avenue. The impact from this area involves interrupting water view and view of North Head from both standing and sitting position. Depending on the view angle and window viewed from, there is a range of view impact from almost obliteration of the water views and North Head to reasonable retention of the water view (kitchen section). Overall, the impact on the whole of the property is **moderate-severe**.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The impact on the view corridor on the northern side of the subject site, arises from a non-compliance with the front setback control and wall height. Given that the **moderate-severe** impact arises as a result of non-compliance with these controls, the view sharing outcome is assessed as **unreasonable**.

8 Gardere Avenue

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:

The views affected involve ocean views over the top of the existing building at 72 Carrington Parade as well as land-water interface views through the northern side of the subject site. The

views over the top of the existing building include a view of the horizon and the water views to the north are partially interrupted by trees along the foreshore.

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:

The views are obtained from both a sitting and standing position, and are over the eastern side boundary.

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:

The proposal would have an impact on views from a first floor and second floor deck toward the front of 8 Gardere Avenue. The impact from this area involves interrupting a substantial water view from both standing and sitting position at the first floor deck and a negligible amount at the second floor deck. The view corridor toward the north of the subject site will remain, however, this is interrupted by existing pine trees. The extent of water view results in a qualitative assessment that the view impact for this property is **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:

The impact on the water view through the subject site, arises partly from a non-compliance with the secondary street setback control and wall height. Despite the minor impact, a more skilful design could provide a greater view corridor through the north of the site, to provide the applicant with the same development potential with a reduced impact on views.

6 Gardere Avenue and 7 Gardere Avenue

Access was not able to be obtained for these properties.

However, given the location of 6 Gardere Avenue in between 4 Gardere Avenue and 8 Gardere Avenue, a similar situation is provided in that views from the front of the site are affected by a non-complying proposal and the outcome could be improved with a more skilful design.

Furthermore, the location of 7 Gardere Avenue to the west of 5 Gardere Avenue, provides a similar situation as 3 Gardere and 5 Gardere in that a more compliant proposal could provide a better outcome for views.

The proposal **does not comply** with this objective.

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

Comment:

Given the non-compliance of the proposal with the controls for setbacks to the streets and wall height, the proposal does not provide a design solution that would improve the urban environment due to the inadequate outcome for view sharing. In particular, view corridors along each street elevation have not been achieved through either design innovation or compliance with the setback controls.

The proposal **does not comply** with this objective.

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

Comment:

The proposal will not have any unreasonable impact on canopy trees.

The proposal **complies** with this objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent 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 not supported, in this particular circumstance.

D9 Building Bulk

Merit consideration

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

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

The proposal involves a building that does not comply with setback, envelope and wall height controls. This contributes to a design that has not sufficiently minimised amenity and visual impact through innovation. The extent of building bulk close to the street and the lack of landscaping between the street and this bulk, provides a situation in which the bulk would result

in an outcome that is unsuitable for the site and the surrounding area.

The proposal **does not comply** with this objective.

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

Comment:

The proposed wall height, lack of appropriate setback to each street and lack of landscaped area, contributes to a visual impact that is not appropriate when viewed from adjoining properties and in the streetscape. This is as a result of the visual dominance associated with the continuous walls which have a lack of setback from the street. In particular, the section of continuous wall that has a nil or negligible setback to Carrington Parade and Gardere Avenue is unsatisfactory.

The proposal **does not comply** with this objective.

Having regard to the above assessment, it is concluded that the proposed development is not 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 not supported, in this particular circumstance.

D11 Roofs

If the application was supported, the following condition would be recommended:

"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."

D12 Glare and Reflection

See comments under *D11 Roofs*.

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.

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, 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
- Inconsistent 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

The proposal complies with the relevant provisions of WLEP 2011, which is primarily the 'Height of Buildings' Development Standard.

The assessment of the proposal against the provisions of the Warringah DCP 2013 found that the proposal does not comply with front setback, building envelope, landscaped open space and wall height controls. This results in a character and amenity outcome that is incompatible with development in the area and indicates the proposal is not suitable for the site.

It is considered that the non-compliance's will have unreasonable amenity impacts (particularly in relation to views) on adjoining properties and that the design is inconsistent with the character of the area.

There were 8 submissions made in response to the public notification.

