

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 19 FEBRUARY 2020



Ashleigh Sherry
Manager Business System and Administration

Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 19 February 2020

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 5 FEBRUARY 2020

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 5 February 2020 were approved by all Panel Members and have been posted on Council's website.

3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	MOD2019/0532 - 7 HIGHVIEW AVENUE, QUEENSCLIFF - MODIFICATION OF DEVELOPMENT CONSENT DA2019/0056 GRANTED FOR DEMOLITION WORKS AND CONSTRUCTION OF A DWELLING HOUSE
REPORTING MANAGER	RODNEY PIGGOTT
TRIM FILE REF	2020/083413
ATTACHMENTS	1 ↓ DDP Assessment Report 2 ↓ Site and Elevation Plan

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 grant Development Consent to Modification Application No. Mod2019/0532 for demolition works and construction of a dwelling house on land at Lot 11 DP 17127, 7 Highview Avenue, Queenscliff, subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0532
Responsible Officer:	Claire Ryan
Land to be developed (Address):	Lot 11 DP 17127, 7 Highview Avenue QUEENSCLIFF NSW 2096
Proposed Development:	Modification of Development Consent DA2019/0056 granted for demolition works and construction of a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Andrew Timothy Collins Marguerite Eleanor Therese Collins
Applicant:	Studio Prineas
Application Lodged:	01/11/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	14/11/2019 to 28/11/2019
Advertised:	Not Advertised
Submissions Received:	4
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Northern Beaches Council is in receipt of Modification Application MOD2019/0532, seeking modifications to Development Consent DA2019/0056.

The proposed modifications are compliant with the development standards under the *Warringah Local Environmental Plan 2011* (WLEP 2011) and the built form controls under the *Warringah Development Control Plan 2011* (WDCP 2011). The proposed development received four submissions objecting to the modifications in relation to privacy, view loss, excavation, noise, construction dust, increase to a rooftop deck, and reduction of setbacks. The application is referred to the Development Determination Panel (DDP) as it modifies a determination previously made by the DDP.

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 modification to Development Consent DA2019/0056 as follows:

- Internal reconfiguration at each level;
- Reconfiguration and extension of first floor footprint;
- Introduction of a car stacker and storage space within approved car parking footprint (requiring additional excavation);
- Amendment to ground floor courtyard walls, and reduced excavation under courtyard for additional planting;
- Amendments to skylights and windows;
- Additional privacy screening; and
- Correction of erroneous reduced level (RL) and finished floor level (FFL) notations on elevations.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 6.2 Earthworks
Warringah Local Environmental Plan 2011 - 6.4 Development on sloping land
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy

SITE DESCRIPTION

Property Description:	Lot 11 DP 17127 , 7 Highview Avenue QUEENSCLIFF NSW 2096
Detailed Site Description:	<p>The subject site consists of one allotment located on the northern side of Highview Avenue, Queenscliff.</p> <p>The site is irregular in shape with a frontage of 13.41m along Highview Avenue and an average depth of 58m. The site has a surveyed area of 764.2m².</p> <p>The site is located within the R2 Low Density zone and accommodates a part-one, part-two, and part-three storey detached dwelling house.</p> <p>The southern half of the site is relatively flat, while the northern half is steeply sloping, falling approximately 8m from the front to the rear. The site contains rocky outcrops, embankments and sandstone retaining walls primarily within the heavily terraced backyard.</p> <p>The site contains a mixture of native mature vegetation and exotic species. There are no significant trees on the site or the adjoining property that will be affected by the development.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached dwelling houses of varying heights, and a dual occupancy.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- Pre-lodgement Meeting PLM2018/0212 was held on 31 August 2018 to discuss construction of a dwelling house.
- DA2019/0056 for Demolition works and construction of a dwelling house was approved on 10 July 2019 by the Development Determination Panel.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2019/0056, in full, with amendments detailed and assessed as follows:

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

Section 4.55 (2) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA2019/0056.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Application DA2019/0056 did not require concurrence from the relevant Minister, public authority or approval body.

Section 4.55 (2) - Other Modifications	Comments
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Warringah Local Environmental Plan 2011 and Warringah Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on "Notification & Submissions Received" in this report.

Section 4.15 Assessment

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

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

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

Section 4.15 'Matters for Consideration'	Comments
	<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 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 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 impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Mrs Karen Therese O'Connell	5 Highview Avenue QUEENSCLIFF NSW 2096
Ms Keryn Jane Clark	2 / 11 Highview Avenue QUEENSCLIFF NSW 2096
Mrs Tracey Elizabeth Oates	3 Highview Avenue QUEENSCLIFF NSW 2096
Ante Sardelic	2 / 13 Highview Avenue QUEENSCLIFF NSW 2096

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

Privacy

Concern was raised that the footprint of the first floor addition extends towards Nos. 5 and 11 Highview Avenue, and may result in increased privacy impacts. Concern was also raised in relation to the operable nature of privacy screens, as well as the angles of and distance between privacy screen battens. Finally, concern was raised in relation to elevated terraces, and an increase to a rooftop deck.

Comment:

The proposed extended footprint to the first floor does not unreasonably impact upon privacy to adjoining properties. To both the north and south, windows orientated to the adjoining properties are treated with privacy screening, angled when in an open position at a distance of approximately 35mm, thereby suitably obscuring views to adjoining properties. Other windows are angled away from adjoining properties. There are no rooftop decks approved under the original application or proposed under this modification application. Approved green roof spaces are non-trafficable and unchanged by this modification application. Any decks are as approved under the original application, with no modifications proposed under this application.

Excavation

Concern was raised that the additional excavation for stacker may increase risk in relation to site stability. Objections raised that dilapidation reports should be prepared before and after excavation/construction, and that adjoining properties should undergo a full wash after construction to remove dust.

Comment:

The modification application is supported by a geotechnical investigation report that demonstrates that the proposed development will not result in unacceptable risk in relation to site stability. Further, the modification application has been reviewed by Council's Development Engineer, who is supportive of the proposed modifications, subject to conditions of consent, which have been included in the recommendation of this Assessment Report. Given the additional excavation proposed, conditions of consent have been applied requiring the preparation of pre- and post-construction dilapidation reports. Any excessive dust resulting from demolition, excavation or construction can be reported to Council's Building Control team for investigation.

View Sharing

Concern was raised that the extension of the first floor footprint will result in view loss for Nos. 2/11 and 2/13 Highview Avenue.

Comment:

The proposed modifications are acceptable in relation to view sharing for the reasons detailed in the section of this report relating to Clause D7 Views of the WDCP 2011.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<p>Proposed stormwater concept has been modified for the development. Thus, condition number 9 in the consent (DA2019/0056) for On-site Stormwater Detention will need to be replaced with the following condition for OSD.</p> <p>Please note that other previous comments and conditions under DA2019/0056 remain.</p> <p>No objections are raised to the proposed development, subject to conditions.</p>

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

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. 984438S_03 dated 6 September 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	58

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:*
- the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - coastal environmental values and natural coastal processes,*
 - the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed*

- development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) *Aboriginal cultural heritage, practices and places,*
 - (g) *the use of the surf zone.*

Comment:

The proposed modifications to the approved development are relatively minor in nature, and generally limited to the approved building footprint. As such, the modifications are not anticipated to result in any unreasonable impact in relation to the matters 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 proposed modifications are designed, site and managed in order to avoid any unreasonable impact in relation to the matters above.

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 modifications are minor in nature and are supported by a geotechnical investigation, which demonstrates the works can be carried out to an acceptable risk level. As such, the works are unlikely to cause increased risk of coastal hazards on the subject site or other land.

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

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	8.1m to new works	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

Detailed Assessment

6.2 Earthworks

Clause 6.2 Earthworks requires that, before granting development 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,*
- (b) the effect of the proposed development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the proposed development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the likelihood of disturbing relics,*
- (g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.*

Comment:

The modification application is supported by a geotechnical investigation report and stormwater plans that demonstrate that the consent authority can be satisfied the proposed development will not result in unacceptable risk in relation to drainage patterns and soil stability. Further, the modification application has been reviewed by Council's Development Engineer, who is supportive of the proposed modifications, subject to conditions of consent, which have been included in the recommendation of this Assessment Report. In this way, the consent authority can also be satisfied that the proposed development will not unreasonably affect future use or redevelopment of the land. The quality and treatment of cut and fill is addressed in Waste Management Plan submitted with the original development application. The impact of the proposed modification on the amenity of adjoining neighbours is assessed throughout this report. Given that the subject site is already developed and that the site has low potential for Aboriginal heritage significance, the likelihood of disturbing relics is low. Given the level of excavation, the proposed modifications are unlikely to result in adverse impacts on any watercourse, drinking water catchment, or environmental sensitive area.

6.4 Development on sloping land

Under Clause 6.4 Development on Sloping Land, 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*
- (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:

The modification application is supported by a geotechnical investigation report and stormwater plans that demonstrate that the consent authority can be satisfied the proposed development will not result in unacceptable risk in relation to landslides, detrimental impacts of stormwater discharge, or subsurface flow conditions. Further, the modification application has been reviewed by Council's Development Engineer, who is supportive of the proposed modifications, subject to conditions of consent, which have

been included in the recommendation of this Assessment Report.

Warringah Development Control Plan

Built Form Controls

Standard	Requirement	Approved	Proposed	Complies
B1 Wall height	7.2m	5.65m to 6.95m	Unchanged	Yes
B3 Side Boundary Envelope	5m	Within envelope	New works within envelope	Yes
	5m	Within envelope	New works within envelope	Yes
B5 Side Boundary Setbacks	900mm (east)	>900mm	New works >900mm	Yes
	900mm (west)	>900mm	New works >900mm	Yes
B7 Front Boundary Setbacks	6.5m	6.5m	New works 6.5m	Yes
B9 Rear Boundary Setbacks	6m	25.7m	New works 26.1m	Yes
D1 Landscaped Open Space and Bushland Setting	40% (305.68sqm)	42.1% (322sqm)	Unchanged	Yes

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	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
D3 Noise	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

D7 Views

The modification application has received two objections in relation to view loss for Nos. 2/11 and 2/13 Highview Avenue. Site visits was carried out at both properties to ascertain the impact on views as a result of the proposed modifications. The modifications are considered against the underlying objectives of the control as follows:

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

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

The relevant views from Nos. 2/11 and 2/13 Highview Avenue are of distant ocean views across the subject site. No. 2/13 Highview Avenue also looks out across No. 11 Highview Avenue. The views do not contain any icons, but do contain partial water views, and views to the horizon. See photos below:



Above: The view from the furthest edge of 2/11 Highview Avenue, from standing position. This location shows the greatest portion of view as existing.



Above: The view from the closest edge of 2/13 Highview Avenue, from standing position. This location shows the greatest portion of view as existing.

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

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

Comment to Principle 2:

Views obtained from Nos. 2/11 and 2/13 Highview Avenue are obtained over side boundaries, from their respective decks in both standing and seated positions.

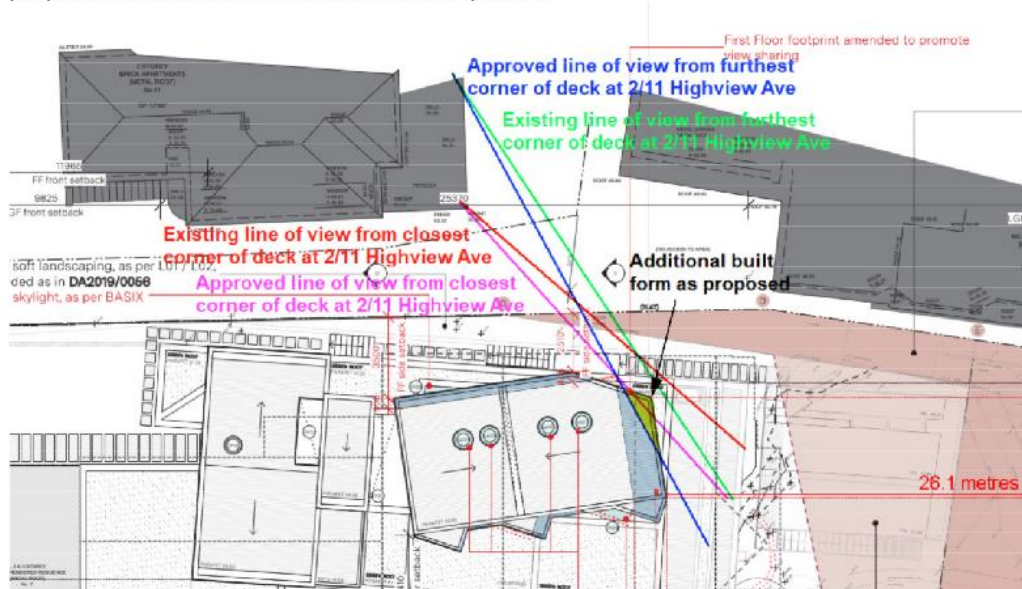
3. Extent of impact

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

Comment to Principle 3:

The affected view from 2/11 Highview Avenue is gained from the principal private open space (deck), so is a valued view. The proposed modification to the first floor results in a minor increase to the approved built form, as indicated in the diagram below by the pink and blue lines, and the yellow highlighted portion. However, this built form still presents an improvement on the view corridor from the existing scenario, as demonstrated by the red and green lines, as the modified new first floor is set further back than the existing floor. Further, the impacted

portion of view is of reduced importance, as it is predominantly towards existing large buildings that disrupt the ocean views (as shown above). As such, the view lost as a result of the proposed modifications is minor and acceptable.



Above: A marked up demonstration of view lines from 2/11 Highview Avenue across the subject site.

The affected view from 2/13 Highview Avenue is gained from the principal private open space (deck), so is also a valued view. The view from 2/13 Highview Avenue is gained from a deck that is set several metres north of that at 2/11 Highview Avenue. As such, a greater expanse of view is currently available to the property than 2/11 Highview Avenue. However, the proposed modification to the first floor will likely result in a minor portion of view loss only as a result of the increased built form.

4. Reasonableness of the proposal that is causing the impact

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

Comment to Principle 4:

The proposed development is wholly compliant with development standards and development controls, thereby demonstrating that the proposal is reasonable in its context. The proposed modifications are skilfully designed in that the modified built form is angled to allow a view corridor for Nos. 2/11 and 2/13 Highview Avenue. As above, while the view corridor is minimally reduced from the approved development, the modified development still presents an improvement in view from the current development.

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

Comment:

The proposed modifications are innovatively designed so as to retain suitable levels of amenity

for the subject site and adjacent sites, while also reasonably retaining views.

- *To ensure existing canopy trees have priority over views.*
Comment:
No trees are impacted upon in relation to the proposed modifications.

D8 Privacy

The proposed modifications include negligible alterations to windows on the eastern and western elevations of the first floor. These modifications do not materially alter the approved development's compliance with the requirements of Clause D8 Privacy of the WDCP 2011.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

- Excavation;
- Privacy; and
- View Sharing.

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

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2019/0532 for Modification of Development Consent DA2019/0056 granted for demolition works and construction of a dwelling house on land at Lot 11 DP 17127,7 Highview Avenue, QUEENSCLIFF, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
02-02 Site Plan	14 August 2019	Studio Prineas
02-04 Lower Ground Floor	14 August 2019	Studio Prineas
02-05 Ground Floor Plan	14 August 2019	Studio Prineas
02-06 First Floor Plan	14 August 2019	Studio Prineas
02-07 Roof Plan	14 August 2019	Studio Prineas
02-08 South Elevation	14 August 2019	Studio Prineas
02-09 North Elevation	14 August 2019	Studio Prineas
02-10 East Elevation	14 August 2019	Studio Prineas
02-11 West Elevation	14 August 2019	Studio Prineas
02-12 Section A	14 August 2019	Studio Prineas
02-13 Section B	14 August 2019	Studio Prineas
02-14 Section C	14 August 2019	Studio Prineas
02-15 Section D	14 August 2019	Studio Prineas

02-16 Section E	14 August 2019	Studio Prineas
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Engineering Plans		
Drawing No.	Dated	Prepared By
HQ100.4.55-H01 Proposed Stormwater Drainage	30 September 2019	Clapham Design Services
HQ100.4.55-H02 Proposed Stormwater Drainage	30 September 2019	Clapham Design Services
HQ100-H03 Proposed Stormwater Drainage	30 September 2019	Clapham Design Services

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. 984438S_03	6 September 2019	Efficient Living Pty Ltd
NatHERS Certificate No. 0003494655-03	6 September 2019	Efficient Living Pty Ltd
Geotechnical Investigation 4743-2-R1	27 September 2019	Asset Geotechnical Engineering Pty Ltd

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.

B. Modify Condition No. 9 On-site Stormwater Detention Details to read as follows:

The Applicant is to provide a certification of drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's , and generally in accordance with the concept drainage plans prepared by Clapham Design Services, drawing number HQ100.4.55-H01 to H02, HQ100-H03, issue 1, Amendment A, dated 30/09/2019 and drawing number HQ100-EA01, issue 1, Dated 19/12/2018. 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.

The drainage plans must address the following:

- i. Any Discharge Control devices/pits and emergency overflow points shall be relocated to be external to the dwelling to ensure that any overflows can be safely directed away.
- ii. The stormwater pipeline crossing the road reserve in Undercliff Road shall be amended to remove the bend in the pipeline and exit from the boundary at an angle towards the kerb east of the existing driveway.

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

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

C. Add Condition No. 15A Structural Adequacy and Excavation Work to read as follows:

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.

D. Add Condition No. 15B Boundary Identification Survey to read as follows:

A boundary identification survey, prepared by a Registered Surveyor, is to be prepared in respect of the subject site. The plans submitted for the Construction Certificate are to accurately reflect the property boundaries as shown on the boundary identification survey, with setbacks between the property boundaries and the approved works consistent with those nominated on the Approved Plans of this consent. Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of any Construction Certificate.

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

E. Add Condition No. 20A Survey Certificate to read as follows:

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.

F. Add Condition No. 20B Pre-Construction Dilapidation Report to read as follows:

Dilapidation reports, including photographic surveys, of the following adjoining properties must be provided to the Principal Certifying Authority prior to any works commencing on the site (including demolition or excavation):

- 5 Highview Avenue, Queenscliff
- 11 Highview Avenue, Queenscliff

The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items. The dilapidation report is to be prepared by a suitably qualified person. 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. The Principal Certifying Authority must be satisfied that the requirements of this condition have been met prior to commencement of any works. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the commencement of any works on site.

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.

