

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 DECEMBER 2019



Ashleigh Sherry
Manager Business Systems and Administration

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

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 27 NOVEMBER 2019

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 27 November 2019 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1 **MOD2019/0507 - CAMPBELL PARADE, MANLY VALE -
MODIFICATION OF DEVELOPMENT CONSENT DA2017/0353
GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION
OF NEW SPORTS AMENITIES BUILDINGS**

REPORTING MANAGER **Steve Findlay**

TRIM FILE REF **2019/692804**

ATTACHMENTS **1 Assessment Report
2 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 **approve** Mod2019/0507 for Modification of Development Consent DA2017/0353 granted for demolition works and construction of new sports amenities buildings on land at Part Lot 2743 DP 752038, Campbell Parade, Manly Vale, subject to the conditions outlined in the Assessment Report.



APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0507
Responsible officer:	Geoff Goodyer - external planning consultant, Symons Goodyer Pty Ltd
Land to be developed (address):	Part Lot 2743, DP 752038, Campbell Parade, Manly Vale – Nolans Reserve
Proposed development:	Modification of consent to DA2017/0353 granted for demolition and construction of a new sports amenities building.
Proposed modification:	Section 4.55 (1a) minor modification for selected changes including floor level, roof form and internal layout.
Zoning:	Warringah LEP 2011 – Land zoned RE1 Public Recreation
Development permissible:	Yes – Recreation facilities (outdoors)
Existing use rights:	No
Consent authority:	Northern Beaches Council
Delegation level:	Development Determination Panel
Land and Environment Court action:	No
Owner:	Northern Beaches Council
Applicant:	Northern Beaches Council
Application lodged:	18 October 2019
Integrated development:	No
Designated development:	No
Notified:	5/11/2019 to 19/11/2019
Advertised:	Not advertised
Submissions received:	Nil
Recommendation:	Approval



EXECUTIVE SUMMARY

On 4 August 2017 Council approved DA2017/0353 for “*demolition works and construction of new sports amenities buildings*”. The original development application was determined by Council’s Application Determination Panel (ADP) being a Council facility. Since this is a minor modification and no contentious issues have been raised by submissions or the assessment the matter may be referred to the DDP for determination. This is because the applicant and land owner is Council and recent directions regarding Section 4.55 of the Act, by the Minister of Planning “do not extend to modifications”

During the construction certificate phase the proposal has gone through a process of design refinement which has resulted in a number of minor changes to the design of the amenities building.

The author of this report (independent external consultant) concludes that the proposal will have no additional or unreasonable impacts and the changes are consistent with that compared to the original approval. The proposal is considered to be substantially the same development as that which was originally approved. Consequently, the proposal is recommended for approval pursuant to s. 4.55(1A) of the EPA Act 1979.

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 (ie: 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 in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011
Warringah Development Control Plan 2011

SITE DESCRIPTION

Property description:	Part lot 2743, DP 752038, Campbell Parade, Manly Vale – Nolan Reserve
Detailed site description:	Nolan Reserve is bounded by Pittwater Road to the east and Manly Creek to the west. It adjoins the North



	<p>Manly Bowling Club to the north and residential development to the south.</p> <p>Nolan Reserve is used for playing fields and contains a number of existing amenities buildings and a bicycle track. It is fringed by trees.</p> <p>Nolan Reserve is owned by Northern Beaches Council and is classified as Community Land under the Local Government Act 1993.</p>
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LOCALITY PLAN (not to scale)



Figure 1 – Location of Site

SITE HISTORY

The existing playing fields were created in the mid-1900's on the site of former farm lands, predominantly market gardens and dairies. The land has been extensively levelled, reclaimed and turfed.

Consent to DA2017/0353 was granted on 4 August 2017 Council approved DA2017/0353 for "demolition works and construction of new sports amenities buildings".

Approval was granted to Mod2017/0209 on 14 August 2017 to correct the numbering of the conditions of Consent DA2017/0353.

PROPOSED DEVELOPMENT IN DETAIL



The proposal is to modify the design of the proposed amenities building as follows:

- Raising of ground floor level by 50mm to allow for future settlement of the building (ensuring building levels stay above flood level).
- Removal of under slab rainwater tank.
- Amendment to accessible walkway to change to accessible ramp which will further reduce the amount of soil mounding required.
- Amendments internally to Canteen and Storeroom for a more functional arrangement of space.
- Conversion of sliding entry gates to hinged.
- Simplification of roof form to remove uplift in structure and changes to roof levels to accommodate this (lowered from RL 9.5m to RL8.4m)
- Amendment to replace wire mesh infill with frameless anodised aluminium louvres.

The application is made pursuant to s. 4.55(1A) of the Environmental Planning and Assessment Act 1979 which relates to modifications involving minimal environmental impact.

STATUTORY CONTROLS

- a) **Environmental Planning and Assessment Act 1979**
- b) **Environmental Planning and Assessment Regulation 2000**
- c) **Warringah Local Environmental Plan 2011**
- d) **Warringah Development Control Plan 2011**

REFERRALS

External Referrals

Referral Body External	Comments	Consent Recommended
Ausgrid	The modification application 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.	N/A

Internal Referrals

Referral officer	Comments	Consent Recommended
Building Assessment	The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.	Yes



Referral officer	Comments	Consent Recommended
	<p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p> <p>Assessment Officer comment: The recommended condition regarding disability access has not been included in the recommendation of this report as it is already provided in the proposed structure. The recommended condition requiring the submission of a Construction Certificate has not been included in the recommendation of this report as it exists on the current consent.</p>	
Development Engineering	<p>The proposed modification does not alter the original assessment by Development Engineering.</p> <p>No objection to approval with no additional or modified conditions of consent recommended.</p>	Yes
Environmental Health – Acid sulfate soils	The proposed modifications will not impact Acid Sulfate soils.	Yes
Environmental Health – Industrial use	The proposed changes (including canteen and store) will not alter the existing assessment.	Yes
Heritage	<p>This application is a modification of the amenities block approved by DA 2017/0353. The new amenities block is located some 80 metres away from the heritage item located near the Passmore Reserve playground and therefore this development is technically not located in the vicinity of a heritage item and therefore does not require heritage comment.</p> <p>Therefore, no objection on heritage grounds and no conditions.</p>	Yes
Landscape	The proposed reduction of the extent of mounding around the building does not alter previous assessment with regard to landscape issues. No objections are raised to the proposed modification. Existing landscape conditions are still relevant and do not require alteration.	Yes



Referral officer	Comments	Consent Recommended
Natural Environment – Biodiversity	<p>The proposed reduction of the extent of mounding around the building does not alter previous assessment with regard to biodiversity issues. No objections are raised to the proposed modification.</p> <p>No conditions required.</p>	Yes
Natural Environment – Coastal	<p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>On internal assessment the DA satisfies the requirements under clauses 13, 14 and 15 of the CM SEPP. As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018 and is supported without condition.</p>	Yes
Natural Environment – Riparian	<p>This application has been assessed under:</p> <ul style="list-style-type: none"> • Warringah DCP 2011 C4 – Stormwater • Warringah DCP 2011 C5 – Erosion and Sedimentation • Warringah Council PL 850 Water Management Policy <p>Rainwater tanks are encouraged and could be plumbed into toilets as an alternative water supply.</p> <p>Water efficient fittings (WELS) rated are required and have been conditioned.</p> <p>Assessment Officer comment: The recommended condition regarding water efficient fittings has not been included in the recommendation of this report as these interior fit-out specifications have already been included as appropriate for the construction contract.</p>	Yes
Property and Commercial Development	<p>The proposal is for a modification to consent for a previously approved amenities block at Nolan Reserve, Manly Vale.</p>	Yes



Referral officer	Comments	Consent Recommended
	Property have no objection to the proposed as submitted.	

NOTIFICATION & SUBMISSIONS

The subject application was notified to surrounding and nearby properties in accordance with the EPA Regulation 2000 and Warringah Development Control Plan 2011.

In response, Council received no submissions.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under Section 4.15 of the EPAA 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	See discussion on "Warringah Development Control Plan 2011" in this report.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	<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 on the original approval.</p> <p>Clauses 54 and 109 of the EP&A Regulation 2000, relates to whether 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>
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) 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) The proposed development will not have a detrimental social impact in the locality.</p> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the proposed modification.</p>



Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (c) – the suitability of the site for the development	The site is zoned for the proposed purpose and has been developed for this purpose.
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.

The relevant matters for consideration under Section 4.55 of the EPAA are:

Section 4.55 'Matters for Consideration'	Comments
Section 4.55(1A)(a) – satisfied that the proposed modification is of minimal environmental impact	The proposed modification results in minor changes to the design of the building that are considered to have minimal environmental impact.
Section 4.55(1A)(b) – 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)	<p>The power to modify a consent is beneficial and facultative. To be “substantially the same” a comparison is required between the originally approved development and the development as now proposed to be modified. The development must be essentially or materially the same. The comparison involves an appreciation, qualitative as well as quantitative, of the developments being compared.</p> <p>In quantitative terms the proposal is essentially unchanged with no discernible difference in height, setbacks or building footprint.</p> <p>In qualitative terms there is no discernible difference in impacts arising from the proposal in terms of views, privacy, solar access, flooding or impacts on the natural environment.</p> <p>Consequently, it is considered that the proposal is substantially the same development pursuant to Council must not approve the application, pursuant to Section 4.55(1A)(b) of the EPA Act.</p>
Section 4.55(1A)(c) – Notify the application in accordance with the regulations and WDCP 2011	The proposal has been notified as required.
Section 4.55(1A)(d) – Consider any submissions made within the period prescribed by the WDCP 2011	No submissions were received.
Section 4.55(3) – Consider matters in S. 4.15(1) as are relevant to the proposal.	<p>See above.</p> <p>The original report, any submissions and approval have been considered with this modification assessment.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS

Local Environment Plans (LEP's)



Warringah Local Environmental Plan 2011 (WLEP 2011)

Consideration of proposal against Warringah Local Environment Plan 2011:

Definition of proposed development: (ref. WLEP 2011 Dictionary)	Recreation facility (outdoors)
Zone:	RE1 Public Recreation
Permitted with Consent or Prohibited:	Permissible with consent
Height of Buildings:	Not applicable (Approved height 8.15m / Modification 6.7m, due to lower roof form)

Objectives of the Zone

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To protect, manage and restore public land that is of ecological, scientific, cultural or aesthetic value.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

The development is considered to be consistent with the relevant objectives of the zone for the following reasons:

- The proposal enhances the use of the land for recreational purposes.
 - The proposal has no undesirable impacts on the natural environment.
- The proposal has no adverse effects on the ecological, scientific, cultural or aesthetic values of the land.

Relevant Miscellaneous Provisions

Provision	Comment
Preservation of trees or vegetation	The proposed modification does not require the removal of any additional trees.

Relevant Additional Local Provisions

Provision	Comment
Acid Sulfate Soils	The site is within a Class 2 Acid Sulfate Soil area. An Acid Sulfate Soil Management Plan was submitted with the original development application and was reviewed by Council's Environmental Investigations Officer who raised no objections subject to recommended conditions, including the implementation of the Acid Sulfate Soil Management Plan. The modification proposal does not change this situation.
Earthworks	The proposed modification does not change the extent to which earthworks are proposed. Conditions were included in the original consent to satisfy the matters for consideration in clause 6.2(3) of WLEP 2011.
Flood Planning	The proposed modification has been reviewed by Council Natural Environment Officer – Flood who raises no objections to the proposed modification.



Relevant Schedules	
Schedule	Comment
Schedule 5 Environmental heritage	The site of the proposed amenities building does not contain a heritage item and is not within a Conservation Area. It is located approximately 80 metres from a heritage item in Passmore Reserve. This separation distance is sufficient to ensure that there will be no impact on the heritage significance of that item.

Warringah Development Control Plan 2011 (WDCP 2011)

Compliance Assessment

Part B: Built Form Controls			
Control	Requirement	Proposed	Complies
B1. Wall heights	Not applicable	6.3m	Yes
B7. Front setback	Not applicable	No change	Yes
B6. Side setback	Not applicable	No change	Yes
B10. Rear setback	Not applicable	No change	Yes
B14. Main Roads setback	Not applicable	No change	Yes

Part C: Siting Factors	
Control	Comment
C2. Traffic, Access and Safety	The proposed modification raises no issues with regards to traffic, access and safety.
C3. Parking Facilities	The proposed modification raises no issues with regards to parking facilities.
C4. Stormwater	The site is in a flood plain so on-site detention is not required. Rainwater is stored in tanks for re-use on site and a raingarden is provided for filtration of water prior to it entering the neighbouring creek system. Council's Water Management Officer has raised no objections to the proposed modification.
C5. Erosion and Sedimentation	The proposed modification raises no issues with regards to erosion and sedimentation.
C7. Excavation and Landfill	The proposed modification raises no issues with regards to excavation and landfill.
C8. Demolition and Construction	This issue is managed by conditions included in the original approval.
C9. Waste Management	This issue is managed by conditions included in the original approval.

Part D: Design	
Control	Comment
D1. Landscaped open space and bushland setting	The proposed modification raises no issues with regards to landscaped open space and bushland setting.



D3. Noise	The proposed modification raises no issues with regards to noise.
D6. Access to sunlight	The proposed modification will not result in any overshadowing of neighbouring development.
D7. Views	No views from residential properties will be affected.
D8. Privacy	There is no impact on privacy as the proposed development is separated from the nearest residential development by approximately 200m.
D9. Building Bulk	The proposed modification raises no issues with regards to building bulk.
D10. Building Colours and Materials	The proposed colours and materials are unchanged from that which were originally approved.
D18. Accessibility	The proposed modification raises no issues with regards to accessibility.
D20. Safety and Security	The proposed modification raises no issues with regards to safety and security.
D21. Provision and Location of Utility Services	All necessary utility services are available to the site.
Part E: The Natural Environment	
Control	Comment
E1. Private Property Tree Management	No trees are affected by the proposed modification of consent.
E2. Prescribed Vegetation	The proposed modification raises no issues with regards to prescribed vegetation.
E3. Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conversation Habitat	The proposed modification raises no issues with regards to threatened species, etc.
E4. Wildlife Corridors	The proposed modification raises no issues with regards to wildlife corridors.
E5. Native Vegetation	The proposed modification raises no issues with regards to native vegetation.
E6. Retaining Unique Environmental Features	The proposal has been sited so as to have no impact on any unique environmental features.
E8. Waterways and Riparian Lands	The proposed modification raises no issues with regards to waterways and riparian lands.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

Under clause 6(3)(a) of Council's Section 94A Development Contributions Plan the proposal is exempt from the payment of any section 94A contributions.



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;
- Warringah Local Environment Plan 2011;
- Warringah Development Control Plan 2011; and
- Codes and Policies of Council.

The proposal has been assessed against the relevant matters for consideration under Sections 4.15 and 4.55 of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions.

The assessment concludes that the proposal has minimal environmental impact and is substantially the same development as that which was originally approved and is suitable for approval.

RECOMMENDATION

THAT the Development Determination Panel of Council as the consent authority grant approval to Modification Application No. Mod2019/0507 for Modification of Development Consent DA2017/0353 granted for demolition works and construction of new sports amenities building on land at Part Lot 2743, DP 752038, Campbell Parade, MANLY VALE (Nolans Reserve), subject to the modification to conditions printed below:

CONDITIONS OF APPROVAL

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:

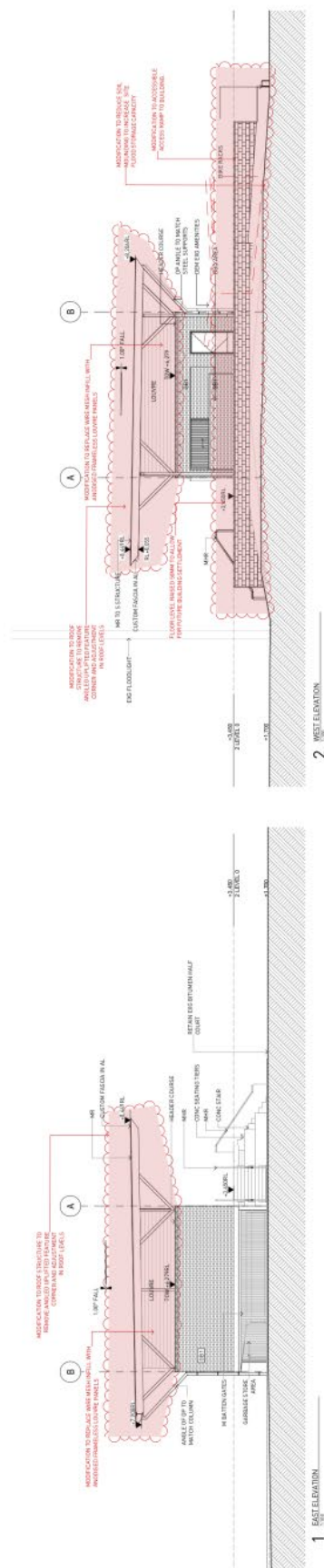
a) Modification Approved Plans

Architectural Plans – Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
MOD-A-103 Rev B	16/10/2019	Smith & Tzannes
MOD-A-200 Rev B	16/10/2019	Smith & Tzannes
MOD-A-201 Rev B	16/10/2019	Smith & Tzannes

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

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

[illegible]

[illegible]

ITEM 3.2	DA2019/0913 - 32 THE STRAND, WHALE BEACH - DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE INCLUDING A SWIMMING POOL
REPORTING MANAGER	Rebecca Englund
TRIM FILE REF	2019/692830
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

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 DA2019/0913 for demolition works and construction of a dwelling house including a swimming pool on land at Lot 70 DP 11067, 32 The Strand, Whale Beach, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0913
Responsible Officer:	Kent Bull
Land to be developed (Address):	Lot 70 DP 11067, 32 The Strand WHALE BEACH NSW 2107
Proposed Development:	Demolition works and construction of a dwelling house including a swimming pool
Zoning:	E4 Environmental Living RE1 Public Recreation
Development Permissible:	Yes - Zone RE1 Public Recreation Yes - Zone E4 Environmental Living
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Robert Alfred Kenneth Nugan
Applicant:	Robert Alfred Kenneth Nugan
Application Lodged:	23/08/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	05/09/2019 to 19/09/2019
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 15.94%
Recommendation:	Approval
Estimated Cost of Works:	\$ 2,564,125.46

EXECUTIVE SUMMARY

The development application seeks consent for the construction of a dwelling house that involves a 15.94% variation to the height of buildings development standard prescribed by clause 4.3 of *Pittwater Local Environmental Plan 2014* (PLEP 2014). As such, the development is referred to the Development Determination Panel for determination.

PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for demolition of existing structures and construction of a

three storey detached dwelling house with swimming pool, construction of a driveway and crossover and associated landscaping works. In particular, the works include:

Demolition and site preparatory works:

- Demolition of existing structures and
- Excavations works.

Garage - RL 17.400

- Two car garage with vehicle access from Whale Beach Road.

Upper level (Second Floor) - RL 16.290

- Dwelling entry;
- Master bedroom;
- Walk-in robe and pilates room;
- Ensuite bathroom and courtyard with void above;
- Retreat;
- Balcony to rear (east); and
- Bin store (south).

Middle level (First Floor) - RL 12.960

- Outdoor courtyard (west);
- Kitchen, Pantry, Open plan living, Dining room;
- Cellar;
- Laundry;
- Study;
- Swimming pool and terrace;
- Balcony with outdoor living area and
- Powder room;

Ground level - upper (Ground Floor) - RL 9.630

- Family/games room and
- Pool equipment storage area;

Ground level - lower (Ground Floor) - RL 8.520

- Three bedrooms;
- Two bathrooms and
- Outdoor shower and store.

Landscaping

- Gate house entry;

- Retaining walls;
- Side access stairs;
- Tree removal and
- Vegetation plantings.

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 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 5.1 Relevant acquisition authority
Pittwater Local Environmental Plan 2014 - 5.1A Development on land intended to be acquired for public purpose
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.3 Flood planning
Pittwater Local Environmental Plan 2014 - 7.5 Coastal risk planning
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater Local Environmental Plan 2014 - 7.10 Essential services
Pittwater 21 Development Control Plan - A4.12 Palm Beach Locality
Pittwater 21 Development Control Plan - A5.1 Exhibition, Advertisement and Notification of Applications
Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan
Pittwater 21 Development Control Plan - C1.1 Landscaping
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - C1.23 Eaves
Pittwater 21 Development Control Plan - D12.1 Character as viewed from a public place
Pittwater 21 Development Control Plan - D12.3 Building colours and materials
Pittwater 21 Development Control Plan - D12.5 Front building line

Pittwater 21 Development Control Plan - D12.6 Side and rear building line
Pittwater 21 Development Control Plan - D12.8 Building envelope
Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land
Pittwater 21 Development Control Plan - D12.11 Fences - General
Pittwater 21 Development Control Plan - D12.14 Scenic Protection Category One Areas

SITE DESCRIPTION

Property Description:	Lot 70 DP 11067 , 32 The Strand WHALE BEACH NSW 2107
Detailed Site Description:	The site is irregular in shape, with a primary frontage of 19.13m to Whale Beach Road, a secondary frontage of 18.29m to The Strand and a depth of 63.385m. The site has a surveyed area of 1105m ² . The site is subject to split zoning; with the western portion of the site zoned E4 Environmental Living and the eastern portion of the site zoned RE1 Public Recreation under the provisions of PLEP 2014. A single storey dwelling is located on the western portion of the site, wholly within the E4 zoned portion of the site. Vehicular and pedestrian access is currently gained via a driveway from Whale Beach Road, with pedestrian access also available to The Strand and Whale Beach. The site falls approximately 11.54m from the Whale Beach Road frontage to the The Strand frontage, with the majority of the fall occurring in the western portion of the site. The site is identified on the Geotechnical Hazard Map, Coastline Hazard Map, Flood Hazard Map, Foreshore Building Line Map and Biodiversity Map of PLEP 2014. Adjoining and surrounding development is characterised by low-density residential dwellings of varied architectural styles.

Map:



SITE HISTORY

22 November 2018

Pre-lodgement meeting (PLM2018/0264) held to discuss the construction of a new dwelling house. Concerns were raised with regards to the proposed vehicle access from The Strand, excavation required for a lift and whether requirements for view sharing would be achieved. The concluding comments from Council detailed that the proposal was not acceptable and that a significant redesign would be required prior to the lodgement of a Development Application with Council.

27 August 2019

The subject application was lodgement with Council.

23 September 2019

Photo evidence provided to Council confirming that the notification sign had been in place during the course of the notification period.

6 September 2019

Following a request made by the previous assessing officer, amended plans detailing the Reduced Levels (RL) on elevation drawings were received by Council and accepted.

4 October 2019

Council issued a letter to the applicant, requesting that the application be withdrawn due to non-compliance with building height, the extent of excavation, the built form of the swimming pool/terrace area and for non-compliance's with the side setback control.

15 October 2019

The assessing officer undertook a site inspection.

17 October 2019

The assessing officer and the Manager of Development Assessment met with the applicant and their representatives to discuss outstanding concerns.

28 October 2019

Additional information was provided requesting that Council continue its assessment of the subject development application. In particular, the letter provided further justification with regards to building height non-compliance, extent of excavation and the side setback non-compliance.

5 November 2019

Height pole certification prepared by a Registered Surveyor provided to Council.

5 November 2019

Notification letters to three (3) additional properties along Morella Road were sent by Council. The submission close date was 25 November 2019.

22 November 2019

A reverse view sharing assessment was undertaken by the assessing officer. Refer to clause C1.3 (View Sharing) of the P21 DCP for further discussion of this assessment.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters 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 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the</p>

Section 4.15 Matters for Consideration'	Comments
	consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent. 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	(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (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.
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:

Name:	Address:
Donohoes Commercial Lawyers	PO Box A526 SYDNEY SOUTH NSW 1235

The issues raised in the submissions received are addressed as follows:

- Excavation and underground drainage near boundary**

Comment: One submission was received, made on behalf of the adjoining property owner*, raising concern regarding the proposed excavation and underground drainage that is near the common side boundary with 237 Whale Beach Road. Council's Development Engineer has reviewed the submitted Geotechnical Report and the stormwater arrangement, deeming the proposal to be acceptable subject to compliance with recommended conditions. As discussed with regards to clause 7.2 of the PLEP 2014, a condition has been recommended to require the preparation of a Dilapidation Report, inclusive of a photographic survey, to be undertaken prior to the issue of a construction certificate. The placement of this condition is considered an appropriate measure to address the concerns raised.

***Note:** Donohoes Commercial Lawyers provided a submission on behalf of the property owner of 237 Whale Beach Road.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The Arborist's Report and Landscape Plan submitted with the application are noted.</p> <p>No objections in general terms to the proposed works, however I would defer to comments from Council's Biodiversity section regarding biodiversity/environmental issues as the site is mapped as Pittwater Littoral Rainforest EEC on Council's mapping layers.</p> <p>In view of <i>Banksia integrifolia</i> to be removed in the rear yard to accommodate the proposed dwelling, it is recommended that 2 additional <i>B. integrifolia</i> be planted in the rear yard.</p> <p><u>Planner Comments 27.11.19:</u></p> <p>To ensure there are no duplicate conditions within the consent, the recommended condition for tree planting and landscape certification upon completion from Council's Landscape Officer has been removed.</p>
NECC (Bushland and Biodiversity)	<p>Council's Natural Environment - Biodiversity section raises no objections to the proposed development, subject to conditions.</p> <p>This application was assessed against Pittwater LEP Clause 7.6 Biodiversity and Pittwater DCP B4.17 Littoral Rainforest EEC.</p> <p>The proposal is for the demolition of the existing structures and the</p>

Internal Referral Body	Comments
	<p>construction of a new dwelling and swimming pool. The site currently contains an existing dwelling with a mown lawn and native / exotic vegetation.</p> <p>The submitted Arboricultural Impact Assessment report (Urban Forestry Australia, June 2019) assesses 12 trees. Four of these trees are non-prescribed. Five of the 8 prescribed trees are proposed for removal. No trees to be removed were assessed as having high retention value.</p> <p>To comply with biodiversity controls, a minimum of 5 locally native canopy tree plantings are required to achieve not net loss of canopy trees within the site. The Landscape Plan will also be required to be amended as the species selection does not comply with controls.</p>
NECC (Coast and Catchments)	<p>The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.</p> <p>State Environmental Planning Policy (Coastal Management) 2018</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> The subject land has been included in the 'Coastal Use Area' map but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 12, 14 and 15 of the CM SEPP apply for</p>

Internal Referral Body	Comments
	<p>this DA. In regard to clauses 12 and 15 of the CM SEPP, the proposed development is unlikely to cause increased risk of coastal hazards on the subject land or other land. As elaborated in the Statement of Environmental Effects (SEE), the DA satisfies requirements under clause 14 of the CM SEPP.</p> <p>As such, it is considered that the application does comply with the requirements of the State Environmental Planning Policy (Coastal Management) 2018.</p> <p>Pittwater LEP 2014 and Pittwater 21 DCP</p> <p>The property is located within a "Wave inundation" area designated on the Coastal Risk Planning Map (Sheet CHZ_015) that is referenced in Pittwater Local Environmental Plan 2014. The property is also mapped as being subject to coastal erosion and coastal inundation hazards on the Pittwater 21 Development Control Plan (DCP)1 Map MDCP016. Therefore, the property is subject to Chapter B3.3 of the DCP, and the Coastline Risk Management Policy for Development in Pittwater (Coastline Policy),</p> <p>The subject land is also identified under Coastline Beach Hazard Area.</p> <p>For this, a Coastline Risk Management Report by Horton Coastal Engineering Pty. Ltd, dated 9 August 2019, has been submitted with this DA application. In this report a Coastline Planning Level of 8.5m AHD has been adopted.</p> <p>In the Coastline Risk Management Policy for Development in Pittwater, it is noted that a planning period (design project life) of 100 years should be adopted unless otherwise justified. A 60-year planning period has been considered herein, The Policy allows variations between the 50 and 100 years.</p> <p>According to Coastline Risk Management Report by Horton Coastal Engineering Pty. Ltd, dated 9 August 2019, coastal erosion/recession is not a credible risk to the proposed development for a planning period beyond 2100 (design life of 81 years). The development would be at an acceptably low risk of damage from coastal inundation and wave runup over a reasonable 60 year design life if the measures outlined in Section 8 are adopted.</p> <p>Final Comment</p> <p>The proposed development does comply with the requirements of State Environmental Planning Policy (Coastal Management) 2018 (Clauses 12, 14 and 15), Section 9(2) of the Coastal Management Act 2016, Clause 7.5 of Pittwater Local Environmental Plan 2014, Section B3.3 of the Pittwater 21 DCP and the Coastline Risk</p>

Internal Referral Body	Comments
	Management Policy for Development in Pittwater for the matters considered herein.
NECC (Development Engineering)	The subject site adjoins an existing Council pipeline and easement in the adjoining property to the north. This location of the pipeline was determined on site and appropriate conditions for the protection of this system have been included. The proposed driveway crossing and internal driveway has been assessed and is satisfactory. The submitted Geotechnical report addresses the relevant DCP controls. No objection to approval, subject to conditions as recommended.
NECC (Riparian Lands and Creeks)	This application has been assessed under Pittwater 21 DCP B5.8 - Water Quality and B8.2 - Erosion and Sediment control The applicant is required to install a sediment arrestor pit to capture organic matter and coarse sediments before stormwater is discharged from the land. The pit with trash screen indicated on the plans is adequate, as long as the screen has a handle and is easily accessed for removal to allow for cleaning. Sediment and erosion controls must be installed prior to any work on site and maintained until all work on site is complete and groundcover reestablished.
NECC (Stormwater and Floodplain Engineering – Flood risk)	The proposed development is outside of the flood affected part of the property.
Strategic and Place Planning (Heritage Officer)	HERITAGE COMMENTS
	Discussion of reason for referral
	The proposal has been referred to Heritage as the subject property is within the vicinity of a heritage item
	Norfolk Island Pines (<i>Araucaria heterophylla</i>) - on the eastern side of The Strand
	Details of heritage items affected
	Details of the item as contained within the Pittwater heritage inventory is as follows: <u>Statement of significance:</u> The Norfolk Island Pines are a defining landscape element for Whale Beach, but also for many ocean beaches in Pittwater and along the coast of NSW and southern QLD. These pines are significant for their historic association with early settlement and as local cultural plantings, in some instances dating from the 1930s. The Norfolk Island Pine plantings also have a high level of visual, environmental and aesthetic value. <u>Physical description:</u> There are approximately 33 Norfolk Island Pines located along the eastern and to a lesser extent the western edges of the beach car park. The trees have a mix of sizes and age and many trees have achieved dramatic proportions and scale. The Pines are a visible feature of the Beach when approaching from the north via Whale Beach Road.

Internal Referral Body	Comments		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage Register	No	
	National Trust of Aust (NSW) Register	No	
	RAIA Register of 20th Century Buildings of Significance	No	
	Other	N/A	
	Consideration of Application		
	The proposal seeks consent for the construction of a new dwelling on the subject property. The heritage item is located to the east of the property across The Strand. There is adequate separation between the heritage item and the dwelling by way of the proposed dwelling being set back into the site, closer to the boundary with Whale Beach Road. As such, Heritage raises no objections to the proposal and requires no conditions.		
	Consider against the provisions of CL5.10 of PLEP.		
	Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No Is a Heritage Impact Statement required? No Has a Heritage Impact Statement been provided? No		
	Further Comments		
COMPLETED BY: Brendan Gavin, Principal Planner			
DATE: 25 November 2019			

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1020266S, dated 22 August 2019). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. 0004145322, dated 22 August 2019).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	54

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:

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 proposed development is not likely to cause an impact on the existing access along the foreshore for members of the public, including persons with a disability and will not cause any overshadowing, wind tunneling or unreasonably impact on the loss of views from public places to foreshores. The visual amenity and scenic qualities of the coast, including the coastal headlands will be preserved. The proposed development will also not have an adverse impact on the cultural and built environment heritage. It is considered that the proposed development has satisfied the requirement to be designed, sited and will be managed to avoid an adverse impact to the above mentioned cultural and environmental aspects. Furthermore, the proposed development is considered to be of an acceptable bulk, scale and size that is generally compatible with the surrounding coastal and built environment, which consist of low-density residential dwellings.

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:

It is considered that the proposed development is not likely to cause increased risk of coastal hazards on the subject site or other land.

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

Pittwater Local Environmental Plan 2014

Is the development permissible?	Zone RE1: Yes Zone E4 : Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Zone RE1: Yes Zone E4 : Yes

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	9.85m	1.35m	No

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
5.1 Relevant acquisition authority	Yes
5.1A Development on land intended to be acquired for public purpose	Yes
5.10 Heritage conservation	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.5 Coastal risk planning	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

4.3 Height of buildings

Clause 4.3 (2) stipulates that a building on any land is not to exceed the maximum height of building for

land as shown within the Height of Buildings Map. The subject site is located within Area 'I' of the Height of Buildings Map which has a maximum height of 8.5m.

The maximum height of the proposed development has been measured at 9.85m from the ridge of the roof to the existing ground level below.

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	9.85m
Percentage variation to requirement:	15.94% (1.35m)

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 argues, in part:

- Despite a section of the proposed building displaying heights of 8.5m to 9.850m the proposed building height exceedance does not compromise the proposal's ability to be consistent with the desired character of the locality.
- The land is characterised by steeply sloping topography, most notably within the western portion of the site where there are level changes of up to 8.5m over a 16.5m distance displaying gradients up to 55%.
- The proposed building minimises, and provides an appropriate, bulk and scale by stepping responsive to the topography, providing generous boundary setbacks, providing a landscape setting and achieves a landscaping and deep soil outcome that meets and exceeds the planning controls under the and DCP, high quality architecture and materials.
- The proposed building is comparable in its height and massing when compared to the existing height and massing of nearby contemporary development within the hillside and the local context.
- The proposed building incorporates an appropriate range of natural colours and materials, compatible with the location and context and will harmonise with the natural environment.
- The proposed building is sympathetic to the site's landform, landscape and other features of the natural environment given that it provides a landscape setting, provides a significant setback of 23m to 29.4m to the eastern boundary of the site, does not propose any change or development within the rear part of the site that is zoned for future public acquisition.
- The proposal will present as a contemporary single storey dwelling to Whale Beach Road. This presentation is compatible with nearby dwellings to the north, located on the eastern side of Whale Beach Road that generally present to the street as 1 to 2 storey dwellings.
- The proposed building height exceedance will allow for the reasonable sharing of views because it is located at the south eastern, lowest section of the roof (at approximately RL 19.415), whereas the maximum height of the roof is at the western end on the dwelling at RL 23.040 AHD. This is due to the slope of the site and terraced nature of the building design.
- The proposal displays a skillion roof that is angled similar to the gradient of the topography and incorporates floor plates that step responsive to the slope of the land.

It is accepted that despite the variation to the building height development standard, the breach relates to the eastern end of the dwelling, being the lowest section of the skillion roof. Following a view impact assessment being undertaken, it is agreed that the western end of the roof, being 7.2m from existing ground level is the portion of the proposal that is creating the greatest level of impact. Consideration is also given that the proposed development responds to the steep topography of the site, as well as being compatible to the bulk and scale of neighbouring dwellings. It is further accepted that the second floor will not give rise to an unacceptable impact on the amenity of adjoining or adjacent properties in terms of solar access, visual bulk and privacy.