The submissions received raised a number of issues and concerns which have been addressed in this report. The applicant was requested to provide height poles to assist in the assessment of the impact on views. Survey confirmation was provided to verify the height and location of the poles.

Despite the significant constraints on development of this small, narrow corner site, the visual impact, view impact and incompatibility of the proposed development with the character of the streetscape and locality, has resulted in a conclusion that the proposal is an overdevelopment and unsuitable development for the site.

Accordingly, the application is recommended for refusal.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No DA2019/0380 for the Demolition works and construction of a dwelling house on land at Lot 1 DP 366860,72 Carrington Parade, CURL CURL, for the reasons outlined as follows:

1. 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 B1 Wall Heights of the Warringah Development Control Plan 2011.
2. 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 B3 Side Boundary Envelope of the Warringah Development Control Plan 2011.
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 B7 Front Boundary Setbacks of the Warringah Development Control Plan 2011.
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 D1 Landscaped Open Space and Bushland Setting of the Warringah Development Control Plan 2011.
5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development is inconsistent with the provisions of Clause D7 Views of the Warringah Development Control Plan 2011.
6. 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 D9 Building Bulk of the Warringah Development Control Plan 2011.

Appendix 1



Photo 1: Location of subject site



Photo 2: Front deck at 2 Gardere Avenue.



Photo 3: Front Living area at 2 Gardere Avenue.



Photo 4: Living area at 2 Gardere Avenue.



Photo 5: Kitchen at 5 Gardere Avenue



Photo 6: Living room at 5 Gardere Avenue



Photo 7- Living room at 3 Gardere Avenue



Photo 8: Kitchen area at 3 Gardere Avenue



Photo 9: Deck at 4 Gardere Avenue



Photo 10: Top deck at 8 Gardere Avenue



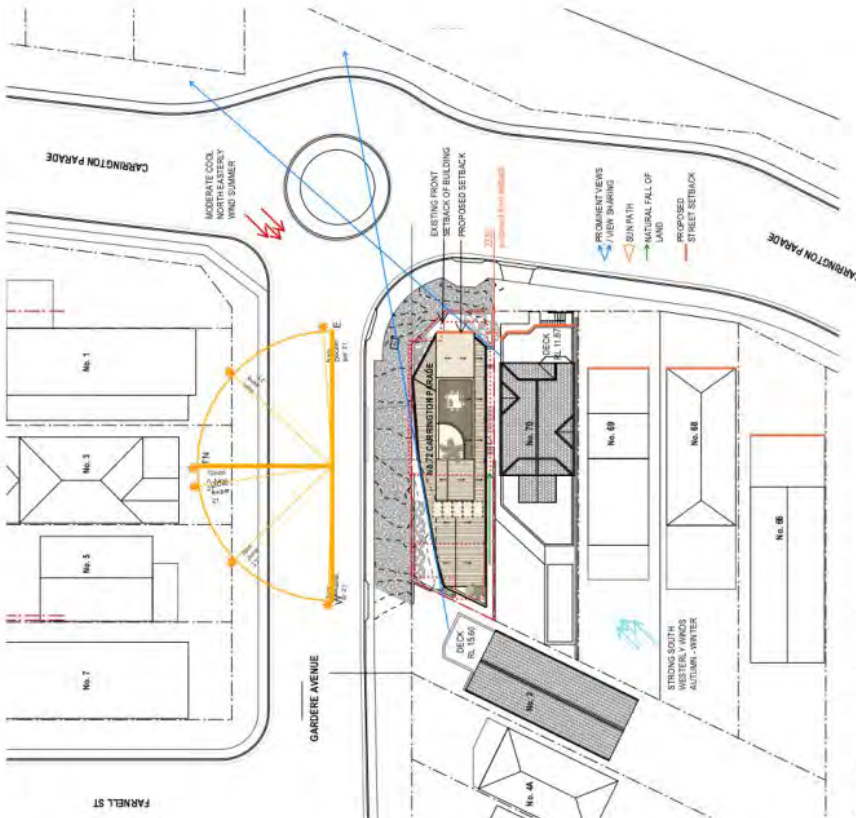
Photo 11: Lower Deck at 8 Gardere Avenue