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

G. Add Condition No. 24 Post-Construction Dilapidation Report to read as follows:

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

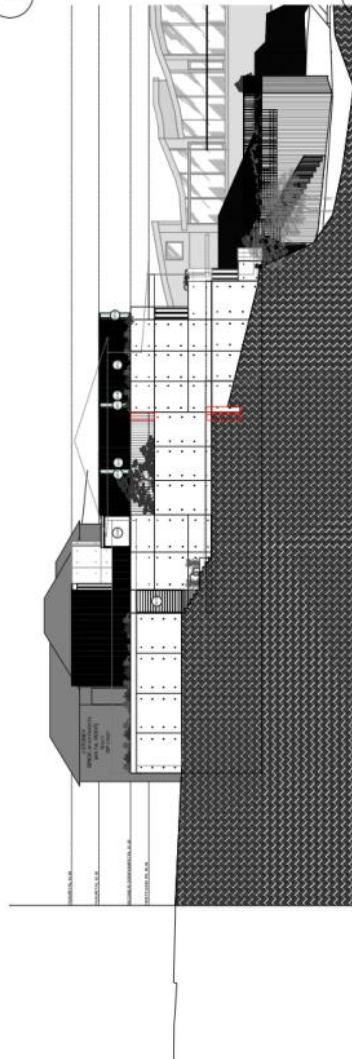
- Compare the post-construction report with the pre-construction report,
- Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- Should any damage have occurred, outline suggested remediation methods.

Copies of the reports must be given to the property owners referred to in the Pre-Construction Dilapidation Report Condition. Copies must also be lodged with Council. Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

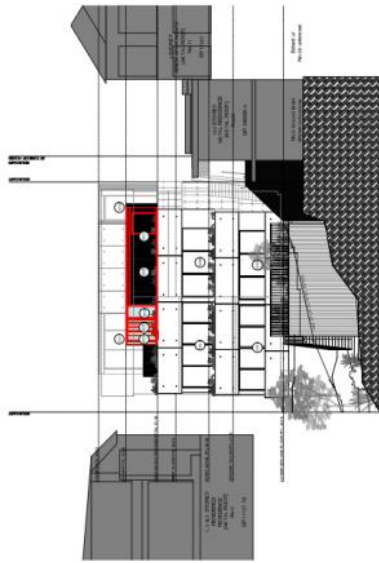
Reason: To maintain proper records in relation to the proposed development.



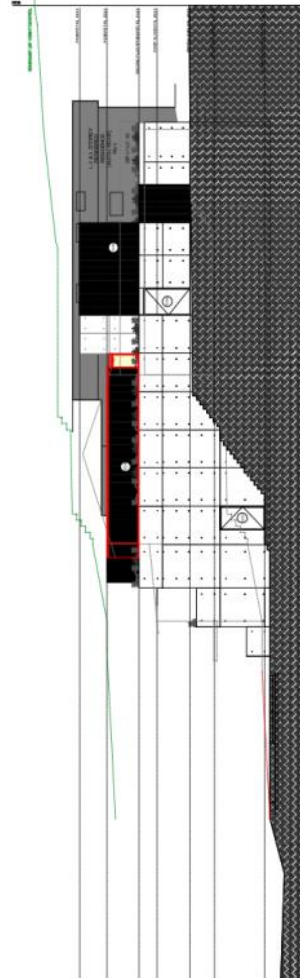
1 Site Plan
NTS



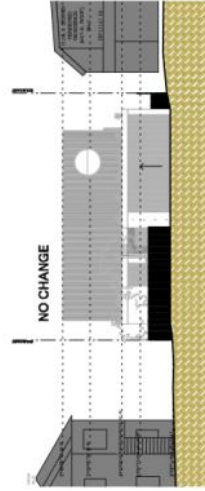
2 East Elevation
NTS



4 North Elevation
NTS



3 West Elevation
NTS



5 South Elevation
NTS

14/08/19 Section 4.55 amendments shown in red

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Revisions

Notes

This drawing is Copyright © Studio Pineas and may not be reproduced without written permission of Studio Pineas. All measurements are in MM unless otherwise stated. User should dimensions and locations are indicative only and need to be verified by a surveyor. All work to be undertaken must comply with the BCA and relevant Australian Standards.

Abbreviations

VOS Work On Site
FHL Finished Floor Level
FCL Finished Ceiling Level
AFFL Above Finished Floor Level
NA Not Applicable
AFS As Further Specified
CL Centreline
EXTG Existing

17206

Collins | Queenscliff
Marguerite & Andrew Collins
7 Highview Avenue, Queenscliff

Drawing Title Notification Plan
Scale NTS
Drawn By JL
Date 12.08.2019

Section 4.55

Not For Construction

02-00



ITEM 3.2	DA2019/1192 - 118 PRINCE ALFRED PARADE, NEWPORT - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	MATTHEW EDMONDS
TRIM FILE REF	2020/083417
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site and Elevation Plans 3 ↓ Clause 4.6 Report

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 grant Development Consent to DA2019/1192 for Alterations and additions to a dwelling house on land at Lot 32 DP 13457, 118 Prince Alfred Parade, Newport, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1192
Responsible Officer:	Megan Surtees
Land to be developed (Address):	Lot 32 DP 13457, 118 Prince Alfred Parade NEWPORT NSW 2106
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Bradley Grattan French Susan Elizabeth French
Applicant:	THW Architects
Application Lodged:	28/10/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	13/11/2019 to 27/11/2019
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 30.5%
Recommendation:	Approval
Estimated Cost of Works:	\$ 135,500.00

PROPOSED DEVELOPMENT IN DETAIL

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

- Modification to the existing driveway, involving a degree of widening at the street level.
- Demolition and replacement of the existing garage (increased internal width). The new garage will have an increased height of 305mm.
- A rear addition to the garage, involving the partial enclosure of the outdoor terrace, to provide for a gym and balcony.
- New entry pathway, with roof over the main pedestrian entry (out of the property boundary).

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 4.6 Exceptions to development standards
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater 21 Development Control Plan - C1.3 View Sharing
Pittwater 21 Development Control Plan - C1.5 Visual Privacy
Pittwater 21 Development Control Plan - D10.7 Front building line (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.8 Side and rear building line (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.11 Building envelope (excluding Newport Commercial Centre)
Pittwater 21 Development Control Plan - D10.13 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 32 DP 13457 , 118 Prince Alfred Parade NEWPORT NSW 2106
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the northern side of Prince Alfred Parade.</p> <p>The site is irregular in shape with a frontage of 15.4m along Prince Alfred Parade and a depth of 30.3m. The site has a surveyed area of 442.6m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a 4 storey residential dwelling.</p>

The site has a southerly orientation towards the street frontage, and northerly aspect towards Pittwater Waterway. The site has been significantly excavated during the construction of the dwelling house, however the site is estimated to be located on a slope of approximately 10.41m (or 35%).

The site has minimal vegetation within the front and side setbacks. The rear setback has a large area of turf, with garden beds located to the east and west of the site. No significant canopy trees are located throughout the site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by dwellings of similar bulk and scale.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

Demolition of Existing Dwelling occupying three lots and the construction of a new dwelling on each parcel of land.

N1023/99

This application sought consent for the construction of a new dwelling on Lot 31, 118 Prince Alfred Parade. This application was approved, subject to conditions. This site is not subject to the current application.

N1026/99

This application sought consent for the construction of a new dwelling on Lot A, 118 Prince Alfred Parade. This application was approved, subject to conditions. This site is not subject to the current application.

N1030/99

This application sought consent for the construction of a new dwelling on Lot 32, 118 Prince Alfred Parade. The application was considered at Council's Environment and Planning Committee Meeting of Monday 28 February 2000. This meeting refused the application based on a number of reasons. Council subsequently received an application for reconsideration of the refusal on 21 March 2000. The application was subject to an appeal with the Land and Environment Court. A report to the Development Unit Meeting on 4 May 2000 saw the Applicant's request for a reconsideration of the refusal recommended for approval, subject to conditions. The application was granted consent on 25 May 2000.

N0261/00

This application sought consent for the construction of a stubb jetty at Lot 32 118 Prince Alfred Parade. This application was refused for a number of reasons.

N0608/02

This application sought consent for the construction of a new dwelling, swimming pool and associated works at Lot 32, 118 Prince Alfred Parade. This application was referred to Council's Development Unit on 7 November 2002. This application was approved, subject to conditions. A Construction Certificate (CC0118/04) was sought on 23 February 2004 for demolition and excavation works only, based on the consent granted under 10656 of 2001, N0608/02 and N0609/02. A Construction Certificate (CC0139/07) was sought on 9 November 2006 for the construction of a new dwelling, with reference to consent granted under N0609/02 and N0569/01. A Construction Certificate (CC0032/11) was sought on 15 October 2009 for the fit-out of the dwelling at lock up stage.

A 12 month development consent extension was requested. This extension for consent under N0608/02 was granted until 21 November 2005.

A Modification Application to modify consent under N0608/02 was sought for the installation of a lift, new openings and courtyards, deck relocations, pool relocations, structural revisions, inclusion of a davit and general internal replanning. Council requested additional information with regards to the modification works being substantially the same as the works approved under N0608/02. A statement prepared by Scott Burwick was provided to Council on 30 September 2005 which further outlines that the modified works are substantially the same as what was previously approved. Council maintains the refusal determination.

Another Modification Application to modify consent under N0608/02 was sought for various internal and external modifications to the previously approved dwelling house. Council advised the Applicant, Essential Planning, through a Withdrawal Letter, of a number of issues that were identified during the assessment process which were to be addressed in order to determine the application. The issues identified were in relation to the following controls of P21 Development Control Plan (P21 DCP): D10.8 Side and Rear Building Line (excluding Newport Commercial Centre), D10.11 Building Envelope, D10.13 Site Coverage – Environmentally Sensitive Land and D10.1 Character as Viewed from a Public Place. Amended plans and supporting documentation were provided to Council on 30 October 2008. However, Council was still of the opinion that the modified works did not achieve compliance with the abovementioned controls. As such, this Modification Application was refused.

N0292/10

This application sought consent for the Installation of a lift at Lot 32,118 Prince Alfred Parade. This application was approved, subject to conditions. A Construction Certificate (CC0186/11) was sought for the installation of a lift, with reference to the consent granted under N0282/10.

BC0005/11

A Building Certificate was lodged with Council for the following unauthorised works: Repositioning of Bedroom 4, reconfiguration of internal connecting stairway and flat roof to carport at Lot 32, 118 Prince Alfred Parade. It is noted that parts of the existing dwelling were not constructed in accordance with the approved consent under N0608/02. As such, approval for the illegal works was sought under a Building Certificate. This Building Certificate was issued by Council on 21 January 2011.

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</p>

Section 4.15 Matters for Consideration'	Comments
	<p>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 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 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 Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Withheld	NEWPORT NSW 2106
Miss Jacqueline Yvonne Fischer	2 Elvina Avenue NEWPORT NSW 2106
Mr Patrick John Moroney	101 Prince Alfred Parade NEWPORT NSW 2106

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

- Non-compliant landscaped area
- Non-compliant building height
- Loss of privacy
- View loss
- Deviation from previous development consent.

The matters raised within the submissions are addressed as follows:

- **Non-compliant Landscaped Area**

Comment:

All 3 submissions raised concern with regards to the non-compliant landscaped area of the subject site. Reference was made to a previous development consent associated with this site in which a condition was implemented to ensure the pebbled area north of the garage was to remain as 'green space'. However, after searching through Council's records, this condition has not been found. A further discussion on the numerical non-compliance with D10.13 Landscaped Area – Environmentally Sensitive Land of P21 DCP can be found within this report.

Please note that a condition of consent will be recommended to ensure planter boxes are installed along the northern, eastern and western elevations of the proposed balcony to address the objectives of C1.5 Visual Privacy of P21 DCP, D10.1 Character as Viewed from a Public Place and D10.13 Landscaped Area – Environmentally Sensitive Land.

- **Non-compliant building height**

Comment:

All 3 submissions raised concern with regards to the proposed building height exceeding the requirements under Clause 4.3 Height of Building Development Standard under *Pittwater Local Environmental Plan (PLEP) 2014*. The required building height is 8.5m, and the proposed development will result in a building height of 11.1m. This exceeds the previously approved building height by 305mm. This 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 in this report under section 4.6 Exceptions to Development

Standards.

- **Loss of privacy**

Comment:

The owner of 101 Prince Alfred Parade and a confidential submission have raised concern with regards to the proposed gym and balcony north of the garage creating a loss of privacy for the occupants of the adjoining properties. The adjoining properties achieve a bulk and scale that is almost identical to the dwelling located on the subject site. Due to the steep topography of the subject site and adjoining properties, achieving complete privacy is difficult.

A further discussion on the potential impact upon visual privacy can be found in this report under section C1.5 Visual Privacy.

- **View loss**

Comment:

Concern has been raised by the owner of 2 Elvina Avenue, Newport, with regards to the potential view loss as a result of the proposed development, particularly the proposed roof structure over the pedestrian entryway obstructing the views obtained through the lift. A full view sharing assessment has been carried out in accordance with the Planning Principle for view sharing *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*. This assessment can be found within this report under section C1.3 View Sharing.

- **Deviation from previous development consent.**

Comment:

All 3 submissions have raised concern with regards to this application deviating from previous development consent. It should be noted that the submissions reference development consent from 2010 and 'the original DA'. After searching through Council's records, the only application in 2010 was N0292/10 for the installation of a lift - this application was approved, subject to conditions. The consent of this application does not reference the requirement for a transparent garage door or the requirement for the area north of the existing garage to remain as 'green space'. Additionally, the 'original consent' - being N0608/02 - for the construction of a new dwelling and swimming pool, does not reference the requirement for a transparent garage door and the retention of 'green space'. Reference has also been made with regards to a development application DA2008/66 - however, there is no record of this application associated with the subject site in Council's records.

It is noted, however, that control C1.3 View Sharing of P21 DCP stipulates that where a view may be obstructed, built structures within the setback areas are to maximise visual access through the structure, for example, by the provision of an open structure or transparent building material. While the existing garage was not constructed with transparent materials, it does achieve a complementary design with the existing garage of the property to the east, being 118A Prince Alfred Parade.

A comprehensive View Loss Assessment was conducted and can be found within this report under section C1.3 View Sharing.

Furthermore, this application has undergone an independent assessment under its own merits in conjunction with the relevant controls under the P21 DCP and PLEP 2014.

REFERRALS

Internal Referral Body	Comments
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 relevant local provisions. The proposal is for the alterations and additions to the existing dwelling, including a pedestrian walkway and an additional storey. No native trees or vegetation are proposed to be impacted. The proposal complies with biodiversity 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>Coastal Management Act 2016</p> <p>The subject site has been identified as being within the coastal zone and therefore <i>Coastal Management Act 2016</i> is applicable to the proposed development.</p> <p>The proposed development is in line with the objects, as set out under Clause 3 of the <i>Coastal Management Act 2016</i>.</p> <p>State Environmental Planning Policy (Coastal Management) 2018</p> <p>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.</p> <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><u>Comment:</u></p> <p>As assessed in the submitted Statement of Environmental Effects (SEE) report prepared by Vaughan Milligan Development Consulting Pty. Ltd dated October 2019 and Council accepts the assessment, the DA satisfies requirements under clauses 13, 14 and 15 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 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</p>

Internal Referral Body	Comments
	<p>relevant B3.7 Estuarine Hazard Controls will apply to any proposed development of the site.</p> <p>Estuarine Risk Management</p> <p>In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.63m 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.</p> <p>On internal assessment, the ground level for the proposed additions and alterations is at 13.2m AHD and is above the applicable EPL of 2.63m AHD for the site.</p> <p>The proposed development is therefore able to satisfy the relevant estuarine risk management requirements of P21 DCP.</p>
NECC (Development Engineering)	<p>The development proposes to provide private pathway, concrete block wall/fencing and garden bed within the road reserve, as result comments/approval from Stephen Watson Manager Transport & Civil Infrastructure Assets is requested prior to providing comments.</p> <p>Dated 23/01/2020</p> <p>The development/site is located in Geotechnical Hazard H1 Area, an "Acceptable Risk Management" level is achievable in accordance with the Geotechnical report. No Development Engineering objection to the proposed development.</p>
NECC (Riparian Lands and Creeks)	<p>This application was assessed under Pittwater 21 DCP B5.8 Water Quality Pittwater 21 DCP B8.2 Sediment and Erosion SEPP Coastal Management 2018 Coastal Environment Zone</p> <p>The proposal does not increase impervious area, therefore water quality controls do not apply. If the outlet to Pittwater is updated, conditions apply. Sediment and erosion control must be installed prior to any disturbance of soil on site (including for the outlet) and maintained until work is complete.</p>
Road Reserve	<p>There is no impact on existing road assets.</p> <p>Development Engineering to assign appropriate conditions in relation to structures on Council's road reserve. The elevated walkway from the Council footway to the property will require a s138/s139 Road Act application to be submitted with all relevant details and submitted to Development Engineering for formal</p>

Internal Referral Body	Comments
	approval. The dwelling shall not rely on the elevated walkway for support and shall be designed as a stand alone structure should it ever need to be removed from the road reserve.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
Aboriginal Heritage Office	<p>Reference is made to the proposed development at 118 Prince Alfred Parade, Newport, and Aboriginal heritage.</p> <p>No sites are recorded in the current development area. Furthermore, the area has been subject to previous disturbance reducing the likelihood of surviving unrecorded Aboriginal sites.</p> <p>Given the above information, the Aboriginal Heritage Office considers that there are no Aboriginal heritage issues for the proposed development.</p> <p>Should any Aboriginal sites be uncovered during earthworks, works should cease and Council, the Department of Planning, Industry and Environment (DPIE) and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.</p> <p>If you have any queries, please contact Susan Whitby on (02) 9976 1682.</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. A358496_02 on 16 September 2019).

SEPP (Infrastructure) 2007Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018

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

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

- (1) *The following may be carried out on land identified as “coastal wetlands” or “littoral rainforest” on the Coastal Wetlands and Littoral Rainforests Area Map only with development consent:*
- (a) *the clearing of native vegetation within the meaning of Part 5A of the Local Land Services Act 2013,*
 - (b) *the harm of marine vegetation within the meaning of Division 4 of Part 7 of the Fisheries Management Act 1994,*
 - (c) *the carrying out of any of the following:*
 - (i) *earthworks (including the depositing of material on land),*
 - (ii) *constructing a levee,*
 - (iii) *draining the land,*
 - (iv) *environmental protection works,*
 - (d) *any other development.*

Comment:

This Clause is not relevant to the subject site. As such, no comment is required.

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:

This Clause is not relevant to the subject site. As such, no comment is required.

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
hazards.*

Comment:

This Clause is not relevant to the subject site. As such, no comment is required.