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 clauses 1.3 (c) and (g) of the EPA Act.

As such, 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 can be 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:

Clause 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 E4 Environmental Living zone. An assessment against these objectives is provided below.

Objectives of development standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the PLEP 2014 are:

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

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

Comment:

The proposed three storey dwelling is technically inconsistent with the desired character for dwelling houses to be a maximum of two storeys in any one place. It should be noted that the proposed dwelling is located on the western portion of the site that is steeply sloping. While the proposal presents as three storeys when viewed from The Strand, a high degree of facade modulation, including setbacks, assist with integrating the dwelling with the sloping topography. Further, the use of materials and finishes including timber batten screens to the ground floor, stone cladding, as well as dark roofing, help to blend the development into the surrounding natural environment. Consideration has been given that the resultant dwelling house will appear as one storey from the Whale Beach Road frontage and generally two storeys from adjoining dwellings. A condition has also been recommended for an amended landscaped plan to comprise of native vegetation including a minimum of 5 locally native canopy trees to be integrated as part of the development. It is therefore considered that the development is consistent with the desired future character of the Palm Beach Locality.

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

development,

Comment:

The proposed development demonstrates compliant above ground side setbacks that provide adequate separation between adjoining dwellings, as well as areas for landscaping. The design also utilises a high degree of modulation on all elevations and utilises natural materials and dark finishes in order to minimise the visual prominence of the development. The proposal being predominately below the height limit will ensure that the development remains compatible with the scale of surrounding and nearby development.

c) to minimise any overshadowing of neighbouring properties,

Comment:

Despite the proposal being technically non-compliant with the building envelope control along the northern elevation, the development does not breach the building envelope along the southern elevation. Through the provision of ample and compliant side setbacks to the dwelling above existing ground level, the proposal adequately minimises overshadowing of neighbouring dwellings. This is demonstrated by the compliance with the numerical controls under the P21 DCP as they relate to solar access.

d) to allow for the reasonable sharing of views,

Comment:

The proposal allows for the reasonable sharing of views by ensuring that the western end of the roof does not exceed the height of building development standard and by utilising a skillion roof form. As discussed with regard to clause C1.3 (View Sharing) of the P21 DCP, while existing views towards Whale Beach from neighbouring properties will be impacted, the proposal has demonstrated that view sharing is achieved.

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

Comment:

The proposed development does require excavation of the steeply sloping hillside for a portion of the ground floor and first floor. While the level of excavation is acknowledged to be significant, the extent of excavation is not considered to be inconsistent with neighbouring development of a similar scale along the eastern side of Whale Beach Road. Further, the application has been submitted with a Geotechnical Report, which has been subsequently reviewed by Council's Development Engineer, who is supportive of the proposal in this regard. The architectural design, incorporating a dark coloured, downward sloping skillion roof is also considered to respond to the natural topography.

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

Comment:

The subject site is within the vicinity of Whale Beach Ocean Reserve which encompasses Norfolk Island Pines that have a local heritage listing. The proposed development is situated outside the heritage buffer area. Further, the utilisation of natural materials, dark finishes and resultant

landscaping comprising of native vegetation ensures that adverse visual impacts arising from the proposal are minimised.

Zone objectives

The underlying objectives of the E4 Environmental Living zone

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment:

The subject site has been identified as being on land mapped as Littoral Rainforest, Scenic Protection - Cat 1 and Area 1 of the Landscaped Area Map. The proposed development has been designed to respond sensitively to the relevant ecological, scientific or aesthetic values as they relate to the land. It is therefore considered that the proposal results in an acceptable low-impact residential development.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment:

In order to protect and maintain the surrounding natural environment and the above-mentioned values, conditions have been placed to ensure that landscaping includes sufficient canopy trees and native vegetation. Further, where the proposal is identified as being technically non-compliant with control requirements, the assessment has shown that the application has satisfied the relevant outcomes to these controls. The proposal is therefore considered to not adversely effect any relevant ecological, scientific or aesthetic values.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment:

While it is noted that the proposal requires significant excavation into the western portion of the site, the extent of excavation and overall scale of the development is not inconsistent with other neighbouring developments along Whale Beach Road and throughout the wider locality. Furthermore, the proposed landscape treatment including the planting of canopy trees and native vegetation will assist with integrating the proposed development with the surrounding landforms.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment:

The proposed development seeks to enhance the eastern portion of the site, inclusive of the foreshore area, through the incorporation of regenerative plantings and by limiting building works within this area. Despite the proposal seeking the removal of trees, conditions have been placed to ensure no net loss of canopy trees within the site. Furthermore, conditions have also been placed to ensure that appropriate erosion and sediment control are installed prior to any works commencing on site.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the E4 Environmental Living zone.

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

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

In accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff may assume the concurrence of the Secretary for variations to the height of building development associated with a single dwelling house.

5.1 Relevant acquisition authority

In accordance with Clause 5.1, the consent authority has identified that the relevant authority of the State to acquire land identified as Zone RE1 Public Recreation and marked "Regional open space" on the Land Reservation Acquisition Map as 'The corporation constituted under section 8 of the Act', being the *Land Acquisition (Just Terms Compensation) Act 1991*.

5.1A Development on land intended to be acquired for public purpose

In accordance with Clause 5.1A, the land identified as Zone RE1 Public Recreation and marked "Regional open space" is to be maintained as a recreational area.

As discussed previously within this report, no building works are proposed within the RE1 Public Recreation zone, and as such, the consent authority can be satisfied in this regard.

7.2 Earthworks

To ensure that the earthworks proposed will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, a recommended condition has been placed for a Dilapidation Report, inclusive of a photographic survey, to be undertaken prior to the issue of a Construction Certificate. The placement of this condition is considered an appropriate measure to address any detrimental effects arising from excavation works, on existing adjoining properties. Council's Development Engineer has also reviewed the submitted Geotechnical documentation and the stormwater arrangement, deeming the proposal acceptable subject to compliance with recommended conditions. Further, the submitted Demolition, Waste and Sediment Control Plan demonstrates the appropriate management and protection measures that will be incorporated during construction. As such, the proposal is considered to satisfactorily address the matters identified in this clause.

7.3 Flood planning

In accordance with Clause 7.3 (3), the consent authority is to be satisfied that the development:

- a) *is compatible with the flood hazard of the land, and*

Comment:

The consent authority can be satisfied that, following a review of the submitted Flood Management Report and certified forms prepared in accordance with the P21 DCP and Council's *Flood Risk Management Policy 2017*, the development is compatible with the flood hazard of the land.

- b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*

Comment:

The consent authority can be satisfied that, following a review of the submitted Flood Management Report and certified forms prepared in accordance with the P21 DCP and Council's *Flood Risk Management Policy 2017*, the development will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties.

- c) incorporates appropriate measures to manage risk to life from flood, and*

Comment:

The consent authority can be satisfied that, following a review of the submitted Flood Management Report and certified forms prepared in accordance with the P21 DCP and Council's *Flood Risk Management Policy 2017*, the development incorporates appropriate measures to manage risk to life from flood.

- d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*

Comment:

The consent authority can be satisfied that, following a review of the submitted Flood Management Report and certified forms prepared in accordance with the P21 DCP and Council's *Flood Risk Management Policy 2017*, the development will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.

- e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding,*

Comment:

The consent authority can be satisfied that, following a review of the submitted Flood Management Report and certified forms prepared in accordance with the P21 DCP and Council's Flood Risk Management Policy 2017, the development is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.

7.5 Coastal risk planning

In accordance with Clause 7.5 (3), the consent authority is to be satisfied that the development:

- a) *is not likely to cause detrimental increases in coastal risks to other development or properties,*

Comment:

The consent authority can be satisfied that, following a review of the submitted *Coastal Risk Management Report* and certified forms prepared in accordance with P21 DCP and Council's *Coastline Policy*, the development is not likely to cause detrimental increases in coastal risks to other development or properties.

- b) *is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment, and*

Comment:

The consent authority can be satisfied that, following a review of the submitted *Coastal Risk Management Report* and certified forms prepared in accordance with P21 DCP and Council's *Coastline Policy*, the development is not likely to alter coastal processes and the impacts of coastal hazards to the detriment of the environment.

- c) *incorporates appropriate measures to manage risk to life from coastal risks, and*

Comment:

The consent authority can be satisfied that, following a review of the submitted *Coastal Risk Management Report* and certified forms prepared in accordance with P21 DCP and Council's *Coastline Policy*, the development incorporates appropriate measures to manage risk to life from coastal risks.

- d) *is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards, particularly if the development is located seaward of the immediate hazard line, and*

Comment:

The consent authority can be satisfied that, following a review of the submitted *Coastal Risk Management Report* and certified forms prepared in accordance with P21 DCP and Council's *Coastline Policy*, the development is likely to avoid or minimise adverse effects from the impact of coastal processes and the exposure to coastal hazards, particularly if the development is located seaward of the immediate hazard line.

- e) *provides for the relocation, modification or removal of the development to adapt to the impact*

of coastal processes and coastal hazards, and

Comment:

The consent authority can be satisfied that, following a review of the submitted *Coastal Risk Management Report* and certified forms prepared in accordance with P21 DCP and Council's *Coastline Policy*, the development provides for the relocation, modification or removal of the development to adapt to the impact of coastal processes and coastal hazards.

f) has regard to the impacts of sea level rise, and

Comment:

The consent authority can be satisfied that, following a review of the submitted *Coastal Risk Management Report* and certified forms prepared in accordance with P21 DCP and Council's *Coastline Policy*, the development has regard to the impacts of sea level rise.

g) will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.

Comment:

The consent authority can be satisfied that, following a review of the submitted *Coastal Risk Management Report* and certified forms prepared in accordance with P21 DCP and Council's *Coastline Policy*, the development will have an acceptable level of risk to both property and life, in relation to all identifiable coastline hazards.

7.6 Biodiversity protection

In accordance with Clause 7.6 (3), the consent authority has considered the following matters:

a) whether the development is likely to have:

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

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

Comment:

Following a review of the submitted Arboricultural Impact Assessment, dated June 2019 by Urban Forestry Australia Pty Ltd that has been prepared in accordance with relevant legislation and the P21 DCP, the application as it relates to the above matters, has been considered by the consent authority to not be likely to have any adverse impacts as identified in this clause, nor any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land. Consideration has also been given of appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

In accordance with Clause 7.6 (4), the consent authority is to be satisfied that:

- a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact,

Comment:

The consent authority can be satisfied that, following a review of the submitted Arboricultural Impact Assessment, dated June 2019 by Urban Forestry Australia Pty Ltd that has been prepared in accordance with relevant legislation and the P21 DCP, the development is designed, sited and will be managed to avoid any significant adverse environmental impact.

7.7 Geotechnical hazards

In accordance with Clause 7.7(3), the consent authority has considered the following matters to decide whether or not the development takes into account all geotechnical risks –

- (a) *site layout, including access,*

Comment:

Following a review of the submitted *Geotechnical Report* Ref. J2226, dated 17 June 2019 and the certified Forms 1 and 1A by White Geotechnical Group Pty Ltd that have been prepared in accordance with the *Geotechnical Risk Management Policy for Pittwater – 2009*, the application as it relates to site layout, including access, has been considered by the consent authority.

- (b) *the development's design and construction methods,*

Comment:

Following a review of the submitted *Geotechnical Report* Ref. J2226, dated 17 June 2019 and the certified Forms 1 and 1A by White Geotechnical Group Pty Ltd that have been prepared in accordance with the *Geotechnical Risk Management Policy for Pittwater – 2009*, the application as it relates to the development's design and construction methods, has been considered by the consent authority.

(c) the amount of cut and fill that will be required for the development,

Comment:

Following a review of the submitted *Geotechnical Report* Ref. J2226, dated 17 June 2019 and the certified Forms 1 and 1A by White Geotechnical Group Pty Ltd that have been prepared in accordance with the *Geotechnical Risk Management Policy for Pittwater – 2009*, the application as it relates to the amount of cut and fill that will be required for the development, has been considered by the consent authority.

(d) waste water management, stormwater and drainage across the land,

Comment:

Following a review of the submitted *Geotechnical Report* Ref. J2226, dated 17 June 2019 and the certified Forms 1 and 1A by White Geotechnical Group Pty Ltd that have been prepared in accordance with the *Geotechnical Risk Management Policy for Pittwater – 2009*, the application as it relates to waste water management, stormwater and drainage across the land, has been considered by the consent authority.

(e) the geotechnical constraints of the site,

Comment:

Following a review of the submitted *Geotechnical Report* Ref. J2226, dated 17 June 2019 and the certified Forms 1 and 1A by White Geotechnical Group Pty Ltd that have been prepared in accordance with the *Geotechnical Risk Management Policy for Pittwater – 2009*, the application as it relates to the geotechnical constraints of the site, has been considered by the consent authority.

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

Comment:

Following a review of the submitted *Geotechnical Report* Ref. J2226, dated 17 June 2019 and the certified Forms 1 and 1A by White Geotechnical Group Pty Ltd that have been prepared in accordance with the *Geotechnical Risk Management Policy for Pittwater – 2009*, the application as it relates to any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development, has been considered by the consent authority.

In accordance with Clause 7.7(4), the consent authority is required to be satisfied that the following matters have been addressed:

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

Comment:

The consent authority is satisfied that, following a review of the submitted *Geotechnical Report* Ref. J2226, dated 17 June 2019 and the certified Forms 1 and 1A by White Geotechnical Group Pty Ltd which have been prepared in accordance with the *Geotechnical Risk Management Policy for Pittwater – 2009*, the development will appropriately manage waste water, stormwater and drainage across the land so as not to affect the rate, volume and quality of water leaving the land.

(b) the consent authority is satisfied that—

(i) the development is designed, sited and will be managed to avoid any geotechnical risk or significant adverse impact on the development and the land surrounding the development, or

Comment:

The consent authority is satisfied that, following a review of the submitted *Geotechnical Report* Ref. J2226, dated 17 June 2019 and the certified Forms 1 and 1A by White Geotechnical Group Pty Ltd which have been prepared in accordance with the *Geotechnical Risk Management Policy for Pittwater – 2009*, the development is designed, sited and will be managed to avoid any geotechnical risk or significant adverse impact on the development and the land surrounding the development.

(ii) if that risk or impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that risk or impact, or

Comment:

The consent authority is satisfied that, following a review of the submitted *Geotechnical Report* Ref. J2226, dated 17 June 2019 and the certified Forms 1 and 1A by White Geotechnical Group Pty Ltd which have been prepared in accordance with the *Geotechnical Risk Management Policy for Pittwater – 2009*, the development is designed, sited and will be managed to minimise that risk or impact.

(iii) if that risk or impact cannot be minimised—the development will be managed to

Comment:

The consent authority is satisfied that, following a review of the submitted *Geotechnical Report* Ref. J2226, dated 17 June 2019 and the certified Forms 1 and 1A by White Geotechnical Group Pty Ltd which have been prepared in accordance with the *Geotechnical Risk Management Policy for Pittwater – 2009*, the development will be managed to mitigate that risk or impact.

7.8 Limited development on foreshore area

In accordance with Clause 7.8 (3), the consent authority is to be satisfied that:

a) the development will contribute to achieving the objectives for the zone in which the land is located, and

Comment:

The consent authority can be satisfied, following a review of the submitted plans, supporting

documentation, relevant legislation and P21 DCP, that, the development will contribute to achieving the objectives for the zone in which the land is located.

- b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*

Comment:

The consent authority can be satisfied, following a review of the submitted plans, supporting documentation, relevant legislation and P21 DCP, that the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area

- c) the development will not cause environmental harm such as:*

- 1. pollution or siltation of the waterway, or*
- 2. an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
- 3. an adverse effect on drainage patterns, or*
- 4. the removal or disturbance of remnant riparian vegetation, and*

Comment:

The consent authority can be satisfied, following a review of the submitted plans, supporting documentation, relevant legislation and P21 DCP, that the development will not cause environmental harm.

- d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*

Comment:

The consent authority can be satisfied, following a review of the submitted plans, supporting documentation, relevant legislation and P21 DCP, that the development will not cause congestion or generate conflict between people using open space areas or the waterway.

- e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*

Comment:

The consent authority can be satisfied, following a review of the submitted plans, supporting

documentation, relevant legislation and P21 DCP, that opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised.

f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and

Comment:

The consent authority can be satisfied, following a review of the submitted plans, supporting documentation, relevant legislation and P21 DCP, that any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained.

g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and

Comment:

The application is not for the alteration or rebuilding of an existing building wholly or partly in the foreshore area.

h) sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.

Comment:

The consent authority is satisfied, following a review of the submitted plans, supporting documentation, relevant legislation and the P21 DCP, that, sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change have been considered.

In accordance with Clause 7.8 (4), the consent authority must consider whether and to what extent the development would encourage the following:

- a) continuous public access to and along the foreshore through or adjacent to the proposed development,*
- b) public access to link with existing or proposed open space,*
- c) public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- d) public access to be located above mean high water mark,*
- e) the reinforcing of the foreshore character and respect for existing environmental conditions.*

Comment:

The proposal reasonably encourages the above matters through siting the development of the land to the western portion of the site.

7.10 Essential services

In accordance with Clause 7.10(1), the consent authority is to be satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:

- a) *the supply of water,*
- b) *the supply of electricity,*
- c) *the disposal and management of sewage,*
- d) *stormwater drainage or on-site conservation,*
- e) *suitable vehicular access.*

Comment:

The consent authority can be satisfied that the above services that are essential for the development are available or that adequate arrangements have been made to make them available when required.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	0m (gate house) 1.5m (outdoor courtyard - excavated) 5.1m (garage)	100% 77% 21.5%	No No No
Rear building line	N/A - FBL applies	Works outside FBL	-	Yes
Side building line	2.5m (south)	0m-6m	100%	No
	1m (north)	0m-2.7m	100%	No
Building envelope	3.5m @ 45 degrees (south)	Within envelope	N/A	Yes
	3.5m @ 45 degrees (north)	Outside envelope	1.1m	No
Landscaped area	Based on 60% of 881.6m ² (528.96m ²)	51.2% (451.8m ²)	14.7%	No

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for Landscaped area - 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
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.2 Heritage Conservation - Development in the vicinity of heritage items, heritage conservation areas, archaeological sites or potential archaeological sites	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.3 Coastline (Beach) Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B4.17 Littoral Rainforest - Endangered Ecological Community	Yes	Yes
B4.22 Preservation of Trees and Bushland Vegetation	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.8 Stormwater Management - Water Quality - Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C1.1 Landscaping	No	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.23 Eaves	No	Yes
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D12.1 Character as viewed from a public place	No	Yes
D12.3 Building colours and materials	No	Yes
D12.5 Front building line	No	Yes
D12.6 Side and rear building line	No	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D12.8 Building envelope	No	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.11 Fences - General	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	No	Yes

Detailed Assessment

A4.12 Palm Beach Locality

The proposed three storey development is inconsistent with the desire for dwelling houses to be a maximum of two storeys in any one place. Consideration has been given that there are number of neighbouring dwellings including No(s). 213, 223, 237 and 237A that are located along the eastern side of Whale Beach Road are greater than two storeys. It should be noted that the proposed dwelling is generally constrained to the portion of the site that is steeply sloping. While the proposal presents as three storeys when viewed from The Strand, a high degree of facade modulation, including setbacks, assist with integrating the dwelling with the sloping topography. Further, the use of materials and finishes including timber batten screens to the ground floor, stone cladding and black roofing help to blend the development into the surrounding natural environment. Consideration has been given that dwelling house will appear as one storey from the Whale Beach Road frontage and generally two storeys from adjoining dwellings. A condition has also been recommended for an amended landscaped plan to comprise additional native vegetation, including a minimum of 5 locally native canopy tree plantings across the site. Based on the above, it is considered that proposal is acceptable within the Palm Beach* Locality.

***Note:** Whale Beach forms part of the Palm Beach Locality Map.

A5.1 Exhibition, Advertisement and Notification of Applications

In accordance with this control, Council exercised its discretion to notify properties beyond those that are directly adjoining or adjacent. On the 5 November 2019, notification letters were sent to three (3) additional properties along Morella Road.

B8.6 Construction and Demolition - Traffic Management Plan

A condition requiring a Traffic Management Plan is applied due to site parking, location and access route issues. Furthermore, it is anticipated that the excavated material from the site will be greater than 100m³.

Subject to compliance with this condition, the proposed development is considered to satisfy the outcomes of this control.

C1.1 Landscaping

Under the provisions of this development control, at least 2 canopy trees in the front yard and 1 canopy tree in the rear yard are to be provided on site.

The submitted landscape plan indicates one (1) native canopy tree within the front yard and zero (0) native canopy trees within the rear yard. The proposal is therefore technically non-compliant with the control. Despite the proposal only proposing the planting of one (1) Coastal Banksia (*Banksia integrifolia*) within the front yard, the proposal is considered acceptable, noting the scale of the proposal presenting to Whale Beach Road. Further, the rear yard and associated foreshore area provides greater opportunities to soften the built form as viewed from The Strand, with sufficient deep soil areas for the planting of canopy trees.

Subject to compliance with relevant conditions for replacement tree plantings and for the landscape plan to be amended to comprise of a minimum of 80% locally native vegetation species, it is considered that the resultant development will comply with outcomes of this control.

C1.3 View Sharing

Despite no submissions being received raising concern with regard to views being impacted by the proposed development, Council requested height poles to be erected in order to assess whether view sharing would be achieved in accordance with the requirements of this clause. Following height pole certification being provided to Council, a reverse view loss assessment was carried out by the assessing officer on the 22 November 2019. The profiles plan (Figure 1- below) assist to diagrammatically demonstrate the location of the erected height poles.

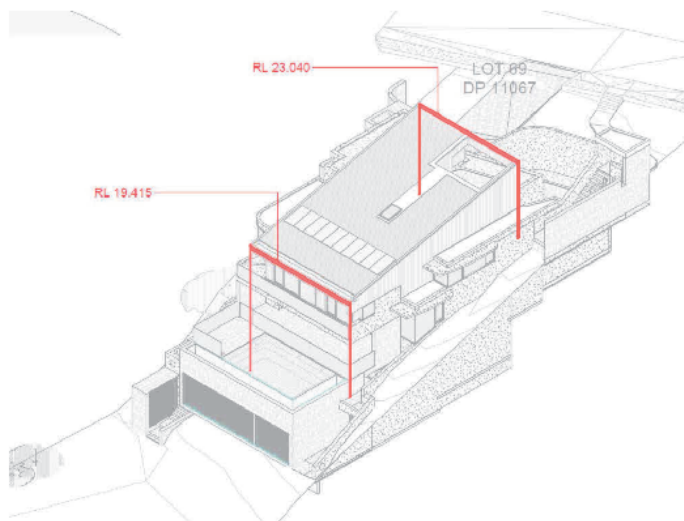


Figure 1. Profiles Plan (3D view of profiles from The Strand). Source: Shaun Locker Architects Pty Ltd.

The following view loss assessment was undertaken to assess the impact of the proposal by utilising the four step planning principal established in *Tenacity Consulting v Warringah Council [2004] NSW LEC 140*.

Step 1 - Assessment of view to be affected

The inspection revealed that the following properties were likely to have affected views of Whale Beach resulting from the proposal:

- 21 Morella Road, Whale Beach
- 23 Morella Road, Whale Beach
- 208 Whale Beach Road, Whale Beach
- 210 Whale Beach Road, Whale Beach

- 212 Whale Beach Road, Whale Beach



Figure 2. Height profiles as viewed from the road reserve in front of No. 208 Whale Beach Road (standing position)



Figure 3. Height profiles as viewed towards the south at Whale Beach (standing position at shoreline - low tide)



Figure 4. Height profiles as viewed towards the east at Whale Beach (standing position at shoreline - low tide)



Figure 5. Height profiles as viewed towards the north at Whale Beach (standing position at shoreline - low tide)

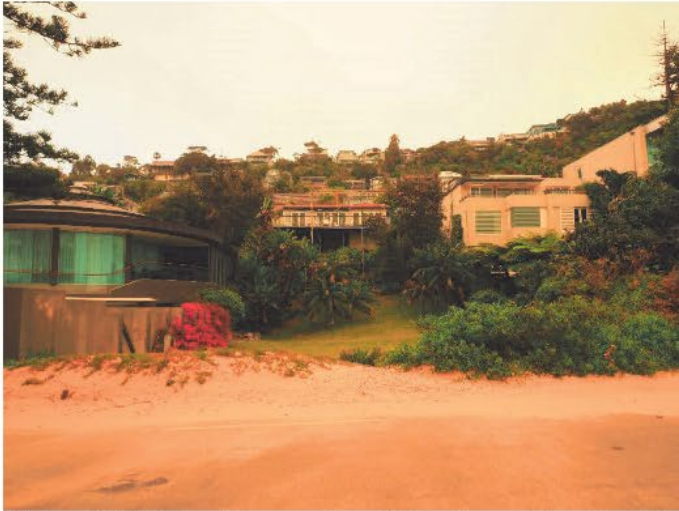


Figure 6. Height profiles as viewed directly east from The Strand (standing position at carpark)

Step 2 - Consideration from what part of the property the views are obtained.

- 21 Morella Road, Whale Beach

Views towards Whale Beach appear to be obtained from the upper floor living areas and balcony areas facing east.

- 23 Morella Road, Whale Beach

Views towards Whale Beach appear to be obtained from the upper floor living areas and balcony areas facing east.

- 208 Whale Beach Road, Whale Beach

Views towards Whale Beach appear to be obtained from the first floor living areas and balcony areas facing east.

- 210 Whale Beach Road, Whale Beach

Views towards Whale Beach appear to be obtained from the ground floor windows as well as the first floor living areas and balcony areas facing east.

- 212 Whale Beach Road, Whale Beach

Views towards Whale Beach appear to be obtained from the first floor living areas and balcony areas facing east.

Step 3 - Assess the extent of the impact for the entire property.

- 21 Morella Road, Whale Beach

While it is anticipated that partial views of the sand at Whale Beach will be affected from the upper floor living areas and balcony areas facing east, it is expected that the property would have panoramic and extensive water views. As these remaining water views would be retained, the overall potential view impact arising from the proposed development at 32 The Strand is considered to be minor.

- 23 Morella Road, Whale Beach

While it is anticipated that partial views of the sand at Whale Beach will be affected from the upper floor living areas and balcony areas facing east, it is expected that the property would have panoramic and extensive water views. As these remaining water views would be retained, the overall potential view impact arising from the proposed development at 32 The Strand is considered to be minor.

- 208 Whale Beach Road, Whale Beach

It is anticipated that north-eastern beach views (land/water interface) that are currently filtered through existing trees will be partially affected from the first floor living and balcony areas. However, it is expected that existing views towards the east and south of Whale Beach will be retained. As such, the overall potential view impact arising from the proposed development at 32 The Strand is considered to be minor.

- 210 Whale Beach Road, Whale Beach

It is anticipated that eastern beach views (land/water interface) obtained from the ground floor windows will be affected. Furthermore, it is anticipated that beach views towards the south-east from the first floor living and balcony areas will also be partially affected. However, it is expected that existing views from the first floor facing east and toward the north of Whale Beach will be retained. As such, the overall potential view impact arising from the proposed development at 32 The Strand is considered to be minor.

- 212 Whale Beach Road, Whale Beach

It is anticipated that south-east beach views (land/water interface) obtained from the first floor living areas and balcony areas will be affected. It should be noted that these views towards the south-east are filtered through vegetation and established Norfolk Island Pines along The Strand. It is expected that existing views towards the east and north of Whale Beach will be retained. As such, the overall potential view impact arising from the proposed development at 32 The Strand is considered to be minor.

Step 4 - Assess the reasonableness of the proposal causing the impact.

A proposal that complies with all controls is considered more reasonable than one that breaches them. Whilst the proposal breaches the 8.5m height limit at the eastern end of the dwelling, being the lowest section of the sloping skillion roof, it is accepted that the western end of the roof, being 7.2m from existing ground level is the portion of the proposal that is creating the impact to views. Reducing this

portion of the roof, which currently falls below the height limit, would not lead to a significant improvement on views for surrounding properties. It should also be noted that the proposed dwelling presents as one storey to the Whale Beach Road street frontage, and is of a scale that is consistent with neighbouring dwellings along the eastern side Whale Beach Road. Furthermore, as all proposed built form non-compliances have been considered and supported on merit, the proposal is not considered to be unreasonable in the circumstances of the site.

Overall, the development is considered acceptable and with view sharing achieved between properties.

C1.5 Visual Privacy

The application proposes balconies at the first floor/swimming pool terrace level and the second floor. The elevated balconies are located on the eastern side of the building and have the potential to result in overlooking toward the north facing windows of No. 30 The Strand and the private open space area of No. 237 Whale Beach Road. While the elevated swimming pool terrace is located within 9m to No. 30 The Strand, consideration has been given that proposed landscaping (as amended) within the southern side setback will help mitigate overlooking. Further, the occupants of No. 30 The Strand are protected from proposed first floor outdoor dining area, with a full height solid wall along the southern extent of this primary entertainment area. Likewise, the proposed windows along the southern elevation are not considered to result in direct overlooking for the occupants of the southern adjoining property, as the dwelling and private open space of No. 30 The Strand are primarily located towards the eastern portion of the site.

With regard to preventing overlooking of private open space areas and windows of No. 237 Whale Beach Road, consideration has been given that the proposed windows along the northern elevation have been appropriately off-set and are predominately to provide light to stairwells. Furthermore, the second floor balcony area of No. 237 Whale Beach Road is higher than that proposed on the subject site. Landscaping along the northern side setback area also ensures 50% of the rear yard will retain appropriate levels of privacy.

It should also be noted, that in this particular area, there is a level of overlooking that exists across properties in order to obtain views towards Whale Beach.

Based on the above, the proposed development is not considered to result in unreasonable impacts upon the privacy of the adjoining properties, and therefore the application is supported on merit.

C1.23 Eaves

No eaves are included along the northern, southern or the western elevations to the dwelling. The proposed development is of a contemporary character that is consistent with other developments in the locality. The submitted BASIX information also indicates that the appropriate level of solar access and shading would be achieved.

Based on the above, the proposed development is considered to satisfy the outcomes of the control and the non-compliance is supported on merit.

D12.1 Character as viewed from a public place

When viewed from The Strand, the eastern elevation of the proposed ground floor (with pool above) presents as a wall that is greater than 8m in length without articulation. Consideration has been given that a range of natural finishes including timber and stone cladding have been incorporated to help blend the development into the surrounding natural environment. Furthermore, the spatial separation,

as well as the landscaping proposed between the proposed dwelling and The Strand, help to screen the visual impact of the built form and give the appearance of the building being secondary to native vegetation.

Based on the above, the proposed development is considered to satisfy the outcomes of the control and the non-compliance is supported on merit.

D12.3 Building colours and materials

The proposed development incorporates the use of natural materials and dark finishes in order to minimise the visual prominence of the development. However, a significant portion of the external walls along the northern, western and southern elevations are to be finished in a white render, which is inconsistent with the requirement for external surfaces to be finished in dark and earth tones. In order to ensure the development blends into the surrounding natural environment, a condition is recommended for the render finish to be a tone equivalent to or darker than Colorbond 'Windspray'.

Subject to compliance with this condition, the submitted schedule of finishes is considered to be consistent with the outcomes of this control and supported on merit.

D12.5 Front building line

The application proposes a 0m setback to the gate house/entry, a 1.5m setback to the outdoor courtyard (which is excavated and hidden from view), and a 5.1m setback to the garage, inconsistent with the 6.5m minimum front building setback prescribed in relation to Whale Beach Road. The variation to the control for the purposes of facilitating carparking within the front setback is considered to be applicable due to the steeply sloping topography of the site, and Council's Development Engineer is supportive of the proposal, despite the inability to enter and exit in a forward direction.

It should be noted that with the exception of the garage, the second floor, being the only level of the dwelling visible from Whale Beach Road, is fully compliant with the front setback requirement. The development being predominantly below the road level reduces the overall dominance, built form and visual streetscape impacts. The submitted landscape plan has further demonstrated a reasonable amount of vegetation, including the planting of a Coastal Banksia tree within the front setback area. As previously discussed in order to preserve the bushland character and surrounding natural environment, relevant conditions for replacement tree plantings have been recommended as well as for the landscape plan to be amended and comprise of a minimum of 80% locally native vegetation species.

Based on the above, the proposal in this particular instance, is considered to satisfy the outcomes of this clause and is supported on its merits.

D12.6 Side and rear building line

Minimum side setback prescribed: 2.5m to at least one side; 1.0m for other side
Minimum side setback proposed: 0m-6m (South); 0m-2.7m (North)

The proposed gate house is technically non-compliant with the northern side setback, being 0m (nil) to the nearest point to the boundary. The dry cavity walls for the ground floor and first floor are also non-compliant, being 0.5m from the northern boundary. While internal stairs and some service areas are also within this setback area, consideration has been given that habitable rooms including living rooms and bedrooms have been located at least 2.5m from the northern boundary. The proposal is also technically non-compliant with the southern side setback, being 0m (nil) from the southern side boundary. The variations within this setback is sought for the dry court area that includes air-

conditioning units. It should be noted this area is measured at 1.7m in width and located a reasonable distance away from the dwelling at No. 30 The Strand. The remaining works along the southern elevation are located a minimum of 1m from this side boundary.

Despite the non-compliant side setbacks, the proposal is considered to maintain sufficient privacy and amenity between the occupants of the subject site and those of adjoining properties. Furthermore, the proposal has adequately demonstrated that an acceptable level of solar access will continue to be provided. The proposal has also been considered acceptable in achieving reasonable view sharing and providing a landscaping arrangement that is suitable for the subject site. The resultant tree plantings and external colours and finishes to dwelling will further assist to visually reduce the bulk and scale of the proposal.

Based on the above, the proposed development is considered to satisfy the outcomes of the control and the non-compliance is supported on merit.

D12.8 Building envelope

The proposed development is not within the prescribed building envelope and is therefore technically non-compliant with the control. At its maximum extent, the proposed development will breach the building envelope by 1.1m (19.8%) at the northern elevation for the second floor. While the breach is applicable for the majority of the northern elevation, the extent is significantly reduced to the front portion of the dwelling facing Whale Beach Road. Consideration should be given that the external walls connects directly to the contemporary skillion roof form, rather than connecting to eaves which are typically permitted to extend outside the building envelope. The variation sought for the proposed development does not result in an unreasonable impact to neighbouring properties with regard to views, privacy and solar access. Furthermore, the proposal is consistent with the desired future character of the locality, and the visual impacts on the streetscape, through limiting the built form of the proposed development and incorporating vegetation within setback areas.

Based on the above, the variations to the control are supported on merit in this instance, as the proposed development is considered to satisfy the outcomes of the this clause.

D12.10 Landscaped Area - Environmentally Sensitive Land

Landscaped Area requirement: 60% of the site area
Landscaped Area proposed: 51.2% (451.8m²)
Landscaped Area including variations: 54.2% (477.6m²)

As the site is subject to a split zoning, the part of the lot zoned RE1 Public Recreation has not been included within the calculation for total landscaped area. The area of the lot zoned E4 Environmental Living has been measured at 881.6m². Therefore, 60% of the land zoned E4 Environmental Living is 528.96m².