2 LOCATION PLAN
1:1000

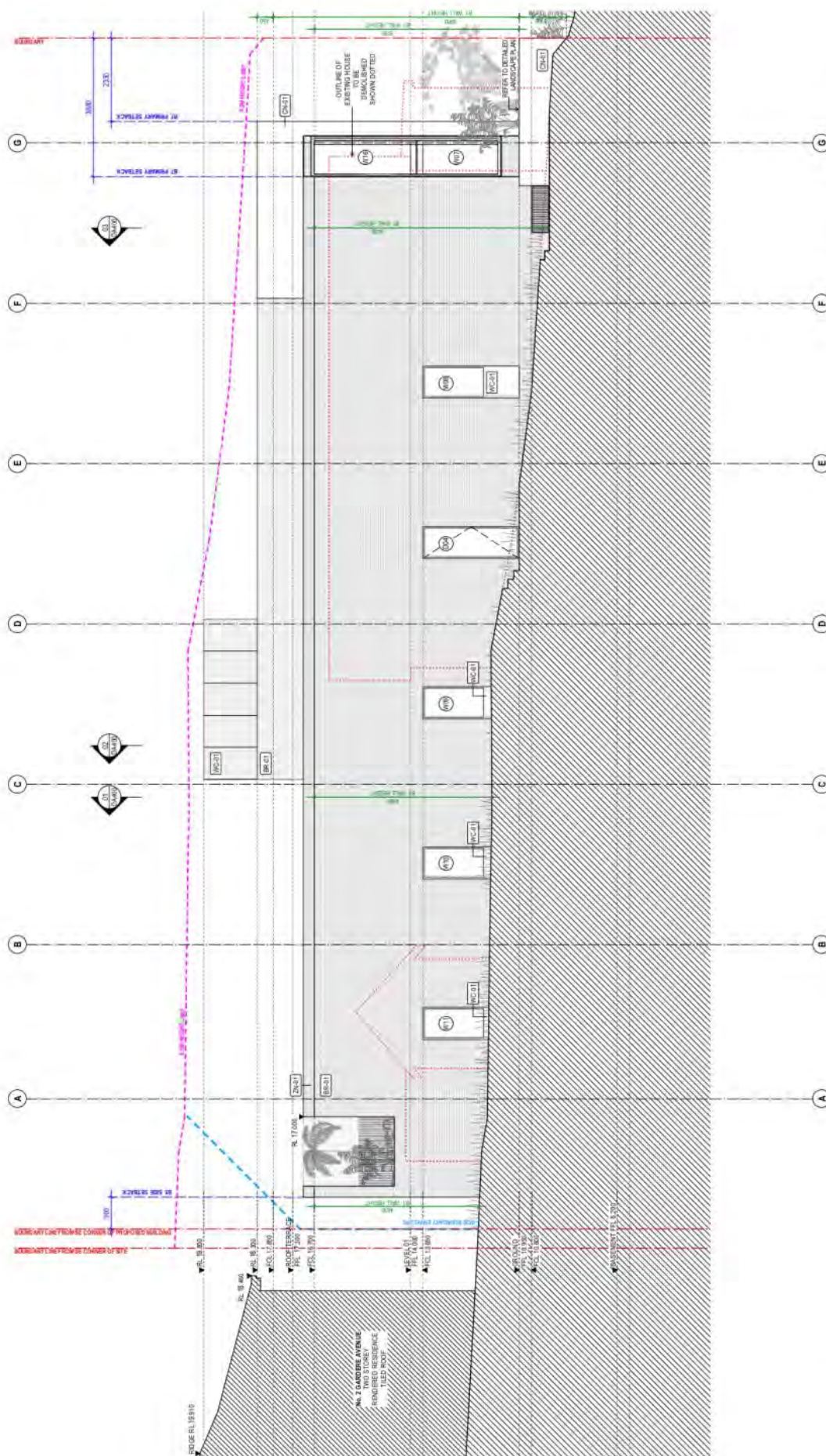


3 EXISTING CARRINGTON PARADE ELEVATION
NTS





<p>NOT FOR CONSTRUCTION</p>		<p>1 NORTH ELEVATION 1:100</p>		<p>72 CARRINGTON PARADE, CURL CURL</p>		<p>NORTH ELEVATION</p>		<p>SHEET 300 DA</p>		<p>E</p>	
<p>PROJECT 72 CARRINGTON PARADE, CURL CURL</p>		<p>ARCHITECT BREAKSPEAR ARCHITECTS ARCHITECTS P. 02 958 8300 E. info@breakspear.com.au</p>		<p>CLIENT 72 CARRINGTON PARADE, CURL CURL</p>		<p>DATE 11 SEP 2019</p>		<p>SCALE 1:100</p>		<p>SHEET NUMBER 300</p>	
<p>PROJECT 72 CARRINGTON PARADE, CURL CURL</p>		<p>ARCHITECT BREAKSPEAR ARCHITECTS ARCHITECTS P. 02 958 8300 E. info@breakspear.com.au</p>		<p>CLIENT 72 CARRINGTON PARADE, CURL CURL</p>		<p>DATE 11 SEP 2019</p>		<p>SCALE 1:100</p>		<p>SHEET NUMBER 300</p>	