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 raised no issues in relation to the proposed development being within the Coastal Environment Area. As such, Council (as the consent authority) can be 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 raised no issues in relation to the proposed development being within the Coastal Environment Area. As such, Council (as the consent authority) can be 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 raised no issues in relation to the proposed development being within the Coastal Environment Area. As such, Council (as the consent authority) can be 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.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies

Height of Buildings:	8.5m	11.1m	30.5%	No
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Compliance Assessment

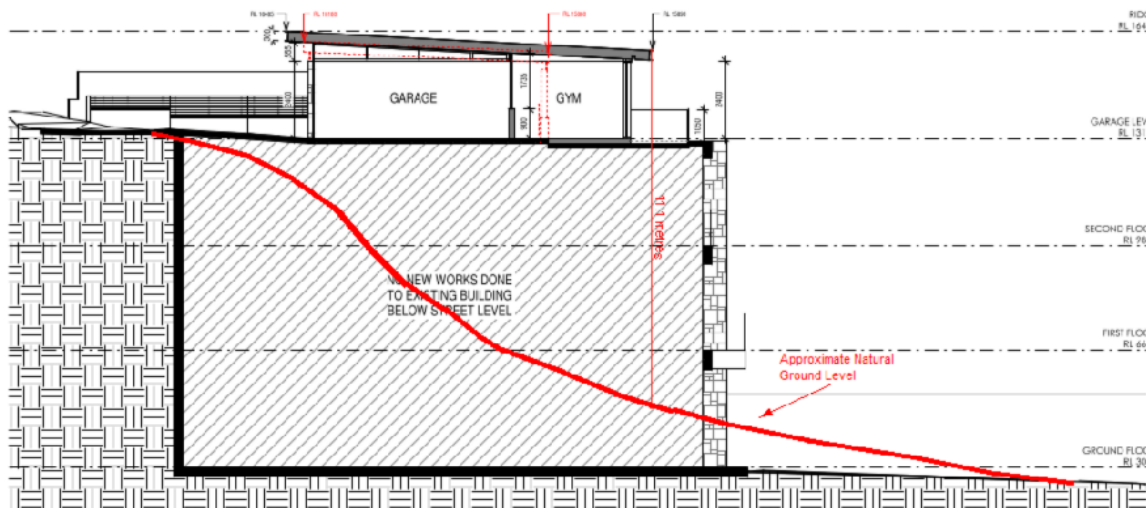
Clause	Compliance with Requirements
4.3 Height of buildings	No
4.6 Exceptions to development standards	Yes
7.1 Acid sulfate soils	Yes
7.7 Geotechnical hazards	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	11.1m
Percentage variation to requirement:	30.5%



Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 - Height of Buildings development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *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 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.'*

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:

"It is unreasonable and unnecessary to require strict compliance with the development standard as the proposal provides for the alterations and additions to an existing building, which is constrained by the nature of the existing development on site, together with the sloping topography of the site. It is considered that the proposal achieves the Objectives of Clause 4.3 and that the development is justified in this instance for the following reasons:

- *The modifications to the existing building are considered to be compatible with the form and nature of the surrounding development.*
- *The proposal is consistent with the character of development in the locality. The proposal sees the construction of a new skillion roof that will not result in any loss of views for neighbouring sites.*
- *The development will maintain a compatible scale relationship with the existing residential*

development in the area. Development in the vicinity has a wide range of architectural styles and, given the variety in the scale of development, this proposal will reflect a positive contribution to the streetscape.

- *The proposed new works do not present any unreasonable additional impacts in terms of view loss for neighbours, or bulk and scale.*
- *The proposed new works provides for improved amenity, is considered to promote good sustainable design and enhance the residential amenity of the building's occupants and the immediate area, which is consistent with the Objectives of 1.3(g) of the EPA Act, which is a suitable environmental planning ground that justifies the flexible application of 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 the existing streetscape. 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 site was heavily excavated during the construction of the dwelling, however the existing dwelling is located on a slope of approximately 35% and the design of the existing dwelling steps with the steep topography of the subject site. The proposed development, located on the street level, will maintain the design of the dwelling to allow for continuity of the visual bulk and scale. The proposed development, when viewed from the street and surrounding developments, will present as a 2 vehicle garage and entry way. As such, the proposed development is considered to be relatively minor in nature and will have minimal impact upon the amenity of adjoining properties, and properties located on Elvina Avenue, Newport.

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

Development Standard Objectives

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:

Despite the variation to the building height control, which occurs as a result of the existing development on the site, the proposed works to the existing dwelling are considered to be in keeping with the desired future character of the locality. The design, colour schedule and external material finishes are in keeping with contemporary and modern designs implemented in new developments within the Newport area, particularly waterfront developments along Pittwater Waterway.

b) 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 the section of the escarpment is typified by dwellings oriented towards the north-west in order to obtain views and, due to the topography of the site, contain garages (some with balconies north of the garage) at the street level, in order to achieve compliance with the vehicle parking requirements under the P21 DCP. As discussed above, the existing dwelling is located on a slope of approximately 35%, as are the adjoining properties. Therefore, the proposed alterations and additions will achieve compatibility with the height and scale of surrounding and nearby developments.

c) to minimise any overshadowing of neighbouring properties,

Comment:

Shadow diagrams were provided with this application. As such, no unreasonable overshadowing to adjoining properties will arise as a result of the proposed development.

d) to allow for the reasonable sharing of views,

Comment:

Compatibility is further enhanced by the fact that there are no unreasonable impacts upon the amenity of adjacent, and nearby, properties as a consequence of this breach of the height control in terms of overlooking, overshadowing or view loss. The resident at 2 Elvina Avenue, Newport has raised concern with regards to the building height obscuring their water views. The proposed development will increase the building height, however the resident at 2 Elvina Avenue, Newport will still have expansive water views of Pittwater Waterway. As such, the proposed development will allow for the reasonable sharing of views.

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

Comment:

The proposed development has been designed to respond sensitively to the natural topography of the site.

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

Comment:

Due to the steep topography of the site, and the need for off-street vehicle parking, the subject site, and dwellings within the immediate vicinity, do not have significant vegetation within the front setback. As such, the proposed development will not result in an adverse visual impact upon the natural environment of the site. The subject site is not located within a heritage conservation area, nor is the subject site a heritage item.

Zone Objectives

The underlying objectives of the E4 Environmental Living zone are:

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 site, and its location along Prince Alfred Parade, and adjoining Crystal Bay in Pittwater, is considered to be an area of special visual and aesthetic value. The proposal provides for modest alterations and additions to an existing residential dwelling, including a new garage and gym area in a manner which will retain the single dwelling character of the site and developments in the immediate vicinity. The stepped built complementing the steep topography of the site, modulation of the street front facade and the side elevations will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

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

Comment:

The design, shown on plans prepared by THW Architects, has been prepared to ensure the visual bulk and overall height of the dwelling is effectively managed. The design is considered to be an improvement in terms of the building's appearance and visual impact and for these reasons, the development does not result in an adverse impact on the special aesthetic values of the site.

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

Comment:

The proposal provides for a new garage, driveway modification and gym area with new entry cover with a contemporary skillion roof form. As the design utilises a recessive colour palette,

the building respects the predominant scale of the development in the locality. The setbacks are compatible with the existing surrounding developments, and the proposal does not have an adverse impact on long distance north-facing views of Pittwater Waterway.

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

Comment:

The proposed development does not result in the removal of any significant vegetation, nor does the proposal include works within close proximity to the foreshore area. The proposed development is unlikely to impact upon existing wildlife corridors and riparian vegetation.

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.

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.

7.1 Acid sulfate soils

Under Clause 7.1 Acid Sulfate Soils of *PLEP 2014*, despite subclause (2), 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 development is accompanied by a Geotechnical Assessment Report in which the geotechnical engineer determines that, *"there were no indicators of Acid Sulfate Soils within the site whilst the proposed works will not lower the water table and will have negligible impact on local hydrogeological conditions. As such, no further investigation or reporting is required in regard to Acid Sulfate Soils as part of this proposed development application [sic]"*. Council, as the consent authority, can be satisfied that the proposed works are unlikely to lower the watertable.

7.7 Geotechnical hazards

Under Clause 7.7 Geotechnical Hazards of *PLEP 2014*, development consent must not be granted to development on land to which this clause applies unless:

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

Comment:

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

(b) the consent authority is satisfied that:

- (i) the development is designed, sited, and will be managed to avoid any geotechnical risk and*
- (ii) if the risk or impact cannot be reasonably avoided - the development is designed, sited and*
- (ii) if that risk or impact cannot be minimised - the development will be managed to mitigate the*

Comment:

A Geotechnical Assessment Report accompanies this application. This report has been prepared by a suitably qualified Geotechnical Engineer in accordance with Council's Geotechnical Risk Management Policy for Pittwater. 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 Crozier Geotechnical Consultants. Council's Development Engineer has reviewed this application and recommended conditions of consent to ensure compliance with the geotechnical recommendations are achieved.

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

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	Nil	100%	No
Rear building line	FBL Applies	7.5m (from FBL)	N/A	Yes
Side building line	2.5m (western boundary)	1.5 - 3.0m	40%	No & Yes
	1m (eastern boundary)	0.4 - 3.1	60%	No & Yes
Building envelope	3.5m (western elevation)	Outside envelope	17.1%	No
	3.5m (eastern elevation)	Outside envelope	25.7%	No
Landscaped area	60%	33%	45%	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: $38/40 \times 100 = 95$ then $100 - 95 = 5\%$ variation)

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.10 Newport Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.7 Estuarine Hazard - Low density residential	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.20 Protection of Estuarine Water Quality	Yes	Yes
B5.8 Stormwater Management - Water Quality - Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	No	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
C1.13 Pollution Control	Yes	Yes
C1.23 Eaves	Yes	Yes
D10.1 Character as viewed from a public place	Yes	Yes
D10.4 Building colours and materials	Yes	Yes
D10.7 Front building line (excluding Newport Commercial Centre)	No	Yes
D10.8 Side and rear building line (excluding Newport Commercial Centre)	No	Yes
D10.11 Building envelope (excluding Newport Commercial Centre)	No	Yes
D10.13 Landscaped Area - Environmentally Sensitive Land	No	Yes
D10.18 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

C1.3 View Sharing

A submission has been received from a neighbouring property, being 2 Elvina Avenue, Newport (to the south of the subject site - uphill) with concerns relating to the potential view loss associated with the proposed works. As such, a view loss assessment has been conducted.

View Loss Assessment

The potentially affected view is accessed from the internal living and dining area and the balcony, which is located on the north side of the ground floor level of the dwelling. The view loss assessment takes into consideration views obtained in a standing and seated position. The proposed development will result in the loss of view of the water through the existing garage and the lift. However, the obscured, but expansive views, facing north-west, of Pittwater Waterway will be maintained.

In regards to C1.3 View Sharing of P21 DCP any concerns relating to view loss will consider the Planning Principle for view sharing *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*. It is a requirement of this Planning Principle that a four part test be undertaken to consider the extent of views potentially impacted by the proposed development.

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

Step 1. Nature of the views affected

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

Comment to Step 1:

The site was inspected on 23 January 2020, with a friend of the owner present. The occupants of 2 Elvina Avenue currently enjoy obscured, but expansive, water views facing north-west towards Pittwater Waterway, as well as an obscured view of the water through the existing garage and lift at 118 Prince Alfred Parade (Image 1.). This view is obtained over the rear boundary from various areas within the site. This view does not contain any structure(s) that is considered to be 'iconic'.



Image 1. North-west facing views from the ground floor balcony; standing.

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

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

Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic".

Comment to Step 2:

This view is obtained over the rear boundary in a standing and seated position from various areas within the subject site, specifically the ground floor internal living and dining areas and the balcony (Image 2. - Image 8. inclusive).



Image 2. North-west facing views from ground floor living room; sitting.



Image 3. North-west facing views from ground floor living room; standing.



Image 4. North-west facing views from ground floor dining table; sitting.



Image 5. North-west facing views from ground floor dining table; standing.



Image 6. North-west facing views from lower ground floor external sitting area; standing.



Image 7. North-west facing views from lower ground floor external sitting area; sitting.



Image 8. North-west facing views from the balcony; sitting.

Step 3. Extent of impact

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

Comment to Step 3:

The proposed development includes the demolition and rebuilding of a 2 car garage, with a gym and balcony located on the street level behind the garage as well as a new pedestrian walkway and roof structure over the walkway and external staircase. This development will result in a minor increase to the existing building height being 305mm. The views enjoyed by the occupants of 2 Elvina Avenue are obtained over the rear boundary line. As outlined under Step 1, whole views are valued more highly than partial views, and, in this instance, the partial water view obtained through the lift and rear corner of the garage is valued less than the views obtained over the existing garage structure.

Considering the nature of the view impacted, and the retention of the existing water views over the garage, the extent of view loss is best described, in this instance, is considered to be negligible.

Step 4. Reasonableness of the proposal that is causing the impact

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

Comment to Step 4:

The proposed development is recognised as resulting in some minor numerical non-compliant built form elements. Due to the significant slope of the topography and the siting of the existing dwelling, the proposed alterations and additions forward of the front setback will result in a breach to the maximum building height, front setback and side (eastern) boundary setback. However, it is considered the proposed development is complementary to the neighbouring properties, as well as achieving a built form that is consistent with other developments located along Pittwater Waterway. As such, the proposed development will result in a development that has been designed to complement the design of the existing dwelling and that of adjoining and surrounding developments.

The proposed development has been considered against the underlying outcomes and controls within C1.3 View Sharing of P21 DCP as outlined below:

Outcomes

A reasonable sharing of views amongst dwellings.

Comment:

The proposed development will maintain a reasonable sharing of views amongst dwellings. The development application has provided adequate information to undertake a full and proper assessment of any view loss. The proposal will result in a negligible loss of view from 2 Elvina Avenue towards Pittwater Waterway. This loss of view is not unreasonable and will maintain reasonable view sharing through, and over, properties. Council received 3 submissions from residents within the immediate vicinity, 1 specifically that raised concerns with regard to immediate view loss as a result of the proposed development. The other 2 submissions were more concerned with the potential view loss that the locality would experience as a result of the development, rather than the immediate loss of view from their properties.

The proposed development has been assessed against the four-part View Loss Assessment established by the NSW Land and Environment Court and is considered to be acceptable.

Views and vistas from roads and public places to water, headland, beach and/or bush views are to be protected, maintained and, where possible, enhanced.

Comment:

The proposed development will not impact upon views and vistas from roads and public places. The existing dwelling achieves a western side boundary setback ranging between 2.2m and 3.6m. As such, any pedestrian or motorist passing the subject site will be able to view Pittwater Waterway through this spatial separation between the subject site and 116A Prince Alfred Parade, Newport.

Canopy trees take priority over views.

Comment:

The proposed development does not involve the removal of any canopy trees.

The information provided with the development application, in conjunction with a site visit, has allowed Council to accurately establish the level of view loss from the nearby property, being 2 Elvina Avenue, Newport. Council is satisfied that the proposed development achieves consistency with the outcomes of Clause 1.3 View Sharing of P21 DCP and the Land and Environment Court's Planning Principle for view sharing *Tenacity Consulting v Warringah Council [2004] NSWLEC 140*.

C1.5 Visual Privacy

The proposed development involves the construction of a new garage, gym and balcony. The balcony's orientation is to the north-west with views towards Pittwater Waterway. Due to the steep topography of the immediate vicinity, the proposed balcony is likely to result in overlooking into the main private open space of the adjoining properties to the west and east, being 116 and 118A Prince Alfred Parade. It is noted that the adjoining properties both have sizeable balconies located to the rear of the garages on the respective lots.

To reduce the potential for direct overlooking, a condition of consent has been recommended to install planter boxes along the western, northern and eastern elevations of the balcony. While the control states that *'elevated decks and pools, verandahs and balconies should incorporate privacy screens where necessary and should be located at the front or rear of the building'*, the installation of privacy screens along the eastern and western elevations will only enhance the bulk and scale of the building, as well as further contribute to the building height non-compliance. In this instance, Council can be satisfied that the proposed development achieves consistency with the outcomes of this control.

D10.7 Front building line (excluding Newport Commercial Centre)

This control requires all development to be setback at least 6.5m from the front building line. The proposed development will have a nil front setback. This represents a variation to the control of 100%. Where the outcomes of this control can be achieved, Council may accept a variation to these building lines in consideration of maintaining established building lines. In this instance, the proposed development will maintain the established building lines. Additionally, where carparking is to be provided on steeply sloping sites, a reduce or nil setback for carparking structures may be considered.

Merit Consideration

With regard to the consideration of a variation, the proposed development is considered against the underlying objectives of the control as follows:

Achieve the desired future character of the Locality.

Comment:

Under Clause A4.10 Newport Locality of P21 DCP, the proposed development is consistent with the objectives of the desired future character of the Newport. The proposal does not result in the removal of native plant species. The bulk and scale of the development is minor in nature, as the proposed development is consistent with the existing development, and with those that are surrounding. The proposal is unlikely to result in any unreasonable amenity impacts upon adjoining properties.

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

Comment:

The proposed development is unlikely to impact upon the views and vistas to and/or from public and private places.

The amenity of residential development adjoining a main road is maintained.

Comment:

Due to the steep topography of the site, the primary private open space is located a reasonable distance from the street frontage. As such, the proposed development is unlikely to reduce the amenity of residential development adjoining a main road.

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

Comment:

The location of the proposed development on the site does not involve the removal of vegetation. As such, the built form is not technically visually reduced. However, the proposed works are considered to be minor in nature and visually consistent with the bulk and scale of surrounding developments.

Vehicle manoeuvring in a forward direction is facilitated.

Comment:

Due to site constraints, vehicle manoeuvring in a forward direction cannot be facilitated. However, Council's Development Engineer has reviewed the proposed development and raised no objection to the non-compliance with this objective.

To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.

Comment:

The proposed development will positively enhance the existing streetscape, while promoting the bulk and scale that is consistent with the height of adjoining buildings and the natural environment.

To encourage attractive street frontages and improve pedestrian amenity.

Comment:

The proposed development will achieve continuity with the street frontages of developments located on the northern side of Prince Alfred Parade, particularly to those within the immediate vicinity of the subject site. Thus resulting in an attractive and consistent street frontage. Additionally, the proposed pedestrian walkway will improve pedestrian amenity and safety when entering and exiting the subject site.

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

Comment:

The proposed development will result in a setback and structure that is similar in nature to what is existing - that is, replacing a garage with a garage along the front frontage, and a gym to the rear. As such, the proposal reinforces and sensitively relates to the existing spatial characteristics of the existing urban environment, resulting in minimal amenity impacts to adjoining properties.

While the proposed development is numerically non-compliant with the requirements of this control, it is consistent with the objectives of this control. Therefore, the proposal is supported on merit.

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

This control requires all development to achieve the following setbacks: 2.5m at least on one side, and 1.0m on the other side. The proposed development will achieve the following setbacks: 1.5 - 3.0m along the western elevation (due to the angle of the built structure) and 0.4 (the roof) - 3.1m (external wall) along the eastern elevation. The proposed development achieves compliance with the rear boundary setback requirement.