The proposed development is technically non-compliant with the control that requires 60% of the site to be landscaped. The proposal seeks to vary this control, reducing the overall total landscaped area to 51.2% (451.8m²). The variations of this clause allow for a revised landscaped area calculation to include impervious areas less than 1m in width and up to 6% of the total site area if used for outdoor recreational purposes. On this basis, the revised landscaped area is measured at 54.2% (477.6m²). The bushland character of the area will be preserved and enhanced through the planting of at least (5) locally native canopy trees or appropriate native vegetation on site as recommended by Council's Natural Environment - Biodiversity section. The planting of native canopy trees conserves the biodiversity of the area while also visually reducing the built form of the development. The proposal is also considered acceptable with regard to stormwater run-off and the infiltration of water with Council's

Development Engineer raising no objection to the application subject to conditions. While technically not included within the total landscaped area calculation, it should be acknowledged that the remaining site area measured at 223.4m² zoned RE1 Public Recreation consists entirely of landscaping. The proposed green roofs have also been excluded from the calculation, however the benefits towards reducing stormwater run-off, as well softening the proposed built form are noted. Furthermore, the proposal will not result in an unreasonable impact on the amenity and solar access provided to neighbouring properties.

Based on the consideration above, the proposed development is consistent with the outcomes of the clause and is supported on merit.

D12.11 Fences - General

The proposed fencing arrangement within the Whale Beach Road front setback is technically non-compliant with the control to not exceed a maximum height of 1 metre above existing ground level. The variation is sought for the gate house that is measured at a height 2.5m, as well as the rendered front boundary wall that varies in height between 1.1m-1.8m. Consideration is given that due to the sloping topography of the site, these structures are predominately below the road level of Whale Beach Road, and therefore will not obscure views of the street for motorists and pedestrians. The front boundary wall also acts as landscape planter to facilitate vegetation that is expected to compliment the visual character as viewed from Whale Beach Road. The Coastal Banksia canopy tree is also proposed to be planted forward of the bin area and southern boundary wall to screen and soften the built form.

As discussed previously within the report, a condition has been recommended for the render finish to be of a mod grey tone or darker in order to minimise the stark contrast between the white rendered boundary wall and the surrounding natural environment. Furthermore, no original stones fences or posts are being removed and no fencing is proposed along the rear boundary. Screen plantings have also been indicated within the side setback areas to delineate the boundaries.

Based on the above, the variations to the control are supported on merit in this instance, as the proposed development is considered to satisfy the outcomes of the clause.

D12.14 Scenic Protection Category One Areas

The proposed development is technically non-complaint with the control that requires screen plantings and native canopy trees between dwellings and the boundary facing the waterfront. As discussed previously in this report, the amended landscaped plan must demonstrate that at least 80% of plantings are native species as well as accommodating for a minimum of 5 locally native canopy tree to be planted. Given the generous setback between the proposed dwelling and rear boundary, it is considered that there is opportunities for these plantings to sufficiently enhance the natural environment and be a predominant feature when viewed from Whale Beach. The proposed development incorporates the use of natural materials and dark finishes, particularly when viewed from Whale Beach. However, as discussed previously within this report, a condition has been recommended for the white rendered areas of the building to be a tone equivalent to or darker than Colorbond 'Windspray' in order to minimise the visual prominence of the development.

Based on the above, the non-compliance is supported on merit and, subject to compliance with recommended conditions, considered to satisfy the outcomes of the control in this particular instance.

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 \$25,641 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,564,125.

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

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 Pittwater Local Environment Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

a) Compliance with the standard is unreasonable or unnecessary in the circumstances of the case;
and

b) There are sufficient environmental planning grounds to justify the contravention.

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

Accordingly Council as the consent authority grant Development Consent to DA2019/0913 for Demolition works and construction of a dwelling house including a swimming pool on land at Lot 70 DP 11067, 32 The Strand, WHALE BEACH, 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
100.01, Rev C (Site & Locality Plans)	26.06.19	Shaun Lockyer Architects Pty Ltd
200.01, Rev B (Second Floor Plan)	18.04.19	Shaun Lockyer Architects Pty Ltd
200.02, Rev B (First Floor Plan)	18.04.19	Shaun Lockyer Architects Pty Ltd
200.03, Rev B (Ground Floor Plan)	18.04.19	Shaun Lockyer Architects Pty Ltd
210.01, Rev C (Roof Plan)	26.06.19	Shaun Lockyer Architects Pty Ltd
300.01, Rev D (North & East Elevation)	04.09.19	Shaun Lockyer Architects Pty Ltd
300.02, Rev D (South & West Elevation)	04.09.19	Shaun Lockyer Architects Pty Ltd
400.01, Rev C (Sections - Sheet 1)	04.09.19	Shaun Lockyer Architects Pty Ltd
400.02, Rev C (Sections - Sheet 2)	04.09.19	Shaun Lockyer Architects Pty Ltd
400.03, Rev C (Sections - Sheet 3)	04.09.19	Shaun Lockyer Architects Pty Ltd
400.04, Rev C (Sections - Sheet 4)	04.09.19	Shaun Lockyer Architects Pty Ltd
100.10, Rev A (Landscape Plan)	26.06.19	Shaun Lockyer Architects Pty Ltd

020.03, Rev A (Material Palette - Exterior)	18.04.19	Shaun Lockyer Architects Pty Ltd
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Engineering Plans		
Drawing No.	Dated	Prepared By
DR-000, Rev 1 (Legend)	05.07.19	Stellen Consulting
DR-001, Rev 1 (Pipe Layout - Second Floor)	05.07.19	Stellen Consulting
DR-002, Rev 1 (Pipe Layout - First Floor)	05.07.19	Stellen Consulting
DR-003, Rev 1 (Pipe Layout - Ground Floor)	05.07.19	Stellen Consulting
DR-110, Rev 1 (Details)	05.07.19	Stellen Consulting

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Impact Assessment Report	June 2019	Urban Forestry Australia Pty Ltd
Geotechnical Report, Ref. J2226	17.06.19	White Geotechnical Group Pty Ltd
Flood Management Report	9.08.19	Horton Coastal Engineering Pty Ltd
Coastline Risk Management Report	9.08.19	Horton Coastal Engineering Pty Ltd
BASIX Certificate, Ref. 1020266S	22.08.19	Building Sustainability Assessments
ABSA Assessor Certificate, Ref. 0004145322	22.08.19	Building Sustainability Assessments

- 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
Demolition, Waste and Sediment Control Plan	15.05.19	No Author

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. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$25,641.25 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$2,564,125.46.

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

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

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

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

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

5. **Security Bond**

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

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

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

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

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

6. **Construction, Excavation and Associated Works Bond (Drainage works)**

The applicant is to lodge a bond of \$10,000 as security against any damage to Council's stormwater drainage infrastructure adjoining the site as part of this consent.

Details confirming payment of the bond are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure.

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION
CERTIFICATE****7. Stormwater Disposal**

The applicant is to submit stormwater plans for the new development within this development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to a suitably designed absorption system generally in accordance with the design by Stellen Consulting Engineers, drawing number DR-000, 001, 002, 003 and 110 Issue 1 dated 05/07/2019.

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

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

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

The recommendations of the risk assessment required to manage the hazards as identified in the Geotechnical Report prepared by White Geotechnical Group dated 17 June 2019 are to be incorporated into the construction plans. Prior to issue of the Construction Certificate, Form 2 of the Geotechnical Risk Management Policy for Pittwater (Appendix 5 of P21 DCP) is to be completed and submitted to the Accredited Certifier. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. Traffic Management and Control

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

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

10. Structures Located Adjacent to Council Pipeline or Easement

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Pittwater 21 DCP 2014 Clause B5.12. A statement of compliance is to be prepared by a suitably qualified Structural Engineer and submitted to Council for approval. The approval from Council is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure.

11. Structural Adequacy and Excavation Work

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

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

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

Reason: To provide public and private safety.

12. Vehicle Crossings Application

The Applicant is to submit an application for driveway levels with Council in accordance with Section 138 of the Roads Act 1993. The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To facilitate suitable vehicular access to private property.

13. Pre-Construction Stormwater Assets Dilapidation Report

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at:

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.1>

The pre-construction / demolition dilapidation report must be submitted to Council for approval and the approval issued to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's Infrastructure.

14. Water Quality Management

The applicant must install a filtration device that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

15. Amendment of Landscape Plans

The submitted Landscape Plan is to be amended in accordance with the following:

- i) Deletion of exotic and environmental weed species.
- ii) Replacement with a planting schedule comprising a minimum of 80% locally native vegetation species as a proportion of the total number of plants. Locally native species are to be consistent with the relevant section of the Native Gardening Booklet available on Council's website. The

planting schedule is to specify details including stratum, species/common names, quantities, pot sizes and staking details.

iii) Provision of a minimum of 5 canopy tree replacement plantings. Species are to have a minimum mature height of 6m and be consistent with Council's Native Gardening Guide.

iv) Provision of locally native shrub species within the setback to southern boundary for the extent of swimming pool (between the pool terrace and southern side boundary), consisting of screen plantings that attain a minimum mature height of 3m and planted at a minimum 200mm pot size, and planted no more than 1 metre apart.

The amended Landscape Plan is to be certified by a qualified landscape architect prior to issue of the Construction Certificate.

Reason: To ensure landscaping is consistent with relevant Natural Environment LEP/DCP controls.

16. **Compliance with Coastal Risk Management Report**

The development is to comply with all recommendations of the approved Coastal Risk Management Report prepared by Horton Coastal Engineering Pty. Ltd, dated 9 August 2019, and these recommendations are to be incorporated into construction plans and maintained over the life of the development.

Reason: To ensure coastal risk is addressed appropriately

17. **Low Level Coastal Inundation Risk Design**

All development must be designed and constructed to achieve a low risk of damage and instability due to coastal inundation, wave impact and foreshore erosion hazards.

Reason: To ensure coastal risk is addressed appropriately

18. **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.

19. **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.

20. **Dilapidation Report**

A dilapidation report including a photographic survey of the following adjoining properties must be provided to Principal Certifying Authority prior to any demolition or works commencing on the site or the issue of a Construction Certificate (whichever comes first). The dilapidation report must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property Area	Structures /
30 The Strand, Whale Beach	Whole Building
237 Whale Beach Road, Whale Beach	Whole Building

If excavation works are proposed the dilapidation report must report on the visible and structural

The dilapidation report is to be prepared by a practising Structural Engineer. All costs incurred in achieving compliance with this condition shall be borne by the person entitled to act on the consent. A copy of the report must be provided to Council, the Principal Certifying Authority and the owners of the affected properties prior to any works commencing.

In the event that access for undertaking the dilapidation report is denied by an adjoining owner, the applicant must demonstrate, in writing that all reasonable steps have been taken to obtain access and advise the affected property owner of the reason for the survey and that these steps have failed. Written correspondence from the owners of the affected properties or other evidence must be obtained and submitted to the Principal Certifying Authority in such circumstances that demonstrates such documentation has been received. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works.

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

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

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

21. Boundary Survey

A boundary survey, prepared by a Registered Surveyor, shall be provided as evidence that all buildings/works are within the appropriate property boundaries of the subject site.

The plans submitted for the Construction Certificate are to accurately reflect the boundaries as shown on the survey.

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

Reason: To ensure all approved works are constructed within the subject site.

22. External Finishes

The external finishes of the development are to be consistent with the materials nominated on the approved elevations referenced in this consent, with the exception of the proposed use of

'rnd01' tyrolean splatter render finish on the external walls, which is to be replaced with a finish/tone equivalent to or darker than Colorbond 'Windspray'.

In order to minimise solar reflections to neighbouring properties and Whale Beach, 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.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

23. 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 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.

24. 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.

25. Compliance with Arborist's Recommendations – Pre-construction

All pre-construction tree protection measures specified in Section 5 of the submitted Arboricultural Impact Assessment report (Urban Forestry Australia, June 2019) and these conditions of consent are to be implemented at the appropriate stage of development.

Compliance with pre-construction measures is to be certified in writing by the project arborist and provided to the Principal Certifying Authority prior to issue of the Construction Certificate.

Reason: To confirm compliance with tree protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

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

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

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

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

27. **Demolition Works - Asbestos**

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

28. **Traffic Control During Road Works**

Lighting, fencing, traffic control and advanced warning signs shall be provided for the protection of the works and for the safety and convenience of the public and others in accordance with RMS Traffic Control At Work Sites Manual (<http://www.rms.nsw.gov.au/business-industry/partners-suppliers/documents/technical-manuals/tcws-version-4/tcwsv4i2.pdf>) and to the satisfaction of the Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public Safety.

29. **Protection of Adjoining Property - Excavation**

Where excavations extend below the level of the base of the footings of a building or Council asset on the lot or an adjoining allotment of land, the person causing the excavation must preserve and protect the building and asset from damage and, if necessary, underpin and support the adjoining building or asset in an approved manner.

Reason: To ensure protection of private and Council's Infrastructure.

30. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 4 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/5 EL and the driveway levels application approval. 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.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

31. **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.

32. **Compliance with Arborist's Recommendations – During Construction**

All tree protection measures to be implemented during construction, as specified in Section 5 of the submitted Arboricultural Impact Assessment report (Urban Forestry Australia, June 2019) and these conditions of consent are to be implemented at the appropriate stage of development. Compliance with these measures is to be certified in writing by the project arborist, including photographic evidence, and submitted to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To confirm compliance with tree protection/replacement measures in accordance with relevant Natural Environment LEP/DCP controls.

33. **Survey Certificate**

A Survey Certificate prepared by a Registered Surveyor at the following stages of construction:

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

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

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

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

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

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

34. **Stormwater Disposal**

The stormwater drainage works shall be certified as compliant with all relevant Australian Standards and Codes by a suitably qualified person. Details demonstrating compliance are to be submitted to the Principal 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.

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

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Pittwater 21 DCP 2014 Clause B5.12.

A statement of compliance is to be prepared by a suitably qualified Structural Engineer and submitted to Council and Council's acceptance of the certification is to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's Infrastructure

36. **Post-Construction Dilapidation Survey**

A post-construction Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset in order to determine if the asset has been damaged by the works. Council's

Guidelines are available at:

<https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/generalinformation/engine>

The post-construction dilapidation report must be submitted to Council for review and Council's acceptance of the report issued to the Principal Certifying Authority prior to the issue of the Occupation Certificate. Any damage to Council's stormwater asset is to be rectified in accordance with Council's technical specifications prior to the release of the security bond.

Reason: To ensure security against possible damage to Council.

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

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

Reason: To ensure geotechnical risk is mitigated appropriately.

38. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans and these

conditions of consent. The new landscaping is to be certified by a qualified landscape architect as being complete and in accordance with approved Landscape Plans and these conditions of consent prior to issue of the Occupation Certificate.

Reason: To ensure landscaping is consistent with relevant Natural Environment LEP/DCP controls.

39. Works as Executed Drawings - Stormwater Treatment Measures

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

40. Replacement of Canopy Trees

At least 5 locally native canopy trees are to be planted on site to replace prescribed trees approved for removal. Species are to have a minimum mature height of 8.5m and be consistent with Council's Native Gardening Guide. Tree plantings are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree. Replacement plantings are to be certified as being completed in accordance with these conditions of consent by a qualified landscape architect, and details submitted to the Principal Certifying Authority prior to issue of any Occupation Certificate.

Reason: To establish appropriate landscaping in accordance with relevant Natural Environment LEP/DCP controls

41. Post Construction Coastal certificate

Prior to the issue of the Occupation Certificate, a Post Construction Coastal Certificate shall be submitted to the Principal Certifying Authority (Form No. 3 of the Coastline Risk Management Policy for Development in Pittwater - Appendix 6 of P21 DCP) that has been prepared and signed by a specialist coastal engineer who is a registered professional engineer with chartered professional status (CP Eng) and coastal engineering as a core competency and who has an appropriate level of professional indemnity insurance.

Reason: To ensure the development has been constructed to the engineers requirements

42. House / Building Number

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

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

Reason: Proper identification of buildings.

43. Dilapidation Report - 2

A second Dilapidation Report including photos of any damage evident at the time of inspection must be submitted after the completion of works. A copy of this Dilapidation Report must be given to the property owners referred to in this Development Consent. The report must:

- Compare the post construction report with the pre-construction report required by these conditions,
- Clearly identify any recent damage and whether or not it is likely to be associated with the development works including suggested remediation methods.

A copy must be lodged with Council and the Principal Certifying Authority prior to the issue of an Occupation Certificate. Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

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

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

44. **Control of Weeds**

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

Reason: Weed management.

45. **Replacement of Canopy Trees**

Tree replacement plantings required under this consent are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Reason: To replace locally native trees in accordance with relevant Natural Environment LEP/DCP controls.

46. **Maintenance of Stormwater Treatment Measures**

Stormwater treatment measures must be retained and maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development.

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment..

47. **No Planting Environmental Weeds**

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

Reason: Weed management.

48. **Dead or Injured Wildlife**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

49. **Domestic Animals Exclusion**

For the life of the development, cats are to be kept in a cat run and/or inside the dwelling such that they are prevented from entering wildlife habitat areas at all times. Dogs are to be kept in an enclosed area such that they cannot enter areas of bushland, unrestrained, on surrounding properties.

Reason: Wildlife protection

50. **Fencing for Wildlife Passage**

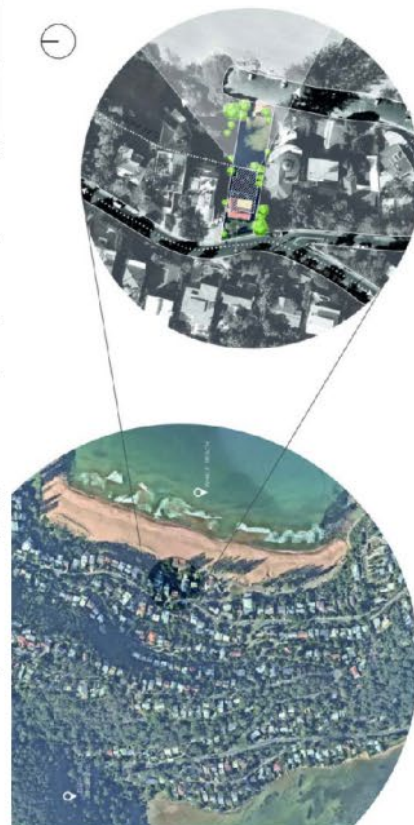
Any new fencing (with the exception of swimming pool fencing) is to be made passable to native wildlife. Hole dimensions are to be a minimum of 150mm wide x 100mm high at ground level spaced at 6 metre intervals.

Reason: Management of wildlife corridors

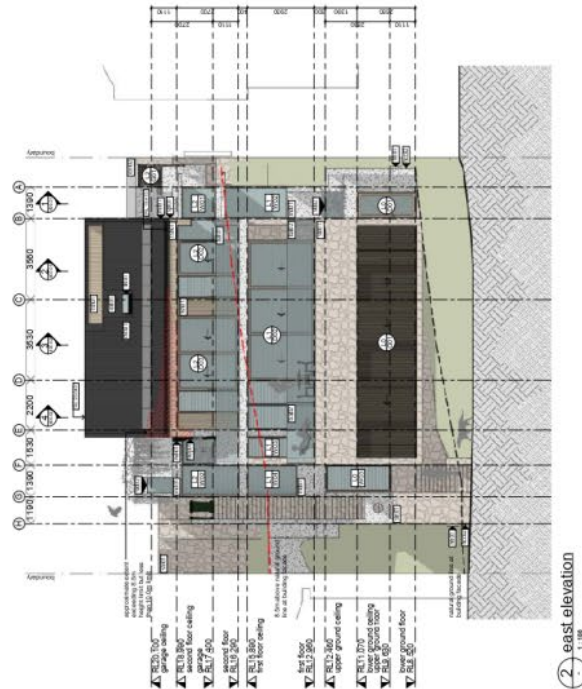
51. **Pool Filter Noise**

The maximum noise level associated with the pool filter does not exceed 5dB(A) above ambient background level when measured from any adjoining premises.

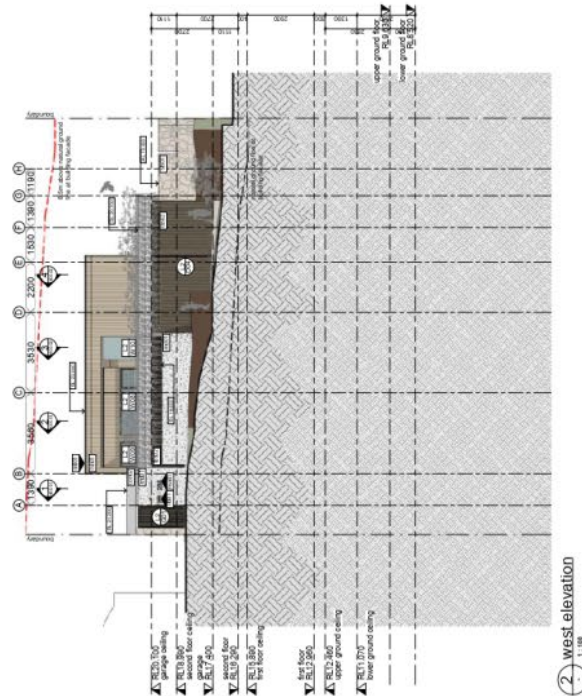
Reason: To protect the amenity for adjoining properties.



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<div><div><div>SL</div><div>studio 2 - 22 wayville street p 07 1257 7288 e 0405541442 w www.shaulockyerarchitects.com.au</div></div><div>shaulockyerarchitects pty ltd</div></div>	DRAWING	REV	DATE	ISSUE	PROJECT	CLIENT	DRAWING NAME	PHASE	DWG NO	REV	PROJECT NO
	MF	B	15.08.18	preliminary issue	32 The Strand	Robert & Sisle Nugan	elevations	DA	300.01	D	5235
	MF	C	26.08.18	revised for DA	White Beach, NSW, 2107		north & east elevation				1:100
	MF	D	04.09.18	BL1 added per DA/R1	Lot 70 on DP11067						A1
	schematic design										



ITEM 3.3	DA2019/0952 - 34 GURNEY CRESCENT, SEAFORTH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL
REPORTING MANAGER	Matthew Edmonds
TRIM FILE REF	2019/692874
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

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 DA2019/0952 for alterations and additions to a dwelling house including a swimming pool on land at Lot 63 DP 663305, 34 Gurney Crescent, Seaforth, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0952
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 63 DP 663305, 34 Gurney Crescent SEAFORTH NSW 2092
Proposed Development:	Alterations and additions to a dwelling house including a swimming pool
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Giuseppe Morello
Applicant:	Giuseppe Morello
Application Lodged:	27/09/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	07/10/2019 to 21/10/2019
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 20%
Recommendation:	Approval
Estimated Cost of Works:	\$ 284,000.00

EXECUTIVE SUMMARY

Northern Beaches Council is in receipt of Development Application DA2019/0952 for alterations and additions to a dwelling house including a swimming pool at 34 Gurney Crescent, Seaforth.

The proposed development is compliant with the required floor space ratio development standard under Clause 4.4 of the *Manly Local Environmental Plan 2013* (MLEP 2013), but proposes a variation to the height of building development standard under Clause 4.3 of the MLEP 2013. The development includes areas of non-compliance with built form controls under Part 4 of the *Manly Development Control Plan 2013* (MDCP 2013), though these non-compliant elements are existing and not exacerbated by the proposed works. The proposed development did not receive any submissions.

As the proposed development includes a variation to the height of building development standard of greater than 10%, the application is referred to the Development Determination Panel (DDP) for review and determination.

The application has been assessed against the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979), *Environmental Planning and Assessment Regulations 2000* (EP&A Regulations 2000), relevant environmental planning instruments (EPIs) and Council policies. Based on a detailed assessment of the proposal against the applicable planning controls, the proposal is suitable and is an appropriate development for the subject site. Accordingly, based on the detailed assessment contained in this report, it is recommended that the application be **approved**.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks consent for alterations and additions to the existing detached dwelling house, consisting of:

- Reconfiguration of existing lower ground floor from habitable space to plant area with ventilation louvres;
- Ground floor terrace extension with privacy screening and glass balustrading;
- First floor extension and reconfiguration;
- Privacy screening and glass balustrading to existing first floor terrace;
- Changes to windows and courtyard screening; and
- New awning over dwelling entry.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
Manly Development Control Plan - 3.8 Waste Management

SITE DESCRIPTION

Property Description:	Lot 63 DP 663305 , 34 Gurney Crescent SEAFORTH NSW 2092
Detailed Site Description:	<p>The Assessing Officer carried out a site visit on 21 October 2019.</p> <p>The subject site consists of one (1) allotment located between the eastern and western portions of Gurney Crescent, Seaforth.</p> <p>The site is irregular in shape with frontages of 24.37m along the eastern Gurney Crescent frontage and 16.62m to the western Gurney Crescent frontage, and an average depth of 47m. The site has a surveyed area of 730.5m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a three-storey detached dwelling with swimming pool and detached double garage.</p> <p>The site slopes approximately 22m from east to west, and is heavily vegetated to the rear (west).</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low density detached residential developments.</p>

Map:



SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site. The land has been used for residential purposes for an extended period of time.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan 2013 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to the swimming pool. Amended plans were received.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p>

Section 4.15 Matters for Consideration'	Comments
	<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 Manly Development Control Plan 2013 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	No submissions were received.
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 Bushfire Planning Services, dated 7 August 2019). The report stated that the bushfire attack level of the site is BAL "Flame Zone" (and BAL 40). The application was referred to the NSW Rural Fire Service for further assessment. The NSW RFS raised no objections to approval, subject to conditions. The recommendations of the Bush Fire Report, along with the conditions from the NSW RFS 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
NECC (Bushland and Biodiversity)	<p>The application was assessed against Manly LEP Clause 6.5 Terrestrial Biodiversity.</p> <p>The proposal is for the alterations and additions to the existing dwelling including refurbishment of the existing pool.</p> <p>To be compliant with biodiversity controls, the area west of the dwelling and pool is to be re-vegetated to encourage recovery of fauna and flora and reduce the risk of erosion.</p> <p>Council's Natural Environment - Biodiversity section raises no objections, subject to conditions.</p>
NECC (Development Engineering)	Development Engineering has no objection to the application subject to conditions of consent.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW Rural Fire Service – local branch (s79BA EPAA)	<p>The proposal was referred to NSW Rural Fire Service (RFS). NSW RFS raised no objections to the proposal, subject to the following conditions of consent.</p> <p><i>Asset Protection Zones</i> <i>The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:</i> <i>1. At the commencement of building works and in perpetuity, the property around the existing dwelling and proposed works shall be managed as an inner protection area (IPA) up to the property boundaries on the northern, southern and eastern aspects and up to the council's biodiversity constraint area on the western aspect. Requirements for an Inner Protection Area are outlined within section 4.1.3 and appendix 5 of 'Planning for Bush Fire Protection 2006' (PBP) and the NSW Rural Fire Service's document 'Standards for asset protection zones'.</i></p> <p><i>Water and Utilities</i> <i>The intent of measures is to provide adequate services of water for</i></p>

External Referral Body	Comments
	<p><i>the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:</i></p> <p><i>2. Any new provisions of water, electricity and gas shall comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.</i></p> <p><i>Design and Construction</i></p> <p><i>The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:</i></p> <p><i>3. New construction on the northern, eastern and western elevations and new roof shall comply with Sections 3 and 9 (BAL FZ) of Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas – 2014' as appropriate. Except for windows, flaming of the specimen is not permitted and there shall be no exposed timber.</i></p> <p><i>4. New construction on the southern elevation(s) shall comply with Sections 3 and 8 (BAL 40) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas – 2014' as appropriate and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection 2006'.</i></p> <p><i>5. The existing dwelling is required to be upgraded to improve ember protection. This is to be achieved by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2mm. Where applicable, this includes any sub floor areas, openable windows, vents, weepholes and eaves. External doors are to be fitted with draft excluders.</i></p> <p><i>Landscaping</i></p> <p><i>6. Landscaping to the site within the recommended APZ is to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection 2006'.</i></p> <p><i>General Advice – consent authority to note</i></p> <p><i>Any new fencing shall comply with New South Wales Rural Fire Service 'Fast Fact 2/06' for Fences and Gates in Bush Fire Prone Areas.</i></p> <p>The above advice has been added to the recommendation.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. 1037396S dated 20 August 2019). The BASIX Certificate indicates that the development will achieve the following:

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

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

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	10.2m	20%	No
Floor Space Ratio	0.4:1 (292.2sqm)	0.395:1 (288.5sqm)	N/A	Yes

Compliance Assessment

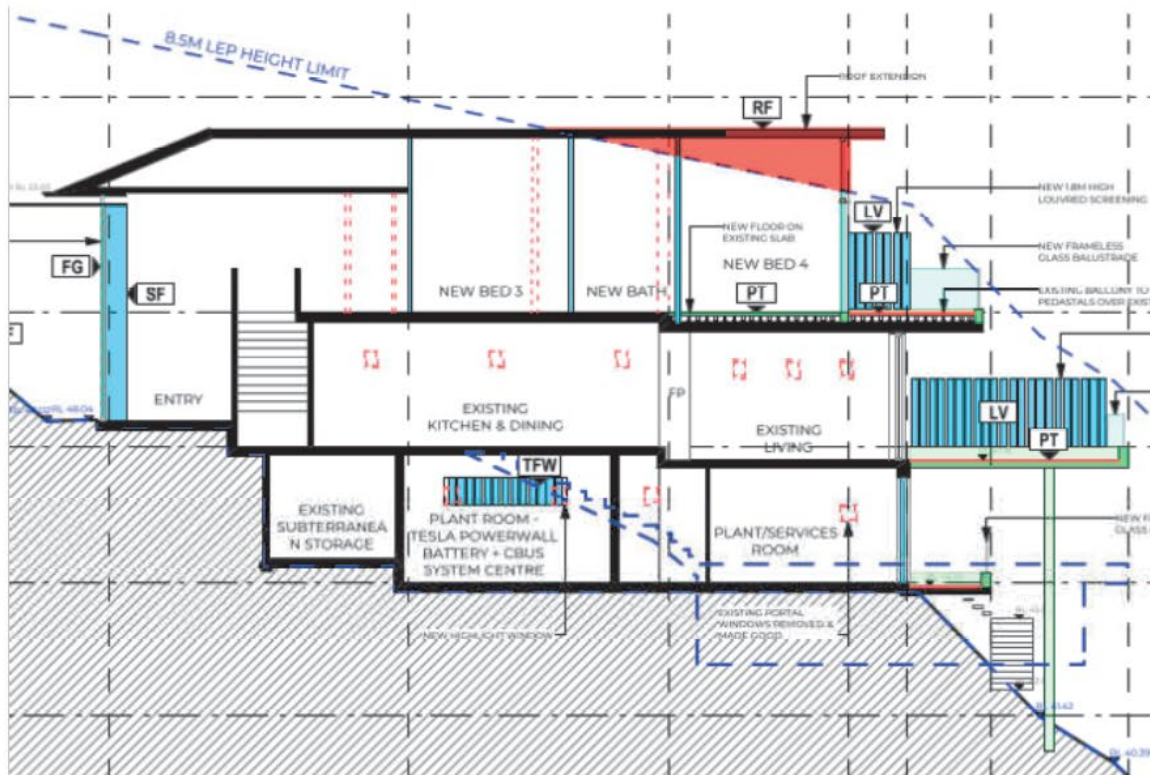
Clause	Compliance with Requirements
2.7 Demolition requires development consent	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.5 Terrestrial biodiversity	Yes
6.9 Foreshore scenic protection area	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.2m
Percentage variation to requirement:	20%



Above: Extent of height of building breach in red.

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 Height of Buildings 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 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 Clause 4.6(3). There are two separate matters for consideration contained within Clause 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 Clause 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.'

Section 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 Applicant's written request argues, in part:

"Objective (a) is to ensure building heights are consistent with the prevailing building height and desired future streetscape.

The proposed is considered to achieve this objective as the proposal is essentially the proposal provides for a small addition to the rear of the dwelling, with the non-complying portion being an extension of an existing roof form. The height of the addition does not exceed the height of the existing dwelling and is located at the rear of the site and will not be prominent in the street. As the proposal does not extend above the height of the existing ridge height and is compatible in terms of height with the adjoining development it is considered that the proposal achieves this objective.

Objective (b) is to control the bulk and scale of buildings.

The proposed additions are not significant with the addition being located at the rear of the dwelling. The additional floor area to the upper level is very minimal and it is not considered that this addition results in unreasonable bulk or scale. This portion of the development is not prominent in the streetscape nor when viewed from the adjoining properties. The resultant bulk of the development is comparable with the existing surrounding development.

Objective (c) is to minimize disruption of views to and from the foreshore from surrounding properties and public spaces. In relation to views currently enjoyed from the surrounding properties the proposed additions have been designed to ensure appropriate view sharing.

This has been achieved by the following:

The additional floor area does not extend beyond existing footprint. The additional floor area to the upper level is located with substantial setback to the rear boundary and does not extend beyond the rear wall of the adjoining dwelling. This element will not obstruct any existing views.

The only works extending beyond the rear of the existing incorporates an open terrace. The proposed additions do not extend beyond the rear setback of the adjoining southern property (No. 36 Gurney Crescent), and existing views from the balcony and rear elevation windows of No. 36 will not be obstructed by the proposed works.

The property to the north is vacant. Regardless, the design and orientation of the existing dwelling and proposed additions on the subject site are such that any future development of the adjoining northern site will provide for appropriate view sharing.

The proposed additions are to the rear of the existing dwelling and do not extend above the existing ridge height. Therefore, properties to the north on the opposite side of Gurney Crescent will not lose any existing views.

The location of the site, topography and existing vegetation ensures that the proposed additions will not obstruct any views to and from the foreshore.

Objective (d) is to potential adverse impact related to excessive overshadowing. Shadow diagrams have been prepared and submitted with this application. The proposed additions result in only minimal additional overshadowing. It is noted that the additional overshadowing does not extend to the private open space or north facing windows on the adjoining property.

Objective (e) does not apply to this development.

...

The site-specific environmental planning grounds that support the proposed variation to the height of

building development standard in this circumstance relate to the significant slope of the site and location and design of the existing dwelling on site. The existing dwelling is currently three storeys and exceeds the maximum building height. The proposed additions have been designed to be located over the existing footprint (with exception to a terrace) to reduce impact on the landscape and ensure appropriate connection to the existing dwelling. The site falls approximately 12.5m across the building platform with the majority of the slope at the rear portion of the dwelling. Any addition to the rear of the dwelling would have some non-compliance with the height controls. In addition, Preston CJ clarified in Micaul and Initial Action, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts.

As outlined in Section 5.2.1, there is considered to be a lack of adverse amenity impacts arising from the proposal as it will not result in adverse overshadowing, overlooking or unreasonable loss of views to adjoining properties."

The above justification is agreed with and considered well-founded by the Assessing Officer. In this regard, the Applicant's written request has demonstrated that the proposed development is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying Clause 1.3(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 Clause 4.6 (3)(b).

Council is satisfied that the Applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3).