<p>PROJECT 72 CARRINGTON PARADE, CURL CURL</p>		<p>ARCHITECT BREAKSPEAR ARCHITECTS ARCHITECTS P. 02 958 8300 E. info@breakspear.com.au</p>		<p>CLIENT 72 CARRINGTON PARADE, CURL CURL</p>		<p>DATE 11 SEP 2019</p>		<p>SCALE 1:100</p>		<p>SHEET NUMBER 300</p>	

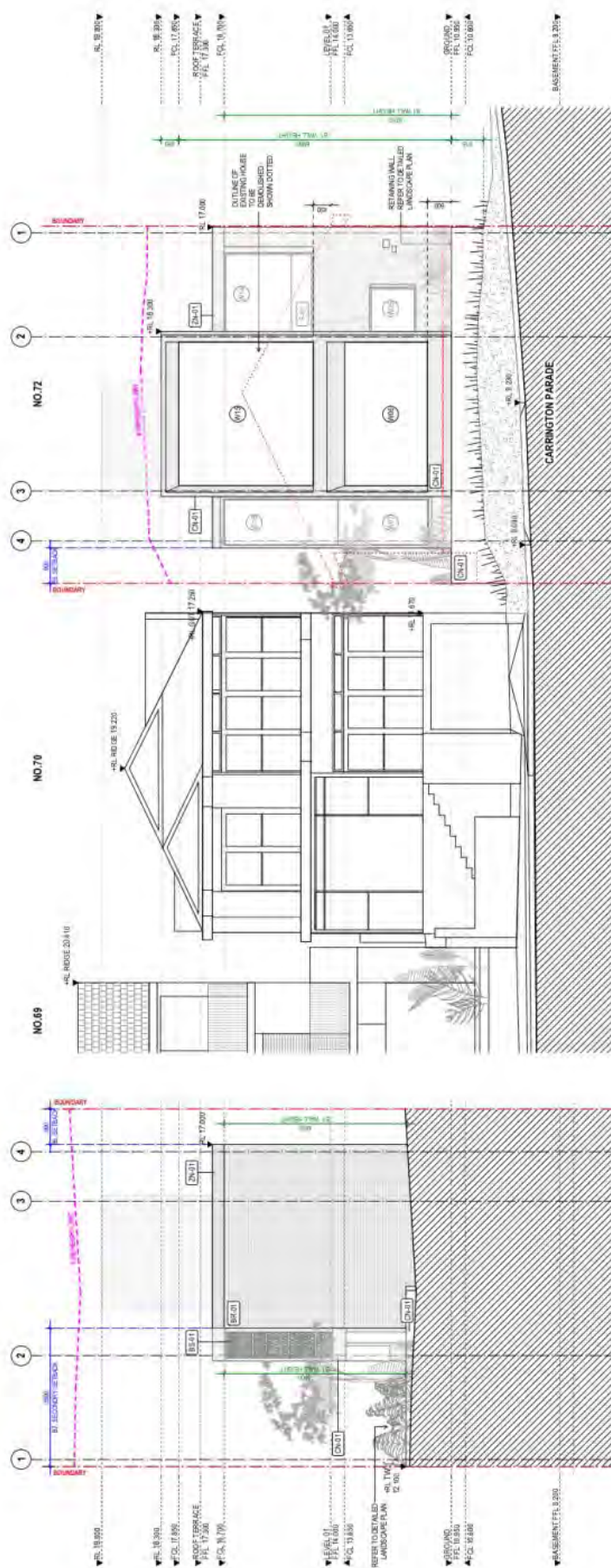


1 SOUTH ELEVATION
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The drawings should be made in consultation with all relevant contacts, specialists, mentors and colleagues. Do not make any changes after the first meeting. All drawings are on site before construction. Copyright of this drawing is retained in the drawing. Architect 2012.