Merit Consideration

With regard to the consideration of a variation, the proposed development is considered against the underlying objectives of the control as follows:

To achieve the desired future character of the Locality.

Comment:

Under Clause A4.10 Newport Locality of P21 DCP, the proposed development is consistent with the objectives of the desired future character of the Newport. The proposal does not result in the removal of native plant species. The bulk and scale of the development is minor in nature, as the proposed development is consistent with the existing development, and with those that are surrounding. The proposal is unlikely to result in any unreasonable amenity impacts upon adjoining properties.

The bulk and scale of the built form is minimised.

Comment:

The proposed development will result in a bulk and scale that is in keeping with the extent of the surrounding developments. Additionally, the proposed colour schedule and external finishes will visually complement the locality, thus visually minimising the proposed development.

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

Comment:

While the proposed development will increase the building height by 305mm, the reasonable preservation of views and vistas to and/or from public/private places is maintained.

To encourage view sharing through complimentary siting of buildings, responsive design and well-positioned landscaping.

Comment:

As discussed above, the proposed development will encourage view sharing through responsive design and complementary siting of buildings.

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

Comment:

The proposed development, being a new garage, gym and balcony, is unlikely to impede upon the existing privacy, amenity and solar access to adjoining properties.

Substantial landscaping, a mature tree canopy and an attractive streetscape.

Comment:

No mature canopy trees are located on the subject site or on those adjoining to provide an attractive streetscape. The existing streetscape has multiple hedges located within Council's road reserve - these are proposed to be retained. The proposal does not involve additional landscape planting. However, due to the steep topography of the subject site and those adjoining, the existing streetscape in the immediate vicinity is primarily driveways and garage frontages. The proposed development will enhance this streetscape through good design and complementary colours and external materials.

Flexibility in the siting of buildings and access.

Comment:

The proposed development will not impact upon the siting of the dwelling. Additionally, alternative access to the property will be retained through the existing external staircase located within the front setback along the eastern elevation.

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

Comment:

The location of the proposed development on the site does not involve the removal of vegetation. As such, the built form is not technically visually reduced. However, the proposed works are considered to be minor in nature and visually consistent with the bulk and scale of surrounding developments.

To ensure a landscaped buffer between commercial and residential zones is established.

Comment:

The subject site is located within, and surrounded by, residential zoning. As such, this objective is not relevant to this application.

While the proposed development is numerically non-compliant with the requirements of this control, it is consistent with the objectives of this control. Therefore, the proposal is supported on merit.

D10.11 Building envelope (excluding Newport Commercial Centre)

The site has been significantly excavated, and as such, the natural ground level has been extrapolated. The proposed development breaches the building envelope along the western and eastern elevations. This represents variations of approximately 17.1% and 25.7%, respectively. Under this control, consideration of a variation may be permitted if the proposed works are situated on a slope of 30% or more. The proposed works will be located on a slope that exceeds 30%.

Merit Consideration

With regard to the above consideration for a variation, the development is considered against the underlying objectives of the control as follows:

To achieve the desired future character of the Locality.

Comment:

Under A4.10 Newport Locality of P21 DCP, the proposal is consistent with the objectives of the desired future character of Newport. The proposal will achieve a height that is well below the existing tree canopy. Furthermore, no native plant species are proposed to be removed as a result of the development. The built form is unlikely to cause an unreasonable amenity impact on adjoining properties.

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

Comment:

The proposed development will positively enhance the existing streetscape, while promoting a bulk and scale that is consistent with the height of adjoining buildings and the natural environment. Additionally, the proposed colour schedule and external finishes will promote an aesthetically appealing streetscape.

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

Comment:

The built form setbacks along the western boundary achieve compliance for the majority of the built form. As such, the proposed development will positively contribute to the spatial characteristics of the existing natural environment.

The bulk and scale of the built form is minimised.

Comment:

The proposed development will result in a bulk and scale that is in keeping with the extent of the surrounding developments.

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

Comment:

The proposed development is unlikely to impact upon the views and vistas to and/or from public and private places.

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

Comment:

The proposed development, being a new garage, gym and balcony, is unlikely to impede upon the existing privacy, amenity and solar access to adjoining properties.

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

Comment:

The location of the proposed development on the site does not involve the removal of vegetation. As

such, the built form is not technically visually reduced. However, the proposed works are considered to be minor in nature and visually consistent with the bulk and scale of surrounding developments.

While the proposed development is numerically non-compliant, it is consistent with the underlying objectives of the control, and is therefore supported on merit.

D10.13 Landscaped Area - Environmentally Sensitive Land

The subject site is located within Area 1 of the Landscaped Area Map, therefore the site requires a minimum of 60% landscaped area. The proposed development results in a numerically non-compliant landscaped area of 33%; this represents a variation of 45%. It should be noted that, by definition under the PLEP 2014, landscaped area is considered to be anywhere on the site that allows grass or trees to grow. As such, the proposed development will not reduce the landscaped area of the site, as all the proposed works are located over existing hardstand surfaces.

While the proposal is numerically non-compliant, it is considered to be consistent with the underlying objectives of the control, and is therefore supported on merit.

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 \$ 678 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 135,500.

CONCLUSION

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

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Pittwater Local Environmental Plan 2014 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of *PLEP 2014* as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2019/1192 for Alterations and additions to a dwelling house on land at Lot 32 DP 13457, 118 Prince Alfred Parade, NEWPORT, 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
A 01 -C - Site Plan	11 October 2019	THW Architects
A 02 -C - Garage Level	11 October 2019	THW Architects
A 10 -C - North Elevation	11 October 2019	THW Architects
A 11 -C - South Elevation	11 October 2019	THW Architects
A 12 -C - East Elevation	11 October 2019	THW Architects
A 13 -C - West Elevation	11 October 2019	THW Architects
A 20 -C - Section 1	11 October 2019	THW Architects
A 102 -C - Demolition Plan	11 October 2019	THW Architects

Engineering Plans		
Drawing No.	Dated	Prepared By
SW1 & SW2 - Stormwater Management Plan	September 2019	Barrenjoey Consulting Engineers Pty Ltd
CIV1 - Sediment & Erosion Control Plan	September 2019	Barrenjoey Consulting Engineers Pty Ltd

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Conceptual Stormwater Management Plan Design Certificate	20 September 2019	Barrenjoey Consulting Engineers Pty Ltd
BASIX Certificate A358496_02	16 September 2019	THW Architects
Geotechnical Assessment	October 2019	Crozier Geotechnical Consultants

- b) Any plans and / or documentation submitted to satisfy the Deferred Commencement Conditions of this consent as approved in writing by Council.
- c) Any plans and / or documentation submitted to satisfy the Conditions of this consent.
- d) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	17 September 2019	THW Architects

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

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

2. Prescribed Conditions

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

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

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

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

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
 - (i) protect and support the adjoining premises from possible damage from the excavation, and
 - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
 - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
 - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost

of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

3. General Requirements

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

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

waste/recycling centres.

- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.

- (k) Prior to the commencement of any development onsite for:

- i) Building/s that are to be erected
- ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
- iii) Building/s that are to be demolished
- iv) For any work/s that is to be carried out
- v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.

- (m) 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 \$677.50 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$135,500.00.

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.

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

The applicant is to lodge a bond with Council of \$2000.00 as security against any damage or failure to complete the construction of road pavement/shoulder reconstruction works 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 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 PITTWATER DCP21, 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. **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 Crozier Geotechnical Consultants dated October, 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 Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure geotechnical risk is mitigated appropriately.

9. **Traffic Management and Control Plan**

The Applicant is to submit an application for Traffic Control Plan for works proposed within the the road reserve to Council for approval prior to issue of the Construction Certificate. The Traffic Control 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. **Boundary Identification Survey**

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

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

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

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

11. **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 elevated walkway 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:

- o Structural design with levels from the existing footpath to the property boundary.
- o The walk way must be designed as stand alone structure, should structure should it ever need to be removed from the road reserve.

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.

12. **Design of Outlet Structure**

The outlet structure discharging stormwater into the creek must be designed in accordance with DPI Water's Guidelines for Outlet Structures on Waterfront land. Guidelines can be found at <https://www.industry.nsw.gov.au/water>.

This design is to be submitted to the Certifying Authority prior to the release of the Construction Certificate.

Reason: To protect the surrounding creek bank from the effects of localised erosion.

13. **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.

14. **Planter Boxes**

Planter boxes, with a depth of 600mm, are to be installed along the eastern, northern and western elevations of the proposed balcony. The plants chosen are to be locally native species. The plant species chosen will achieve a minimum height of 600mm (measure from the top of the planter box).

The plants are to be maintained for the life of the development and is to be replaced if any part of it dies, is destroyed or removed.

Reason: To ensure visual privacy is maintained between adjoining properties.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

15. **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

16. **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.

17. **Civil Works Supervision**

The Applicant shall ensure all civil works approved in the Section 138 approval are supervised by an appropriately qualified and practising Civil Engineer.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority and/or Roads Authority.

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

18. **Aboriginal Heritage**

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

Environment and Climate Change (DECC).

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

Reason: Aboriginal Heritage Protection. (DACAHE01)

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

19. **Certification Elevated Parking/walkway Work**

The Applicant shall submit a Structural Engineers' certificate certifying that the elevated parking facility was constructed in accordance within this development consent and the provisions of Australian/New Zealand Standard AS/NZS 2890.1:2004 parking facilities - Off-street car parking, in particular Section 2.4.5 Physical controls. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the final Occupation.

Reason: Compliance with this consent.

20. **Retaining wall**

The retaining wall works shall be certified as compliant with all relevant Australian Standards and Codes by a Structural Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any final Occupation Certificate.

Reason: Public and Private Safety

21. **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.

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

22. **No Planting Environmental Weeds**

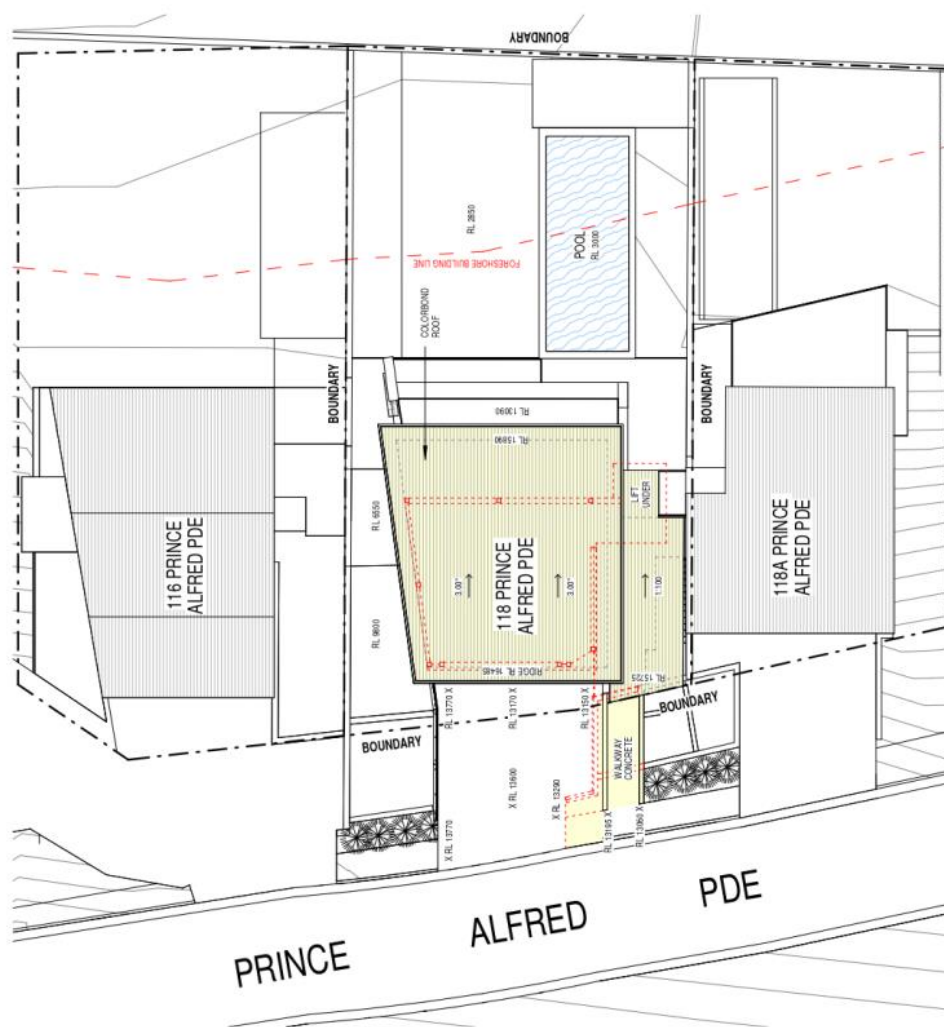
No environmental weeds are to be planted on the site. Information on weeds of the Northern Beaches can be found at the NSW WeedWise website (<http://weeds.dpi.nsw.gov.au/>).

Reason: Weed management.

23. **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.