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

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

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

Comment:

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

Objectives of Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 Height of Buildings of the MLEP 2013 are as follows:

a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,

Comment:

The proposed development does not increase the existing building height, but extends the existing building over lower sloping topography, resulting in a breach to the maximum building height. The proposed extension is set below the existing roof ridge height, and continues the existing roof form. As shown in the diagram above, the proposed development steps down with the topography of the land. The proposed works retain the site's consistency with the prevailing building height of the locality. The proposed new works are to the rear of the dwelling, so are generally not visible from the streetscape, and therefore do not result in any unreasonable visual impacts.

b) to control the bulk and scale of buildings,

Comment:

The proposed development remains compliant with the maximum gross floor area allowable under Clause 4.4 Floor Space Ratio of the MLEP 2013, which controls bulk and scale. The proposal retains the general form and scale of the existing building, with the first floor extension being minor in nature, and the greatest change proposed. The proposed development does not exacerbate any existing non-compliance with built form controls under the MDCP 2013, including in relation to setbacks and open space/landscaping, indicating that the proposed development is not too large a form for the site.

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:

Despite the non-compliance with the height of building development standard, the proposed development is suitably designed and sited so as not to result in any unreasonable view loss.

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:

Despite the non-compliance with the height of building development standard, the proposed development retains compliant solar access to the subject site and adjacent sites.

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

Comment:

Not applicable. The subject site is zoned R2 Low Density Residential.

Zone Objectives

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

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

Comment:

The proposed development retains the existing low density residential use of the site.

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

Comment:

Not applicable. The proposed development retains the residential use of the site.

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:

Clause 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.

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 730.5sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 1,150sqm	1 dwelling on existing 730.5sqm lot	N/A	No - Existing and unchanged
	Dwelling Size: 107sqm	288.5sqm	N/A	Yes
4.1.2.1 Wall Height	N: 7.7m (based on gradient 1:5)	6.5m	N/A	Yes
	S: 7.7m (based on gradient 1:5)	8.7m	12.98%	No - Existing and unchanged
4.1.2.2 Number of Storeys	2	3	50%	No - Existing and unchanged
4.1.2.3 Roof Height	Height: 2.5m	2.5m	N/A	Yes
	Pitch: Maximum 35 degrees	24 degrees	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 2.16m (based on wall height)	790mm	73.6%	No - Existing and unchanged
	S: 2.9m (based on wall height)	1.025m	65.83%	No - Existing and unchanged
	Windows: 3m	N: 790mm	73.6%	No - Existing and unchanged
		S: 1.025m	65.83%	No - Existing and unchanged
4.1.4.4 Rear Setbacks	8m	16.4m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS4	Open space: Min. 60% of site area (438.3sqm)	67.48% (493sqm)	N/A	Yes
	Open space above ground: Max. 40% of open space (197.2sqm)	19.93% (98.3sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area: Min. 40% of open space (197.2sqm)	46.12% (227.4sqm)	N/A	Yes
4.1.5.3 Private Open Space	Min. 18sqm	356.7sqm	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	Max. 1m height above ground	Up to 4.8m	380%	No - Existing and unchanged
	Max. 1m coping to side/rear setback	0m	100%	No - Existing and unchanged

	Max. 1.5m water to side/rear setback	1m	50%	No - Existing and unchanged
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***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3 Landscaping	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	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
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	No	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	Yes	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	Yes	Yes
4.1.10 Fencing	Yes	Yes
4.4.1 Demolition	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
4.4.2 Alterations and Additions	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes

Detailed Assessment

3.8 Waste Management

The application is not supported by a waste management plan. A suitable condition has been applied, requiring preparation and submission of an adequate waste management plan to the Certifying Authority prior to the issue of the construction certificate.

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 \$2,840 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$284,000.

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

In summary, a detailed assessment has been required in relation to the non-compliant height of building. The proposed non-compliance is demonstrated to be unreasonable/unnecessary in the circumstances of the case, and justified by sufficient environmental planning grounds, so is supported on merit.

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 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 DA2019/0952 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 63 DP 663305, 34 Gurney Crescent, 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
DA100 Site + Roof Plan Issue A	19 August 2019	Aleksandar Projects
DA101 Lower Ground Floor Plan Issue A	19 August 2019	Aleksandar Projects
DA102 Ground Floor Plan Issue A	19 August 2019	Aleksandar Projects
DA103 Level 01 Floor Plan Issue A	19 August 2019	Aleksandar Projects
DA200 Section A-A Issue A	19 August 2019	Aleksandar Projects

DA201 North Elevation Issue A	19 August 2019	Aleksandar Projects
DA202 South Elevation Issue A	19 August 2019	Aleksandar Projects
DA203 East & West Elevation Issue A	19 August 2019	Aleksandar Projects
DA304 Schedule of Materials Issue A	19 August 2019	Aleksandar Projects
DA308 Swimming Pool Plan	10 September 2019	Aleksandar Projects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1037396S	20 August 2019	Outsource Ideas
Geotechnical Investigation	19 August 2019	White Geotechnical Group
Bushfire Risk Assessment	7 August 2019	Bushfire Planning Services

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. Compliance with Other Department, Authority or Service Requirements

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

Other Department, Authority or Service	EDMS Reference	Dated
NSW Rural Fire Service	NSW Rural Fire Service Response	21 October 2019

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

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

3. Prescribed Conditions

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

- Authority for the work, and
 - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
 - (iii) stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
- (i) in the case of work for which a principal contractor is required to be appointed:
 - A. the name and licence number of the principal contractor, and
 - B. the name of the insurer by which the work is insured under Part 6 of that Act,
 - (ii) in the case of work to be done by an owner-builder:
 - A. the name of the owner-builder, and
 - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

4. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
 - 7.00 am to 5.00 pm inclusive Monday to Friday,

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

FEES / CHARGES / CONTRIBUTIONS

5. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$2,840.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$284,000.00.

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.

6. **Security Bond**

A bond (determined from cost of works) of \$1,500 and an inspection fee in accordance with Council's Fees and Charges paid as security to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

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

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

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

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

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

7. **Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's MANLY SPECIFICATION FOR ON-SITE STORMWATER MANAGEMENT 2003. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

8. 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.

9. Preparation of Landscape Plans

Detailed Landscape Plans are to be prepared for the sloped land west of the pool and certified by a qualified landscape architect, arborist or ecologist and are to include the following:

- A planting schedule comprising at least 60% locally native species. The planting schedule is to specify details including stratum, species/common names, quantities, pot sizes and staking details.
- Provision of at least 4 locally native canopy trees. Species are to have a minimum mature height of 8.5m and are to be chosen from Council Tree Guide on Council's website.
- The proposed finished treatment of garden areas

The Landscape Plan is to be certified in writing by a qualified landscape architect, arborist or ecologist, prior to issue of the Construction Certificate.

Reason: To ensure landscaping is consistent with relevant Natural Environment LEP/DCP controls.

10. 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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

11. Road Reserve

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

Reason: Public Safety.

12. 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 Roads Authority. Traffic movement in both directions on public roads, and vehicular access to private properties is to be maintained at all times during the works

Reason: Public safety.

13. Implementation of Landscape Plan

Landscaping is to be implemented in accordance with the approved Landscape Plans and these conditions of consent. The new landscaping is to be certified in accordance with approved

Landscape Plans and these conditions of consent by a qualified landscape architect, arborist or ecologist prior to issue of the Occupation Certificate.

Reason: To ensure landscaping is consistent with relevant Natural Environment LEP/DCP controls.

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

14. **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.

15. **Certification of Landscape Plan**

Landscaping is to be implemented in accordance with the approved Landscape Plans and these conditions of consent. The new landscaping is to be certified as complete and in accordance with approved Landscape Plans and these conditions of consent by a qualified landscape architect, arborist or ecologist prior to issue of any Occupation Certificate.

Reason: To ensure landscaping is consistent with relevant Natural Environment LEP/DCP controls.

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

16. **Control of Weeds**

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

Reason: Weed management.

17. **Clearance of Structures from Trees**

A minimum of 200mm clearance is to always be maintained to the tree trunk from proposed bearers, joists and decking.

Reason: To ensure existing/proposed trees are not negatively impacted.

18. **No Planting Environmental Weeds**

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

Reason: Weed management.

19. **Works to Cease if Item Found**

If any Aboriginal Engravings or Relics are unearthed all work is to cease immediately and the Aboriginal Heritage Office (AHO) and Office of Environment and Heritage (OEH) are to be notified.

Reason: To protect Aboriginal Heritage.

20. **Dead or Injured Wildlife**

If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

21. **Domestic Animals Exclusion**

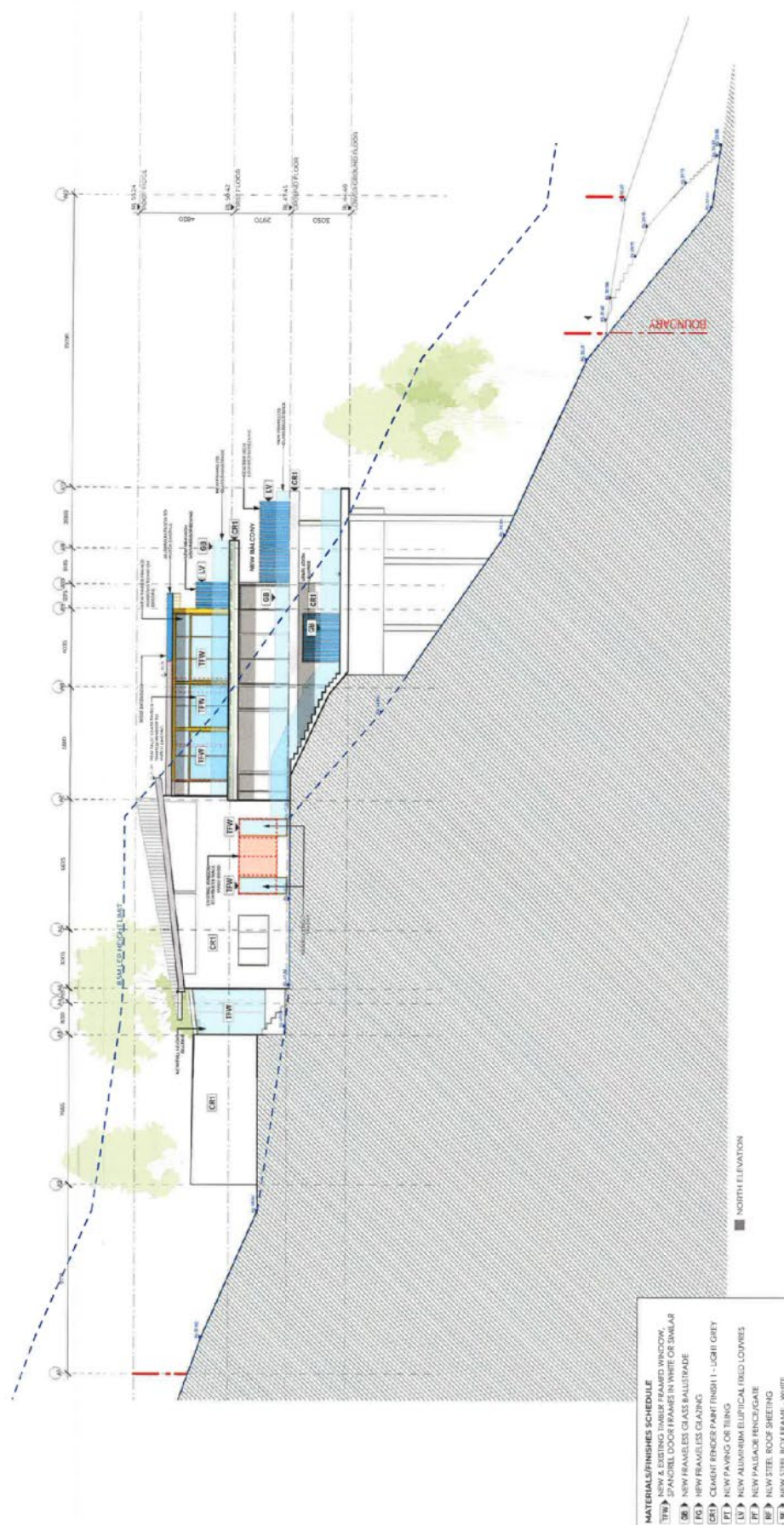
For the life of the development, cats are to be kept in a cat run and/or inside the dwelling such that they are prevented from entering wildlife habitat areas at all times. Dogs are to be kept in an enclosed area such that they cannot enter areas of bushland, unrestrained, on surrounding properties.

Reason: Wildlife protection

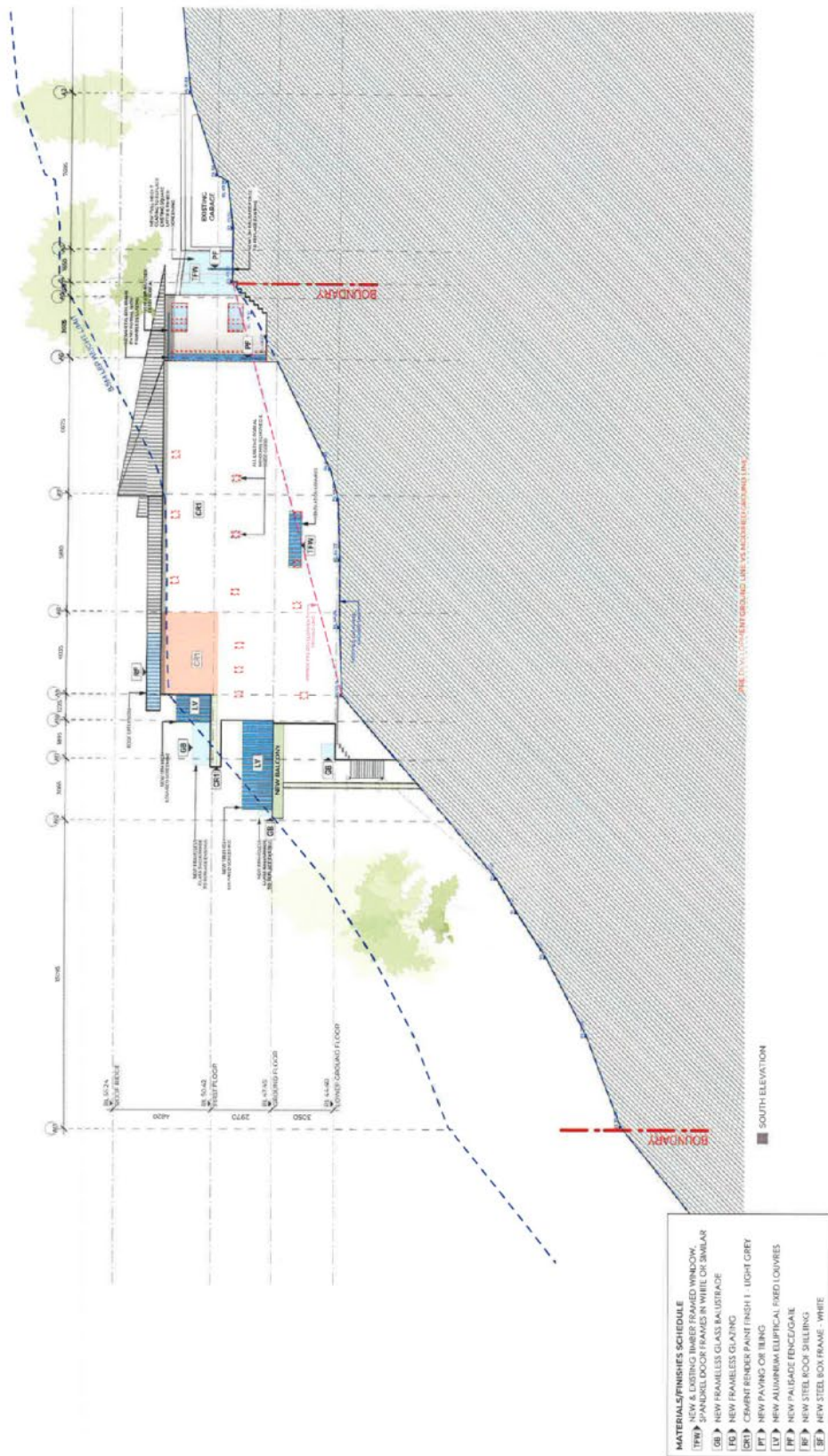
ALEKSANDAR



ALEKSANDAR



REV/NOTES	CLIENT	ADDRESS	REVISION	TITLE	PROJECT NO.	19024
STANDARD ARCHITECTURAL PLAN	GIUSEPPE MORELLO	34 GUDNEY CRESCENT, SEAFORTH	A	North Elevation	DRAWING NO.	
COLOURS					DA201	
<div> <div>■</div> <div>EXISTING</div> </div> <div> <div>■</div> <div>TO BE RENOVISHED</div> </div> <div> <div>---</div> <div>BLD. BRICK/MASONRY</div> </div> <div> <div>---</div> <div>EXISTING GROUND LINE AT BOUNDARY</div> </div> <div> <div>---</div> <div>SITE BOUNDARY</div> </div>					1299 A A	REVISION
<div>■</div> LIGHT GREEN - CONCRETE/TILES <div>■</div> BLUE - STEEL <div>■</div> YELLOW - TIMBER <div>■</div> LIGHT BLUE - GLASS						A

[illegible]

ITEM 3.4	DA2019/1161 - 48 LINDLEY AVENUE, NARRABEEN - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Claire Ryan
TRIM FILE REF	2019/692919
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

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 DA2019/1161 for alterations and additions to a dwelling house on land at Lot 2 DP 502501, 48 Lindley Avenue, Narrabeen, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1161
Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 2 DP 502501, 48 Lindley Avenue NARRABEEN NSW 2101
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
Land and Environment Court Action:	No
Owner:	Maxim Hathaway-Jones Lisamaree Frances Hathaway-Jones
Applicant:	Peter Downes
Application Lodged:	22/10/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	06/11/2019 to 20/11/2019
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.3 Height of buildings: 40.0%
Recommendation:	Approval
Estimated Cost of Works:	\$ 500,000.00

PROPOSED DEVELOPMENT IN DETAIL

The proposed development seeks consent for alterations and additions to an existing residential dwelling including:

- Additional internal floor space on the top and ground floors.
- New deck located off the kitchen and living areas on the top floor.
- Extension of existing ground floor deck.
- Internal reconfiguration.
- Replacement of existing roof.
- Carport incorporating a suspended concrete slab forward of the building line to accommodate one (1) vehicle parking space and associated driveway.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
 Warringah Local Environmental Plan 2011 - 6.1 Acid sulfate soils
 Warringah Local Environmental Plan 2011 - 6.2 Earthworks
 Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
 Warringah Development Control Plan - B1 Wall Heights
 Warringah Development Control Plan - B3 Side Boundary Envelope
 Warringah Development Control Plan - B7 Front Boundary Setbacks
 Warringah Development Control Plan - C5 Erosion and Sedimentation
 Warringah Development Control Plan - C9 Waste Management
 Warringah Development Control Plan - D9 Building Bulk

SITE DESCRIPTION

Property Description:	Lot 2 DP 502501 , 48 Lindley Avenue NARRABEEN NSW 2101
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Lindley Avenue.</p> <p>The site is irregular in shape with a frontage of 17.0m along Lindley Avenue and a maximum depth of 46.0m. The site has a surveyed area of 667.0m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a one (1) and two (2) storey residential dwelling.</p>

The site has a southerly orientation and is located on a considerable slope of approximately 12.0m (31%).

The site is mapped as being a wildlife corridor, threatened and high conservation habitat and native vegetation areas under the Warringah Development Control Plan.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by dwellings of similar size.

Map:



SITE HISTORY

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

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

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&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 allow Council to request additional information. No additional information was requested in this case.</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> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (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</p>

Section 4.15 Matters for Consideration'	Comments
	social impact in the locality considering the character of the proposal. (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.
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:
Mrs Nanette Margaret Adler	1024 Pittwater Road COLLAROY NSW 2097

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

- Bulk and Scale
- Building Height Contravention
- Direct Overlooking and Privacy
- Tree and Vegetation Removal

The matters raised within the submissions are addressed as follows:

- **Bulk and Scale**

Comment:

Concern has been raised by the owners of 50 Lindley Avenue in regards to the bulk and scale of the proposed alterations and additions to the rear of the dwelling. The existing dwelling does not step down with the topography of the site. As such, the proposed development continues the structure and design of the existing dwelling. The proposed alterations and additions will be in keeping with the bulk and scale of the adjoining property to the east, which currently enjoys two (2) balconies with a northerly aspect. A further discussion on this matter can be found under section D9 Bulk and Scale of this report.

- **Building Height Contravention**

Comment:

The owners of 50 Lindley Avenue have raised concerns with regards to the proposed building height exceeding the requirements under *Clause 4.3 Height of Building Development Standard under the Warringah Local Environmental Plan (WLEP) 2011*. The required building height is 8.5m, and the proposed development results in a building height of 11.9m. The application is accompanied by a Clause 4.6 document to request to vary the development standard. A further discussion on the building height contravention can be found elsewhere in this report under section 4.6 Exceptions to Development Standards. It is noted that the submission provided addresses the Height of Building objectives of the *Pittwater Local Environmental Plan (PLEP) 2014* which is different from the Height of Building Objectives of the *WLEP 2011*, to which the subject site is applicable to.

- **Direct Overlooking & Privacy**

Comment:

Concern has been raised by the owners of 50 Lindley Avenue in regards to potential direct overlooking as a result of the proposed balconies. 50 Lindley Avenue is sited lower down the slope to the subject site, and as such the potential for overlooking is high. It is noted the dwelling in its current form has floor to ceiling windows for the entire length of the top floor along the northern elevation. The proposed top floor balcony affords the occupants of the subject site with an acceptable private open space that acts as a direct extension to the internal living areas of the dwelling.

All efforts have been made to ensure privacy for the adjoining properties and the occupants of the subject site through the provision of 1.6m high privacy screens along the eastern and western elevations of the proposed balconies to ensure views are maintained to the northerly aspect. It should be noted the proposed development does not include additional windows along the eastern and western elevations of the dwelling. Additionally, due to the significant slope of the land, the top floor balcony is likely to view the roof of 50 Lindley Avenue.

- **Tree and Vegetation Removal**

Comment:

The owners of 50 Lindley Avenue have raised concerns with regards to the vegetation removed by the previous owners, in addition to the proposed removal of four (4) trees. The proposed development requires the removal of four (4) trees (three (3) within the front setback, one (1) along the eastern side boundary in the rear yard) to provide sufficient space for a one (1) vehicle carport located within the front setback, the associated driveway and the balcony extensions. Council's Landscape Officer has reviewed this application and determined that, of the four (4) trees proposed for removal, three (3) are considered to be exempt species; that is, they are species that can be removed without Council permission. Council's Landscape Officer is satisfied that the removal of the one (1) tree that requires permission is satisfactory, with the recommendation of a condition of consent to ensure one (1) replacement canopy tree of native

species is planted on site.

The removal of trees and vegetation by previous owners is not relevant to this development application.

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 four (4) trees in the front yard to accommodate the new suspended parking slab and carport. Three (3) of the trees proposed for removal are listed as exempt species. The other tree to be removed is indicated on the survey plan to be 15m high, but is beneath an even larger tree in the road reserve, which is indicated to be 25m high. The smaller tree appears to be suppressed by the larger tree. The tree (<i>Ficus rubiginosa</i>) is located in the position of the proposed suspended parking slab and carport. In this instance, retention of the larger tree is of primary importance given its significance in the local landscape and the location of the site in a wildlife corridor under WDCP.</p> <p>Recommended conditions also include planting to of a tree to replace the tree removed. No objections to the proposed works in regard to landscape issues subject to conditions.</p>
NECC (Bushland and Biodiversity)	<p>Council's Natural Environment - Biodiversity section raises no objections to the proposed development, subject to conditions.</p> <p>This application was assessed against Warringah DCP E2 Prescribed vegetation, E3 Threatened species, populations, ecological communities, E4 Wildlife corridors, E5 Native vegetation, and E6 Retaining unique environmental features.</p> <p>The proposal is for the alterations and additions to the existing dwelling including new balconies, roof replacement, and single carport and associated driveway.</p> <p>The submitted Arborist Report "<i>Arboricultural Impact Appraisal and Method Statement</i>" (Naturally Trees 08/10/2019) assesses 21 trees. Four trees are proposed to be removed, 2 within the property (T6 and T7) and 2 within Council's road reserve (T3 and T4). Only one of the trees to be removed (T6) has high significance and will be replaced with a native canopy tree planting.</p> <p>The Flora and Fauna Assessment Report (ACS Environmental Pty Ltd, October 2019) assesses the impacts of the proposal on biodiversity. Threatened species identified as having occasional potential to occur on the site included the Powerful Owl, Large</p>

Internal Referral Body	Comments
	<p>Bentwing Bat and the Grey-headed Flying Fox. The assessment concluded that the proposed development is unlikely to have an adverse effect on these threatened species or their habitat. The site provides foraging and sheltering habitat for fauna and provides connectivity for faunal movement between and within surrounding fragmented bushland. No new fencing is proposed, therefore connectivity values will be maintained. No trees containing hollows will be removed.</p> <p>The proposed development is consistent with local biodiversity controls.</p>
NECC (Coast and Catchments)	<p>The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.</p> <p>As assessed in the submitted Statement of Environmental Effects (SEE) report the DA satisfies the requirements under clauses 13, 14 and 15 of the CM SEPP. 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)	<p>Original Comments</p> <p>The proposed Stormwater Concept Plan is unsatisfactory. Stormwater drainage for the site shall be in accordance with Council's Warringah Stormwater Drainage from Low Level Properties Technical Specification Section 2.2. In particular, the following matter is raised with regard to this Specification:</p> <ul style="list-style-type: none"> The applicant will need to follow the Steps in this Specification and demonstrate that Step 1 is not available for stormwater disposal. If the property owner is unable to obtain an easement through adjoining downstream property, evidence of a refusal letter from the downstream property owner or a Statutory Declaration by the property owner shall be submitted in accordance with this Clause. <p>The proposed application cannot be supported by Development Engineering due to lack of information to address:</p> <ul style="list-style-type: none"> Stormwater drainage for the development in accordance with clause C4 Stormwater. <p>Updated Comments</p> <p>Additional Information Received on 22/11/2019</p> <p>The drainage easement refusal letter was received from 18 The</p>

Internal Referral Body	Comments
	<p>Esplanade Narrabeen on 22/11/2019.</p> <p>The existing rock outcrops within council road reserve will need to be excavated for the proposed driveway. This may impact on the existing rock outcrops with setback area. Planners may consider whether the retention of the rock outcrops is necessary. If it is not required to retain the rock outcrops then conditions will be applicable for the approval.</p> <p>Planner's Comment Council's Development Engineer reviewed the proposed development and determined the proposed Stormwater Concept Plan was unsatisfactory (as seen in the above comments), and as such, recommended the application for refusal. The applicant subsequently provided a signed easement refusal letter from the downstream property owners. Council's Development Engineer reviewed the signed easement refusal and amended their referral comments, recommending the application for approval subject to strict conditions.</p>
NECC (Riparian Lands and Creeks)	<p>This application has been assessed under Warringah DCP 2011 C4 – Stormwater Warringah DCP 2011 C5 – Erosion and Sedimentation Warringah Council PL 850 Water Management Policy SEPP Coastal Management 2018 - Coastal Environment Zone</p> <p>The proposed level spreader will comply with the above controls if the area around the spreader is prepared to help the stormwater infiltrate into the soil ie. a shallow gravel and sand trench that can be covered with grass or other vegetation. Conditions apply.</p> <p>Sediment and erosion controls must be installed prior to any disturbance of soil on the site and maintained until all work is complete and groundcover re-established.</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted with the application (see Certificate No. A358955 on 20 October 2019).

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:

This Clause is relevant to the subject site. Council's Coast and Catchment Officer has reviewed this application and raises no issues in relation to the proposed development being within the Coastal Environment Area. As such, Council is satisfied that the proposed development achieves compliance with the abovementioned requirements.

- (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:

This Clause is relevant to the subject site. Council's Coast and Catchment Officer has reviewed this application and raises no issues in relation to the proposed development being within the Coastal Environment Area. As such, Council is satisfied that the proposed development achieves compliance with the abovementioned requirements.

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:

This Clause is relevant to the subject site. Council's Coast and Catchment Officer has reviewed this application and raises no issues in relation to the proposed development being within the Coastal Use Area. As such, Council is satisfied that the proposed development achieves compliance with the abovementioned requirements.

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 proposed development is unlikely to increase risk of coastal hazards.

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

Warringah Local Environmental Plan 2011

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	11.9m	40%	No

Compliance Assessment

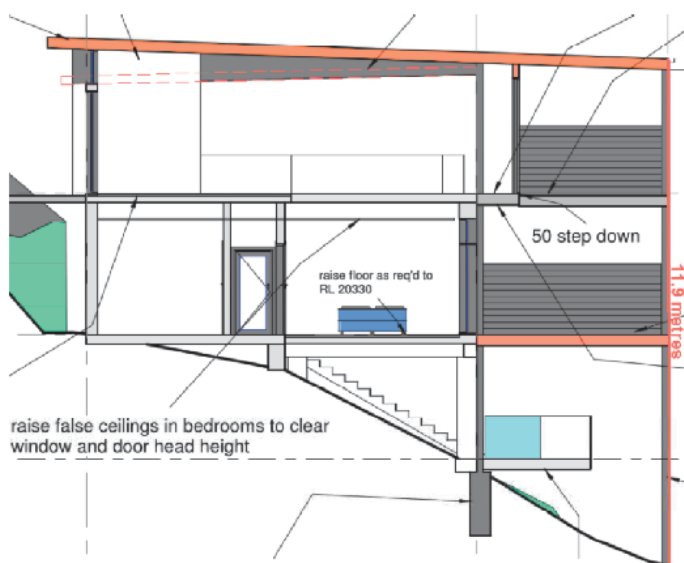
Clause	Compliance with Requirements
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	11.9m
Percentage variation to requirement:	40%



Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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

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

development,

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

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

Comment:

Clause 4.3 Height of Buildings 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 Clause 4.6(3). There are two separate matters for consideration contained within Clause 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 Clause 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.'

Section 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 Applicant's written request argues, in part:

"The variation sought by this request is a consequence of the proposed removal of the existing flat roof component of the existing dwelling and its replacement with a skillion roofed lightweight component this which generally follows the topography of the subject site. This re-roofing of the existing dwelling with a resultant maximum height of 12.0m from existing ground level will result in a breach of the 8.5m height control of 3.5m at its highest point. It should be noted that this is a maximum height and is a consequence of the skillion roof being extended across the upper-level balcony in order to achieve satisfactory levels of energy efficiency for the dwelling due to its orientation. The breach of the standard with no material impacts is worthy of support and will not result in an undesirable precedent due to the merits of the proposal which will result in a completed dwelling that does not materially impact upon the nearby locality, enhances the energy efficiency of the dwelling and result in usable areas of private open space for residents. The site constraints, coupled with the levels of the existing dwelling, preclude compliance with the development standard."

The proposed alterations and additions to the existing residential dwelling have been designed in a way that maintains the visual bulk and scale of the existing structure, as well as achieving consistency with

the visual continuity of surrounding developments. As such, the proposed development is unlikely to impact upon the amenity of adjoining properties and will serve to increase the usability and amenity of the subject site. The existing dwelling is located on a slope of approximately 38.6% and the design of the existing structure does not step with the slope of the land. The proposed development is maintaining this design to allow for continuity of the visual bulk and scale of the existing dwelling. The proposed development, when viewed from the street will present as a one (1) storey residential dwelling, and, due to the slope of the land, dense vegetation and other dwellings, the rear of the property is unlikely to be viewed from surrounding public places. The proposed development is considered to be relatively minor in nature and will have minimal impact upon the amenity of adjoining properties.

In this regard, the Applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying Clauses 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 Clause 4.6 (3)(b).

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

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

Clause 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 addressed as follows:

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

Comment:

The proposal is compatible with the height and scale of surrounding and nearby development as this section of the escarpment is typified by dwellings oriented towards the north in order to obtain views and, due to the topography, contain significant elevated balconies in order to achieve satisfactory areas of private open space. As discussed above, the existing dwelling is located on a slope of approximately 38.6%, as are the adjoining properties. Therefore the proposed

alterations and additions will achieve compatibility with the height and scale of surrounding and nearby developments.

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

Comment:

Compatibility is further endorsed by the fact that there are no unreasonable impacts upon the amenity of adjacent or nearby properties as a consequence of this breach of the height control in terms of overlooking, overshadowing or view loss. The extension to the rear of the dwelling includes a 1m internal extension, as well as the retention of the existing balconies located on the top floor and ground floor. The balconies will have 1.6m high privacy screens along the eastern and western elevations to minimise the potential for overlooking.

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

Comment:

The proposal has been sensitively crafted to enhance the visual compatibility of the site by providing for a more sensitive design and colour palette to integrate with the significant surrounding vegetation which will have the result of a completed proposal which will be visually recessive when viewed from surrounding locations. Four (4) trees are proposed to be removed as a result of the development, with one (1) tree requiring removal for the suspended concrete slab, two (2) required for removal for the associated driveway and one (1) for the balcony extensions. As such, additional canopy tree planting has been recommended as a condition of consent to ensure the development continues to positively respond to and integrate with the bush environment that is typical of the Warringah locality.

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

Comment:

Similar to the response (c) above, the crafting of the proposal has given significant regard to visual compatibility and when viewed from the nearest public reserve, being the reserve on the south side of Narrabeen Lagoon, the subject site is barely discernible due to the significant vegetation and will be less discernible with the proposed works completed and the proposed colour palette applied to the existing and proposed works.

Zone Objectives

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

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

Comment:

The proposal will continue to provide housing needs of the community.

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

Comment:

The proposal maintains housing variety within the residential area.

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

Comment:

The proposal will continue the existing residential land use.

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:

Clause 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.

6.1 Acid sulfate soils

Under Clause 6.1 Acid Sulfate Soils of *WLEP 2011*, development consent is not required under this clause to carry out any works if:

(a) the works involve the disturbance of less than 1 tonne of soil, and

Comment:

Council (as the consent authority) can be satisfied that the proposed development will involve the disturbance of less than 1 tonne of soil.

(b) the works are not likely to lower the watertable

Comment:

The proposed application is accompanied by a Geotechnical Assessment Report in which the geotechnical engineer determines that, "due to the position of the block relative to the slope and the underlying geology, no significant standing water table is expected to influence the site". Council (as the consent authority) can be satisfied that the proposed works are unlikely to lower the watertable.

6.2 Earthworks

Under Clause 6.2 Earthworks under the *WLEP 2011*, before granting consent for earthworks, the consent authority must consider the following matters:

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

locality,

Comment:

A Geotechnical Assessment Report, prepared by Ascent Geotechnical Consulting, was provided with this application. The report stipulates that the geotechnical risk associated with the proposed development is acceptable, subject to compliance with the recommendations outlined within the report. Additionally, Council's Development Engineer has reviewed the application and has imposed relevant conditions to satisfy appropriate stormwater discharge management.

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

Comment:

If approved, the proposed development is unlikely to impact upon the future use, or redevelopment, of the land.

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

Comment:

A Geotechnical Assessment report was provided with this application, and, as such, the recommendations enforced by the conditions of consent within the report ensure the quality of fill, if necessary, is to comprise local silty soil, clay and weathered rock.