NOT FOR CONSTRUCTION

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2	PROJECT ADDRESS	LOT 1 (OF 36600)	
3	PROJECT NUMBER	1701	CA
4	PROJECT DATE	1-10-00	A3
5	PROJECT TYPE	TR	DA
6	PROJECT VALUE	SHEET ELEVATION	
7	PROJECT SHEET	SHEET FILE	
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2 EAST ELEVATION
1:100

1 WEST ELEVATION
1:100

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NOT FOR CONSTRUCTION

SHEET TITLE

EAST / WEST ELEVATION

DOCUMENTATION STAGE

DA

SHEET NUMBER

302

TITLE

E

PROJECT	PROJECT NUMBER	DRAWING	DESIGNER	SHEET SCALE	SHEET SIZE
72 CARRINGTON PARADE, CURL CURL	1701	CA	TB	1:100	A3

<p>LANDSCAPE ARCHITECT 10000 E. 1st Ave., Suite 100 Denver, CO 80231 Tel: 303.733.8111 E: info@paulmiller.com</p>	<p>ARCHITECT BREAKPEAR ARCHITECTS 1841 601 670 9691 A201 670 9691 Level 1, 2003 The Centre, Mary Hill NSW Tel: 02121 981 746 E: info@breakpear.com.au</p>	<p>CLIENT George and Lisa De Bussche 72 Glenfern Park, Carlisle NSW 2059</p>
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<p>STRUCTURAL ANALYSER 2D/3D/4D/5D/6D/7D/8D/9D/10D/11D/12D/13D/14D/15D/16D/17D/18D/19D/20D/21D/22D/23D/24D/25D/26D/27D/28D/29D/30D/31D/32D/33D/34D/35D/36D/37D/38D/39D/40D/41D/42D/43D/44D/45D/46D/47D/48D/49D/50D/51D/52D/53D/54D/55D/56D/57D/58D/59D/60D/61D/62D/63D/64D/65D/66D/67D/68D/69D/70D/71D/72D/73D/74D/75D/76D/77D/78D/79D/80D/81D/82D/83D/84D/85D/86D/87D/88D/89D/90D/91D/92D/93D/94D/95D/96D/97D/98D/99D/100D/101D/102D/103D/104D/105D/106D/107D/108D/109D/110D/111D/112D/113D/114D/115D/116D/117D/118D/119D/120D/121D/122D/123D/124D/125D/126D/127D/128D/129D/130D/131D/132D/133D/134D/135D/136D/137D/138D/139D/140D/141D/142D/143D/144D/145D/146D/147D/148D/149D/150D/151D/152D/153D/154D/155D/156D/157D/158D/159D/160D/161D/162D/163D/164D/165D/166D/167D/168D/169D/170D/171D/172D/173D/174D/175D/176D/177D/178D/179D/180D/181D/182D/183D/184D/185D/186D/187D/188D/189D/190D/191D/192D/193D/194D/195D/196D/197D/198D/199D/200D/201D/202D/203D/204D/205D/206D/207D/208D/209D/210D/211D/212D/213D/214D/215D/216D/217D/218D/219D/220D/221D/222D/223D/224D/225D/226D/227D/228D/229D/230D/231D/232D/233D/234D/235D/236D/237D/238D/239D/240D/241D/242D/243D/244D/245D/246D/247D/248D/249D/250D/251D/252D/253D/254D/255D/256D/257D/258D/259D/260D/261D/262D/263D/264D/265D/266D/267D/268D/269D/270D/271D/272D/273D/274D/275D/276D/277D/278D/279D/280D/281D/282D/283D/284D/285D/286D/287D/288D/289D/290D/291D/292D/293D/294D/295D/296D/297D/298D/299D/300D/301D/302D/303D/304D/305D/306D/307D/308D/309D/310D/311D/312D/313D/314D/315D/316D/317D/318D/319D/320D/321D/322D/323D/324D/325D/326D/327D/328D/329D/330D/331D/332D/333D/334D/335D/336D/337D/338D/339D/340D/341D/342D/343D/344D/345D/346D/347D/348D/349D/350D/351D/352D/353D/354D/355