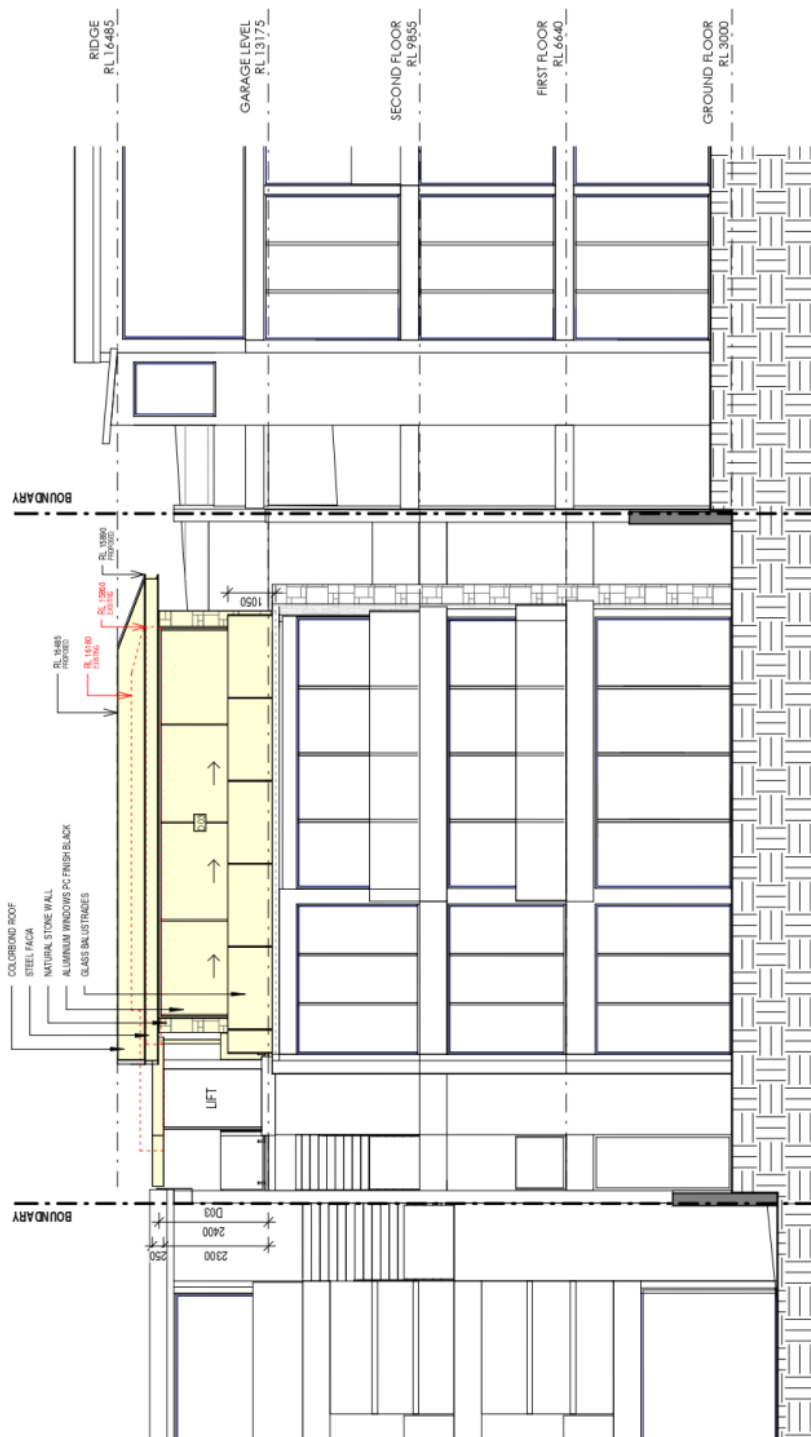
Reason: Wildlife protection



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ATTRACTIONS LANDSCAPES
118 PRINCE ALFRED PARADE, NEWPORT NSW, 2107

CLIENT
BRADLEY FRENCH

JOB NUM
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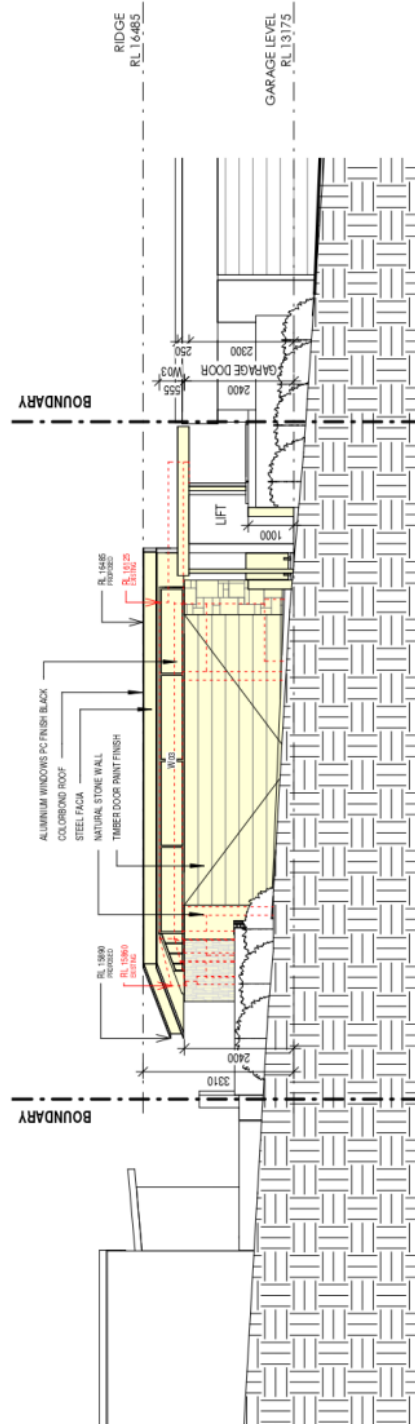
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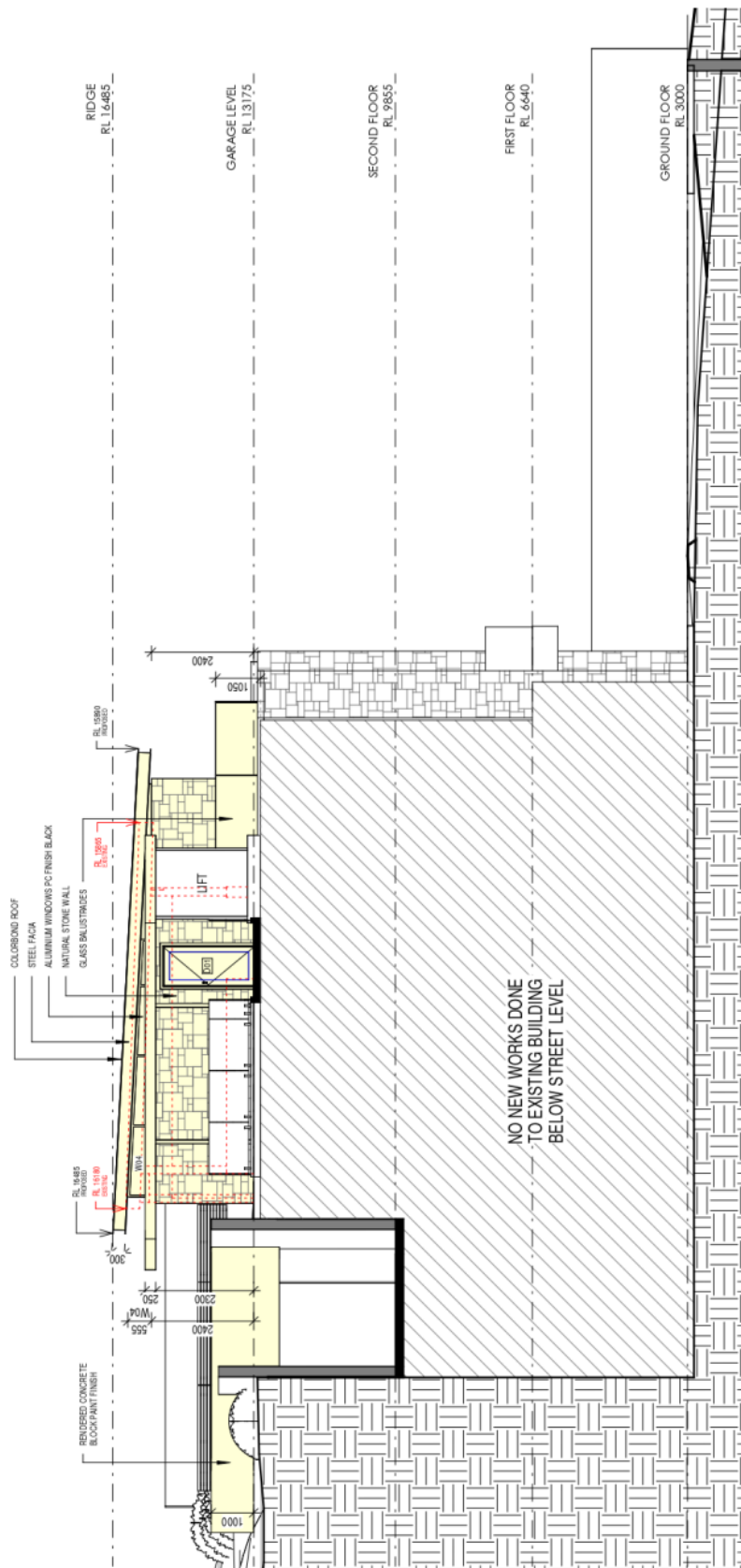
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PROJECT
ATTRACTIONS LANDSCAPES
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CLIENT
BRADLET FRENCH

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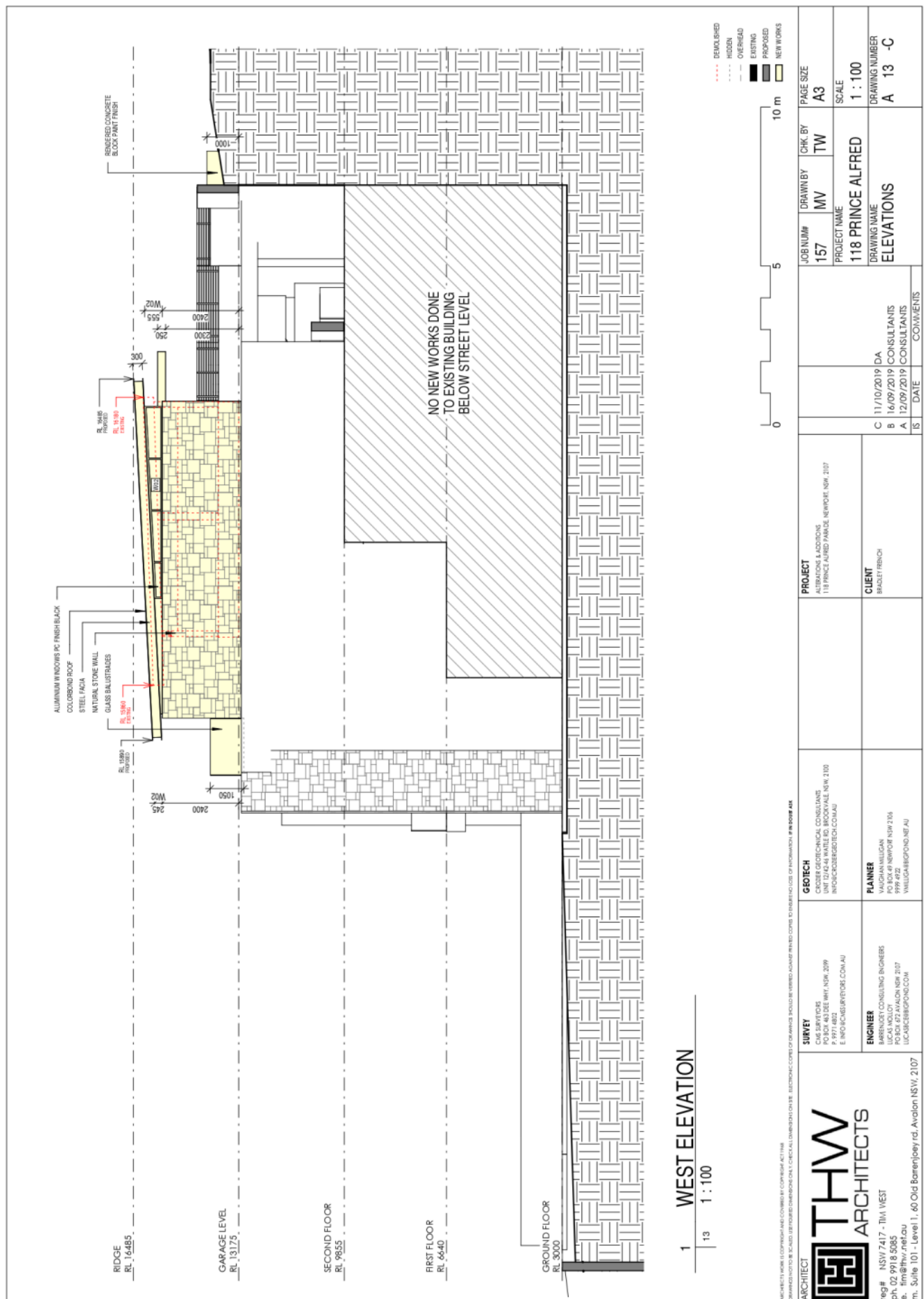
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COMMENTS



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APPENDIX: CLAUSE 4.6 SUBMISSION MAXIMUM BUILDING HEIGHT

Vaughan Milligan Development Consulting Pty Ltd

WRITTEN REQUEST PURSUANT TO CLAUSE 4.6 OF PITTWATER LOCAL ENVIRONMENTAL PLAN 2014

118 PRINCE ALFRED PARADE, NEWPORT

**PROPOSED ALTERATIONS AND ADDITIONS TO EXISTING DWELLING, INCLUDING NEW GARAGE, GYM
& DRIVEWAY MODIFICATIONS**

For: For alterations and additions to existing dwelling, including new garage, gym & driveway modifications
At: 118 Prince Alfred Parade, Newport
Owner: Mr Bradley French
Applicant: Mr Bradley French
C/- THW Architects

1.0 Introduction

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

2.0 Background

Clause 4.3 restricts the height of a building in this locality to a maximum of 8.5m and is considered to be a development standard as defined by Section 4 of the Environmental Planning and Assessment Act.

The proposed alterations and additions to the dwelling will see a minor increase in the overall building height by 305mm from 13.18m to 13.485m. The proposed building height will exceed Council's maximum building height by 4.985mm or 58.6% and therefore does not comply with this control.

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

3.0 Purpose of Clause 4.6

The Pittwater Local Environmental Plan 2014 contains its own variations clause (Clause 4.6) to allow a departure from a development standard. Clause 4.6 of the LEP is similar in tenor to the former State Environmental Planning Policy No. 1, however the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) suggests a similar approach to SEPP 1 may be taken in part.

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

118 Prince Alfred Parade, Newport

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

4.0 Objectives of Clause 4.6

The objectives of Clause 4.6 are as follows:

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

The development will achieve a better outcome in this instance as the site will provide for alterations and additions to an existing approved dwelling, which is consistent with the stated Objectives of the E4 Environmental Living Zone, which are noted as:

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

As sought by the zone objectives, the proposal will provide for alterations and additions to an existing dwelling to provide for increased amenity for its residents.

The new works maintain a bulk and scale which is in keeping with the extent of surrounding development, with a consistent palette of materials and finishes, in order to provide for high quality development that will enhance and complement the locality.

Notwithstanding the non-compliance with the maximum overall height, which will see an increase in the overall height by only 305mm, the new works will provide an attractive residential development that will add positively to the character and function of the local residential neighbourhood.

The siting of the new works at the garage level will mitigate any adverse impacts of overshadowing and loss of views for any neighbouring properties.

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5.0 Onus on Applicant

Clause 4.6(3) provides that:

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

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

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

6.0 Justification of Proposed Variation

There is jurisdictional guidance available on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Initial Action Pty Ltd vs Woollahra Municipal Council [2018] NSWLEC 11 Samadi v Council of the City of Sydney [2014] NSWLEC 1199*.

Paragraph 27 of the Samadi judgement states:

Clause 4.6 of LEP 2013 imposes four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(ii)).

Precondition 1 - Consistency with zone objectives

The site is located in the E4 Environmental Living Zone. The objectives of the E4 zone are noted as:

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

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Comments

It is considered that notwithstanding the extent of the non-compliance with the maximum building height control (4.985m or an increase of only 305mm), the proposed alterations and additions to the existing dwelling will be consistent with the individual Objectives of the E4 Environmental Living zone for the following reasons:

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

The proposal provides for modest alterations and additions including a new garage and gym area in a manner which will retain the single dwelling character of the site and the immediate area.

The site and its location in Prince Alfred Parade and adjoining Crystal Bay in Pittwater, is considered to be an area of special visual and aesthetic value.

The external form of the development is stepped with the sloping topography of the form, which will reduce the visual bulk of the development.

Further, the modulation of the street front façade and side elevations, will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and will not be a visually prominent element in the area.

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

The design prepared by THW Architects has been prepared to meet the client brief, together with ensuring that the visual bulk and overall height of the dwelling is effectively managed.

The design is considered to be an improvement in terms of the building's appearance and visual impact and for these reasons, the development does not result in an adverse impact on the special aesthetic values of the site.

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

The proposal provides for a new garage, driveway modification and gym area with new entry cover with a contemporary skillion roof form.

As the design utilises a recessive colour palette, the building respects the predominant scale of development in the locality.

The setbacks are compatible with the existing surrounding development and the proposal does not have an adverse impact on long distance views.

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

Precondition 2 - Consistency with the objectives of the standard

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

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

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

Comments

Despite the variation to the building height control which occurs as a result of the existing development on the site, the proposed works to the existing dwelling are considered to be in keeping with the desired future character of the locality.

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

The proposal is generally consistent with the height and scale of development in the locality.

Accordingly, we are of the view that the proposal is consistent with the objectives of the development standard.

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

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

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

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

- The proposed new works present only a modest increase (305mm) in height with a compatible bulk and scale and will maintain consistency with the extent of other residential development in the area. Furthermore, the works are in keeping with the character of the locality.

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- The overall bulk and scale of the new works will appropriately maintain the neighbour's amenity and will not see any unreasonable loss of solar access for the subject site and neighbouring properties.

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

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

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

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

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

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

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

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

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

Comment: Whilst it is not suggested that Council has abandoned its control, variations to the maximum building height control have been granted in the immediate vicinity, where Council has considered it appropriate to do so for development that meets the objectives of the zone. In this instance it is considered that the proposed development appropriately addresses the zone objectives and is worthy of the support of Council.

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

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

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

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

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

The proposed alterations and additions to the dwelling will see the existing height increased by 305mm to 13.485m or a variation to the height of 4.985m or 58.64%.

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

- The modifications to the existing building are considered to be compatible with the form and nature of the surrounding development.
- The proposal is consistent with the character of development in the locality. The proposal sees the construction of a new skillion roof that will not result in any loss of views for neighbouring sites.
- The development will maintain a compatible scale relationship with the existing residential development in the area. Development in the vicinity has a wide range of architectural styles and the given the variety in the scale of development, this proposal will reflect a positive contribution to its streetscape.
- The proposed new works do not present any unreasonable additional impacts in terms of view loss for neighbours, or bulk and scale.
- The proposed new work provides for improved amenity, is considered to promote good sustainable design and enhance the residential amenity of the building's occupants and the immediate area, which is consistent with the Objective 1.3 (g) of the EPA Act which is a suitable environmental planning ground which justifies the flexible application of the development standard.

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

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

It should be noted that a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but expressly noted that the Commissioner's decision on that point (that she was not "satisfied" because something more specific to the site was required) was simply a discretionary

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(subjective) opinion which was a matter for her alone to decide. It does not mean that Clause 4.6 variations can only ever be allowed where there is some special or particular feature of the site that justifies the non-compliance. Whether there are “sufficient environmental planning grounds to justify contravening the development standard”, it is something that can be assessed on a case by case basis and is for the consent authority to determine for itself.

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

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

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

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

- The proposed additions to the dwelling are compatible in scale to its surrounding neighbours, which promotes the orderly & economic use of the land.
- Similarly, the proposed roof level and parking area addition will provide for an appropriate level of family accommodation and improved amenity within a built form which is compatible with the streetscape of Prince Alfred Parade, which also promotes the orderly and economic use of the land.
- The proposal is considered to promote good design and amenity to the local built environment as appropriate views, solar access and privacy will be maintained for the neighbouring properties.

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

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7.0 Conclusion

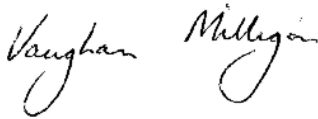
This development proposes a departure from the maximum building height control, with the proposed alterations and additions to the existing building to provide a maximum building height of 13.485m.

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

This objection to the maximum building height control specified in Clause 4.3 of the Pittwater LEP 2014 adequately demonstrates that the objectives of the standard will be met.

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

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



VAUGHAN MILLIGAN
Town Planner

ITEM 3.3	DA2019/1321 - 72 PITTWATER ROAD MANLY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	MATTHEW EDMONDS
TRIM FILE REF	2020/084876
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site and Elevation Plans 3 ↓ Clause 4.6 Report

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 grant Development Consent to DA2019/1321 for - alterations and additions to a dwelling house on land at Lot 1 DP 745249, 72 Pittwater Road Manly, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1321
Responsible Officer:	Nick Keeler
Land to be developed (Address):	Lot 1 DP 745249, 72 Pittwater Road MANLY NSW 2095
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Glenn Reginald Hammond Robyn Lea Hammond
Applicant:	Nick Karahalios
Application Lodged:	22/11/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	06/12/2019 to 13/01/2020
Advertised:	Not Advertised
Submissions Received:	1
Clause 4.6 Variation:	4.4 Floor space ratio: 46.7%
Recommendation:	Approval
Estimated Cost of Works:	\$ 135,300.00

PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for alterations and additions to the existing dwelling including the following works:

Ground Floor

- Partial demolition of rear and south facing walls at the rear of the existing dwelling.
- Demolition of existing study partition wall.
- New open plan kitchen/dining/living area opening into to the rear private open space area.
- New bathroom extended from the laundry. The existing laundry door and window is to be removed and replaced with a wall.

- Existing kitchen to be removed and replaced with a bedroom with new room configuration.

First Floor

- The existing living room will be reconfigured to a bedroom.
- The new rear addition will include a rumpus room which opens to a new balcony with privacy screens on the northern and southern sides.

The rear yard is re-turfed with all stormwater connected to the existing stormwater drainage system.

ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)

SITE DESCRIPTION

Property Description:	Lot 1 DP 745249 , 72 Pittwater Road MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of Pittwater Road.</p> <p>The site is irregular in shape with a frontage of 6.13m along Pittwater Road and a depth of 30.06m. The site has a surveyed area of 184m².</p>

The site is located within the R3 Medium Density Residential zone and accommodates two-storey semi-detached residential dwelling.

The site is generally flat and contains a small grassed area at the rear of the dwelling. A number of trees are located along the Pittwater Road street verge near the site.

Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by a variety of development including low density semi-detached residential dwellings, medium density residential flat buildings and shop top housing. A boarding house is located on the southern adjacent property. The site is located in the Pittwater Road Heritage Conservation Area.

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

Pre-lodgement Meeting **PLM2019/0073** was held on 07/05/2019 for Alterations and Additions to a dwelling house.