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

Comment:

If approved, the proposed development is unlikely to impact upon the existing and likely amenity of the adjoining properties.

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

Comment:

The proposed development requires minor excavation for the installation of the steel posts at the rear of the property. A waste management plan was not submitted with this application. Should this application be approved, conditions of consent have been recommended to ensure a waste management plan is prepared in accordance with Northern Beaches Council Waste Management Plan Guidelines prior to the issue of a Construction Certificate. The waste management plan is to be complied with during works, and certified by the Principal Certifying Authority prior to the issue of an Occupation Certificate.

(f) the likelihood of disturbing relics

Comment:

The subject site is not classified as being within an Aboriginal Heritage area. If approved, Council (as the consent authority) can be satisfied that the likelihood of disturbing relics is low.

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

Comment:

The State Environmental Planning Policy (SEPP) (Coastal Management) 2018 is applicable to the subject site. As such, the relevant divisions have been addressed within this report under SEPP (Coastal Management) 2018. Additionally, Council's Coast and Catchment Officer has reviewed the application and concluded that the proposed development achieves compliance with the relevant divisions (13, 14 and 15) within the SEPP (Coastal Management) 2018.

The subject site is not in close proximity to a drinking water catchment or environmentally sensitive area. As such, Council (as the consent authority) can be satisfied that the proposed development will not unreasonably impact on watercourses, drinking water catchments or environmentally sensitive areas.

6.4 Development on sloping land

Under Clause 6.4 Development on Sloping Land under the *WLEP 2011*, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

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

Comment:

A Geotechnical Assessment Report accompanies this application. The report states that the geotechnical risk associated with the proposed development is acceptable, subject to compliance with the recommendations outlined within the report by Ascent Geotechnical Consulting.

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

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

Comment:

Council's Development Engineer has reviewed the application and imposed relevant conditions to satisfy appropriate stormwater discharge from the site.

Council, as the consent authority, can be satisfied the proposed development will achieve compliance with the abovementioned objectives.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	10.0m	38%	No
B3 Side Boundary Envelope	4m (western elevation)	Encroachment (6.8m)	70%	No
	4m (eastern elevation)	Encroachment (5.7m)	42.5%	No
B5 Side Boundary Setbacks	0.9m (western)	1.0m	N/A	Yes
	0.9m (eastern)	1.3m	N/A	Yes
B7 Front Boundary Setbacks	6.5m	Nil	100%	No
B9 Rear Boundary Setbacks	6m	>6m	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (266m ²)	57.9% (386.8m ²)	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	No	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	No	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	No	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	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
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or High Conservation Habitat	Yes	Yes
E4 Wildlife Corridors	Yes	Yes
E5 Native Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

This Clause relies upon the objectives of Clause 4.3 Height of Buildings under *WLEP 2011*. An assessment of the proposal against the objectives of this Clause has been provided in the section this

report relating to Clause 4.3 Height of Buildings of *WLEP 2011*. This assessment has found the proposal to be consistent with the objectives of Clause 4.3 Height of Buildings.

B3 Side Boundary Envelope

Description of non-compliance

The proposed alterations and additions exceed the minimum requirements for the side building envelope along the eastern and western elevations. This represents variations of 70% (western elevation) and 42.5% (eastern 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:

The proposed development will remain consistent with the developments within the immediate vicinity of the subject site. Both the eastern and western elevations encroach into the prescribed building envelope. However, the amenity impact for the property to the east is minimal as the bulk of the new works will be the balconies which provide an open style design with 1.6m high privacy screens along the eastern and western elevations. Due to the significant slope of the land, the dwelling will present as one (1) storey when viewed from Lindley Avenue, and due to surrounding developments and dense vegetation the proposed works will not become visually dominant from surrounding public spaces.

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

Comment:

Compliance is achieved with the side boundary setbacks. Therefore, spatial separation between buildings is acceptable and the provision of 1.6m high privacy screens along the eastern and western elevations (which causes the envelope breach) will enhance the privacy for the occupants of the subject site and to those of adjoining properties. Solar access and adequate light are acceptable for the subject site and adjoining sites.

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

Comment:

The site experiences a significant slope of approximately 38.6%, falling steeply in the direction from the street frontage towards the rear of the site. The existing dwelling does not step with the topography of the site, and as such the proposed alterations and additions will continue this design so as to visually contribute to the existing bulk and scale of the dwelling and that of developments in the immediate vicinity of the subject site.

B7 Front Boundary Setbacks

Description of non-compliance

This control requires the front setback to be 6.5m from the front boundary line. The proposed carport and suspended concrete hardstand space will provide a nil setback to the front boundary line. This represents a variation of 100%.

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 proposed carport located over the suspended concrete hardstand space is an open-style structure and, therefore, achieves a reasonable sense of openness when viewed from the street and surrounding properties.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

Comment:

Dwellings to the east of the subject site have either open carport structures or enclosed garages. Therefore, the proposed suspended concrete hardstand surface will maintain the visual continuity of Lindley Avenue.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

Comment:

The proposed carport and suspended concrete hardstand surface will present as an open element when viewed from the street and surrounding developments. As such, the proposal will positively contribute to the visual quality of the Lindley Avenue streetscape.

- *To achieve reasonable view sharing.*

Comment:

Due to the open nature of the proposed suspended concrete hardstand surface, any views that are currently obtained by surrounding developments will not be unreasonably impacted as a result.

C5 Erosion and Sedimentation

An Erosion and Sediment Control fence has not been shown on the plans provided. As such, a condition of consent has been recommended to ensure a sediment control fence is installed throughout the duration of the construction works.

C9 Waste Management

A detailed waste management plan was not submitted with this application. As such, a condition of consent will be recommended to ensure a waste management plan is prepared and adhered to throughout the development.

D9 Building Bulk

Non-Compliance

The existing structure does not step with the topography of the site and, as such, the proposed development does not comply with the fourth requirement of this Control.

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 existing dwelling does not step with the topography of the site, and, as such, the proposed development will continue the existing building bulk and design. Good design has been reflected with the inclusion of 1.6m high privacy screens along the western and eastern elevations on the top and ground floor balconies in order to mitigate overlooking. Additionally, the roof design is in keeping with the existing structure and positively contributes to the reduction of the building bulk. The building bulk achieves consistency with dwellings within the immediate vicinity of the subject site.

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

Comment:

The proposed alterations and additions are not dissimilar to the design and bulk of the existing dwelling. The proposed additions to the rear of the dwelling will be in line with the rear of the property to the east. Therefore, the visual impact upon adjoining properties is minimal as the design and bulk achieves consistency with the size of surrounding dwellings.

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 \$5,000 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$500,000.

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

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 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 DA2019/1161 for

Alterations and additions to a dwelling house on land at Lot 2 DP 502501, 48 Lindley Avenue, NARRABEEN, 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
A3 1912 01- Site Plan	18 August 2019	Peter Downes Designs
A3 1912 02 - Top Floor Plan	18 August 2019	Peter Downes Designs
A3 1912 03 - Ground Floor Plan	18 August 2019	Peter Downes Designs
A3 1312 04 - Lower Ground Floor	18 August 2019	Peter Downes Designs
A3 1912 05 - Eastern Elevation	18 August 2019	Peter Downes Designs
A3 1912 06 - Western Elevation	18 August 2019	Peter Downes Designs
A3 1912 07 - Northern Elevation	18 August 2019	Peter Downes Designs
A3 1912 08 - Southern Elevation	18 August 2019	Peter Downes Designs
A3 1912 09 - Section 1	18 August 2019	Peter Downes Designs
A3 1912 10 - Roof Plan	18 August 2019	Peter Downes Designs

Engineering Plans		
Drawing No.	Dated	Prepared By
Stormwater Management Plan	18 October 2019	Taylor Consulting Civil & Structural Engineers

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Flora and Fauna Assessment	October 2019	ACS Environmental Pty Ltd
Geotechnical Assessment	15 October 2019	Ascent Geotechnical Consulting
Stormwater Management Plan	18 October 2019	Taylor Consulting Civil & Structural Engineers
BASIX Certificate: A358955	20 October 2019	Simon Downes Enterprises

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 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 \$5,000.00 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 \$500,000.00.

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 \$1,500 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. **Amendments to the Approved Plans**

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

- The privacy screens located on the eastern and western elevations on the top floor and ground floor balconies are to be amended to reflect a minimum spacing of 20mm between the privacy screen slats.

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

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

7. **On-site Stormwater Detention Details**

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Warringah Water Management Policy PL850, and generally in accordance with the concept drainage plans prepared by Taylor Consulting, drawing number Sheet 2 & Sheet 3, dated 18 October 2019 & 4 October 2019 respectively. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer, who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

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

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

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

The application is to include four (4) copies of Civil Engineering plans for the design of suspended driveway and carport which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information: The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

An approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

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

9. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

10. Shoring of Council's Road Reserve (Temporary road anchors)

Should the proposal require shoring to support an adjoining property or Council land, the Applicant shall provide the adjoining properties with engineering drawings, detailing the proposed shoring works for their consideration and approval.

Written approval from Council under Section 138 of the Roads Act 1993 is required if temporary ground anchors are to be used within Council's road reserve. The Owner's approval is to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure that owners consent is obtained for ancillary works, and to ensure the protection of adjoining properties and Council land.

11. Water Quality Management

The Applicant must install a filtration device (such as a silt arrestor pit or absorption trench) that captures organic matter and coarse sediments prior to discharge of stormwater from the land. All stormwater treatment measures must make provision for convenient and safe regular inspection, periodic cleaning, and maintenance.

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

Reason: Protection of the receiving environment.

12. Compliance with Standards

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

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

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

13. External Finishes to Roof

The external finish to the roof shall have a 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.

14. Compliance with Environmental Reports

Written certification from a suitably qualified person(s) shall submit to the Principal Certifying

Authority stating that the proposed plans achieve compliance with the works/methods/procedures/control measures/recommendations as outlined within the following environmental reports:

- (a) Arboricultural Impact Appraisal and Method Statement (dated 8 October 2019; prepared by Naturally Trees)
- (b) Flora and Fauna Assessment (dated October 2019; prepared by ACS Environmental Pty Ltd)
- (c) Geotechnical Assessment (dated 15 October 2019; prepared by Ascent Geotechnical Consulting)

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

Reason: To ensure compliance with standards.

15. **Boundary Survey**

A Boundary Survey is to be conducted of the subject site prior to the issue of a Construction Certificate. The Boundary Survey is to be prepared and signed by a registered surveyor.

Reason: To ensure the proposed works are contained wholly within the subject site.

16. **Waste Management Plan**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

17. **Tree Protection**

- (a) All trees not indicated for removal on the approved plans and trees located on adjoining properties are to be retained, unless exempt under relevant planning instruments.
- (b) Tree protection
 - i) No tree roots greater than 25mm 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 25mm diameter unless directed otherwise by a qualified Arborist on site.
 - iii) All tree protection to be in accordance with the Arboricultural Impact Appraisal dated October 2019 prepared by Naturally Trees 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.

18. Project Arborist

A Project Arborist with minimum qualification AQF Level 5 is to be appointed prior to commencement of works. The Project Arborist is to oversee all tree protection measures, removals hold point inspections and works adjacent to protected trees as outlined in the Arboricultural Impact Appraisal dated October 2019 prepared by Naturesly Trees and AS4970-2009 Protection of trees on development sites. The Project Arborist is to ensure compliance as relevant with any other environmental requirements conditioned under this consent.

Reason: To ensure protection of vegetation proposed for retention on the site.

19. 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

20. Road Reserve

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

Reason: Public safety.

21. Removing, Handling and Disposing of Asbestos

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

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

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

22. Demolition Works - Asbestos

Demolition works must be carried out in compliance with WorkCover Short Guide to Working with Asbestos Cement and Australian Standard AS 2601 2001 The Demolition of Structures.

The site must be provided with a sign containing the words DANGER ASBESTOS REMOVAL IN PROGRESS measuring not less than 400 mm x 300 mm and be erected in a prominent visible position on the site. The sign is to be erected prior to demolition work commencing and is to remain in place until such time as all asbestos cement has been removed from the site and disposed to a lawful waste disposal facility.

All asbestos laden waste, including flat, corrugated or profiled asbestos cement sheets must be disposed of at a lawful waste disposal facility. Upon completion of tipping operations the applicant must lodge to the Principal Certifying Authority, all receipts issued by the receiving tip as evidence of proper disposal.

Adjoining property owners are to be given at least seven (7) days' notice in writing of the intention to disturb and remove asbestos from the development site.

Reason: To ensure the long term health of workers on site and occupants of the building is not put at risk unnecessarily.

23. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 5.2 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/3 NL and the driveway levels application approval. 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.

A copy of the vehicle crossing inspection form is to be submitted to the Principal Certifying Authority.

Reason: To facilitate suitable vehicular access to private property.

24. **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.

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

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. 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.

26. **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

27. **Condition of Retained Vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist shall be submitted to the Certifying Authority assessing the health and impact of trees and vegetation required to be retained as a result of the proposed development, including the following information:

- a) Compliance to Arborist recommendations for tree protection and excavation works.
- b) Extent of damage sustained by vegetation as a result of the construction works.
- c) Any subsequent remedial works required to ensure the long term retention of the vegetation.

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

28. **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.

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

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

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

A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for on-site storm water detention/disposal is to be submitted to the Certifying Authority prior to the issue of final Occupation Certificate.

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

30. Environmental Reports Certification

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

- (a) Arboricultural Impact Appraisal and Method Statement (dated 8 October 2019; prepared by Naturally Trees)
- (b) Flora and Fauna Assessment (dated October 2019; prepared by ACS Environmental Pty Ltd)
- (c) Geotechnical Assessment (dated 15 October 2019; prepared by Ascent Geotechnical Consulting)

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of a Interim / Final Occupation Certificate.

Reason: To ensure compliance with standards.

31. Required Planting

Trees shall be planted in accordance with the following schedule:

Minimum No. of Trees Required.	Species	Location	Minimum Pot Size
1	<i>Ficus rubiginosa</i>	Grounds of property	25 litre

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

Reason: To maintain environmental amenity.

32. Priority and Environmental Weeds

Landscaping is not to include any Priority or environmental weeds identified in the Greater Sydney Regional Strategic Weed Management Plan 2017 – 2022. Evidence of compliance with this condition is to be provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

Reason: To manage the spread of environmental weeds in accordance with relevant Natural Environment LEP/DCP controls.

33. Works as Executed Drawings - Stormwater Treatment Measures

Works as Executed Drawings for the stormwater treatment measures must be prepared in accordance with Council's Guideline for Preparing Works as Executed Data for Council

Stormwater Assets.

The drawings shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

34. New Vegetation Planting

Prior to the issue of any Occupation Certificate, evidence that the new landscaping comprises a minimum of 60% locally native vegetation species as a proportion of the total number of plants is to be provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

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

35. 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.

36. Waste Management Confirmation

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

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

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

37. Control of Weeds

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

Reason: Weed management.

38. Replacement of Canopy Tree

The replacement tree planting required under this consent are to be retained for the life of the development and/or for their safe natural life. Trees that die or are removed must be replaced with another locally native canopy tree.

Reason: To replace locally native trees in accordance with relevant Natural Environment LEP/DCP controls.

39. Maintenance of Stormwater Treatment Measures

Stormwater treatment measures must be maintained at all times in accordance with manufacturer's specifications and as necessary to achieve the required stormwater quality targets for the development (removal of sediment).

Northern Beaches Council reserves the right to enter the property and carry out appropriate maintenance of the device at the cost of the property owner.

Reason: Protection of the receiving environment.

40. **Dead or Injured Wildlife**

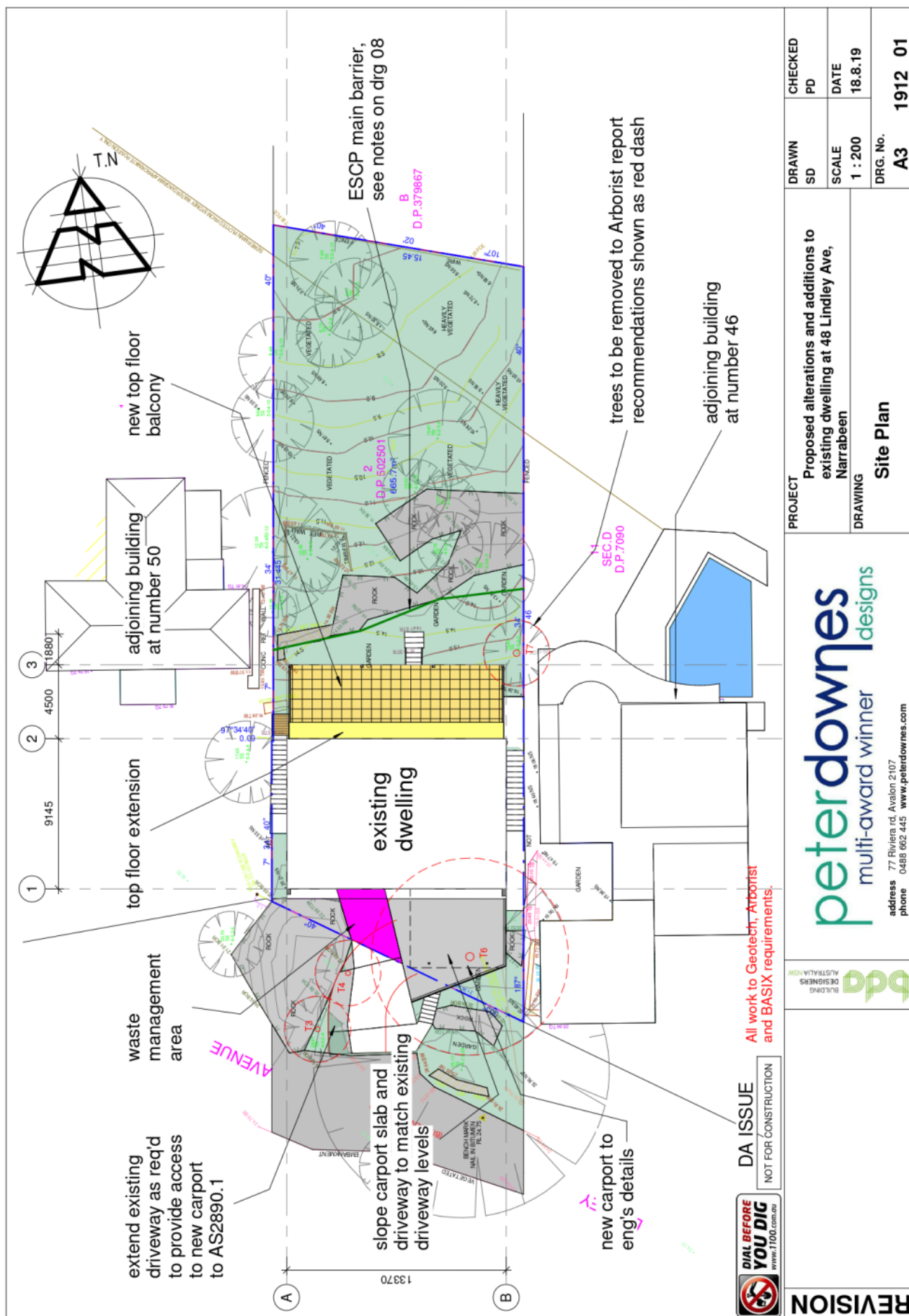
If construction activity associated with this development results in injury or death of a native mammal, bird, reptile or amphibian, a registered wildlife rescue and rehabilitation organisation must be contacted for advice.

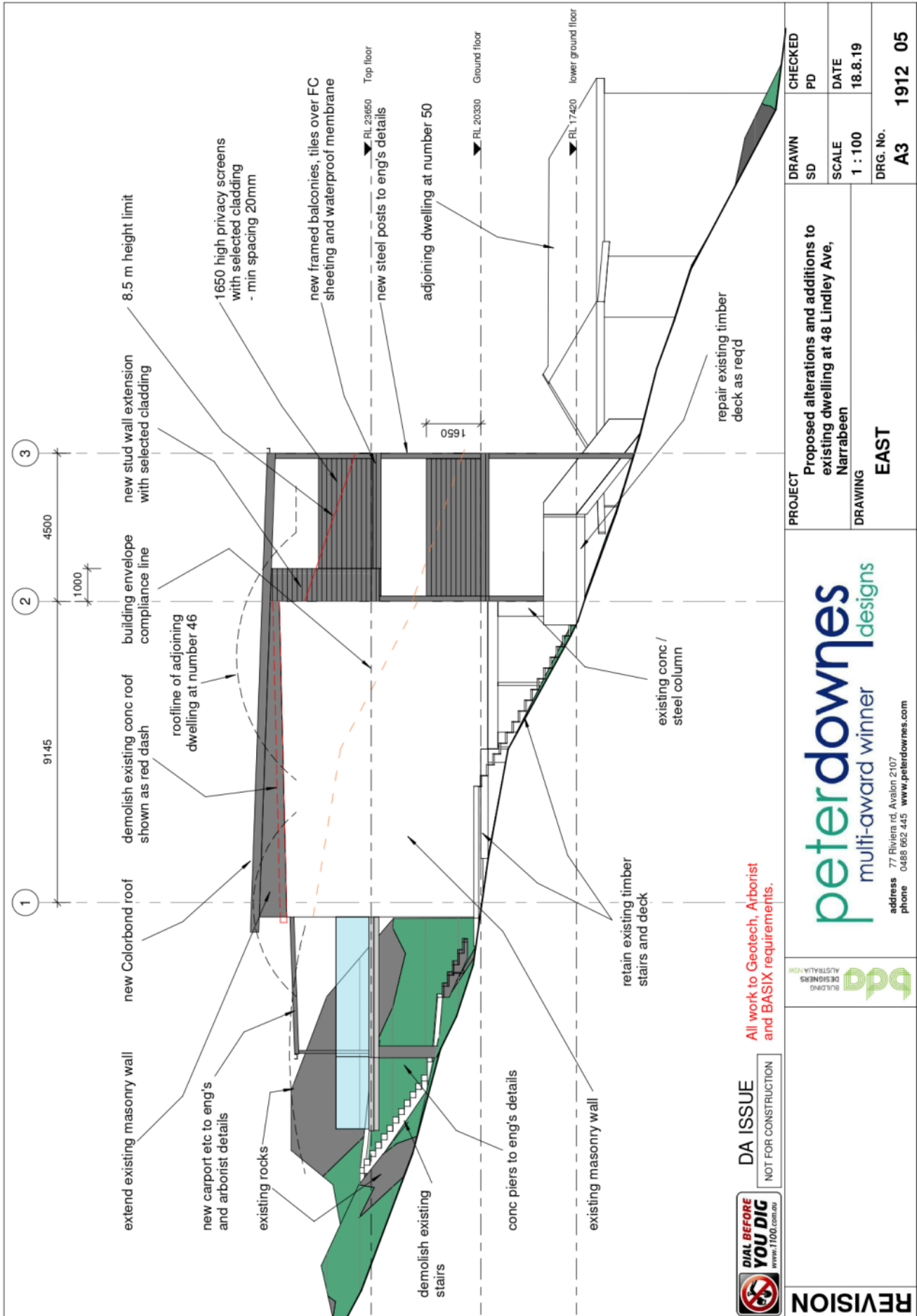
Reason: To mitigate potential impacts to native wildlife resulting from construction activity.

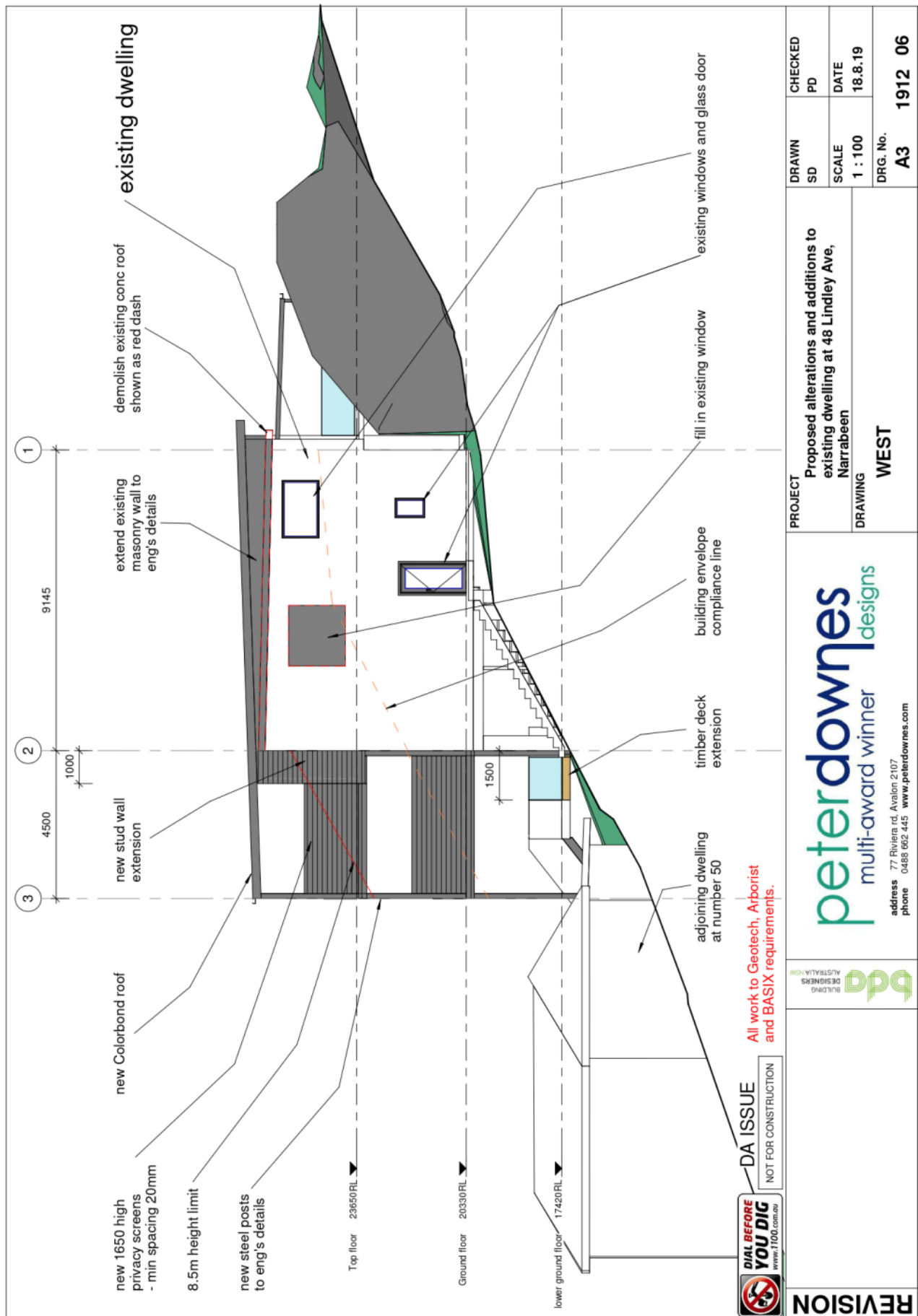
41. **Domestic Animals Exclusion**

For the life of the development, cats are to be kept in a cat run and/or inside the dwelling such that they are prevented from entering wildlife habitat areas at all times. Dogs are to be kept in an enclosed area such that they cannot enter areas of bushland, unrestrained, on surrounding properties.

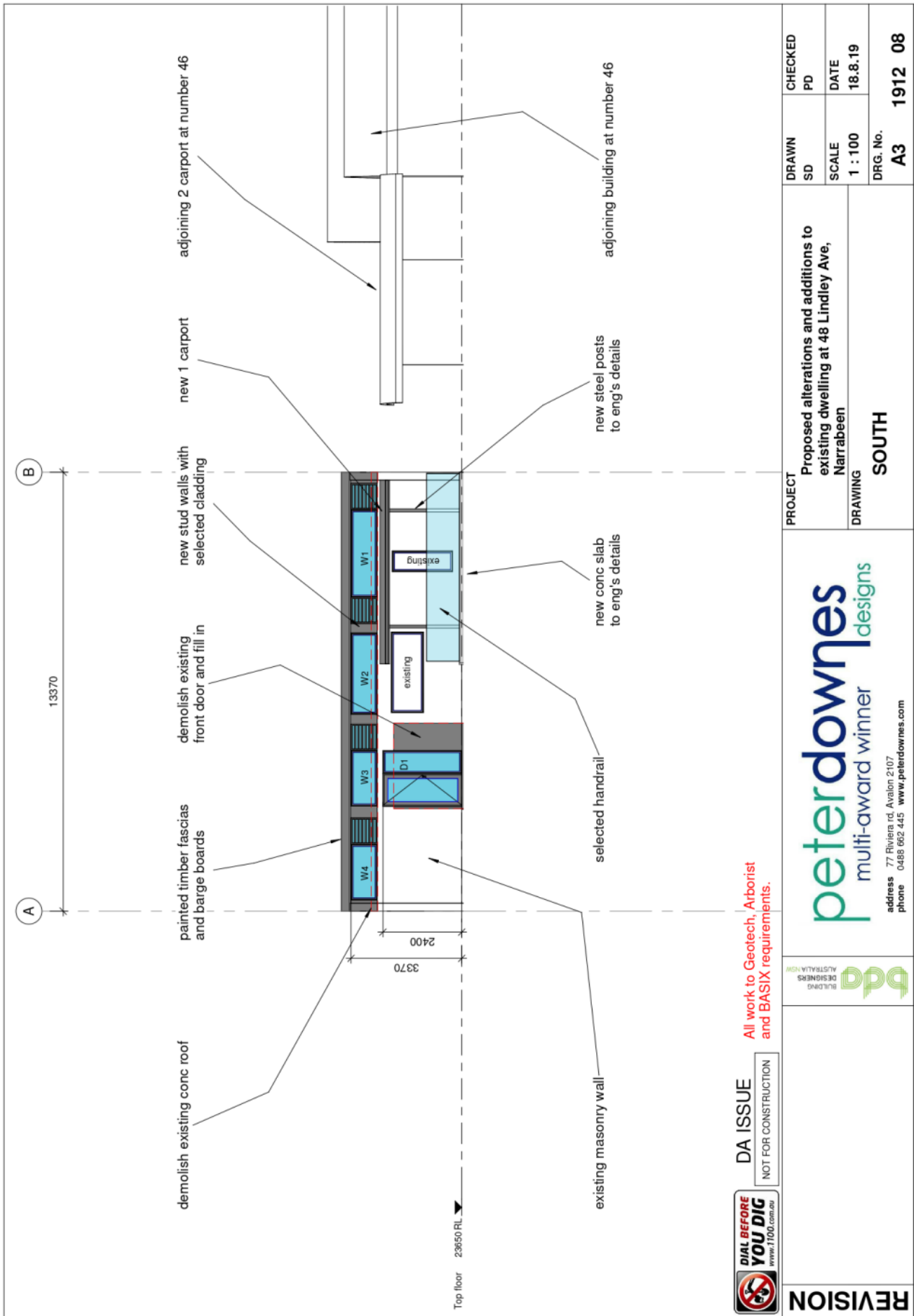
Reason: Wildlife protection











ITEM 3.5	DA2019/0616 - 5 BIRDWOOD AVENUE, COLLAROY - REGULARISATION OF THE USE OF AN EXISTING BUILDING AS A SECONDARY DWELLING, CARPARKING AND FRONT FENCE
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2019/692958
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

PURPOSE

To refer the attached application for determination by the discretion of the Director Planning and Place.

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/0616 for use of existing building as a secondary dwelling, carparking and front fence on land at Lot 3 DP 9667, 5 Birdwood Avenue, Collaroy, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/0616
Responsible Officer:	Planning Consultant (Natalie Nolan)
Land to be developed (Address):	Lot 3 DP 9667, 5 Birdwood Avenue COLLAROY NSW 2097
Proposed Development:	Regularisation of the use of an existing building as a secondary dwelling, carparking and front fence
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Development Determination Panel
Land and Environment Court Action:	No
Owner:	Christopher Douglas Hunt Kristine Mary Hunt
Applicant:	Christopher Douglas Hunt
Application Lodged:	17/06/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - New second occupancy
Notified:	28/06/2019 to 12/07/2019
Advertised:	Not Advertised
Submissions Received:	8
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$ 5,000.00

EXECUTIVE SUMMARY

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

The proposed development demonstrates compliance with the objectives of the relevant built form controls of the WLEP 2011 and WDCP 2011. The numerical variations to landscape open space, front and side setbacks are considered reasonable given the nature of the subject site and the existing adjoining development.

A separate Building Information Certificate will need to be lodged with respect to the unauthorised works and a condition of consent is recommended in this regard.

Seven (7) submissions were received in support of the proposal and there was one submission which

raised a number of concerns. These have been dealt with in detail in this report.

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

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

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

The assessment issues are summarised below:

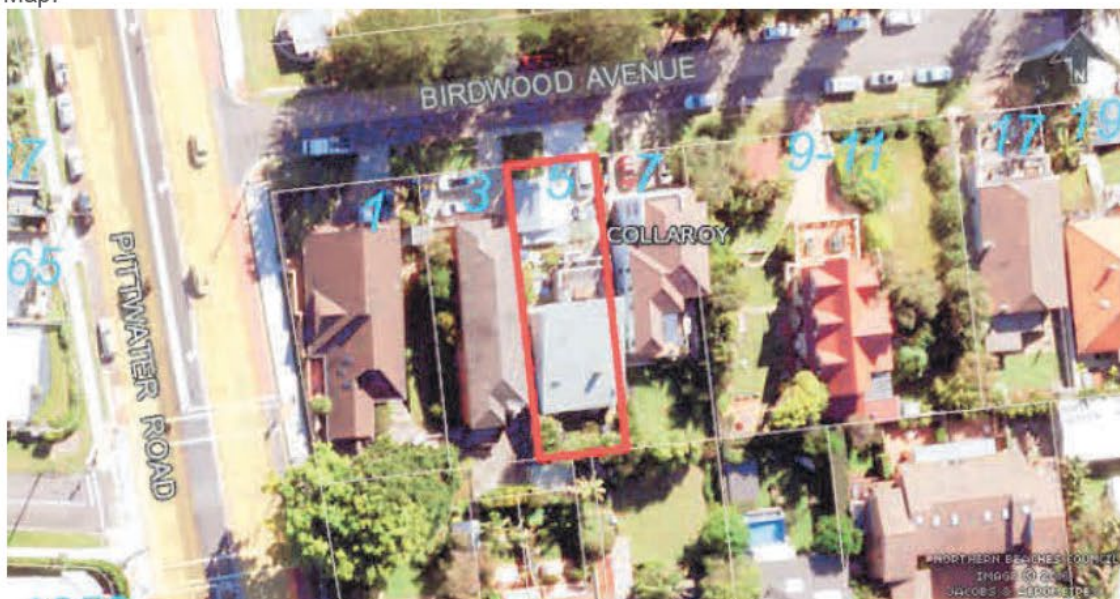
Warringah Development Control Plan – Clause B5 Side Boundary Setback
Warringah Development Control Plan – Clause B7 Front Setback
Warringah Development Control Plan – Clause D1 Landscaped Open Space

SITE DESCRIPTION

Property Description:	Lot 3 DP 9667 , 5 Birdwood Avenue COLLAROY NSW 2097
Detailed Site Description:	<p>The subject site consists of one allotment located on the southern side of Birdwood Avenue.</p> <p>The site is a rectangular shaped allotment with a frontage of 12.19m to Birdwood Avenue and a depth of 40.235m. The site has a total surveyed area of 490.5m².</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a two storey dwelling, detached outbuilding forward of the dwelling and adjacent hard stand parking area.</p>

	<p>The site enjoys views of the coastline and ocean to the north and east. The site has fall from the rear boundary towards the street.</p> <p>There is no significant vegetation on site.</p> <p>The site is currently drained to the street gutter in Birdwood Avenue.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>The character of the immediate locality is predominately residential in nature and consists of two to three storey detached dwelling houses and three storey apartment buildings/attached dwellings. A number of these properties have minimal landscaping. The northern side of Birdwood Avenue is public open space and provides access to Collaroy Beach.</p> <p>The property to the west (3 Birdwood Avenue) is a three storey red brick residential flat building comprising five (5) units with garaging occupying the lower level facing the street and two (2) levels of apartments above. The front setback area comprises hard paving.</p> <p>The property to the east (1 & 2/7 Birdwood Avenue) is a part two (2) and part three (3) storey residential building comprising two attached dwellings. Parking is located at the lower level facing the street with the front setback area comprising hard paving.</p>
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Map:



SITE HISTORY

Council issued a Notice of Intention to Issue a Development Order on 26 March 2019 with respect to the unauthorised works carried out to the detached existing garage, newly constructed hard stand parking area and landscape works.