D/356D/357D/358D/359D/360D/361D/362D/363D/364D/365D/366D/367D/368D/369D/370D/371D/372D/373D/374D/375D/376D/377D/378D/379D/380D/381D/382D/383D/384D/385D/386D/387D/388D/389D/390D/391D/392D/393D/394D/395D/396D/397D/398D/399D/400D/401D/402D/403D/404D/405D/406D/407D/408D/409D/410D/411D/412D/413D/414D/415D/416D/417D/418D/419D/420D/421D/422D/423D/424D/425D/426D/427D/428D/429D/430D/431D/432D/433D/434D/435D/436D/437D/438D/439D/440D/441D/442D/443D/444D/445D/446D/447D/448D/449D/450D/451D/452D/453D/454D/455D/456D/457D/458D/459D/460D/461D/462D/463D/464D/465D/466D/467D/468D/469D/470D/471D/472D/473D/474D/475D/476D/477D/478D/479D/480D/481D/482D/483D/484D/485D/486D/487D/488D/489D/490D/491D/492D/493D/494D/495D/496D/497D/498D/499D/500D/501D/502D/503D/504D/505D/506D/507D/508D/509D/510D/511D/512D/513D/514D/515D/516D/517D/518D/519D/520D/521D/522D/523D/524D/525D/526D/527D/528D/529D/530D/531D/532D/533D/534D/535D/536D/537D/538D/539D/540D/541D/542D/543D/544D/545D/546D/547D/548D/549D/550D/551D/552D/553D/554D/555D/556D/557D/558D/559D/560D/561D/562D/563D/564D/565D/566D/567D/568D/569D/570D/571D/572D/573D/574D/575D/576D/577D/578D/579D/580D/581D/582D/583D/584D/585D/586D/587D/588D/589D/590D/591D/592D/593D/594D/595D/596D/597D/598D/599D/600D/601D/602D/603D/604D/605D/606D/607D/608D/609D/610D/611D/612D/613D/614D/615D/616D/617D/618D/619D/620D/621D/622D/623D/624D/625D/626D/627D/628D/629D/630D/631D/632D/633D/634D/635D/636D/637D/638D/639D/640D/641D/642D/643D/644D/645D/646D/647D/648D/649D/650D/651D/652D/653D/654D/655D/656D/657D/658D/659D/660D/661D/662D/663D/664D/665D/666D/667D/668D/669D/670D/671D/672D/673D/674D/675D/676D/677D/678D/679D/680D/681D/682D/683D/684D/685D/686D/687D/688D/689D/690D/691D/692D/693D/694D/695D/696D/697D/698D/699D/700D/701D/702D/703D/704D/705D/706D/707D/708D/709D/710D/711D/712D/713D/714D/715D/716D/717D/718D/719D/720D/721D/722D/723D/724D/725D/726D/727D/728D/729D/730D/731D/732D/733D/734D/735D/736D/737D/738D/739D/740D/741D/742D/743D/744D/745D/746D/747D/748D/749D/750D/751D/752D/753D/754D/755D/756D/757D/758D/759D/760D/761D/762D/763D/764D/765D/766D/767D/768D/769D/770D/771D/772D/773D/774D/775D/776D/777D/778D/779D/780D/781D/782D/783D/784D/785D/786D/787D/788D/789D/790D/791D/792D/793D/794D/795D/796D/797D/798D/799D/800D/801D/802D/803D/804D/805D/806D/807D/808D/809D/810D/811D/812D/813D/814D/815D/816D/817D/818D/819D/820D/821D/822D/823D/824D/825D/826D/827D/828D/829D/830D/831D/832D/833D/834D/835D/836</p>
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12/1/14	ISSUE FOR DON	12/1/14	ISSUE FOR DON
12/1/14	UPDATES FOR SEE	12/1/14	UPDATES FOR SEE
12/1/14	ISSUE FOR DON	12/1/14	ISSUE FOR DON
12/1/14	ISSUE TO PLANNER	12/1/14	ISSUE TO PLANNER
12/1/14	REJURY ISSUE FOR DON	12/1/14	REJURY ISSUE FOR DON