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	Mainly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000 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 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	(i) Environmental Impact

Section 4.15 Matters for Consideration'	Comments
the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Mr Philip Andrew Frawley	43 Whistler Street MANLY NSW 2095

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

- Privacy

The matters raised within the submissions are addressed as follows:

- *Concern is raised that the upper floor rear balcony will impact upon the privacy of the rear adjacent property.*

Comment:

A condition of consent is imposed to require screening vegetation capable of growing at a height of 4m be planted along the rear boundary. This vegetation will limit the direct overlooking impact from the upper level balcony on the rear adjacent property.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	Development Engineering has no objection to the application subject to the following conditions of consent.
Strategic and Place Planning (Heritage Officer)	<p>Discussion of reason for referral</p> <p>The proposal has been referred to heritage as it is in the Pittwater Road Conservation Area and within the vicinity of a number of heritage listed items:</p> <p>I200 - Salvation Army, private hotel - 61-63 Pittwater Road, Manly I202 - House - 80 Pittwater Road, Manly I203 - House - 82 Pittwater Road, Manly</p> <p>Details of heritage items affected</p> <p>Details of the heritage items as contained within the Manly heritage inventory are:</p> <p>I200 - Salvation Army, private hotel Statement of significance: This item is of local and state cultural heritage significance as it demonstrates the pattern of development of Manly and, in particular, that associated with Pittwater Road. Constructed on a transport corridor close to the Steyne, it is an important example of a hostel built by the Salvation Army for holiday-makers from the country, one of the first three built in Australia. It is a fine and unique example of a large scale hostel displaying elements of the free classical style of architecture.</p> <p>Physical description: A large scale 4 storey, tuck pointed red brick and painted brick hostel with timber, cantilevered verandah to first floor. Ornate plastered Free Classical facade. Verandah has decorative, scrolled metal awning brackets and organic styled timber valence above. Double hung windows to upper level and casement sashes with coloured glazing to ground floor level with coloured glazing in top. Glazed ceramic tiles to street level entrance with art nouveau motif. Double leaf paneled front door. The front of the building on the ground floor, was the original location of the communal dining room. "The garden roof is an outstanding feature of this modern</p>

Internal Referral Body	Comments		
	<p>hostel." (The War Cry, 8.11.1913)</p> <p>I202 - House - 80 Pittwater Road, Manly I203 - House - 82 Pittwater Road, Manly</p> <p><u>Statement of significance:</u> These buildings are good examples of a Late Victorian design. The items are of local cultural heritage significance as they demonstrate the pattern of development of Manly and in particular that associated with Pittwater Road. Constructed on the main road, they are associated with the development of the area prior to the introduction of the tram service. One of a pair, it is an uncommon example of its kind which contributes to the overall character of the Pittwater Conservation Area.</p> <p><u>Physical description:</u> One of a pair (Nos 80 and 82) of single storey late Victorian period weatherboard semi-detached cottage in the Villa style. The cottages have a hipped roof with dominant symmetrical gabled wings and bull nosed awning between. Gabled have decorative barge boards and timber louvres. Bay windows in front of gabled wing have 2 pane double hung sashes and a sheet metal roof.</p> <p>Pittwater Road Conservation Area</p> <p><u>Statement of significance:</u> This street pattern is distinctive and underpins the urban character of the area. The streets remain unaltered in their alignment, although the names of Malvern, Pine and North Steyne are now names for what were Whistler, Middle Harbour and East Steyne respectively.</p> <p><u>Physical description:</u> The streetscape of Pittwater Road is a winding vista of late 19th and early 20th century commercial and residential architecture of generally one or two floors - although there are exceptions such as the four storey private hotel. The streetscape provides a 19th century atmosphere due to it's scale, width and the number of extant Victorian structures. Within the streetscape there are a number of individually significant buildings which are listed separately. Adjacent streets generally comprise a consistent pattern of one and two storey residential cottages, with the occasional terrace.</p>		
	Other relevant heritage listings		
	Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005	No	
	Australian Heritage Register	No	
	NSW State Heritage	No	

Internal Referral Body	Comments
	Register
	National Trust of Aust (NSW) Register
	RAIA Register of 20th Century Buildings of Significance
	Other
	Consideration of Application
	<p>The proposal seeks consent for alterations and additions to the existing dwelling, including internal alterations, partial demolition of the external walls at the rear and an extension to the existing first floor. The proposed additions are mainly to the rear of the existing dwelling, behind the existing pitched roof.</p> <p>The proposed works are mainly at the rear and not visible from Pittwater Road, therefore there will be minimal impact upon the heritage items in the proximity and the conservation area.</p> <p>Therefore Heritage raises no objections and requires no conditions.</p> <p>Consider against the provisions of CL5.10 of MLEP. Is a Conservation Management Plan (CMP) Required? No Has a CMP been provided? No</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. A363626 dated 13 November 2019). A condition has been included in the recommendation of this report requiring compliance with the commitments indicated in the BASIX Certificate.

SEPP (Infrastructure) 2007Ausgrid

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) *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 proposed development, in accordance with its siting and design, is not expected to cause any adverse impact to the significance of the coastal use area. The development is in keeping with the prevailing built character of the area in terms of bulk and scale.

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 not expected to cause an increased risk of coastal hazards on the site or surrounding land.

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	6.5m	N/A	Yes

Floor Space Ratio	0.6:1 (110.4m ²)	0.88:1 (161.92m ²)	46.7% (51.52m ²)	No
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Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
4.4 Floor space ratio	No
4.6 Exceptions to development standards	Yes
5.10 Heritage conservation	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Floor space ratio
Requirement:	0.6:1
Proposed:	0.88:1
Percentage variation to requirement:	46.7%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.4 - Floor space ratio development standard, has taken into consideration the recent judgement contained within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards:

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

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

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

Comment:

Clause 4.4 - Floor space ratio development standard is not expressly excluded from the operation of this clause.

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment:

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

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

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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

The proposed development demonstrates an appropriate built form for the site with the overall bulk and scale of the existing dwelling is to be generally maintained. The alterations and additions are designed to respect the heritage significant of the locality and to reasonably minimise amenity impacts on the public domain and adjacent properties.

It is considered the applicant adequately justifies that strict numerical compliance with the floor space ratio development standard, in this instance, is both unreasonable and unnecessary.

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

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

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

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

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

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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Floor space ratio development standard and the objectives of the R3 Medium Density Residential zone. An assessment against these objectives is provided below.

Objectives of development standard

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

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

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

Comment:

The proposed development is not considered to unreasonable increase the bulk and scale of the existing buildings. The building additions are located towards the rear of the building and will not be directly perceivable from the public domain. No works are proposed to alter the facade of the building. The development is considered to be in keeping with the existing and desired future character of the locality.

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

Comment:

The proposed development is in keeping with the existing building density and is not discernible from the public domain. The heritage significance and streetscape character of the locality is not expected to be impacted.

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

Comment:

The proposed development is designed to limit visual impact by being positioned behind and lower than the existing dwelling roof ridge. The existing visual relationship of the dwelling with the streetscape character is not expected to be impacted.

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

Comment:

The proposed development is considered to reasonably respond to the spatial constraints of the site to ensure adverse environmental impacts to adjoining land and the public domain are limited.

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

Comment:

Not applicable.

Zone objectives

The underlying objectives of the R3 Medium Density Residential zone are:

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

Comment:

The existing semi-detached dwelling is to be retained with the proposed alterations and additions to improve the amenity of occupants of the building.

- *To provide a variety of housing types within a medium density residential environment.*

Comment:

The existing semi-detached dwelling is to be retained.

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

Comment:

No change to the existing residential land use is proposed.

- *To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*

Comment:

The proposed development is expected to provide a revitalised dwelling in an area of high amenity and aesthetic and heritage value. The proposed works are designed to respect the existing built form of the site and surrounds.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Comment:

Not applicable.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the R3 Medium Density Residential zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, and in accordance with correspondence from the Deputy Secretary on 24 May 2019, Council staff under the delegation of the Development Determination Panel, may assume the concurrence of the Secretary for variations to the Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

Mainly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 184m²	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling per 250m ²	1 dwelling	N/A	Yes
	Dwelling Size: 90m ²	161.92m ²	N/A	Yes
4.1.2.1 Wall Height	S: 6.5m (based on gradient 0)	5.7m	N/A	Yes
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.2m	N/A	Yes
	Pitch: maximum 35 degrees	7 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m	No change to existing setback	N/A	N/A
4.1.4.2 Side Setbacks and Secondary Street Frontages	S: 1.88m (based on wall height)	1.2m	36.2%	No
	Windows: 3m	1.2m	60%	No
4.1.4.4 Rear Setbacks	8m	6.5m	18.75%	No
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	34% (62.6m ²)	38.1%	No
	Open space above ground 25% of total open space	27.7% (17.2m ²)	10%	No
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	65.7% (41.1m ²)	N/A	Yes
4.1.5.3 Private Open Space	18m ² per dwelling	69.9m ²	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	No spaces	100%	No

***Note:** The percentage variation is calculated on the *overall* numerical variation (ie: for LOS - Divide the proposed area by the numerical requirement then multiply the proposed area by 100 to equal X, then 100 minus X will equal the percentage variation. Example: $38/40 \times 100 = 95$ 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
3.2 Heritage Considerations	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
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.6 Accessibility	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	No	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes

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

Detailed Assessment

3.4.1 Sunlight Access and Overshadowing

While the proposed development is expected to cause additional overshadowing of the southern adjacent property, the overshadowing does not impact any private open space or windows to internal living areas. The windows impacted on the adjacent dwelling are associated with bedrooms.

4.1.3 Floor Space Ratio (FSR)

The proposed development has a floor space ratio of 0.88:1 (161.92m²), which represents a variation of 46.7% to the prescribed 0.6:1 (110.4m²) FSR requirement.

Refer to Clause 4.6 Exceptions to Development Standards of MLEP 2013 for a detailed assessment.

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

Description of non-compliance

Clause 4.1.4 requires development to be setback as follows:

- One third of the proposed wall height from side boundaries; and
- Windows to be setback at least 3m from side boundaries.

The side setback requirement of the southern elevation is 1.88m based on a wall height of 5.7m. The proposed setback of this wall is 1.2m from the southern side boundary, which represent a variation of 36.2%. Additionally, the windows on this elevation are setback 1.2m from the boundary, representing a 60% variation.

The side setback requirement of the northern elevation does not apply as this elevation shares a common wall with the northern adjacent dwelling.

Merit consideration:

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

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

Comment:

The proposed development will be sited at the rear of the property, therefore will have no impact on the streetscape.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposed extension will be below the existing ridge height of the dwelling and positioned at the rear of the property. While additional overshadowing of the southern adjacent building is expected, it is not expected to impact upon existing solar access to internal living areas or outdoor private open space. Privacy between dwellings is maintained due to the highlight window design on the proposed southern elevation. The proposal will not impact road visibility or traffic conditions along Pittwater Road.

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

Comment:

The proposed development does not alter the siting and orientation of the existing dwelling on the subject site.

Objective 4) To enhance and maintain natural features by:

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

Comment:

The subject site does not contain any significant landscape features and does not adjoining any Open Space Lands or National Parks.

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

Comment:

The subject site is not bushfire prone.

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

4.1.5 Open Space and Landscaping

Description of non-compliance

Clause 4.1.5.1 requires a minimum of 55% (101.2m²) of the site area to be provided as open space with a maximum of 25% of the open space to be provided above ground.

The proposal provides 34% (62.6m²) of the site as open space, which represents a variation of 38.1% (38.6m²) and 27.7% (17.2m²) of open space above ground, which represents a variation of 10% (1.55m²).

Merit consideration:

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

Objective 1) To retain and augment important landscape features and vegetation including remnant populations of native flora and fauna.

Comment:

The proposed development does not require the removal of any significant vegetation with new landscape treatment is proposed. The landscape features of the site will be retained and enhanced as a result of the application.

Objective 2) To maximise soft landscaped areas and open space at ground level, encourage appropriate tree planting and the maintenance of existing vegetation and bushland.

Comment:

The site complies with the landscaped area requirement prescribed within this Control, providing 65.7% (41.1m²) of the total open space as landscaped area.

Objective 3) To maintain and enhance the amenity (including sunlight, privacy and views) of the site, the streetscape and the surrounding area.

Comment:

No unreasonable view loss or overshadowing impacts will arise as a result of the proposed development. The proposed development will ensure that privacy is maintained between the subject site and adjoining properties by way of condition requiring the planting of screening vegetation along the rear boundary.

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

Comment:

The site contains in excess of the minimum required landscape area. In this regard, it is considered the site has enhanced its water infiltration capacity and surfaces to minimise stormwater runoff.

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

Comment:

The proposal is unlikely to cause the spread of weeds.

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

Comment:

No significant vegetation is required to be removed to facilitate the proposed works. New landscape treatment is to be implemented on site which will maximise wildlife habitat and potential for wildlife corridors.

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

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

Description of non-compliance

The minimum on-site car parking requirement for the site is 2 spaces. Council may consider the provision of only 1 space where adherence to the requirement for 2 spaces would adversely impact on the streetscape or on any heritage significance identified on the land or in the vicinity.

The proposal does not include any provision of on-site car parking.

Merit consideration:

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

Objective 1) To provide accessible and adequate parking on site relative to the type of development and the locality for all users (residents, visitors or employees).

Comment:

Due to spatial constraints of the site by way of size and existing built structures, there is no feasible option to provide on-site parking. The site is located on Pittwater Road and is within walking proximity of the Manly CBD where an abundance of public transport options are available.

Objective 2) To reduce the demand for on-street parking and identify where exceptions to onsite parking requirements may be considered in certain circumstances.

Comment:

As above, the spatial characteristics of the site do not allow for any on-site parking to be provided.

Objective 3) To ensure that the location and design of driveways, parking spaces and other vehicular access areas are efficient, safe, convenient and are integrated into the design of the development to minimise their visual impact in the streetscape.

Comment:

No on-site parking or driveways are proposed.

Objective 4) To ensure that the layout of parking spaces limits the amount of site excavation in order to avoid site instability and the interruption to ground water flows.

Comment:

As above

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

Comment:

As above

Objective 6) To integrate access, parking and landscaping; to limit the amount of impervious surfaces and to provide screening of internal accesses from public view as far as practicable through appropriate landscape treatment.

Comment:

As above

Objective 7) To encourage the use of public transport by limiting onsite parking provision in Centres that are well serviced by public transport and by encouraging bicycle use to limit traffic congestion and promote clean air.

Comment:

The lack of on-site parking will encourage the use of public transport by occupants of the dwelling.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly 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 \$ 677 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 0.5% of the total development cost of \$ 135,300.

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.4 Floor Space Ratio has adequately addressed and demonstrated that:

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

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

Accordingly

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

RECOMMENDATION

That Northern Beaches Council as the consent authority vary clause 4.4 Floor Space Ratio development standard pursuant to clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Accordingly Council as the consent authority grant Development Consent to DA2019/1321 for Alterations and additions to a dwelling house on land at Lot 1 DP 745249, 72 Pittwater Road, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
191666 Sheet 02	5 November 2019	Nick Karahalios Architectural Drafting Services
191666 Sheet 03	5 November 2019	Nick Karahalios Architectural Drafting Services
191666 Sheet 04	5 November 2019	Nick Karahalios Architectural Drafting Services
191666 Sheet 05	5 November 2019	Nick Karahalios Architectural Drafting Services
191666 Sheet 06	5 November 2019	Nick Karahalios Architectural Drafting Services
191666 Sheet 07	5 November 2019	Nick Karahalios Architectural Drafting Services
191666 Sheet 08	5 November 2019	Nick Karahalios Architectural Drafting Services

Engineering Plans		
Drawing No.	Dated	Prepared By
191666 Sheet 09	5 November 2019	Nick Karahalios Architectural Drafting

		Services
191666 Sheet 10	5 November 2019	Nick Karahalios Architectural Drafting Services

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A363626	13 November 2019	Nick Karahalios Architectural Drafting Services

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
Waste Management Plan	5 November 2019	Nick Karahalios

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) Should any asbestos be uncovered on site, its demolition and removal must be carried

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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
 - (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
 - (m) 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 \$676.50 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$135,300.00.

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

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

7. **Boundary Identification Survey**

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

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

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

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

8. Compliance with Standards

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

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

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

9. Sydney Water "Tap In"

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

Please refer to the website www.sydneywater.com.au for:

- o "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- o Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

10. 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.

11. Removing, Handling and Disposing of Asbestos

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

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

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

12. Installation and Maintenance of Sediment Control

Prior to any works commencing on site, including demolition, 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 WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE
OCCUPATION CERTIFICATE****13. Stormwater Disposal**

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

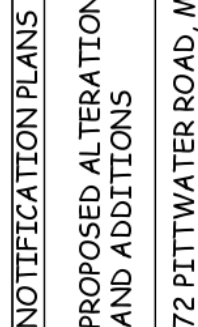
Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

14. Screening Planting

Privacy screening vegetation is to be planted along the full length of the rear boundary. The vegetation is to be a locally native species and capable of growing to a height of at least 4m.

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

Reason: To ensure privacy between dwellings is maintained.



SITE PLAN AND SITE ANALYSIS PLAN

Appendix:

Clause 4.6 Request to Vary the FSR Development Standard

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Pursuant to clause 4.4 of the Manly LEP it states that the maximum floor space ratio (FSR) for the subject site is 0.6:1. The FSR proposed with this application is 0.88:1 which equates to a floor area of 161.92m² or a variation of 46.7%.

Clause 4.6 provides a mechanism by which a development standard can be varied. The objectives of this clause are:

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

Pursuant to clause 4.6(2) 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. This clause applies to the clause 4.4 Floor Space Ratio Development Standard.

Clause 4.6(3) states that consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

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

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular*

standard and the objectives for development within the zone in which the development is proposed to be carried out, and

- (b) the concurrence of the Director-General has been obtained.*

Clause 4.6(5) states that in deciding whether to grant concurrence, the Director-General must consider:

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

Claim for Variation

Zone and Zone Objectives

The subject site is zoned R3 Medium Density Residential pursuant to the Manly LEP. The objectives of the zone are as follows:

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

Comment: The existing use as a single residence in a semi-detached built form will be maintained. The works will improve the amenity of the existing dwelling.

- *To provide a variety of housing types within a medium density residential environment.*

Comment: Maintains the semi-detached dwelling use.

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

Comment: Land use to remain as per existing.

- *To encourage the revitalisation of residential areas by rehabilitation and suitable redevelopment.*

Comment: The proposed works have been contextually designed to maintain the presentation to the street while providing a revitalised and liveable dwelling in this exceptional location. The development will not result in any adverse impacts to the heritage value of the conservation area and items within the vicinity. The works proposed are reflective of a

considered response to provide a family home within the constraints of it being an undersized lot in a conservation area.

- *To encourage the provision and retention of tourist accommodation that enhances the role of Manly as an international tourist destination.*

Comment: N/A

The proposed development has been found to be consistent with the stated zone objectives. Accordingly, there is no zone or zone objective impediment to the granting of consent.

Floor Space Ratio Objectives:

Having regard to the stated objectives it is considered that strict compliance is both unreasonable and unnecessary for the following reasons:

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

Comment: The existing front façade with pitched roof will be maintained. The additions are confined behind the pitched roof and significantly below the existing max roof ridge height. The alterations and additions will not be readily discernible from the street. In that regard, the existing character of the streetscape and the heritage value of the conservation area will be maintained.

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

Comment: The site is located within the Pittwater Road Heritage Conservation Area (HCA) with a number of heritage items in the vicinity. The works are confined behind the existing pitched roof and well below the existing max roof ridge height. The additions will not be discernible from the street nor create a visual impact in regard to excessive bulk and scale. No important landscape or townscape features will be impacted with the proposed works.