On 2 April 2019, a Pre-Lodgement Meeting was held at Council (PLM2019/0058). The following issues were identified and discussed:

- Secondary Dwelling
- Streetscape/Landscape Open Space
- Front Building Setback
- Building Certificate for unauthorized works

On 17 June 2019, the subject development application was lodged with Council.

A Building Information Certificate has not yet been lodged with Council with respect to the unauthorised works.

PROPOSED DEVELOPMENT IN DETAIL

The proposal seeks a change of use of the existing detached weatherboard and aluminum roof garage to permit a secondary dwelling. The physical works related to the detached building, hardstand parking area and landscape/earthworks have been carried and will be the subject of a separate Building Information Certificate.

The secondary dwelling provides for a combined kitchen, living and bedroom area with a separate bathroom with laundry facilities. The secondary dwelling is orientated towards Birdwood Avenue, with sliding doors providing access from the internal areas to a small garden area adjacent to the front boundary. A single entry door is provided on the eastern elevation of the building.

A small section of new fence is proposed along the western portion of the front boundary. The fence is to be a maximum of 1.2m high and be constructed of timber pickets and sandstone construction.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.

Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
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>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. A BASIX Certificate was requested and provided to Council on 11 November 2019.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the 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 Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.

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 initial public exhibition process Council is in receipt of eight (8) submissions from:

Name:	Address:
Dr Craig Ian Walker	3 / 2 Frazer Street COLLAROY NSW 2097
Mr Peter Graeme Dawson	1 / 7 Birdwood Avenue COLLAROY NSW 2097
Mr Leslie Browne Mrs Kate Brown	11 Brissenden Avenue COLLAROY NSW 2097
Ms Michele Clare France	99 Cumberland Avenue COLLAROY NSW 2097
Mr Craig William Busch	15 - 17 Birdwood Avenue COLLAROY NSW 2097
Mr Ross Anthony Corben Mrs Roberta Leader Corben	9 Brissenden Avenue COLLAROY NSW 2097
John Tuinman Mrs Janette Edna Tuinman	1 Birdwood Avenue COLLAROY NSW 2097
Symons Goodyer for Mr Paul Byrne Mrs Judy Byrne	2/7 Birdwood Avenue COLLAROY NSW 2097

There were seven (7) submissions in support of the proposal with one (1) submission in objection, raising a number of issues. The issues were detailed in a letter prepared by Geoff Goodyer from Symons Goodyer (planning consultant) on behalf owners of No. 2/7 Birdwood Avenue and are addressed below:

- ***No previous approval for the secondary dwelling and resolution of unapproved building works***

Comment:

Unauthorised works were carried out on site, including the modification of the existing garage structure including fit-out and addition to the rear for use as a secondary dwelling and a new hard stand parking area for two (2) cars with associated retaining works/landscaping. The matter was referred to Compliance and a Notice of Intention to Serve an Order has been served in regards to these works. A Building Information Certificate will need to be submitted.

- ***Inadequate front setback***

Comment:

The secondary dwelling is setback 2.5m and open hard parking spaces from the street frontage which is the setback of the original garage building on site. In this regard, the setback to the street frontage from the detached secondary dwelling is unchanged. Notwithstanding, an assessment of the proposal against the provisions of Clause B7 Front

Setbacks of the Warringah Development Control Plan 2011 (WDCP 2011) is provided later in this report. This assessment finds that the setback as proposed is reasonable for the following reasons:

- The front setback to the detached secondary dwelling remains unchanged as part of this application.
 - The proposal incorporates landscaping forward of the secondary dwelling to soften the proposal and a picket fence will provide a residential character.
 - It is recommended that a condition of consent is imposed requiring landscaping behind the proposed front fence to further enhance the locality.
 - The development sits comfortably within the streetscape, particularly with regard to the two (2) adjoining properties which provide for three storey buildings with the front setback comprising predominantly hard surface.
 - The proposal does not obstruct any views from adjoining properties or from the public domain.
- ***Inadequate landscaped open space***

Comment:

The proposal provides for a landscape open space of 130m² or 26% of the site area. An assessment of the proposal against the provisions of D1 Landscaped Open Space is provided later in this report. This assessment finds that the landscaped area as proposed is reasonable for the following reasons:

- The proposal incorporates landscaping forward of the secondary dwelling and a small timber picket fence to ensure a residential character.
 - It is recommended that a condition of consent be imposed requiring the landscaping (planting) behind the proposed fence to further enhance the landscaped character of the locality.
 - There are sufficient areas for the use of private open space being both passive and active recreation.
 - The proposal directs all stormwater to the street gutter and a condition is recommended requiring stormwater details.
 - There is no unreasonable privacy impact as a result of the development. The secondary dwelling and hardstand area are located at ground level and well below the habitable areas and private open space of the adjoining development. There is no opportunity for overlooking.
- ***Insufficient Private Open Space***

Clause D2 of the WDCP 2011 provides guidelines for the provision of private open space. For dwellings with 1 or 2 bedrooms, this clause specifies a minimum private open space of 35m² with a dimension of at least 3 metres. It does not provide specific controls for secondary dwellings. It is generally accepted that occupants of secondary dwellings can

share private open space with the primary residence.

The secondary dwelling is studio style and has an area of only 39m². A small area immediately to the north (front) of the secondary dwelling provides for a landscaped area of approximately 14m², which is considered reasonable. Private open space is also provided to the rear of the secondary dwelling via the existing stairs adjacent to the eastern boundary of the site. This portion has an area of 54m².

It is also noted that the site is well located, being immediately opposite public open space and Collaroy Beach to the north. Given the modest size of the secondary dwelling, the options of private open space on site and the close proximity to public open space, it is considered that the private open space is sufficient.

- ***Subsidence of neighbouring bin storage area***

Concern is raised over the hard stand carparking area and associated retaining walls impacting on the bin storage area of No. 7 Birdwood Avenue and possibly contributing to this subsidence of this bin storage area. No engineering evidence was submitted from the objector confirming this outcome. This is a matter for compliance.

- ***BASIX Certificate not provided***

A BASIX Certificate was not provided with the original submission, however following Council's request, a BASIX Certificate was submitted on 11 November 2019. A condition of consent is recommended requiring compliance with the BASIX Certificate.

- ***Inadequate Stormwater Management Details***

The application has been referred to Council's Development Engineer for comment, which stated:-

'No objections are raised to the proposed development, subject to conditions.'

Conditions are recommended in relation to providing details of stormwater disposal prior to issue of a Construction Certificate and certification to be provided prior to final occupation.

- ***Connection to Sewer***

A condition is recommended ensuring the secondary dwelling is connected to the sewer.

- ***Impact on Coastal Area***

The site is identified as being within a 'Coastal Use Area' for the purposes of SEPP (Coastal Management) 2018. This is discussed in further detail in the discussion of the SEPP, however the proposal does not provide for any physical works and is considered to be consistent with the aims and objectives of the SEPP. The application has also been referred to Council's NRCC Coastal team who have supported the proposal and state that *'it can be determined that the application meets the requirements of section 13, 14 and 15 of SEPP Coastal Management.'*

REFERRALS

Internal Referral Body	Comments
NECC (Coast and Catchments)	<i>The proposed application is supported without condition. The property is a significant distance from the areas impacted by coastal erosion and inundation. The development will also not impact access to a beach or headland. Therefore, it can be determined that the application meets the requirements of sections 13, 14 and 15 of SEPP Coastal Management.</i>
NECC (Bushland and Biodiversity)	<i>The proposed development will not remove or impact any trees or native vegetation, and will not significantly impact threatened species, endangered ecological communities or their habitats. The site is not mapped as native vegetation or located within a wildlife corridor under the Warringah DCP controls.</i>
Building Assessment - Fire and Disability upgrades	<p><i>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</i></p> <p><i>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p>
Environmental Health (Acid Sulphate)	<p>General Comments</p> <p><i>Does not appear that development will taken place 2 metres below ground level</i></p> <p>Recommendation</p> <p>APPROVAL - no conditions</p>
NECC (Development Engineering)	<i>No objections are raised to the proposed development, subject to conditions.</i>
NECC (Riparian Lands and Creeks)	<i>The subject land has been included on 'coastal use area' maps under State Environmental Planning Policy (Coastal Management) 2018. In regard to the SEPP the proposed development is unlikely to cause an adverse impact on the integrity and resilience of the biophysical, hydrological and ecological environment. As such, it is considered that the application complies with the requirements of the SEPP.</i>
Landscaping	<p><i>Recommended conditions are as below (with standard tree protection condition to cover all trees).</i></p> <p>PRIOR TO COMMENCEMENT Tree protection</p>

	<p>(a) Existing trees which must be retained</p> <p>i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation</p> <p>ii) Trees located on adjoining land</p> <p>(b) Tree protection</p> <p>i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.</p> <p>ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.</p> <p>iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.</p> <p>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</p> <p>v) All tree protection measures, including fencing, are to be in place prior to commencement of works.</p> <p>Reason: To ensure compliance with the requirement to retain and protect significant planting on the site.</p> <p>PRIOR TO OCCUPATION CERTIFICATE</p> <p>Landscape completion certification</p> <p>a) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the approved landscape plan and inclusive of any conditions of consent.</p> <p>b) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been established and maintained in accordance with the approved landscape plan.</p> <p>Reason: To ensure that the landscape treatments are installed to provide landscape amenity.</p> <p>ONGOING CONDITIONS</p> <p>Landscape maintenance</p> <p>i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.</p> <p>ii) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.</p> <p>Reason: To maintain local environmental amenity.</p>
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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.
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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

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 (Coastal Management) 2018

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

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

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

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

Comment: Not applicable to the site.

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

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

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

Comment: Not applicable to the site.

12 Development on land within the coastal vulnerability area

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

- (a) if the proposed development comprises the erection of a building or works—the building or works are engineered to withstand current and projected coastal hazards for the design life of the building or works, and*
- (b) the proposed development:*
 - (i) is not likely to alter coastal processes to the detriment of the natural environment or other land, and*
 - (ii) is not likely to reduce the public amenity, access to and use of any beach, foreshore, rock platform or headland adjacent to the proposed development, and*
 - (iii) incorporates appropriate measures to manage risk to life and public safety from coastal hazards, and*
- (c) measures are in place to ensure that there are appropriate responses to, and management of, anticipated coastal processes and current and future coastal hazard."*

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

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: Not applicable to the site.

"(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: Not applicable to the site.

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 proposal does not impact upon the existing and safe access to and along the foreshore. The works do not overshadow, create wind funnelling or loss of views from public spaces to the surrounding foreshores. The development has no impact on any heritage item or area/place. The development as constructed and the proposed use is considered appropriate taking into account the surrounding coastal and built environment and bulk and scale of development.

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.

Conclusion of Assessment under SEPP (Coastal Management) 2018

"The proposed application is supported without condition. The property is a significant distance from the areas impacted by coastal erosion and inundation. The development will also not impact access to a beach or headland. Therefore, it can be determined that the application meets the requirements of sections 13, 14 and 15 of SEPP Coastal Management."

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted as additional information (see Certificate No. 1053989S, dated 23 October 2019). A condition has been included in the recommendation of this report requiring compliance with the requirements of the BASIX Certificate.

SEPP (Affordable Rental Housing) 2009

Secondary dwellings are permissible with the consent of Council in the R2 zone under the provisions of the Warringah LEP and as such does not rely upon the SEPP for permissibility. Notwithstanding, Division 2 of the SEPP applies to secondary dwellings and the following provisions are relevant:

Clause 19: Definition

Development for the purposes of a secondary dwelling includes the following:

- (a) the erection of, or alterations or additions to, a secondary dwelling,
- (b) alterations or additions to a principal dwelling for the purposes of a secondary dwelling.

Note: The standard instrument defines secondary dwelling as follows:

"secondary dwelling means a self-contained dwelling that:

- (a) is established in conjunction with another dwelling (the principal dwelling), and*
- (b) is on the same lot of land (not being an individual lot in a strata plan or community title scheme) as the principal dwelling, and*
- (c) is located within, or is attached to, or is separate from, the principal dwelling."*

Comment:

The proposed use is defined under WLEP 2011 as a secondary dwelling.

Clause 20 Land to which this Division applies

The subject site is zoned R2 Low Density Residential and dwelling houses are permissible in the zone. Therefore, development for the purpose of a secondary dwelling is a permissible subject to this clause.

Clause 21: Development to which this Division applies

Consistent.

The development involves the use of building as a secondary dwelling, as defined by the Standard Instrument. Therefore, this Division applies.

Clause 22 Development may be carried out with Consent

Subclause (2) and (3) provides:

- (2) *A consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling.*
- (3) *A consent authority must not consent to development to which this Division applies unless:*
 - (a) *the total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area allowed for a dwelling house on the land under another environmental planning instrument, and*
 - (b) *the total floor area of the secondary dwelling is no more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.*

The development results in the principal dwelling and the secondary dwelling only on site. The secondary dwelling has an area of 39m² which complies with this clause.

Further subclause (4) provides:

- (4) *A consent authority must not refuse consent to development to which this Division applies on either of the following grounds:*
 - (a) *site area*
 - if:*
 - (i) *the secondary dwelling is located within, or is attached to, the principal dwelling, or*
 - (ii) *the site area is at least 450 square metres,*

*(b) parking
if no additional parking is to be provided on the site.*

The development will result in one primary dwelling and one secondary dwelling, as defined by the Standard Instrument, and therefore, this Division applies.

The total floor area of the detached secondary dwelling is 39sqm, which is compliant against the requirements of the WLEP 2011.

The site has an area of 490.5m² and the proposal does not provide any additional parking. The proposal complies with this clause.

There are no other provisions of the SEPP relevant to the proposal.

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.

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	3.7m	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
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4.3 Height of buildings	Yes
4.6 Exceptions to development standards	N/A
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation *	Complies
B1 Wall height	7.2m	2.4m	N/A	Yes
B3 Side Boundary Envelope	4m and 45 degrees	Within envelopes	N/A	Yes
B5 Side Boundary Setbacks	0.9m (west)	(i) 0.5m (ii) 5.8m	44% N/A	No Yes
	0.9m (east)	(i) 6.4m (ii) 0.5m	Yes N/A	Yes No
B7 Front Boundary Setbacks	6.5m	(i) 2.5m (ii) 0.3m	61.5% 95.4%	No No
B9 Rear Boundary Setbacks	6m	Located in front setback	Yes	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	26%	35%	No

- (i) Secondary Dwelling
(ii) Hardstand Parking Spaces

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	Yes	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes

D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E4 Wildlife Corridors	N/A	N/A
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B5 Side Boundary Setbacks

Description of non-compliance

The secondary dwelling provides for a setback of 0.5m to the western boundary, where a setback of 0.9m is required by this clause of the DCP. This represents a variation of 44% to the requirement.

The hardstand parking provides for a setback of 0.5m to the eastern boundary, where a setback of 0.9m is required by this clause of the DCP. This represents a variation of 44% to the requirement.

It is noted that the proposal involves the regularisation of the already completed internal and rear addition to the existing outbuilding and hardstand parking spaces.

Merit consideration:

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

- *To provide opportunities for deep soil landscape areas.*

Comment:

The site provides for a large private open space area in the rear yard with an area of 62m². The application provides a small landscaped area immediately forward of the secondary dwelling which can support small-medium shrubs. A further landscaped area is provided between the primary and secondary dwelling. These three (3) areas provide for deep soil landscaping which can support a variety of trees and shrubs.

- *To ensure that development does not become visually dominant.*

Comment:

The secondary dwelling is a single storey detached structure and the hardstand parking spaces are open. This structure was previously a garage and has been in existence for many years and appears

in 1943 aerial mapping. The presentation to streetscape and adjoining properties remains generally consistent, in terms of bulk and scale with the the original garage structure, with the exception of a removal of the garage door and replacement with sliding doors and windows within the gable end. Further the driveway has been removed. The proposal provides for a landscaped area forward of the secondary dwelling to assist in softening the proposal.

The site is located in an area that is characterized by a mix of residential flat buildings, attached dwellings and single detached dwellings. On street parking is very limited and in high demand given the proximity to Collaroy Beach and the public open space immediately opposite the site.

The site immediately to the west, No. 3 Birdwood Avenue, is a three (3) storey residential flat building comprising ground level parking with two (2) garages orientated towards Birdwood Avenue, and two (2) levels of residential floors above. The entire front setback area is hard surface with a driveway extending adjacent to the eastern boundary and within the rear yard.

The site immediately to the east, No. 7 Birdwood Avenue, is a three (3) storey residential building comprising, parking at the ground level with three garages orientated towards Birdwood Avenue and two (2) dwellings above. With the exception of a small landscape planter adjacent to the eastern boundary, the entire front setback area is hard surface.
The majority of properties in Birdwood Avenue have large hard paved areas within the front setback and parking structures visible from the street.

When viewed from the adjoining western property, the structure is recessive and sits well below the height of the development at Nos. 3 and 7 Birdwood Avenue.

It is considered that the development is not visually dominant having regard to the streetscape and the landscaping incorporated forward of the secondary dwelling will assist in softening the development.

- *To ensure that the scale and bulk of buildings is minimised.*

Comment

The secondary dwelling is a single storey structure with a bulk and scale that is consistent with the garage structure which was converted and is proposed as a secondary dwelling. The hardstand parking spaces are open and are generally consistent with the adjoining and surrounding properties. The landscaped area incorporated forward of the secondary dwelling will assist in softening the developments presentation to Birdwood Avenue. The resultant development which includes at grade parking and a detached secondary dwelling within the front setback is of a bulk and scale that is recessive to the immediately adjoining properties.

- *To provide adequate separation between buildings to ensure a reasonable level of privacy, amenity and solar access is maintained.*

Comment

The secondary dwelling is a detached single storey building. The building does not provide nor propose any windows on the western elevation and there is no opportunity to overlook the private open space or habitable areas of the adjoining properties. The floor level is at ground level and the adjoining dwellings are located at elevated levels.

The secondary dwelling has an area of only 39m² is not suitable for a large family. It is intended that the secondary dwelling will be occupied by one (1) or two (2) people. This will not result in unreasonable loss of amenity to the surrounding properties. The single storey structure is located on the northern side of the subject site and adjacent to a driveway on the adjoining western side which will not result in any overshadowing of private open space or habitable areas of the adjoining properties.

In addition the open hardstand parking spaces has an open nature which is considered to provide adequate separation between the adjoining building and structures at No. 7 Birdwood Avenue ensuring

reasonable level of privacy, amenity and solar access.

It is considered that the proposal demonstrates consistency with this merit consideration.

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

The secondary dwelling is a single storey development with an overall height of only 3.7m and hardstand parking spaces are open. These structures do not block any views from adjoining properties. Further the proposal does not obstruct any important views or vistas from public areas. There have been no submissions raised in relation to views.

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

B7 Front Setbacks

Description of non-compliance

The secondary dwelling provides for a setback of 2.5m to the Birdwood Avenue street frontage, where a setback of 6.5m is required by this clause of the DCP. This represents a variation of 61.5% to the requirement.

The hardstand parking spaces provides for a setback of 0.3m to the Birdwood Avenue street frontage, where a setback of 6.5m is required by this clause of the DCP. This represents a variation of 94.3% to the 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 create a sense of openness.*

The secondary dwelling is proposed within the previous garage footprint and does not reduce the setback previously provided from the garage to the street frontage. The proposal incorporates landscaping forward of the secondary dwelling and a small picket fence is proposed to be erected to soften the development and retain the residential character. The hard stand parking area to the east is an open at grade area consistent with the hard surface areas of the immediately adjoining properties.

- *To maintain the visual continuity and pattern of buildings and landscape elements.*

The development sits comfortably in the streetscape, in particular having regard to the two immediately adjoining properties. The secondary dwelling retains the same bulk and scale as the previous garage and sits well below the height of the adjoining development. The majority of development within Birdwood Avenue comprises garaging which is dominant in the streetscape and large areas of hard paving forward of the built form.

The proposed development is considered to provide appropriate visual continuity.

- *To protect and enhance the visual quality of streetscapes and public spaces.*

The existing streetscape comprises a mixture of medium density housing, including residential flats and multi-dwelling housing and single detached housing. The majority of developments provide large hard surface areas within the front setbacks and some garage structures with

reduced front setbacks. This development provides for the use of the previous garage as a secondary dwelling. This structure in conjunction with the hard stand area is consistent with the existing streetscape. The proposal incorporates landscaping and a small picket fence forward of the secondary dwelling to soften the development and retain the residential character.

- *To achieve reasonable view sharing.*

The secondary dwelling is a single storey development with an overall height of only 3.7m and hardstand parking spaces are open. These structures do not block any views from adjoining properties. Further, the proposal does not obstruct any important views or vistas from public areas. There have been no submissions raised in relation to views.

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

D1 Landscaped Open Space

Description of non-compliance

The subject site provides for a landscaped area of 26%, where an area of 40% is required by this clause of the DCP. This represents a variation of 35% to the 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 enable planting to maintain and enhance the streetscape.*

The proposal incorporates landscaping forward of the secondary dwelling and it is recommended that a condition of consent be imposed requiring a street tree to be provided on Council's road reserve adjacent to the property. The existing streetscape, particularly in this part of Birdwood Avenue is dominated by large two/three (2/3) storey buildings of significantly greater bulk and predominantly hard surface area within the front setback.

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

The proposal did not require the removal of any protected vegetation and it is recommended that a street tree be provided on Council's road reserve as part of any consent.

- *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.*

Immediately forward of the secondary dwelling landscaping is proposed that can reach 2-3m in height. There is sufficient area in the remaining portion of open space forward and to the rear of the main dwelling that can support a wide range of shrubs and trees.

- *To enhance privacy between buildings.*

The non-compliance with the landscaped area does not contribute to a loss of privacy. The secondary dwelling is single storey and is located immediately adjacent to a driveway on the adjoining western property. The secondary dwelling is setback more than 6m to the eastern boundary and is located significantly lower than the habitable areas and private open space of the two (2) adjoining properties. The secondary dwelling is primarily orientated to the north and it is considered that there are no unreasonable privacy impacts.

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

A small area (approximately 14m²) is provided forward of the secondary dwelling which is considered appropriate given the modest size of the secondary dwelling being only 39m². Further, it is accepted that there is opportunity for shared private open space with an additional area (being 54m²) and access via the existing stair adjacent to the eastern boundary.

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

There is sufficient area for service functions within the open space to the rear of the secondary dwelling.

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

All collected stormwater is to be discharged to the street gutter in Birdwood Avenue. Given the slope of the site, it is not anticipated that the proposal will result in additional runoff to the adjoining properties. A condition of consent is recommended in relation to the discharge of stormwater.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

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.

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, other documentation supporting the application and the public submissions, and the conclusion is that the proposal does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties.

Suitable conditions will ensure an additional street, appropriate stormwater discharge and that a building information certificate is lodged and approved.

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

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

RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/0616 for Use of existing building as a secondary dwelling, carparking and front fence on land at Lot 3 DP 9667, 5 Birdwood Avenue, Collaroy, 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
1 – Aerial Photo	06/06/19	C.D. Hunt
2-1 – Plan View	06/06/19	C.D. Hunt
3-2 – Expanded Plan View	06/06/19	C.D. Hunt
3-1 – Northern Elevation	06/06/19	C.D. Hunt
3-2 – Elevations	06/06/19	C.D. Hunt
4 – Site Analysis Plan	06/06/19	C.D. Hunt
5 – Landscape Plan	06/06/19	C.D. Hunt

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 1053989S	24 October 2019	Christopher Hunt
BCA Statement	13 June 2019	GRS Building Reports Pty Ltd

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:

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

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

2. Approved Land Use

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

A Secondary Dwelling is defined as:

"a self-contained dwelling that:

- (a) is established in conjunction with another dwelling (the principal dwelling), and*
- (b) is on the same lot of land as the principal dwelling, and*
- (c) is located within, or is attached to, or is separate from, the principal dwelling."*

Any variation to the approved land use and/occupancy of any unit beyond the scope of the above definition will require the submission to Council of a new development application.

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

3. Prescribed Conditions

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

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

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

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work

carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative Requirement

4. General Requirements

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

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

Demolition and excavation works are restricted to:

8.00 am to 5.00 pm Monday to Friday only.

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

- (b) 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.

5. Compliance with Standards

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

(Note: At the time of determination the following (but not limited to) Australian Standards applied:

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites'***
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking**
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
- (l) AS 1428.1 - 2009* Design for access and mobility - General requirements for access - New building work**
- (m) AS 1428.2 - 1992*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities**

*Note: The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website [www.hreoc.gov.au/disability rights /buildings/good.htm](http://www.hreoc.gov.au/disability%20rights%20/buildings/good.htm).
<www.hreoc.gov.au/disability%20rights%20/buildings/good.htm>

**Note: the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.)

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.

FEES / CHARGES / CONTRIBUTIONS

6. 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 WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

7. Building Certificate - Unauthorised Works on site

An application for a Building Certificate is to be lodged and approved for all unauthorised works onsite.

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

Reason: To regularise unauthorised development.

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.

9. 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.

10. Laundry Facilities

The secondary dwelling is to incorporate clothes washing facilities, comprising of at least one washtub and space in the same room for a washing machine in accordance with Part 3.8.3 of the Building Code of Australia – 'Facilities'.

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

Reason: To ensure adequate provision is made for building occupant health and amenity.

11. Fire Separation - External Walls

The external walls of the proposed secondary dwelling where less than 900mm from an allotment boundary shall have a FRL 60/60/60. Any openings within these walls are to be protected in accordance with Part 3.7 of the Building Code of Australia – 'Fire Safety'. Details demonstrating compliance are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for fire safety and for building occupant safety.

12. Stormwater Disposal

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

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

13. Vertical Garden

A vertical garden is to be located on the eastern boundary in accordance with the submitted plans. The height of the vertical garden is not to exceed 1.2m and be a minimum length of 5m.

Reason: To ensure that the landscape treatments are installed to provide landscape amenity.

PRIOR TO COMMENCEMENT

14. 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 25mm 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 25mm diameter unless directed otherwise by a qualified Arborist on site.

iii) All tree protection to be in accordance with 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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. 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.

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

16. Waste Management Plan

A Waste Management Plan shall be submitted prior to the issue of an Occupation Certificate detailing the on-going waste management of the premises.

Reason: To ensure adequate and appropriate waste and recycling facilities are provided.

17. Fire Safety Matters

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

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

Each year the Owners must send to the Council and the NSW Fire Brigade an annual fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000. (DACPLF07)

18. Stormwater Disposal

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

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

19. Landscape completion certification

a) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have

been completed in accordance with the approved landscape plan and inclusive of any conditions of consent.

b) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been established and maintained in accordance with the approved landscape plan.

Reason: To ensure that the landscape treatments are installed to provide landscape amenity.

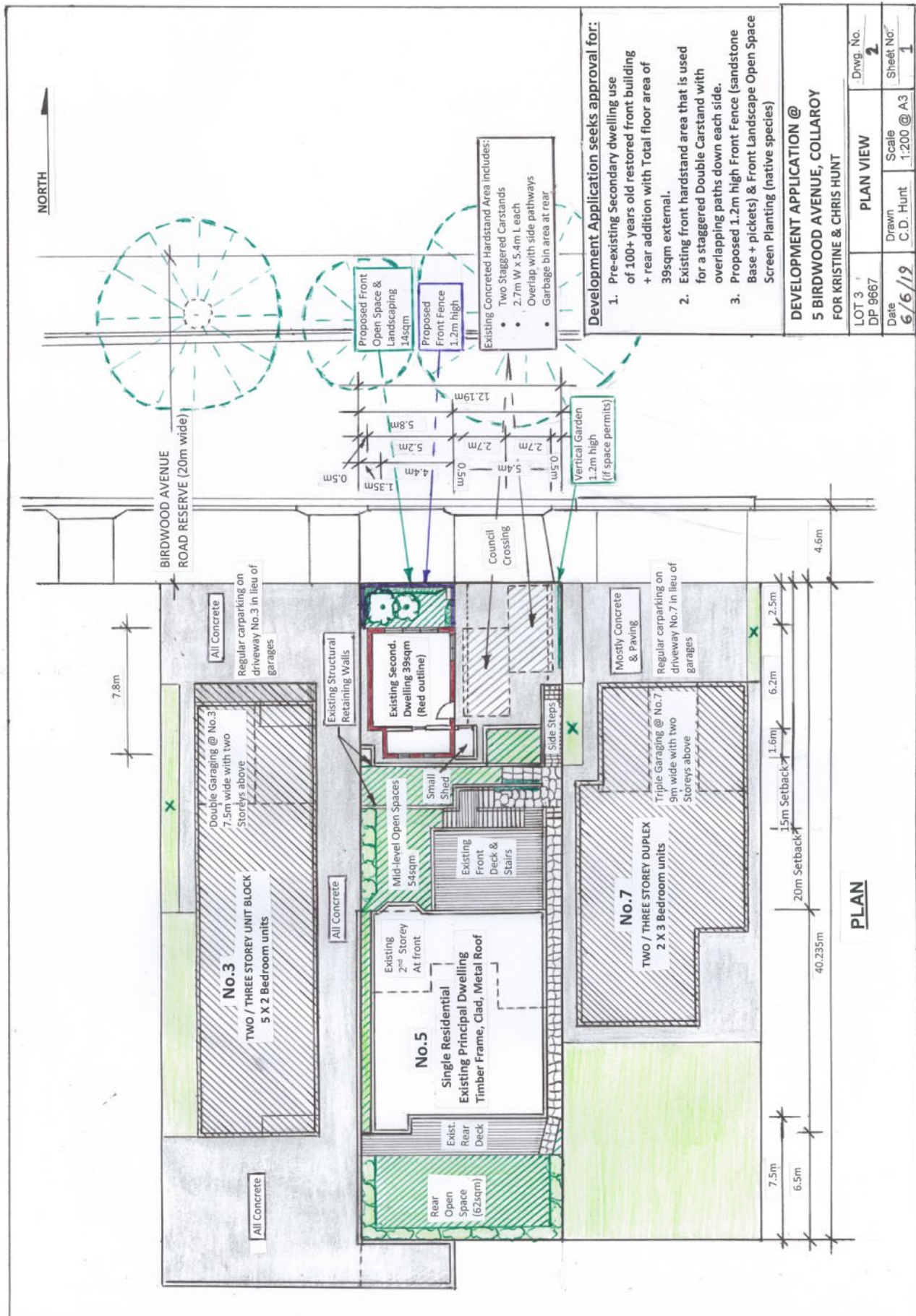
ONGOING CONDITIONS

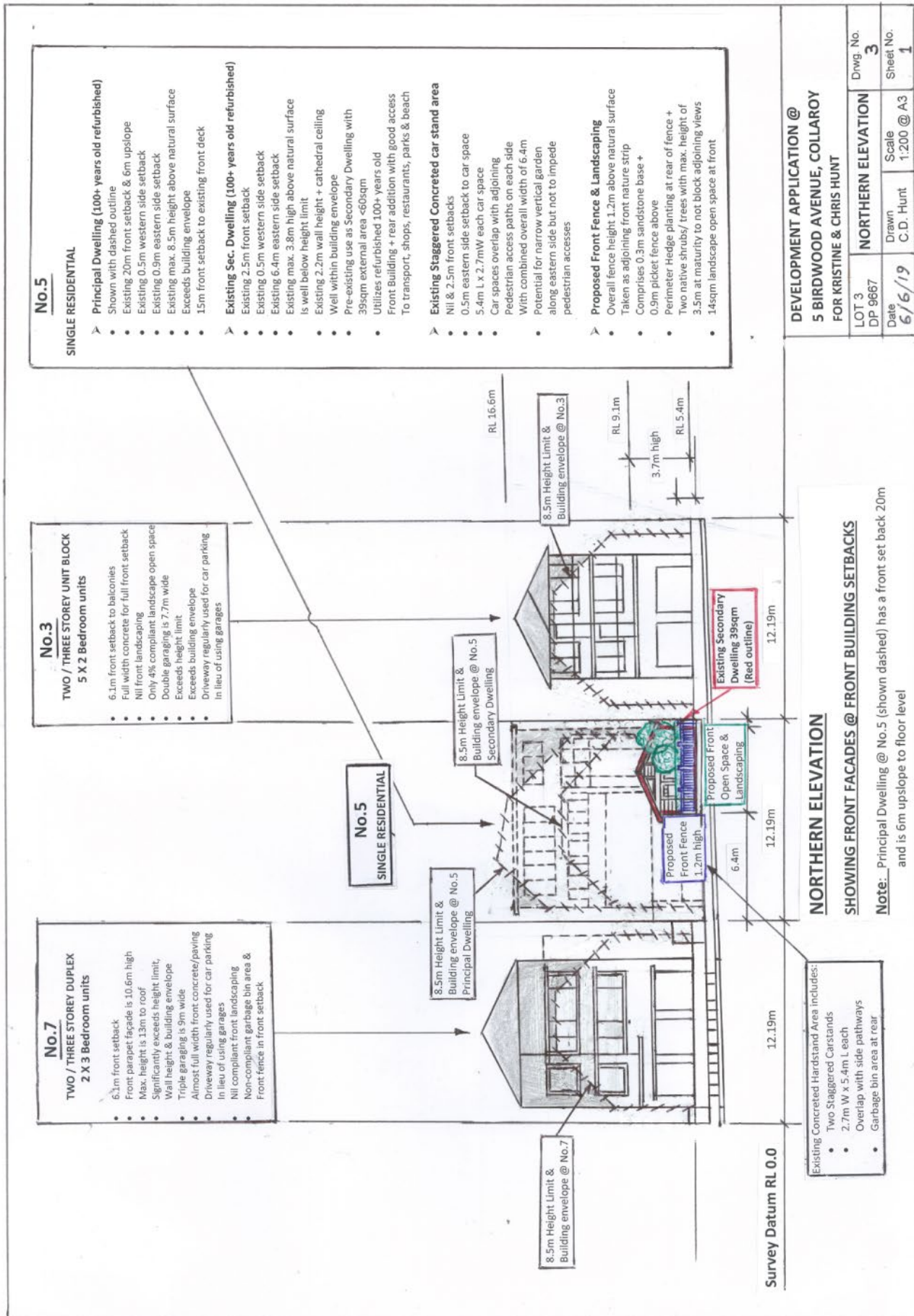
20. Landscape maintenance

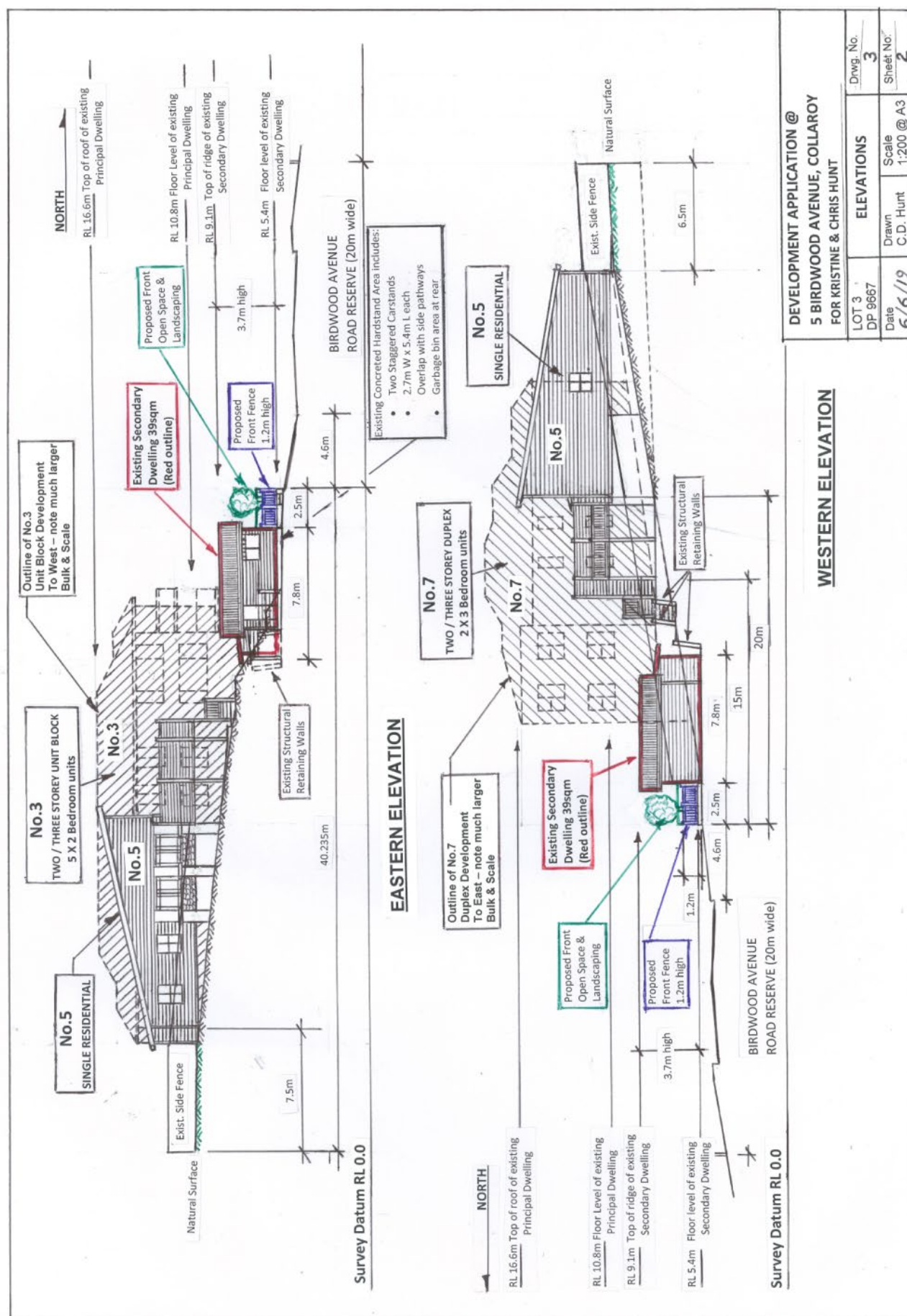
i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.

ii) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: To maintain local environmental amenity.







ITEM 3.6

**MOD2019/0245 - 2129 PITTWATER ROAD, CHURCH POINT -
MODIFICATION OF DEVELOPMENT CONSENT N0549/08
GRANTED FOR CONSTRUCTION OF 10 SELF CONTAINED
DWELLINGS UNDER SEPP HSPD AND CONSOLIDATION AND
RESUBDIVISION OF THE LAND AT LOTS 51 52 53 DP 709248
AND LOT H D**

REPORTING MANAGER

Claire Ryan

TRIM FILE REF

2019/693020

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 **refuse** Mod2019/0245 for Modification of Development Consent N0549/08 granted for construction of 10 self contained dwellings under SEPP HSPD and consolidation and resubdivision on land at Lot 51 DP 709248, Lot 52 DP 709248 & Lot 53 DP 709248, 2129 Pittwater Road, Church Point, subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0245
Responsible Officer:	Renee Ezzy
Land to be developed (Address):	Lot 51 DP 709248, 2129 Pittwater Road CHURCH POINT NSW 2105 Lot 52 DP 709248, 2129 Pittwater Road CHURCH POINT NSW 2105 Lot 53 DP 709248, 2129 Pittwater Road CHURCH POINT NSW 2105
Proposed Development:	Modification of Development Consent N0549/08 granted for construction of 10 self contained dwellings under SEPP HSPD and consolidation and resubdivision of the land at Lots 51 52 53 DP 709248 and Lot H DP 415249
Zoning:	E4 Environmental Living
Development Permissible:	Yes, under SEPP (Housing for Seniors or People with a Disability) 2004
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Kevin Allan Stacey Eda Muriel Stacey Rpna Water Views Pty Ltd
Applicant:	Rpna Water Views Pty Ltd
Application Lodged:	24/05/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Seniors Living
Notified:	22/06/2019 to 06/07/2019
Advertised:	22/06/2019
Submissions Received:	28
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Executive Summary

This report provides an assessment of the proposed modification to development consent No. N0549/08 approved by the NSW Land and Environment Court on 8 September 2010 for ten (10) self

contained seniors housing dwellings.

When it was originally approved, the site was zoned Residential 2(a) and the proposal was permissible pursuant to SEPP HSPD 2004. The subject site is now zoned E4 Environmental Living under Pittwater LEP 2014 (PLEP 2014) and would be prohibited development if lodged as a new development application.

The application seeks to reduce the size of the site by removing Lot H in DP 415249 from the development site and the site description of the consent. Further, the modification removes the second driveway access on the northern side of the site accessing Buildings B and C to provide one single basement with an extended excavation footprint increase by approximately 845m².

The development as proposed to be modified will result in a non-compliance with the density requirement contained within SEPP HSPD of 0.5:1. The development with the reduced site area provides a development that is 0.59:1. The proposal does not satisfactorily address the requirements of Part 7.3 and 7.4 of PLEP 2014 in relation to flooding, and Sections D4.6 and D4.8 of P21 DCP. The proposed modifications result in further non compliances with P21 DCP and is not considered to be consistent with the Desired Future Character for the Church Point and Bayview Locality and does not harmonise with the natural environment of the site.

The assessment of this modification has found the proposal cannot be supported because it fails to satisfy the requirements of Section 4.56(1) (a) of the Environmental Planning and Assessment Act, 1979 (EPA Act, 1979), is not considered substantially the same development for which consent was originally granted and is not considered to satisfy the relevant controls pursuant to Section 4.15 of the EPA Act, 1979.

Accordingly, it is recommended that the Development Determination Panel (DDP) refuse the application for the reasons detailed within the 'Recommendation' section of this report.

PROPOSED DEVELOPMENT IN DETAIL

This modification application seeks to amend the court approved development being DAN0549/08, approved by the NSW Land and Environment Court of 8 September 2010. This modification application seeks the following:

- Delete access proposed on Lot H DP 415249 that will no longer form part of the site. This land was to be used to enable Buildings B and C to access the existing driveway located on Lot H DP 415249 and provided an additional landscaped area to the rear. This driveway was to be incorporated into the site with a right of carriageway being provided in favour of Lot H DP 415249. Reduction of site area from 3729m² to 3047.35m².
- New access to the Building B and C basement being provided via the basement access to the remainder of the approved development from Pittwater Road.
- Create one (1) large interconnected basement for Buildings A, B and C. New basement area 842m².
- Delete and modify superfluous DA conditions and add two conditions relating to updated Flood Study requirements. See following table.

Condition	Action	Reason
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Description of Development	Modify	To delete reference to Lot H DP 415249 and re subdivision of the land.
A 1.1	Modify	Update architectural plans and supporting document references to provide for amended basement layout.
B 46	Delete	Condition required privacy screen to Unit C3 which has been provided on the modified plans submitted.
B 47	Delete	Condition restricting construction vehicles on northern driveway, which is no longer part of the proposed development.
B 56	Delete	Condition required privacy blades to Unit A3 which has been provided on the modified plans submitted
C 22	New Condition	A retaining wall is to be constructed along the edge of the easement to contain the overland flows within the easement.
C 23	New Condition	The driveway crest into the site off Pittwater Road should be set at RL 3.5m AHD to account for Climate Change as per the McCarrs Creek Mona Vale Flood Study.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 4.56 - Environmental Planning and Assessment Act 1979 - Section 4.56 - with S79C Assessment
Pittwater Local Environmental Plan 2014 - Zone E4 Environmental Living
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.3 Flood planning
Pittwater 21 Development Control Plan - A4.4 Church Point and Bayview Locality
Pittwater 21 Development Control Plan - B3.1 Landslip Hazard
Pittwater 21 Development Control Plan - B3.8 Estuarine Hazard - Medium Density Residential
Pittwater 21 Development Control Plan - B3.11 Flood Prone Land
Pittwater 21 Development Control Plan - B5.12 Stormwater Drainage Systems and Natural

Watercourses

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

Pittwater 21 Development Control Plan - B8.1 Construction and Demolition - Excavation and Landfill

Pittwater 21 Development Control Plan - B8.3 Construction and Demolition - Waste Minimisation

Pittwater 21 Development Control Plan - C1.2 Safety and Security

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - C1.12 Waste and Recycling Facilities

Pittwater 21 Development Control Plan - C1.21 Seniors Housing

Pittwater 21 Development Control Plan - D4.6 Side and rear building line

Pittwater 21 Development Control Plan - D4.8 Building envelope

Pittwater 21 Development Control Plan - D4.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	<p>Lot 51 DP 709248 , 2129 Pittwater Road CHURCH POINT NSW 2105</p> <p>Lot 52 DP 709248 , 2129 Pittwater Road CHURCH POINT NSW 2105</p> <p>Lot 53 DP 709248 , 2129 Pittwater Road CHURCH POINT NSW 2105</p>
Detailed Site Description:	<p>The subject site consists of three (3) allotments located on the western side of Pittwater Road, Church Point known as Lots 51, 52 and 53 in DP709248.</p> <p>The site is irregular in shape with a frontage of 18.29m along Pittwater Road and a depth of 92.225m. The site has a surveyed area of 3047m².</p> <p>The site is located within the E4 Environmental Living zone and is currently vacant.</p> <p>The site has a substantial fall from the rear south-east to the front of the site of approximately 17.26m (18.7%).</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by predominantly one (1) and two (2) storey dwelling houses.</p>

Map:



SITE HISTORY

The approved development is located within Church Point and the development application was submitted to the former Pittwater Council on 3 November 2008.

On 11 December 2009 the applicant filed a Class 1 proceedings with the Land and Environment Court of NSW. The application was reported to the Development Unit Meeting of 25 February 2010 and a refusal notice was issued 17 March 2010 for the following reasons:

1. *Buildings B and C do not recognise the desirable elements of the location's current character and the proposed bulk, scale and particularly width is highly visible and out of keeping with adjoining developments within the locality in contradiction to Clause 33 "Neighbourhood amenity and Streetscape" of SEPP HSPD, Clause 31 "Design of in-fill self-care housing" of SEPP HSPD and Sections 1 and 3 of Seniors Living Policy: "Urban design guidelines for in-fill development".*
2. *Building C is greater than one storey in height within the rear 25% of the site which contributes to an excessive bulk and scale when viewed from surrounding locations in contradiction to clause 40 (4) (c) of SEPP HSPD.*
3. *The first floor living area of Unit A1 will have an unacceptable impact on the privacy of the adjoining property at 2131 Pittwater Road as it is able to gain lines of sight into the primary private open space area of 2131 Pittwater Road. It is therefore considered to be non-compliant with Clause 34 "Visual and Acoustic Privacy" of SEPP HSPD, Clause 31 "Design of in-fill self-care housing" and Section 4 Seniors Living Policy: "Urban design guidelines for infill development".*
4. *Inadequate screening has been provided between Building A and the common boundary with the adjacent property at 2131 Pittwater Road which contributes to privacy impacts and an overbearing presence within a close proximity to a primary private open space area of the dwelling at 2131 Pittwater Road which is considered to be non compliant with Clause 31 "Design of in-fill self-care housing" and Section 4 Seniors Living Policy: "Urban design guidelines for infill development".*
5. *Building B has a minimal setback to the common boundary to the adjacent property at 2131 Pittwater Road which results in an unacceptable bulk and scale, an overbearing*

presence, an inability for adequate screening and a reduction in amenity and privacy and acoustic implications which is considered to be non compliant with Clause 31 "Design of in-fill selfcare housing", and Sections 2 and 4 of Seniors Living Policy: "Urban design guidelines for infill development".

6. *The proposal does not give the appearance of a one and two storey dwelling within a natural landscaped setting and does not minimise bulk and scale when viewed from the Pittwater Waterway as required by Section A4.4 "Bayview and Church Point Locality" of Pittwater 21 DCP.*
7. *The first floor living area of Unit A1 will have an unacceptable impact on the privacy of the adjoining property at 2131 Pittwater Road as it is able to gain lines of sight into the primary private open space area of 2131 Pittwater Road. It is therefore considered to be non-compliant with Clause C1.5 "Visual Privacy" of Pittwater 21 DCP.*
8. *The proposal does not provide a built form secondary to landscaping, and does not respond to the spatial characteristics of the existing built and natural environment as required under section D4.1 "Character as viewed from a public place" of Pittwater 21 DCP.*
9. *The proposal is not considered to minimise visual impacts on the natural environment when viewed from the Pittwater Waterway and Pittwater Road as required by Section D4.14 "Scenic Protection Category One Areas" of Pittwater 21 DCP.*
10. *The proposed development does not resolve a conflict between the requirement for landscaping in the south-eastern setback and overland flow path (drainage easement) located along the south-eastern boundary.*
11. *The proposal has failed to demonstrate compliance with Section B6.4 "Internal driveways – all development other than dwelling houses and dual occupancy development" of Pittwater 21 DCP and Clause 38(b) of SEPP HSPD as the site is not able to provide a minimum 5.5m driveway within the access handle and the plans are inconsistent in terms of the driveway's widths.*
12. *The proposal results in an unacceptable removal of mature trees from the site which presently play a significant role in the landscaped setting of existing dwellings on the site and the locality generally which is non compliant with Clauses 31 and 33 of SEPP HSPD, Sections 2 and 3 of Seniors Living Policy: "Urban design guidelines for in-fill development" and C1.1 Landscaping of Pittwater 21 DCP.*

The Appeal was heard by the Land and Environment Court on 21 May 2010, 18 and 19 June 2010 and the judgment upholding the appeal was handed down on 8 September 2010.

Modification Application No. MOD2019/0245 to reduce the site area removing one (1) lot from the description and providing design and condition changes was lodged with Council on 24 May 2019. This application is the subject of this assessment.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

The relevant matters for consideration under Section 4.56 of the Environmental Planning and Assessment Act, 1979, are:

Section 4.56- Other Modifications	Comments
(1) 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	

Section 4.56- Other Modifications	Comments
<p>regulations, modify the consent if:</p> <p>(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and</p>	<p>The development, as proposed, has been found to be such that Council is not satisfied that the proposed works are substantially the same as those already approved under development consent N0549/08.</p> <p>The works proposed in the modification application will not result in a development that is substantially the same as the development for which the consent was originally granted by the NSW Land and Environment Court in 2010, and as such, the modification application does not meet the provisions of s4.56 of the EP&A Act.</p> <p>In particular, the works proposed in the modification application are not considered to be essentially and materially the same as that originally approved, as follows:</p> <ol style="list-style-type: none"> 1. The proposed modification removes Lot H DP 415249 from the proposed development site and description as approved. The inclusion of this lot was a fundamental factor in the court approval as it provided greater separation of the building form at the side and rear of the site, and increased the site area such that the development was able to satisfy the density provisions for an FSR under 0.5:1. The application provides no quantitative assessment or analysis of this component of the modification. 2. The scale and footprint of the excavation of the development differs from that originally approved, with a significantly greater and deeper extent of site excavation (approximately an additional 845m²). 3. Insufficient information has been provided to establish the exact floor space ratio calculation resulting from the reduction in site area by 768.8m² 4. The change to the scale and footprint of the excavation alters the degree of disturbance of the natural ground levels in totality across the site. Where the court approved Development Consent anticipated smaller parking areas in a more sensitive arrangement limiting the excavation to service the three (3) building pavilions at different levels up the hillside, the larger single excavated basement proposed in the Modification Application will result in a significant volume of the site being cut and removed from the site which is within an environmentally sensitive location. 5. The circumstances in which the Development Consent was issued vastly differ from those that relate to the subject Modification Application, particularly with respect to: <ul style="list-style-type: none"> • The site has been rezoned from Residential 2A to E4 Environmental Living where SEPP HSPD cannot be applied and seniors housing is no longer permissible on the Site.

Section 4.56- Other Modifications	Comments
	<ul style="list-style-type: none"> The plans, policies and standards that are now applicable in relation to the Site and to seniors housing development are different from those that applied at the time that the Development Consent was issued.
<p>(b) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	<p>The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Pittwater Local Environment Plan 2014 and Pittwater 21 Development Control Plan.</p>
<p>(c) it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and</p>	<p>Written notices of this application have been sent to the last address known to Council of the objectors or other persons who made a submission in respect of development consent N0549/08. Notification of the application resulted in twenty eight (28) submissions.</p>
<p>(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.</p>	<p>See discussion on "Notification & Submissions Received" in this report.</p>

Section 4.15 Assessment

In accordance with Section 4.56 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 79C 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(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 clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&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>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 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 clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely	(i) The environmental impacts of the proposed development

Section 79C 'Matters for Consideration'	Comments
impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development due to the excessive excavation proposed by this modification.
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	This assessment has found the proposal to be contrary to a number of relevant requirements of PLEP 2014 and P21 DCP and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

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 28 submission/s from:

Name:	Address:
Mr Peter Gregory Blaxland Mrs Belinda Ruth Blaxland	PO Box 620 CHURCH POINT NSW 2105
Mr Stanley Robinson Edwards	2137 Pittwater Road CHURCH POINT NSW 2105
Mr Richard John Layton	2137 A Pittwater Road CHURCH POINT NSW 2105
Edson Pike	9 Eastview Road CHURCH POINT NSW 2105
Mrs Deborah Leone Couldwell Mr Lawrence Charles Davidson	15 Eastview Road CHURCH POINT NSW 2105
Mr Mark Charles Gray	2133 Pittwater Road CHURCH POINT NSW 2105

Name:	Address:
Mrs Deirdre Anne Calvesbert	2183 Pittwater Road CHURCH POINT NSW 2105
Mr Ian Michael Cocoran	36 Bakers Road CHURCH POINT NSW 2105
Mr Kenneth Carlisle Lough Mrs Susan Jane Lough	22 Utingu Place BAYVIEW NSW 2104
City Plan Services Pty Ltd	Suite 6 02, 120 Sussex Street SYDNEY NSW 2000
Ms Rosemary Iris Costley	PO Box 619 MONA VALE NSW 1660
Mr Edward James Kenny	28 Bakers Road CHURCH POINT NSW 2105
Mr Kim Simon Richards Ms Susan Leslie Rose	13 Bakers Road CHURCH POINT NSW 2105
Mrs Emma Victoria Capell	25 Barooka Road CHURCH POINT NSW 2105
Mrs Virginia Ann Gray	2133 Pittwater Road CHURCH POINT NSW 2105
Mr David Williams	2081 Pittwater Road BAYVIEW NSW 2104
Paul Johnson-Walker	2159 Pittwater Road CHURCH POINT NSW 2105
Mr Stuart McNair Mrs Noelene Rosemarie McNair	30 Bakers Road CHURCH POINT NSW 2105
Mr Michael Ian Holmes Mrs Joyce Margaret Holmes	11 Barooka Road CHURCH POINT NSW 2105
Mr Graeme Ernest Fletcher	39 Bakers Road CHURCH POINT NSW 2105
Dianne King	47 Bakers Road CHURCH POINT NSW 2105
Mrs Jean Margaret Rushforth	7 Quarter Sessions Road CHURCH POINT NSW 2105
Mr Jeffrey Raymond Quinn	11 Eastview Road CHURCH POINT NSW 2105
Mr Lee Kevin Smith Mrs Kimberly Dawn Walls- Smith	2135 A Pittwater Road CHURCH POINT NSW 2105
Boston Blyth Fleming Pty Ltd	Suite 1 9 Narabang Way BELROSE NSW 2085
Bayview Church Point Residents Association	PO Box 348 CHURCH POINT NSW 2105
Mr Robert James Forbes Mrs Joyce Irene Forbes	1762 Pittwater Road BAYVIEW NSW 2104
Mr Gregory John Carroll Mrs Julie Gai Carroll	2153 Pittwater Road CHURCH POINT NSW 2105

The Development Application has been publically exhibited in accordance with the EPA Act, Environmental Planning and Assessment Regulation 2000 and Pittwater 21 DCP. As a result of the public exhibition process, Council is in receipt of a total of twenty eight (28) submissions. The matters raised within the submissions are addressed as follows:

- **Geotechnical**

*Cross section of basement does not clearly show full extent of earthworks required for 24 cars.
Geotech Report indicates more investigation work is required prior to approval.
Vibration of deep excavation may cause structural damage to nearby properties.
Seepage of subsoil drainage
300% increase in extent of excavation.*

Comment:

The drawing submitted with the application includes three (3) section drawings on drawing number DA10 and DA11. Further section drawings would be considered useful for the purposes of assessment to confirm the excavation across the site.

Concerns relating to the amount of detail provided with the Geotechnical report are considered well founded given the amount of additional excavation proposed by this application. Insufficient information has been provided for Council's Development Engineers to support the proposed modifications, accordingly, this issue forms a reason for refusal.

- **Floor Space Ratio**

Building: land ratio has changed due to the removal of the permitted use of the western driveway and land on the southern boundary.

Number of units should therefore be reduced.

Over development of the site

Comment:

Insufficient detail has been provided within the supporting documentation submitted with the application to accurately determine what the amended floor space ratio will be given the proposed reduction of site area. The application provides no substantive quantitative assessment of the impact of the reduced site area on the FSR for the development.

Based on calculations from the drawing provided, the amended proposal would result in an FSR of approximately 0.59:1 which is in excess of the FSR approved by the NSW Land and Environment Court of 0.47:1 and in excess of the FSR anticipated by SEPP HSPD of 0.5:1.

It is understood that the proposal originally had an FSR over 0.5:1. This issue was addressed by the applicant increasing the depth of the land to be acquired as Lot H along the southern boundary to reduce the FSR to 0.47:1 by the time to proceedings progressed to hearing. Accordingly, the application is considered deficient in this regard and this issue forms a reason for refusal.

- **Landscape**

The planting of 5 spotted gum trees on the northern side of the building will be negatively impacted by the increased excavation and over-development.

Drawings show a Broad Leaf Paper Bark tree on the southern corner of the development with a mature height of 13m. This will shade our property.

Comment:

Council's Landscape Architect has reviewed the amended proposal and Landscape Plans. The proposal is not supported and the following comments were provided:

"The landscape component of the section 4.55 modification application is not acceptable. The modification deletion of land upon Lot H DP 415249 from the scheme results in a reduction of landscape area and significantly a reduction in the landscape buffer along the rear of the development site adjoining 2133 Pittwater Road Church Point, as a result of the reduced landscape area.

The approved landscape plans, with landscaping upon Lot H DP 415249, provided sufficient landscape area and width to support the proposed tree planting to soften the built form and provide a landscape buffer to 2133 Pittwater Road Church Point.

The modification landscape plan, in terms of proposed tree planting to provide a landscape buffer, is reduced from the approved plans and is now limited in capacity to ensure long term tree establishment along the rear of the property. The proposed planting is limited to one indigenous canopy tree (Spotted Gum) placed at the corner of the site and one indigenous palm (Cabbage Tree Palm). Other nominated species are Exempt species (Frangipani, Maple, Alexander, and Strelizia) that may be removed without Council consent due to their small size and exempt listing, and thus the provision of a landscape buffer to reduce the built form and provide residential privacy and amenity is diminished by this modification application."

The reduction in Landscaped open space is not supported and this issue forms a reason for refusal.

- **Removal of additional lot and access**

Reliance on Pittwater Road for access, site works and earth removal.

Comment:

The removal of Lot H from the subject site results in a number of new non-compliance an design issues with the development which are not supported. These non-compliances are addressed in detail within the Built Form Controls section of the report.

- **Safety**

There is no safe parking on Pittwater Road.

*Use of short term parking at boat ramp opposite
Increased vehicular access from one driveway*

Comment:

Council's Traffic Engineer has reviewed the proposed changes to vehicular access on the site and does not support the application for approval. There is a discrepancy between the Traffic Impact Statement and the architectural plans in so far as the Traffic report indicates that a two way driveway will be provided to enable vehicle passing for its length. However, the drawings appear to be below the required 5.5m width for two way access and no passing bay is provided. Accordingly, this issue forms a reason for refusal.

- **Substantially the same development**

*On site resident parking completely changed to now accommodate all parking underground.
20% reduction in land area an attempt to gain a larger unit yield on a smaller parcel of land.
Quantitative assessment of impact from FSR, setback and excavation changes not provided.
Original DA relied on the consolidation of the four (4) parcels to meet the requirements of the controls.*

Comment:

This issues is addressed in further detail within the assessment of Section 4.56 of the EPA Act, 1979. This assessment of the application does not support that the modifications proposed are substantially the same development as originally approved. The application fails to satisfy this requirement and therefore Council cannot support the application. This issue forms a reason for refusal.

- **Seniors Housing (and SEPP HSPD) is now prohibited in the E4 Zone**

Area is environmentally and geotechnically sensitive. There have been at least 6 major landslips

along Bakers Road above the development.

Comment:

The subject site was rezoned with the gazettal of Pittwater LEP 2014 from Residential 2(a) to E4 Environmental Living. The E4 Environmental Living zone is not considered land that is for urban purposes, according SEPP HSPD does not apply to the site and seniors housing is otherwise prohibited development. The Applicant in this instance relies on the development consent for N0549/08 issued by the NSW Land and Environment Court having been commenced. Subject to the commencement of the consent being satisfactorily demonstrated, the application remains active.

- ***Application is more than 10 years old.***
Developer must apply for a new DA.

Expiry of consent.

Comment:

The applicant has provided detailed information relating to the physical commencement of the consent under s95(4) of the EPA Act, 1979 as it was prior to 8 September 2015 when the consent would have lapsed. Subject to council accepting the evidence provided in relation to 'engineering works', specifically surveying work undertaken for the purposes of creating easements and restrictions for the subdivision of Lots 51, 52 and 53 of DP709248 and Lot H of DP415249, the application may be considered to have been commenced in 2011.

- ***Dilapidation Reports for excavation***

Comment:

The original consent included requirements for dilapidation surveys to be undertaken on the adjoining properties. Were Council to consider approving this modification, further conditions requiring more detailed surveys would be required to ensure that the excavation works proposed to be undertaken did not adversely impact on the structural stability of the adjoining dwellings.

- ***Height Poles requested***
Application states that the The proposed modifications to the approved development do not in any way alter a material or essential aspect of the approved development". Request height poles be erected for the duration of the project to reduce potential for height to be exceeded.

Comment:

The finished height RL provided for each building in the modified application remains consistent with the finished height of the approved application. No further height poles are considered necessary in this instance either to determine this modification application or during construction.

- ***Impact of population increase from 10 additional units.***
Changes to court approvals allowing residents to move in using an interim occupation certificate.

Comment:

The approval by the Court for 10 self contains seniors housing units is not proposed to be increased by the proposed modification. Impacts associated with the approved density were a matter considered by the Court at the time of the hearing.

In terms of occupants moving in to these senior housing developments before they are complete under an interim occupation certificate, this process has changed for new developments effective 1 December 2019 with changes to Part 6 of the Environmental Planning and Assessment Regulations (2000). There is no longer 'interim' or 'final' occupation certificates as these are now replaced by a single Occupation Certificate. While staged occupation of a development may still occur, it is only for occupiable parts of a building which do not pose a health and safety risk to the occupants. Consents issued before this date are still subject to the old building provisions.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>Supported, subject to condition</p> <p>The application has been investigated with respects to aspects relevant to the Building Code of Australia. There are no objections to approval of the development subject to inclusion of the attached conditions in the notes below.</p> <p><i>Note: The proposed development may not comply with some requirements of the BCA this however may be determined at Construction Certificate Stage.</i></p> <p>Section 4.55 (S.96) Modifications</p> <p>Works in connection with this Section 4.55 (Previously S.96) modification are not to be carried out until a Construction Certificate is issued for the modified building works.</p> <p>Reason: The Environmental Planning and Assessment Act 1979 requires a new update of the Building Code of Australia approved Section 96 modifications involving changes in the design of the development.</p>
Landscape Officer	<p>Not supported</p> <p>The landscape component of the section 4.55 modification application is not acceptable. DP 415249 from the scheme results in a reduction of landscape area and significantly a reduction of the rear of the development site adjoining 2133 Pittwater Road Church Point, as a result of the modification.</p> <p>The approved landscape plans, with landscaping upon Lot H DP 415249, provided sufficient proposed tree planting to soften the built form and provide a landscape buffer to 2133 Pittwater Road.</p> <p>The modification landscape plan, in terms of proposed tree planting to provide a landscape buffer, is now limited in capacity to ensure long term tree establishment along the rear of the site. The one indigenous canopy tree (Spotted Gum) placed at the corner of the site and one indigenous nominated species are Exempt species (Frangipani, Maple, Alexander, and Strelizia) therefore the provision of a landscape buffer to residential privacy and amenity is diminished by this modification application..</p>

Internal Referral Body	Comments
NECC (Development Engineering)	<p>Not Supported</p> <p>Prior to full assessment the following questions and requirements are to be met:</p> <ol style="list-style-type: none"> 1. The proposed buildings are relocated within the rights of carriageways and easen site. No documentations have been submitted from the beneficiaries in agreemen extinguished. 2. The subject site has been identified as being in a flood risk area and requires app Team. 3. The proposed access arrangement requires Traffic Engineers comments with reg management for the site. 4. The existing kerb & gutter alignment may require to be modified for the proposed Infrastructure Assets to comment on requirements for kerb & gutter alignment. 5. An access report is to be submitted by a suitably qualified Access Consultant to a Clause 26 location and access to facilities of SEPP (Housing for Seniors or Peopl requires the extension or upgrading of public paved footpaths and pram crossing detail survey with grades in compliant with the SEPP requirements has not been 6. Geotechnical Risk Assessment From 1 and 2 of Council's Geotechnical risk man submitted. 7. The submitted second floor plan drawing no DA04 Revision I dated 26.02.2019 sl Council drainage easement and stormwater overland flow path. No structure is pe and stormwater overland flow path. 8. The consultant has not demonstrated that the pre-development and post-develop ensure the adjoining properties are not worse off post development. 9. The architectural plans do not clearly demonstrated that no stormwater overland f door or stair well. 10. The piping of stormwater overland flow is not satisfactory. A clear unobstructed o development. <p>As result the proposed development cannot be supported.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>Not supported</p> <p>Council must be satisfied that the proposed development complies with the DCP and floo</p> <p>The site is located in a medium and low flood risk precinct and is within the vulnerable la</p> <p>Pre and post development flood modelling is required in order to ensure that there are no and that the proposed DA complies with the flood requirements of the LEP and DCP. Ad Prone Land clause only) means, the proposed development:</p> <ul style="list-style-type: none"> • Will result in less than 0.02m increase in the 1% AEP • Will result in less than a 0.05m increase in the PMF • Will result less than a 10% increase in PMF peak velocity • Will have no loss in flood storage or flood way in the 1% AEP

Internal Referral Body	Comments
	<p><u>Flood effects caused by Development</u> – (Control A4) the Flood Management Report does not show impacts on flood levels and velocities caused by alterations to the flood conveyance. Section within the property at all critical points (including all potential entry point to the basement) show the 1% AEP level, Flood Planning Level (FPL), Probable Maximum Flood (PMF) and Flood Management Level (FML).</p> <p><u>Drainage Infrastructure & Creek Works</u> – (Control B1) The Flood Management Report does not show how the works comply with the Flood Prone Land Design Standard. The following information is to be provided:</p> <ul style="list-style-type: none"> • sections that show pipe invert levels and depth of cover • detailed sections of the inlet structure(s) and diversion wall including FPL and PMF • blockage factors applied to the inlet pits and pipe in the easement within the site • management of overland flows considering supercritical flows • how potential scouring will be managed • sections of the proposed swale on top of the easement and how it will be maintained • how adjoining properties (including No 28 Bakers Road) will be protected from potential flooding <p><u>Building Components & Structural</u> – (Control C2) Structural integrity to the PMF level.</p> <p><u>Flood Emergency Response</u> – (Control E2) New development must provide an appropriate access to the area above the Probable Maximum Flood level and appropriate access to this area should be provided.</p> <p><u>Floor Levels</u> – (Control F7) Floor levels are to be at or above the PMF level or FPL which include the prescribed floor level for each dwelling with floor level controls.</p> <p><u>Car Parking</u> – (Control G9) Enclosed car parks must be protected from inundation up to the Flood Planning Level whichever is higher. The PMF and FPL at the entrance to the car park is to be provided. Cross sections are to be provided that show that all access, ventilation and other carpark is above the relevant floor level. Details on how the basement area under proposed carpark from stormwater are to be provided.</p> <p>The information we have does not satisfy clause B3.12 Climate Change of Pittwater 21 to include an assessment of climate change and determine the likely increase in FPLs.</p>
Road Reserve	<p>No Objection</p> <p>The application was referred to Council's Road Reserves section. No objections or issues were raised.</p>
Traffic Engineer	<p>Not Supported</p> <p>The proposal is for the modification of Seniors Living configurations. It is understood that the proposal was requested. Below is the traffic comment to be taken in consideration.</p> <p>The Traffic Impact Statement identifies that there are no changes to the traffic or parking arrangements. The consolidation of vehicle access to a single driveway crossing in the driveway previously. It is indicated in the traffic report that: <i>"The proposed driveway will provide for improved access and is considered an improvement when compared to the approved scheme."</i></p> <p>Concerns are raised regarding the plans as it appears that the driveway at the property boundary is not clearly defined.</p>

Internal Referral Body	Comments
	scaled, appears to be well under the 5.5m width required for two way access. On this basis, the width should be increased or a passing bay of 6m in length provided within the property boundary to meet Australian Standards AS2890.1:2004.
Waste Officer	<p>Not Supported</p> <p>The applicant has not complied with the Northern Beaches Council Waste Management Policy to ensure compliance.</p> <p><u>Bin room design and location</u></p> <p>The bin room is to be able to accommodate 9 x 240L bins required for the 10 dwellings. Provide every 200m² of landscaped open space on the site.</p> <p>The applicant is to ensure there is a bin room at street level to facilitate a wheel out and for agents. The bin room is to be located within 6500mm of the front property boundary and minimum path of 1200mm wide.</p> <p><u>Access Path</u></p> <p>The pathway and access between the Waste Storage Area and Collection Point will be:</p> <ol style="list-style-type: none"> Solid, concrete, continuous, non-slip and clear of any obstructions and steps. A maximum ramp gradient of 1 in 8. Hazard free and not via a pathway with vehicular traffic. A minimum width of 1200mm. <p><u>Fitout</u></p> <p>Any doors fitted on the Waste Storage Area, pathway and access will be:</p> <ol style="list-style-type: none"> A minimum width of 1200mm. Able to be latched in an open position. Unobstructed by any locks and security devices. Openable in an outward direction. <p><u>Bulky Goods</u></p> <p>A bulky goods waste storage area must be provided that will be: a) A minimum of 4m³ per bulky goods. b) A room or caged area separate from the Waste Storage Area. c) Incorporated and visible to the public.</p>

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

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

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

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

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

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

SEPP 55 - Remediation of Land

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

SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate was submitted with the original application. An updated BASIX certificate reflecting the changes to the basement and site area has not been provided. Accordingly, the application is considered deficient in this regard.