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

Comment: The proposal is a contextually appropriate response to the HCA characteristics by maintaining the existing dwelling presentation.

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

Comment: This has been addressed in the Statement of Environmental Effects. It is considered that there will be no significant adverse amenity impacts in regard to privacy, view loss or overshadowing.

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

Comment: N/A

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

In this regard, we have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the compatibility of the height, bulk and scale of the development, as reflected by floor space, with the built form characteristics established by adjoining development and development generally within the site's visual catchment .

Further, the works are of good design with the floor space proposed promoting/ reflecting the orderly and economic use and development of the land, consistent with objectives 1.3(c) and (g) of the Act, in circumstances where the FSR standard has effectively been abandoned for recently approved development within the sites visual catchment.

The current property owner seeks to realise the reasonable development potential of their property consistent with that of surrounding development.

Conclusions

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the floor space ratio standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and

- (d) that having regard to (a), (b) and (c) above that compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and floor space ratio standard objectives that approval would not be antipathetic to the public interest, and
- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning.

As such we have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a floor space ratio variation in this instance.

Boston Blyth Fleming Pty Limited



Greg Boston
Director

ITEM 3.4	MOD2019/0488 - 39 SEABEACH AVE MONA VALE - MODIFICATION OF DEVELOPMENT CONSENT DA582/16 GRANTED FOR ADDITIONS AND ALTERATIONS TO AN EXISTING RESIDENTIAL FLAT BUILDING
REPORTING MANAGER	STEVE FINDLAY
TRIM FILE REF	2020/084894
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site and Elevation Plans

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 grant Development Consent to MOD2019/0488 for Modification of Development Consent DA582/16 granted for additions and alterations to an existing residential flat building on land at Lot CP SP 3266, 39 Seabeach Ave Mona Vale, subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0488
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Responsible Officer	Sarah McNeilly (Consultant Planner)
Land to be developed (address)	Lot CP SP 3266, 39 Seabeach Avenue MONA VALE NSW 2103
Proposed Development	Modification of Development Consent NO582/2016 granted for alterations and additions to a residential flat building.
Zoning:	R3 Medium Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Land and Environment Court Action:	No
Owner:	Proprietors of Strata Plan 3266
Applicant:	THW Architects

Application lodged:	8/10/2019
Integrated Development:	No
Designated Development:	No
State Reporting category:	Residential - Multi unit
Notified:	26/10/2019 to 09/11/2019
Advertised:	26/10/2019
Submissions:	3
Clause 4.6 Variation:	Nil
Recommendation:	Approval
Estimated Cost of Works:	\$0

PROPOSED DEVELOPMENT IN DETAIL

The application is made pursuant to Section 4.55(2) and proposes to modify an existing consent (**NO582/2016**) in the following manner:

- Delete the sliding adjustable louvre screens from the extended balconies,
- Delete the proposed roof over level 3 balconies, and
- Relocate balcony columns on ground and first floors.

The louvre screens were a design option included in application NO582/2016.

The sliding adjustable louvres were not a requirement or condition of the of the original building's approval, as a result of the balcony extensions.

There is no change proposed to the approved size of the balconies.

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 Development Control Plan C1.3 – View Sharing
Pittwater Development Control Plan C1.5 – Visual Privacy

SITE DESCRIPTION

Property Description:	Lot CP SP 3266 , 39 Seabeach Avenue MONA VALE NSW 2103
Detailed Site Description:	<p>The subject site is located on the southern side of Seabeach Avenue in Mona Vale with its eastern boundary abutting Apex Park.</p> <p>The lot is irregular in shape with a front (northern) boundary of 15.24 metres, and angled eastern boundary (Apex Park) of 49.875 metres and 12.776 metres, a rear (southern) boundary of 8.696 metres and a side (western) boundary of 60.847 metres.</p> <p>The site in its entirety has a total area of 891.4 m² and is fairly level.</p>

	<p>The site is zoned R3 Medium Density Residential and is currently developed with a four-storey rendered brick residential flat building including ground floor parking containing 12 units.</p> <p>Adjoining and surrounding development is characterised by a mix of residential flat buildings, dwelling houses and open space. Mona Vale Beach is located to the east of the site across Apex Park and Surfview Road.</p>
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SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

Development Application N0582/16

Development application for Alterations and additions to residential flat building was granted consent on 12 April 2017.

The works included:

- Replacement of the balconies on all three (3) levels of the residential flat building.
- New balconies to be increased in size with the incorporation of louvres and colourbond roofing.

Development Application N0913/00

Development Application for landscaping works was granted consent on 8 June 2001.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 (EPAA)

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

In this regard:

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for NO582/2016, in full, with amendments detailed and assessed as follows:

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

Section 4.55(2) – Other Modifications	Comments
A consent authority may, on the application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development as proposed to be modified would still be substantially the same development as the development for which consent was originally granted under NO582/16.
(b) it has consulted with the relevant minister, public authority or approval body (within the meaning of Division 5) in respect of a condition of consent imposed as a requirement of concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that the Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	Development Consent NO582/2016 did not require concurrence from the Minister, public authority or approval body.

(c) it has notified the application in accordance with: the regulations, if the regulations so require, or a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with Pittwater 21 Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	Three submissions were received in relation to this application. See "Notification and Submissions Received" below.

Section 4.15 Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15C (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	Not 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 regulations	All relevant provisions of the EP&A Regulation 2000 have been taken into consideration during the assessment of the development application and this modification 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) The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater Development Control Plan section in this report and found to be appropriate. (ii) The proposed development will not have a

Section 4.15 'Matters for Consideration'	Comments
	detrimental social impact on the locality. (iii) The proposed development will not have a detrimental economic impact on the locality.
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 the discussion on “Notification and Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

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

As a result of the public exhibition of the application, Council has received four (4) submissions, from two (2) properties.

Name:	Address:
Mr Ronald Heald	12/39 Seabeach Avenue, Mona Vale
Turnbull Planning International On behalf of Mr Mark Hanley	6/39 Seabeach Road, Mona Vale
Mr Marc Hanley	6/39 Seabeach Road, Mona Vale

The relevant matters raised within the submissions have been considered and addressed as follows:

1. Roof needed for sun/rain protection on upper levels

Unit owners on the top floor apartment would like level 3 roofing to be retained to ensure protection of their units from weather.

Comment:

The roofing was not a part of the original residential flat building approval. The roofing element was approved as part of application N0582/16 in April 2017. While it may enhance amenity for upper level units, it is not unreasonable to remove this component of the previous Development Application.

2. Investors

Many property owners are investors and are not interested in the works which will not benefit their units directly.

Comment:

This is not a relevant consideration to the assessment of the Development Application.

3. Privacy

The louvres and roof are needed to enhance privacy, and this was detailed in the original assessment report. The original SEE argued that these were needed for both privacy and aesthetic reasons.

Comment:

The deletion of the roof and privacy screens results in the building retaining the privacy and aesthetic character approved when the original building was developed. The minor changes to the scale of the balconies, which were approved in Development Consent N0582/16, and are not considered extensive enough to warrant the need for additional privacy screens and roofing.

4. Desired Character of Mona Vale

The approved development will enable the building to appear more contemporary and allow for modulation and shade structures. Removal of these features will be to the detriment of this objective. The revisions are to the detriment of arguments made by the consultant planner in the original DA.

Comment:

The revised proposal and aesthetic appearance is supported by Council's Urban Designer, as preferable to the approved plan. This is concurred with, with the design considered of lesser bulk and scale and appropriate when viewed from all aspects including Apex Park and Mona Vale Beach

5. Inaccuracies on plans and statement

Original plans include non-sliding louvres, which are now shown as sliding adjustable louvres and glazed balustrades.

Comment:

This application includes the deletion of all louvres and accordingly this is the only matter the subject of this assessment.

6. SEPP 65

A statement by a qualified designer under the provisions of SEPP 65 is required pursuant to Section 4.55 (2).

Comment:

The assessment of the original development application determined that the application did not require consideration under the provisions of SEPP65. Accordingly, the requirement for such statement is not required in this instance.

7. Retro-fitting fixed privacy screens to glazed panels

Discussions with the architect have included varying options and possible options for privacy panels including options which did not gain consent.

Comment:

This is not the subject of this application and accordingly not relevant to the assessment for this development application.

8. New DA required

The development is not substantially the same development and cannot be considered under the provisions of Section 4.55 of the Act.

Comment:

A thorough review of the modification has resulted in the conclusion that it is substantially the same development. It is a reduction in scale and is worthy of consideration under this Section of the Act. A new Development Application is not warranted.

9. Planning Principles

Privacy and overlooking are detrimentally impacted by the removal of screens. This is at odds with established LEC principles which demonstrate the need for privacy in open space areas. The magnitude of the privacy implications is too great without the privacy screens.

Comment:

The original residential flat building was built with balconies and no privacy screens. The inclusion of these was only the subject to the more recent NO582/2016. The removal of these will take the building back to essentially its original status and this was previously deemed appropriate by Council. It is not reasonable to retrospectively require additional screening, even when considering the small balcony additions.

10. Clothes drying

Occupants are hanging clothes out on balconies which is unsightly and would be screened if louvres were not deleted. This is at odds with the requirements of SEPP 65, which calls for clothes drying to be screened from the street and public view.

Comment:

The original residential flat building was built with balconies and no privacy screens. With immediate access to the balconies from living areas, these spaces would always be used for clothes drying. This is an historic issue pre-dating SEPP 65 and is not intensified or changed through the deletion of the screens.

MEDIATION

No requested for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Landscape	<p><u>Officer comments</u> No objections are raised to the proposed modification with regard to landscape issues.</p> <p><u>Recommendation</u> Recommended for approval</p>
Urban Design	<p><u>Officer Comments</u> The deletion of the louvre privacy screens on the balconies will make the building look less bulky, which is desirable as the newly extended balconies (as per application NO582/2016) are within the building side set-back line.</p>

	<p>As such, no objection is raised to the proposed modifications with regards to urban design issues.</p> <p><u>Recommendation</u> Recommended for approval</p>
Development Engineering	<p>There is no objection to the modified works, and there are no recommended changes to the conditions of consent.</p> <p><u>Recommendation</u> Recommended for approval</p>

External Referral Body	Comments
Ausgrid	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 (Infrastructure) 2007

Clause 45 of SEPP Infrastructure 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 5m 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 5m of an overhead electricity power line

Council advised Ausgrid of the proposal in a letter dated 21 October 2019. 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.

State Environmental Planning Policy No. 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 recreation and community 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.

State Environmental Planning Policy No.65

It was determined by in the original Development Application assessment that SEPP 65 did not apply to the works, the subject of this application, with the following statement provided in the assessment:

As the proposal only seeks consent for extending the balconies and associated roof of the residential flat building, the proposal is not considered to fall under any of the above categories. The proposal is not considered a substantial redevelopment as the internal layout, overall height and building footprint is unchanged.

Accordingly, no additional information or assessment is required in this instance.

Pittwater Local Environmental Plan 2014

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

Aims of the PLEP2014

The relevant aims of the Pittwater Local Environmental Plans are achieved with the proposed modification of the existing residential flat building being a positive development, consistent with the desired character for Pittwater.

Objectives of the Zone

The site is zoned R3 Medium Density Residential and is a permissible use in the zone. The objectives of the zone are achieved retaining and existing a residential use in with ample amenity and local character.

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	Existing building 12.25m	N/A	N/A

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	Yes*
4.6 Exceptions to development standards	N/A
5.10 Heritage conservation	Yes*
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes

Detailed Assessment

- Height**

Clause 4.3 (Height of buildings) of PLEP 2014

A maximum height of 8.5 metres is permissible on the site.

The approved roof over the balconies was to a height of 10.65 metres. This will no longer be constructed, therefore removing this non-compliant element.

The roof ridge of the existing residential flat building has a height of 12.25 metres. This unchanged by the proposed development.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	unchanged	N/A	N/A
Rear building line	5.2m	unchanged	N/A	N/A
Side building line	East 5.2m	unchanged	N/A	N/A
	West 5.2m	unchanged	N/A	N/A
Building envelope	4.2m/45°	reduced	N/A	No*
Landscaped area	50%	unchanged	N/A	N/A

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/ Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/ Objectives
<i>B1.3 Heritage Conservation - general</i>	Yes	Yes
<i>B2.5 Dwelling Density and subdivision – Medium Density Residential</i>	Yes	Yes
<i>B3.6 Contaminated Land and Potentially Contaminated Land</i>	N/A	N/A
<i>B4.5 Landscape and Flora and Fauna Enhancement Category 3 land</i>	Yes	Yes
<i>B5 Water Management</i>	Yes	Yes
<i>B6 Access and Parking</i>	Yes	Yes
<i>B8 Site Works</i>	Yes	Yes
<i>C1.1 Landscaping</i>	Yes	Yes
<i>C1.2 Safety and Security</i>	Yes	Yes
<i>C1.3 View Sharing</i>	Yes	Yes*
<i>C1.4 Solar Access</i>	Yes	Yes
<i>C1.5 Visual Privacy</i>	Yes	Yes*
<i>C1.6 Acoustic Privacy</i>	Yes	Yes
<i>C1.7 Private Open Space</i>	Yes	Yes
<i>C1.9 Adaptable Housing and Accessibility</i>	Yes	Yes
<i>C1.10 Building Facades</i>	Yes	Yes
<i>C1.12 Waste and Recycling Facilities</i>	Yes	Yes
<i>C1.13 Pollution Control</i>	Yes	Yes
<i>C1.14 Separately Accessible Structures</i>	N/A	N/A
<i>C1.15 Storage Facilities</i>	N/A	N/A
<i>C1.18 Car/Vehicle/ Boat Wash Bays</i>	N/A	N/A
<i>C1.19 Incline Passenger lifts and stairways</i>	N/A	N/A
<i>C1.20 Undergrounding of Utility Services</i>	N/A	N/A
<i>C1.23 Eaves</i>	Yes	Yes
<i>C1.24 Public Road Reserve – Landscaping and Infrastructure</i>	N/A	N/A
<i>C1.25 Plant, Equipment Boxes and Lift Over-run</i>	N/A	N/A
<i>D9.1 Character as viewed from a public place</i>	Yes	Yes
<i>D9.2 Scenic Protection – General</i>	Yes	Yes
<i>D9.3 Building Colours and materials</i>	Yes	Yes
<i>D9.6 Front Building line</i>	Yes	Yes
<i>D9.7 Side and rear building line</i>	Yes	Yes
<i>D9.9 Building envelope</i>	Yes	Yes*
<i>D9.10 Landscaped Area – general</i>	Yes	Yes
<i>D9.12 Fences – general</i>	N/A	N/A
<i>D9.14 Construction, retaining walls, terracing and undercroft areas.</i>	N/A	N/A

Detailed Assessment

- **View Sharing**

Clause C5.4 (View sharing) of P21 DCP

The applicant has provided details which demonstrate that there will be detrimental view loss as a result on the installation of privacy screens, which weighed up against the privacy gained, is not an appropriately loss.

It is considered that a better balance of issues would be for the existing view to be preserved and the existing status quo of privacy be retained.

Whilst this is to the detriment of the units on the beach side, it is to the vast benefit of the northern units and is not altering the decision of Council when the original building was constructed.

- **Visual Privacy**

Clause C1.5 (Visual privacy) of P21 DCP

The proposal includes the deletion of the approved sliding adjustable louvres. The privacy screens were not a requirement or condition of the of the original building's approval, which included the balconies. The louvre screens were a design option included in the more recent NO582/2016 and accordingly, their deletion will retain the current amenity and visual privacy for units, even though the balconies have been approved to increase marginally in size.

It is noted that the balconies face the adjoining public reserve and not neighbouring private open space and the existing amenity will be retained as originally approved for the units.

- **Character as viewed from a public place**

Clause D9.1 (Character as viewed from a public place) of P21 DCP

The modification proposed is of a positive design, consistent with the Mona Vale character, the coastal environment and the large open space area adjoining. The view to the building from the immediate area including the street, beach and parkland is positive and supported.

- **Building Envelope**

Clause D9.9 (Building Envelope) of P21 DCP

The existing building sits well outside the current building envelope controls as it built and approved under a previous regime of planning controls. Development Application NO582/2016 permitted a further breach of this envelope for the roof and screens on the third floor. The removal of these design elements will lessen the degree of variation, which is to the benefit of the overall bulk of the building and supported.

POLICY CONTROLS

Northern Beaches Section 7.12 Development Contribution Plan 2019

S94 Contributions are not applicable to this application.