SEPP (Housing for Seniors or People with a Disability) 2004

The application to modify development consent N0549/08 has been lodged pursuant to State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) as the development is for self contained dwellings.

The development's consistency with SEPP HSPD and suitability for this land use on this site at the time it was proposed was established by the NSW Land and Environment Court proceedings *Boston Blyth Fleming Pty Limited v Pittwater Council [2010] NSWLEC 1203*. It is noted that the site has since been rezoned from Residential 2(a) to E4 Environmental Living which would make a development for Seniors Housing prohibited under the PLEP 2014 and the SEPP HSPD not applicable. The application therefore relies on their arguments that the development consent N0549/08 has been commenced.

Chapter 3 – Development for seniors housing

Chapter 3 of SEPP HSPD contains a number of development standards applicable to development applications made pursuant to SEPP HSPD. Clause 18 of SEPP HSPD outlines the restrictions on the occupation of seniors housing and requires a condition to be included in the consent if the application is approved to restrict the kinds of people which can occupy the development. These requirements were included as conditions in the consent issued by the court. Further assessment of this criteria is not required for the proposed modification.

Clause 32 Design of residential development

In accordance with Clause 32 of SEPP HSPD a consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied that the proposed development demonstrates that adequate regard has been given to the principles set out in Division 2 of Part 2.

The following table outlines compliance with the principles set out in Division 2, Part 3 of SEPP HSPD.

Control	Requirement	Proposed	Compliance
CL33 Neighbourhood amenity and streetscape	a. Recognise the desirable elements of the location's current character so that new buildings contribute to the quality and identity of the area.	No change to external appearance	Yes
	b. Retain, complement and sensitively harmonise with any heritage conservation area in the vicinity and any relevant heritage items that re identified in a local environmental plan.	N/A	N/A
	c. Maintain reasonable neighbour amenity and appropriate residential character by; (i) providing building setbacks to reduce bulk and overshadowing (ii) using building form and siting that relates to the site's land form, and (iii) adopting building heights at the street frontage that are compatible in scale with adjacent development, (iv) and considering, where buildings are located on the boundary, the impact of the boundary walls on neighbors.	The proposed modifications to the basement footprint of the development is considered to result in a building form that does not relate to the site's land form, requires the removal of most of the site through excavation down to a depth of approximately 16m.	No
	d. Be designed so that the front building of the development is set back in sympathy with, but not necessarily the same as, the existing building line, e. embody planting that is in sympathy with, but not	No change to Building A. No change	Yes Yes

Control	Requirement	Proposed	Compliance
	necessarily the same as, other planting in the streetscape. f. retain , wherever reasonable, major existing trees, and g. be designed so that no building is constructed in a riparian zone.	No change N/A	Yes N/A
CL 34 Visual and acoustic privacy	The proposed development should consider the visual and acoustic privacy of neighbours in the vicinity and residents by: (a) Appropriate site planning, the location and design of windows and balconies, the use of screening devices and landscaping, and (b) Ensuring acceptable noise levels in bedrooms of new dwellings by locating them away from driveways, parking areas and paths.	No change to the proximity living areas to neighbouring properties.	Yes
CL35 Solar access and design for climate	The proposed development should: (a) ensure adequate daylight to the main living areas of neighbours in the vicinity and residents and adequate sunlight to substantial areas of private open space, and (b) involve site planning, dwelling design and landscaping that reduces energy use and makes the best practicable use of natural ventilation solar heating and lighting by locating the windows of living and dining areas in a	No change	Yes

Control	Requirement	Proposed	Compliance
	northerly direction.		
CL 36 Stormwater	Control and minimise the disturbance and impacts of stormwater runoff and where practical include on-site detention and water re-use.	The proposed modifications have been reviewed by Council's Development Engineer and Flood Plain Engineer and is found to be unacceptable.	No
CL 37 Crime prevention	The proposed development should provide personal property security for residents and visitors and encourage crime prevention by: (a) site planning that allows observation of the approaches to a dwelling entry from inside each dwelling and general observation of public areas, driveways and streets from a dwelling that adjoins any such area, driveway or street, and (b) where shared entries are required, providing shared entries that serve a small number of dwellings that are able to be locked, and (c) providing dwellings designed to allow residents to see who approaches their dwellings without the need to open the front door.	No change	Yes
CL 38 Accessibility	The proposed development should: (a) have obvious and safe pedestrian links from the site that provide access to public transport services or local facilities, and (b) provide attractive, yet safe environments for pedestrians and	<p>The modified proposal includes a substantially larger excavated basement area to accommodate all resident and visitor vehicles.</p> <p>The design include a fire tunnel along the south-eastern side of the excavate basement area which is approximately 38m in length. This tunnel is considered a</p>	No

Control	Requirement	Proposed	Compliance
	motorists with convenient access and parking for residents and visitors.	poor design solution in a seniors housing development and is not considered to satisfy the intent of this clause in relation to convenient and safe pedestrian access.	
CL 39 Waste management	The proposed development should be provided with waste facilities that maximise recycling by the provision of appropriate facilities.	The location of the bin storage area has been assessed by Council's Waste Management team and is considered unacceptable. The bin storage room is not within the required 6.5m setback in accordance with Council's policy and does not include a separated access path between the bin room and the site frontage.	No

Part 4 - Development standards to be complied with

Clause 40 – Development standards – minimum sizes and building height

Pursuant to Clause 40(1) of SEPP HSPD a consent authority must not consent to a development application made pursuant to Chapter 3 unless the proposed development complies with the standards specified in the Clause.

The following table outlines compliance with standards specified in Clause 40 of SEPP HSPD.

Control	Required	Approved	Proposed	Compliance
Site Size	1000 sqm	3475.3m ² excluding access handle 3	3047m ²	Yes
Site frontage	20 metres	18.29m	18.29m	No
Building Height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	Maximum height of 8.06m	No change to approved height	Yes, no change to approved
	A building that is adjacent to a boundary of the site must not be more than 2 storeys in height.	3 storeys	No change to approved	Yes as approved
	A building located in the rear 25% of the site must not	2	2 storeys within 2.5m of boundary	No

Control	Required	Approved	Proposed	Compliance
	exceed 1 storey in height (development within 15.51 metres of the rear boundary).			

Clause 41 Standards for hostels and self contained dwellings

In accordance with Clause 41 a consent authority must not consent to a development application made pursuant to Chapter 3 unless the development complies with the standards specified in Schedule 3 for such development. Final compliance with the requirements of Schedule 3 of SEPP HSPD is conditioned within the original consent conditions.

Part 5 Development on land adjoining land zoned primarily for urban purposes

This part is not applicable to the subject site.

Part 6 Development for vertical villages

This part is not applicable to the proposed development.

Part 7 Development standards that cannot be used as grounds to refuse consent

Clause 46 Inter relationship of Part with design principles in Part 3

Clause 46 states that nothing in Part 7 permits the granting of consent pursuant to the Chapter if the consent authority is satisfied that the proposed development does not demonstrate that adequate regard has been given to the principles set out in Division 2 of Part 3.

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

In accordance with Clause 50 of SEPP HSPD a consent authority must not refuse consent to a development application made pursuant to Chapter 3 for the carrying out of development for the purpose of a self contained dwelling on any of the grounds listed in Clause 50 provided they meet the numerical requirement.

The following table outlines a comparison of the approved and proposed developments compliance with standards specified in Clause 50 of SEPP HSPD.

Control	Required	Approved	Proposed	Compliance
Building height	8m or less (Measured vertically from ceiling of topmost floor to ground level immediately below)	Building A - 7.6m Building B - 7.7m Building C - 8.06m	No change to height approved by LEC.	Acceptable as approved.
Density and scale	0.5:1	0.47:1	0.59:1	No
Landscaped area	30% of the site area is to be landscaped	Site area = 3047.35m ² 30% = 914.2m ²	34% - 1045m ²	Yes
Deep soil zone	15% of the site area Two thirds of the deep soil	15% = 521.25m ²	>15%	Yes

Control	Required	Approved	Proposed	Compliance
	zone should be located at the rear of the site. Each area forming part of the zone should have a minimum dimension of 3 metres.			
Solar access	Living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid winter	No change to approved	No change to approved	No change to approved
Private open space	(i) in the case of a single storey dwelling or a dwelling that is located, wholly or in part, on the ground floor of a multi-storey building, not less than 15 square metres of private open space per dwelling is provided and, of this open space, one area is not less than 3 metres wide and 3 metres long and is accessible from a living area located on the ground floor, and (ii) in the case of any other dwelling, there is a balcony with	No change to approved	No change to approved	No change to approved

Control	Required	Approved	Proposed	Compliance
	an area of not less than 10 square metres (or 6 square metres for a 1 bedroom dwelling), that is not less than 2 metres in either length or depth and that is accessible from a living area			
Parking	(10 bedrooms proposed – 5 carparking spaces required)	20 spaces	20 spaces	Yes
Visitor parking	None required if less than 8 dwellings	10 dwellings - 5 spaces	10 dwellings - 5 spaces	Yes

Chapter 4 – Miscellaneous

This chapter is not applicable to the subject application.

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

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 is unlikely to have an adverse impact on any of the above

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

Comment: The proposal design and siting will avoid an adverse impacts

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,
 - (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 subclause (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.

(c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment: The proposal is not likely to have adverse impact on the surrounding coastal environment.

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 development is unlikely to cause increased risk of coastal hazards on the subject site or other land.

Pittwater Local Environmental Plan 2014

Is the development permissible?	No
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Minimum subdivision lot size:	700m ²	3475.3m ²	3047m ²	N/A	Yes
Height of Buildings:	8.5m	Building A - 7.6m Building B - 7.7m Building C - 8.06m	No change	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
7.2 Earthworks	No
7.3 Flood planning	No
7.4 Floodplain risk management	No
7.7 Geotechnical hazards	No
7.10 Essential services	Yes

Detailed Assessment

Zone E4 Environmental Living

Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone E4 Environmental Living of the Pittwater Local Environmental Plan 2014.

7.2 Earthworks

The proposed modifications include substantial changes to the extent of excavation proposed on the site. In deciding whether to grant development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:

- a. the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,
Comment: Council's Development and Flooding Engineers have considered the proposed development and are not satisfied that sufficient information has been provided to demonstrate that there will not be a detrimental impact on drainage patterns in the locality.
- b. the effect of the development on the likely future use or redevelopment of the land,
Comment: The extent of excavation of the site will dictate any future development on this site with up to 16m of excavation depth proposed.
- c. the quality of the fill or the soil to be excavated, or both,
Comment: There is no concern raised in relation to the quality of the rock to be excavated.
- d. the effect of the development on the existing and likely amenity of adjoining properties,
Comment: The impact of the proposed excavation has not been adequately investigated and concerns are raised in relation to the extent of excavation and the proximity of the excavation to adjoining properties. In addition, the impacts of overland flow and flooding have not been adequately identified.
- e. the source of any fill material and the destination of any excavated material,
Comment: No details have been provided in relation to the anticipated destination of the large amount of rock to be excavated from this site.
- f. the likelihood of disturbing relics,
Comment: It is considered unlikely that the proposed development will disturb any relics
- g. the proximity to, and potential for adverse impacts on any waterway, drinking water catchment or environmentally sensitive area,
Comment: Insufficient information has been provided in this regard. The proposed development is subject to further assessment on receipt of an Estuarine Risk Management Report, prepared by a Coastal Engineer addressing the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.8 Estuarine Hazard Controls.
- h. any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development,
Comment: No specific details have been provided in this regard.
- i. the proximity to and potential for adverse impacts on any heritage item, archaeological site, or heritage conservation area.
Comment: The site is not a heritage item or within close proximity of any heritage, archaeological site or heritage conservation zone.

7.3 Flood planning

The proposed modifications have been reviewed by Council's Floodplain Planning Section who have indicated that insufficient information has been provided to assess the pre and post development flood levels as satisfactory. Accordingly, this issues forms a reason for refusal.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	10m	10.2m	unaltered	Yes as approved
Rear building line	6.5m	8.25m	2.5m*	No
Side building line	South-east - 2.5m	Building A - 2.0m Building B - 1.6m Building C - 1.6m	unaltered	Yes as approved
	North-west - 1m	Building A - 2.8m Building B - 1.6m Building C - 1.6m	Building A - 2.8m* Building B - 0.7m* Building C - 0.5m* to building. Nil to roof line	No
Building envelope	South-east 3.5m	Building A - Minor breach leading edge of 1.0m Building B - Minor breach leading edge 600m Building C - Minor breach leading edge 1.0m	Building A - unaltered Building B - 1.43m Building C - 3.8m	Yes as approved No No
	North-west 3.5m	Building A - Very minor breach of roof form Building B - Elements of parapet breach Building C - Compliant	unaltered	Yes as approved
Landscaped area	60%	46%	34%	No - proposal complies with the landscaped area requirements of SEPP HSPD

* numerical setback changes are due to the removal of Lot H from the site area.

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.4 Church Point and Bayview Locality	No	No

Clause	Compliance with Requirements	Consistency Aims/Objectives
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	No	No
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.8 Estuarine Hazard - Medium Density Residential	No	No
B3.11 Flood Prone Land	No	No
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B5.14 Stormwater Drainage Easements (Public Stormwater Drainage System)	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	No	No
B6.2 Internal Driveways	No	No
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	No	No
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	No	No
C1.2 Safety and Security	No	No
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.10 Building Facades	Yes	Yes
C1.12 Waste and Recycling Facilities	No	No
C1.13 Pollution Control	Yes	Yes
C1.18 Car/Vehicle/Boat Wash Bays	Yes	Yes
C1.21 Seniors Housing	No	No
C1.25 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C5.21 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
D4.1 Character as viewed from a public place	Yes	Yes
D4.5 Front building line	Yes	Yes
D4.6 Side and rear building line	No	No
D4.8 Building envelope	No	No
D4.10 Landscaped Area - Environmentally Sensitive Land	No	No
D4.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

A4.4 Church Point and Bayview Locality

The desired future character statement for the Church Point and Bayview Locality provides specific expectations for land within this area which adjoins the waterway, most of which is zoned E4 Environmental Living. Specifically, the locality statement provides:

The Church Point and Bayview locality will remain a low-density residential area with dwelling houses a maximum of two storeys in any one place in a natural landscaped setting, integrated with the landform and landscape.

Future development is to be located so as to be supported by adequate infrastructure, including roads, water and sewerage facilities, and public transport. The locality is characterised by steeply sloping blocks so the provision of facilities such as inclinator, driveways and carparking need to be sensitively designed. The shared use of vehicular/pedestrian access, and the use of rooftops as parking areas can be solutions that minimise the physical and visual impact on the escarpment or foreshore.

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

*The locality is visually prominent particularly from Scotland Island, Bilgola Plateau, and the Pittwater waterway. Therefore, **a balance will be achieved between maintaining the landforms, landscapes and other features of the natural environment, and the development of land.** As far as possible, the locally native tree canopy and vegetation will be retained and enhanced to assist development blending into the natural environment, and to enhance wildlife.*

The proposed modifications create a development that is further from satisfying the expected form of development in this environmentally constrained and sensitive location. The excavation for the basement extension is inconsistent with the requirement to "minimise site disturbance" or "maintaining the landforms, landscapes and other features of the natural environment".

B3.1 Landslip Hazard

The Geotechnical Report submitted with the application states that "these investigations were completed based on previous development proposals therefore they do not provide suitable levels of detail to sufficient depth based on the proposed new design to allow detailed excavation support design or assessment. As such further geotechnical investigation and stability analysis is required.

The report does not satisfactorily address the requirements of the Geotechnical Risk Management Policy for Pittwater and is unacceptable.

B3.8 Estuarine Hazard - Medium Density Residential

The application has been assessed in consideration of the Coastal Management Act 2016, State Environmental Planning Policy (Coastal Management) 2018 and has also been assessed against requirements of the Pittwater LEP 2014 and Pittwater 21 DCP.

Coastal Management Act 2016

The subject site has been identified as being within the coastal zone and therefore *Coastal Management Act 2016* is applicable to the proposed modifications.

The proposed modifications is in line with the objects, as set out under Clause 3 of the *Coastal Management Act 2016*.

State Environmental Planning Policy (Coastal Management) 2018

As the subject site has been identified as being within the coastal zone and therefore SEPP (Coastal Management) 2018 is also applicable to the proposed development.

The subject land has been included on the 'Coastal Environment Area' and 'Coastal Use Area' maps but not been included on the Coastal Vulnerability Area Map under the State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP). Hence, Clauses 13, 14 and 15 of the CM SEPP apply for this DA.

Comment:

As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by GLN Planning dated 23/05/2019 and Council accepts the assessment, the DA satisfies requirements under clauses 13, 14 and 15 of the CM SEPP.

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

Pittwater LEP 2014 and Pittwater 21 DCP

The subject property has also been identified as affected by estuarine wave action and tidal inundation on Council's Estuarine Hazard Mapping. As such, the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.8 Estuarine Hazard Controls will apply to any proposed development of the site.

Estuarine Risk Management

In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.68 m AHD would apply at the subject site. A reduction factor (RF) based upon the distance from the foreshore of proposed development may also apply at a rate of 0.06m reduction to the EPL for every 5.00m distance from the foreshore edge up to a maximum distance of 40.00m.

B3.8 Estuarine Hazard Controls

These controls are applied among others for seniors housing.

Protection of Development from Wave Action and Tidal Inundation

Development is to be protected from the effects of wave action or tidal inundation either by mitigation works to protect the development or ensuring that the floor levels of the development are at or above the Estuarine Planning Level.

General to all Development

The following applies to all development:

- All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes; and
- All structural elements below the Estuarine Planning Level shall be constructed from flood compatible materials; and,
- All structures must be designed and constructed so that they will have a low risk of damage and instability due to wave action and tidal inundation; and,
- All electrical equipment, wiring, fuel lines or any other service pipes and connections must be waterproofed to the Estuarine Planning Level; and,
- The storage of toxic or potentially polluting goods, materials or other products, which may be hazardous or pollute the waterway, is not permitted to be stored below the Estuarine Planning Level; and,
- For existing structures, a tolerance of up to minus 100mm may be applied to the Estuarine Planning Level in respect of compliance with these controls.
- To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

Wave Action and Tidal Inundation Mitigation Works

Developments that propose mitigation works that modify the wave action or tidal inundation behaviour within the development site including the filling of land, the construction of retaining structures and the construction of wave protection walls may be permitted on a merit basis subject to demonstration through an Estuarine Risk Management Report that:

- The wave action or tidal inundation works do not have an adverse impact on any surrounding property or estuarine processes up to the Estuarine Planning Level; and
- The wave action or tidal inundation mitigation works result in the protection of the existing and proposed development from inundation up to the Estuarine Planning Level.
- The wave action or tidal inundation mitigation works do not have an adverse impact on the environment (this includes but is not limited to the altering of natural flow paths and the clearing of vegetation).

Where wave action or tidal inundation mitigation works are undertaken to protect the development from inundation as set out above, the application of the Estuarine Planning Level requirements of this control need not apply.

A Section 88B notation under the *Conveyancing Act 1919* may be required to be placed on the title describing the location and type of wave action or tidal inundation mitigation works with a requirement for their retention and maintenance.

Floor Levels - New Development and Additions

All floor levels within the development, excluding balconies (with open balustrades) are to be at, or above, or raised to the Estuarine Planning Level.

Floor Levels - Carparking Facilities

- **Enclosed garage or enclosed car park:** All floor levels shall be at or above the Estuarine Planning Level.
- **Basement (i.e. below ground level (existing)) carparking facilities:** All access, ventilation and any other potential water entry points must be above the Estuarine Planning Level. A clearly signposted pedestrian access to a 'safe haven' above the Estuarine Planning Level separate from the vehicular access ramps, shall be provided. The access ramp to the basement where practical should not face the direction of wave action.
- **Open carpark areas (including covered carpark areas) and carports used for residential carparking:** All floor levels/pavement levels shall be at or above the Estuarine Planning Level.
- **Open carpark areas (including covered carpark areas) and carports used by visitors, staff and service delivery vehicles spaces:** Are permissible at the existing ground level. Vehicle barriers or restraints are to be provided to prevent floating vehicles leaving where finished surface levels are more than 300mm below the Estuarine Planning Level.

Variations

Innovative Designs in Wave Action and Tidal Inundation Protection Measures

Innovative and alternative designs in wave action and tidal inundation protection measures may be permitted on a merit basis subject to demonstration through an Estuarine Risk Management Report that the protection measures can be achieved.

Conclusion

The proposed development is therefore subject to further assessment on receipt of an Estuarine Risk Management Report addressing the Estuarine Risk Management Policy for Development in Pittwater (Appendix 7, Pittwater 21 DCP) and the relevant B3.8 Estuarine Hazard Controls. This report needs to be prepared by a Coastal Engineer.

B3.11 Flood Prone Land

Insufficient information has been provided to enable a full assessment of the modifications against the requirements of the control.

B5.12 Stormwater Drainage Systems and Natural Watercourses

The development has been assessed by Council's Development Engineer as unacceptable in terms of the details provided for the Stormwater Drainage on the site.

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

Council's Traffic Engineer has reviewed the amended basement and driveway access requirements for

this application which is considered insufficient in width to accommodate two way traffic as detailed within the Traffic and Parking Assessment prepared by McLaren Traffic Engineering dated 22 May 2019.

B8.1 Construction and Demolition - Excavation and Landfill

The Report on Geotechnical Assessment prepared by Crozier Geotechnical Consultants, dated march 2019 states the following:

To comply with Councils conditions and to enable CGC to complete Forms: 2b and 3 required as part of construction, building and post-construction certificate requirements of the Councils Geotechnical Risk Management Policy 2009, it will be necessary for Crozier Geotechnical Consultants to:

- 1. Undertake or review the results of further geotechnical investigation into site geology and ground conditions.*
- 2. Review and approve the structural and stormwater design drawings for compliance with the recommendations of this report prior to construction, including review of detailed stability analysis of support systems.*
- 3. Site inspection for assessment of batter slopes and during installation of support systems,*
- 4. Inspect all new footings and earthworks to confirm compliance to design assumptions with respect allowable bearing pressure, basal cleanness and stability prior to the placement of steel/concrete,*
- 5. Inspect completed works to ensure construction activity has not created any new hazards and that all retention and stormwater control systems are completed.*

Based on these comments, insufficient Geotechnical investigation has been undertaken in order for the Applicant to satisfy the requirement of the control as the requisite forms specified within the Geotechnical Risk Management Policy for Pittwater cannot be provided.

B8.3 Construction and Demolition - Waste Minimisation

No details have been provided indicating how the large volumes of excavated sandstone will be disposed or reused.

C1.2 Safety and Security

The proposed modifications to this development include a substantial increase in the footprint of the basement excavation. As a result, the design provides a Fire Escape Tunnel along the south side of the basement extending 38m. The length of this tunnel is considered excessive for a seniors housing development.

C1.5 Visual Privacy

The application seeks to delete Condition B46 requiring a privacy screen to Unit C3 and condition B56 requiring privacy blades to Unit A3 as these elements are detailed on the modified plans. No objections are raised in relation to these conditions being deleted subject to the remaining modifications being deemed acceptable.

C1.12 Waste and Recycling Facilities

The proposed modifications to the development have been considered by Council's Waste Officer and are deemed inconsistent with Council's requirements. The redesign provides the bin room 15m from the frontage of the site which is inconsistent with the Northern Beaches Council Waste Management Guidelines as it does not have a safe separate path to the street and requires the use of the driveway to

manoeuvre the bins from the site, the bin room is 15m from the street boundary and does not demonstrate that it will be able to accommodate the required bin storage.

C1.21 Seniors Housing

The proposed development includes an extension to the approved excavated carpark for Building A to accommodate all parking increasing the footprint of this excavation level in excess of 850m² and increasing the depth of excavation from approximately 5.4m to between 12.8m and 14.7m. This change to the proposal is considered contrary to the outcomes of the control as it is not a restricted footprint.

D4.6 Side and rear building line

The proposed development with the removal of Lot H in DP 415249 and the extended basement excavation does not comply with the side and rear building line requirement of P21 DCP. The development as modified will have a rear setback of 2.5m and a side setback of 0.5m to building C and a zero setback to the roof structure of this building. It should be noted that the judgement of Commissioner Hussey, one of the amendments made to the development in order to make it acceptable was an increase in the side boundary setback along the north-western boundary to provide a 1.5m landscape strip.

The enlarged basement excavation provides a setback of 1.1m to the adjoining property at No. 2131 Pittwater Road and the rear setback is reduced to 2.5m from 8.5m. The reduction of site area results in a greater site coverage and reduced setbacks to adjoining properties for this development which is not supported.

D4.8 Building envelope

The removal of Lot H from the development site has reduced the site curtilage along the northern and western boundaries of the site. The built form as approved no longer retains the benefit of the access handle along the northern boundary to provide a technically greater separation in this location. As a result, the site boundary will essentially be touching the building at the north-western corner of the roof line on Building C. The siting of buildings in this amended form creates inconsistencies with the outcomes of the control and is not considered to sensitively relate to the spatial characteristics of the E4 Environmental Living zone.

D4.10 Landscaped Area - Environmentally Sensitive Land

While the site with the proposed modifications does not comply with the P21 DCP requirement of 60% landscaped open space, the application is lodged under SEPP (Housing for Seniors or People with a Disability) and complies with the landscaping requirements under the SEPP.

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;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

Conclusion

This development application has been assessed in accordance with the provisions of 4.15 of the EP&A Act, 1979, the provisions of relevant EPI's, PLEP 2014 and the relevant codes and policies of Council including the relevant provisions of the P21 DCP 2014.

The assessment of this application has found that the plans and documentation submitted fail to demonstrate that the application to modify this consent is substantially the same development as originally approved.

The modifications result in numerous new non-compliances with Council's controls which are considered unacceptable in their current form.

The notification of the development resulting in twenty eight (28) submissions. The majority of the submissions raised concern with the following:

- Insufficient Geotechnical investigation and reporting
- Increased Floor Space Ratio
- Reduction in landscaping
- Removal of Lot H from the proposal
- Substantially the same development
- Expired development consent
- Prohibited land use

The issues raised in the submissions have been addressed within the 'Public Notification Section' of this report. On balance, the proposal is unsatisfactory, fails to demonstrate to council's satisfaction that the application is substantially the same development and is contrary to maintaining and protecting the public interest.

As a result of the matters raised in this report, it is recommended that the Development Determination Panel, as the consent authority refuse this application for the reasons detailed within the 'Recommendation' section of this report.

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 Modification Application No. Mod2019/0245 for Modification of Development Consent N0549/08 granted for construction of 10 self contained dwellings under SEPP HSPD and consolidation and resubdivision of the land at Lots 51 52 53 DP 709248 and Lot H DP 415249 on land at Lot 51 DP 709248,2129 Pittwater Road, CHURCH POINT, Lot 52 DP 709248,2129 Pittwater Road, CHURCH POINT, Lot 53 DP 709248,2129 Pittwater Road, CHURCH POINT, subject to the reasons outlined as follows:

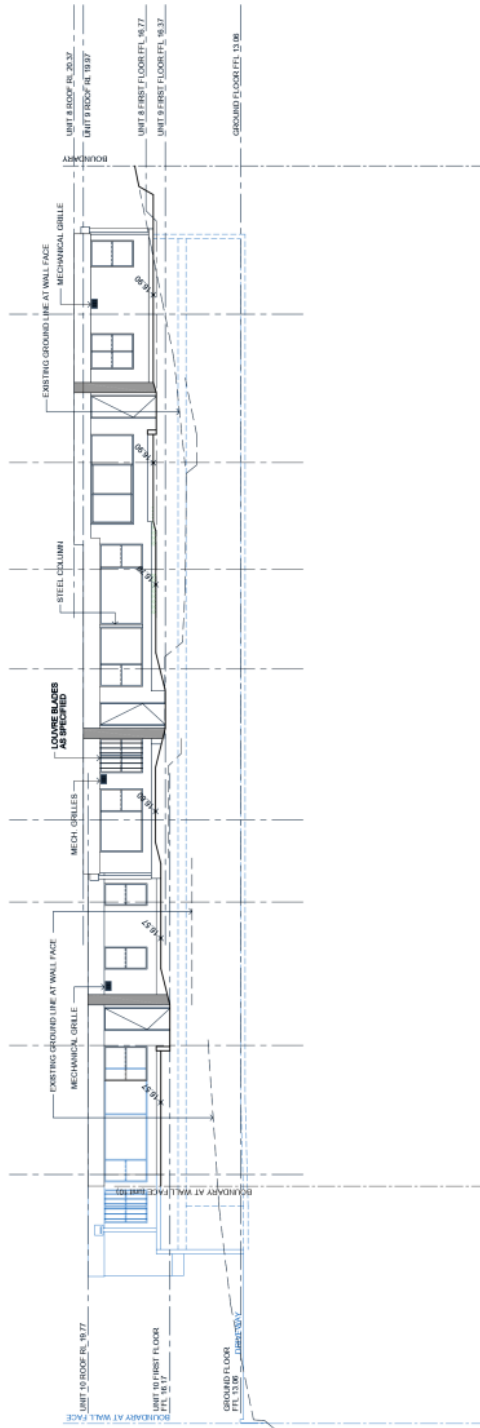
1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of SEPP (Building and Sustainability Index: BASIX) 2004.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
3. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the following provisions of Pittwater Local Environmental Plan 2014:
 - o Clause 7.2 Earthworks
 - o Clause 7.3 Flood Planning
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development does not satisfy the provisions of Pittwater 21 DCP and is inconsistent with the following:
 - o The desired future character of the Church Point and Bayview Locality
 - o B3.8 Estuarine Hazard - Medium Density Residential
 - o B3.11 Flood Prone Land
 - o B5.12 Stormwater Drainage Systems and Natural Watercourses
 - o B6.1 Access Driveways and Works on the Public Road Reserve
 - o B8.3 Construction and Demolition - Waste Minimisation
 - o C1.2 Safety and Security
 - o C1.12 Waste and Recycling Facilities
 - o C1.21 Seniors Housing
 - o D4.6 Side and Rear Building setbacks
 - o D4.8 Building envelope
 - o D4.10 Landscaped Area - Environmentally Sensitive Land
5. Pursuant to Section 4.56(1)(a) of the Environmental Planning and Assessment Act 1979 the proposed development is not considered to be substantially the same development as originally

granted.

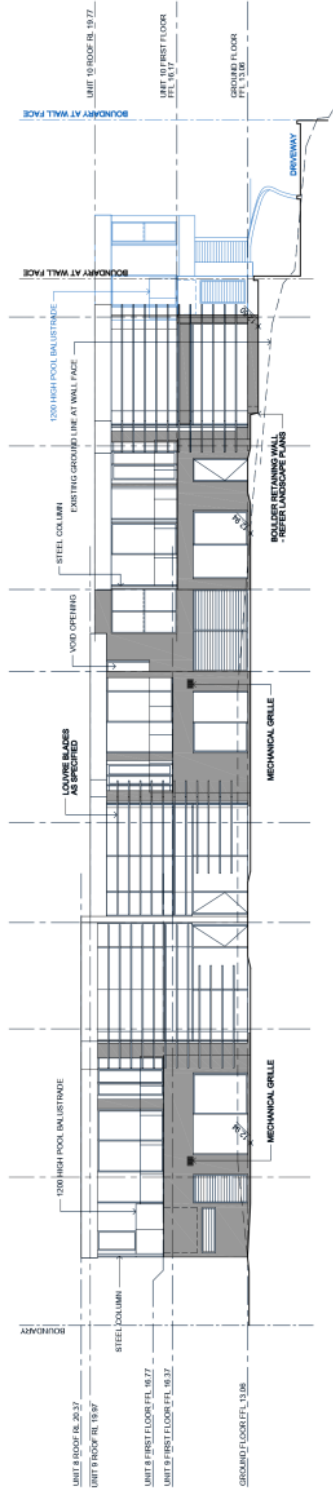
6. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979 the proposed development is not in the public interest.







BUILDING C - SOUTH WEST ELEVATION



BUILDING C - NORTH EAST ELEVATION

KEY

- Information shown in blue denotes existing works
- Information shown in green denotes proposed new works

IMPORTANT NOTES

- DO NOT SCALE FROM DRAWINGS. USE DIMENSIONS.
- ONLY A DESIGNER OR ARCHITECT CAN CARRY THE LATEST REVISIONS.
- THESE DRAWINGS ARE THE PROPERTY OF RPNA WATERVIEWS PTY LTD. NO PART OF THESE DRAWINGS IS TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, WITHOUT PERMISSION IN WRITING FROM RPNA WATERVIEWS PTY LTD.

REVISION	DATE	DESCRIPTION	BY
1	21.08.19	SECTION 4.56 LEC MODIFICATIONS	VCJ/AB
2	17.10.19	SECTION 4.56 LEC MODIFICATIONS (REVISED)	VCJ/AB
3	28.02.20	SECTION 4.56 LEC MODIFICATIONS (REVISED)	VCJ/AB

RPNA WATERVIEWS PTY LTD ATY RPNA WATERVIEW TRUST Formed from Pty Ltd	2129 PITTSWATER RD CHURCH POINT NSW SEPP 55 HOUSING FOR SENIORS OR PEOPLE WITH A DISABILITY	BUILDING C ELEVATIONS NE AND SW
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SECTION 4.56 LEC MODIFICATION	DA07	H
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