CONCLUSION

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

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

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

RECOMMENDATION

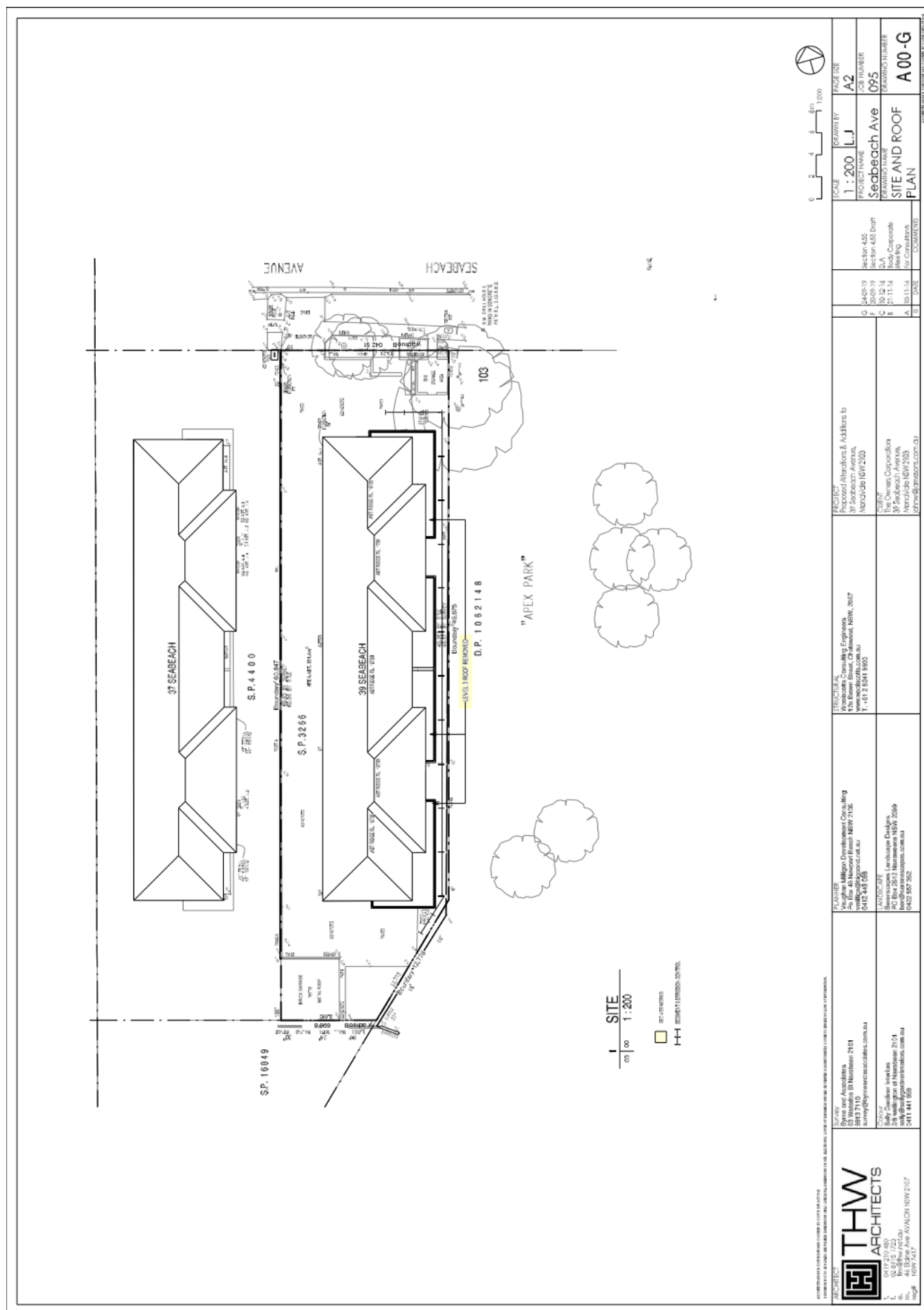
That Council, as the consent authority, grant approval to Modification Application 2019/0488 for Modification of Development Consent to NO582/2016 for alterations and additions to an existing residential flat building at SP 3266, 39 Seabeach Road, Mona Vale, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

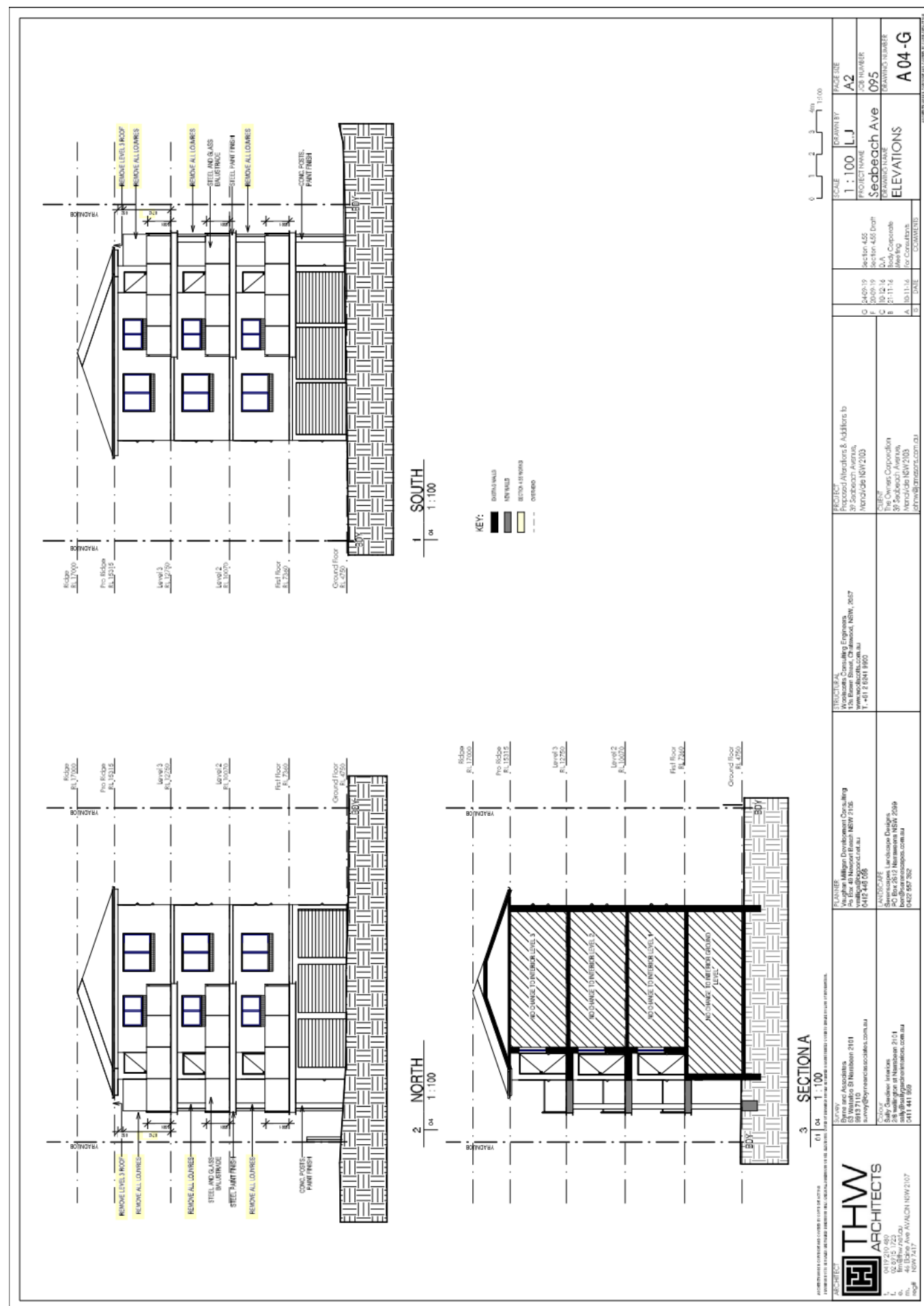
The development must be carried out in compliance (except as amended by any other condition of consent) with the following:

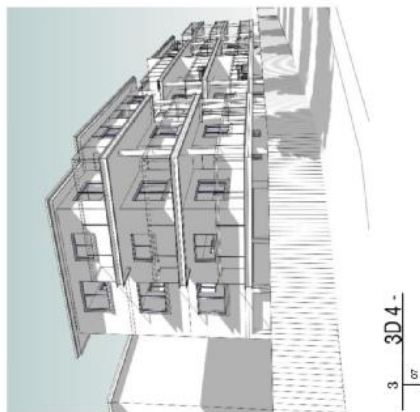
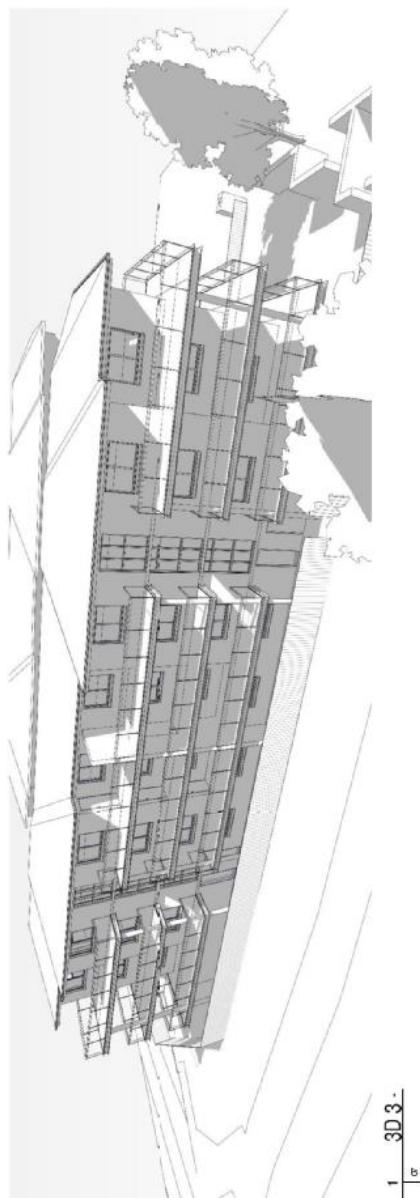
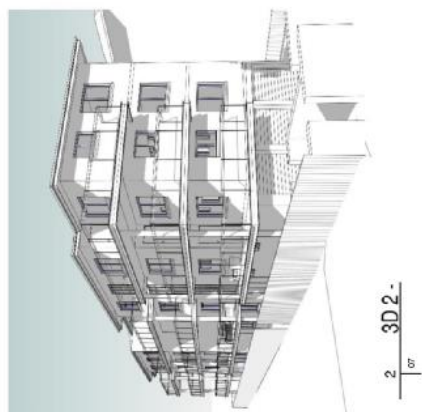
The plans and documents listed in the "Notice of Determination" on 12 April 2017 in relation to N0582/2016, as modified by,

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A00-G Site and Roof Plan	24-09-19	THW Architects
A01 – G Floor Plans	24-09-19	THW Architects
A02 – G Floor Plans	24-09-19	THW Architects
A03 – G Elevations	24-09-19	THW Architects
A04 – G Elevations	24-09-19	THW Architects
A05 – G Site Analysis	24-09-19	THW Architects
A09 – G Colours	24-09-19	THW Architects







[illegible]

ITEM 3.5	MOD2019/0421 - 31 PONSONBY PARADE, SEAFORTH - MODIFICATION OF DEVELOPMENT CONSENT DA164/2017 GRANTED FOR DEMOLITION AND CONSTRUCTION A NEW DWELLING HOUSE
REPORTING MANAGER	STEVE FINDLAY
TRIM FILE REF	2020/084936
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site and Elevation Plans

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 grant Development Consent to MOD2019/0421 for Modification of Development Consent DA164/2017 granted for demolition and construction a new dwelling house on land at Lot 288 DP 4889, 31 Ponsonby Parade, Seaforth, subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0421
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 288 DP 4889, 31 Ponsonby Parade SEAFORTH NSW 2092
Proposed Development:	Modification of Development Consent 10.2017.164.1 granted for demolition and construction a new dwelling house.
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Scott Kinloch Hindmarsh Samantha Jane Gill Hindmarsh
Applicant:	Samantha Jane Gill Hindmarsh
Application Lodged:	30/08/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	09/09/2019 to 23/09/2019
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	Nil
Recommendation:	Approval

EXECUTIVE SUMMARY

The proposal involves a modification of the consent granted for the demolition and construction of a dwelling house. Specifically, the modification involves a minor reduction of part of the western setback, enclosure and raising of the bin area, change to the design and location of the rear privacy screen and number of minor changes which reconfigure the approved development.

The proposed modified design has an effect on the relationship between the development and the presentation to neighbours, particularly to the west at 33 Ponsonby Parade.

The proposed reconfiguration of the western setback results in a minor non-compliance with the

numerical control of 0.02m. The modulation at the western elevation ensures that there would not be an unreasonable impact despite this reduced setback. Therefore, the non-compliance with the western side setback control is not unreasonable and the variation does not result in any unreasonable impacts to adjoining or surrounding properties.

Furthermore, the changes to the bin area will present similarly to the fences which form the predominant character of the street, and the rear privacy screen will comply with the side setback and wall height controls. As such the assessment concludes that the changes to these features will not result in any unreasonable visual impact.

A condition has also been imposed to place a limitation on the height of planting along the western boundary to ensure the amenity impact to the western neighbour is appropriately minimised.

The application has been assessed against the planning controls of the MDCP 2013, and whilst there are still minor variations to the setback controls, these have been found to be consistent with the objectives and requirements of the control (subject to conditions). In this regard, the built form will provide appropriate separation and design to minimise amenity impact.

The assessment concludes that the proposed design is appropriate for the site and would not have any unreasonable impacts on access to sunlight or any other unreasonable amenity or visual impact.

Therefore, it is recommended that the application be approved.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is a modification to the approved dwelling house. The modifications involve the following:

- Construction of wall and slab in bin storage area
- Enclosure to the bin area along with a Trellis and Star Jasmine to screen enclosure
- Removal of approved trees (*Eleocarpus Reticulata*) next to bin area
- Provision of a row of trees adjacent to the bin area
- Changes to access between front garden and back deck (deletion of external stairs), extension of deck and continued row of hedging in location of approved access area
- A sliding door at the end of the laundry in place of the full height glazed window
- Walls to the west of the family room and kitchen to move 148mm west
- Increase in height of privacy screen from 2250mm to 3160mm, located 400mm closer to the house (to the north) and 250mm narrower
- A new steel pergola structure adjacent to the kitchen area
- Relocation of bathroom in basement
- Adjustment in location of garage end wall and garage door
- Changes to landscaping including change of species and deletion of planter

ASSESSMENT INTRODUCTION

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

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Development Control Plan - 3.1 Streetscapes and Townscapes

Manly Development Control Plan - 3.4.1 Sunlight Access and Overshadowing

Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation

SITE DESCRIPTION

Property Description:	Lot 288 DP 4889 , 31 Ponsonby Parade SEAFORTH NSW 2092
Detailed Site Description:	<p>The subject property is commonly known as 31 Ponsonby Parade, Seaforth and legally known as Lot 288 DP 4889. The site is located on the southern side of Ponsonby Parade. The property is an irregular shape and has a frontage of 20.115m to Ponsonby Parade, an average depth of 26m and an overall site area of 1087m². The property currently contains a single storey dwelling with vehicular access to an existing garage at the rear of the existing dwelling in Panorama Lane. The property slopes from front to rear (Ponsonby Parade to Panorama Lane) with an approximate crossfall of 4m.</p> <p>The surrounding area includes one, two and three storey residential dwellings on both sides of Ponsonby Parade.</p>

Map:



SITE HISTORY

The land has been used for residential purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- DA164/2017 - Demolition and construction of a new dwelling house and swimming pool was approved by Councils on 1 November 2017.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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

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

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2018/0260, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	Yes The modification, as proposed in this application, is considered to be of minimal environmental impact.
(b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The development, as proposed, has been found to be such that Council is satisfied that the proposed works are substantially the same as those already approved under DA164/2017.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000, Manly Local Environment Plan 2013 and Manly Development Control Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	No submissions were received in relation to this application.

Section 4.15 Assessment

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

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

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

Section 4.15 'Matters for Consideration'	Comments
planning agreement	
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>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 the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Benjamin Francis Rourke	49 Willow Tree Crescent BELROSE NSW 2085
Mr Michael Rodney Baker	33 Ponsonby Parade SEAFORTH NSW 2092
Ben Rourke - Planning Partnerships	Address Unknown

It is noted that each of the three submissions above are on behalf of the one dwelling. As such, the total number of submissions is considered as 1 in accordance with the Manly DCP, which contained the relevant notification provisions at the time this application was placed on public exhibition.

The matters raised within the submissions are addressed as follows:

- **S4.55 modification of the consent**

Comment:

The proposal is for a modification to the consent granted for demolition and construction of a new dwelling house. The changes would result in a dwelling that contains two storeys and a basement, and contains ancillary features such as a bin area, a privacy screen and landscaping. This is substantially the same development as approved. As such, it is valid for the application to be made under Clause 4.55 of the Environmental Planning and Assessment Act 1979.

Furthermore, precedent is established by *Windy Dropdown Pty Ltd v Warringah Council [2000] NSWLEC 240* in regard to consent that can be granted for retrospective approval under Section 4.55 (formerly s.96) of the Environmental Planning and Assessment Act 1979. As such, the works as completed in regard to the bin area (as well as other modifications) can be assessed under this s4.55 application.

- **Visual impact of slab and boundary fence**

Comment:

As further discussed under, 'Clause 3.1 Streetscape' in this report, the proposed modification to the bin area will not result in a visually dominant presentation of the structure in the street. This is as a result as the structure presenting similarly to surrounding front fences, being screened by vegetation, and extending across a small proportion of the front and side boundaries.

- **Impacts caused by planting**

Comment:

A condition has been imposed to require that the height of planting along the western boundary is limited. This provides a reasonable balance between promoting natural features on site and protecting the amenity of the western neighbour.

- **Side Setback- impact on solar access and visual impact**

Comment:

The proposed modification involves a further non-compliance to the numerical western side setback control at the first floor level. However, this non-compliance is minor, being 200mm, and the proposal will maintain consistency with the objectives of the control. In particular, the modulation of the side elevation, along with compliance with the controls for building height, front setback and rear setback, provide a design which allows for adequate spacing and separation to minimise amenity impact and visual impact.

- **Solar access- query regarding shadow diagrams**

Comment:

The information submitted is sufficient to assess the application under the Manly DCP, 2013. This assessment (as below under *Clause 3.4.1*) has found that the proposal provides a satisfactory outcome in terms of access to sunlight and overshadowing. This assessment has found that the compliant building height, compliant front and rear setbacks, and the modulation of the dwelling, provides appropriate opportunity for solar access.

- **Visual impact of privacy screen to the rear**

Comment:

The proposed privacy screen to the rear of the dwelling complies with the wall height control and side setback control. This represents a height and separation of bulk that is acceptable for the site. As such, the proposed screen would not cause an unreasonable visual impact.

- **Stormwater issues caused by bin storage area**

Comment:

Conditions relating to stormwater imposed on the original application remain. This includes a requirement for a Stormwater Management Plan which complies with Council's relevant policies. This provides appropriate management of stormwater issues associated with the bin storage area.

- **Height of pergola**

Comment:

The proposed pergola complies with the development standard for building height and complies with the numerical control for side setbacks. Along with the open nature of the structure, this provides an outcome in which the proposed height will not cause any unreasonable amenity or visual impact.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The modification application includes changes to the bin and utility area, the external area west of the kitchen and family room, the screen and the addition of a pergola at the BBQ area, the basement, and changes to landscaping. The changes to landscaping include alternative plant selections as follows: - Eleocharis reticulatus deleted, Banksia Sentinel added at bin/utility

Internal Referral Body	Comments
	<p>area</p> <ul style="list-style-type: none"> - Waterhousia Sweeper replaces bamboo along the west boundary. - Waterhousia Sweeper replaces Magnolia, Strelitzia etc along the east boundary. - Agonis flexuosa replaces bamboo in west garden bed - Deletion of planter at end of pool area (not included in DA Landscape area) - Garden beds east and west of lower garden area planted with native shrubs, grasses & groundcovers. <p>Council's Landscape section have assessed the modification application against the landscape controls of Manly DCP 2013, section 3: General Principles of Development, and section 4: Development Controls, and support is provided as the landscape outcomes of the Manly DCP are achieved.</p>
NECC (Development Engineering)	Development Engineering has no objection to the modification application.
Traffic Engineer	No Traffic Engineering objections to the modification

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 (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	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.3m	1.45m-1.8m (bin enclosure) 5.0m (screen to rear deck) 7.7m (screen to top level balcony) 8.3m (as approved for dwelling)	N/A	Yes
Floor Space Ratio	0.45:1 489m ²	0.36:1 (393m ²)	0.33:1 (357m ²)	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes

Clause	Compliance with Requirements
4.4 Floor space ratio	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Manly Development Control Plan

Built Form Controls

Built Form Controls - Site Area: 1087m ²	Requirement	Approved	Proposed	Complies
4.1.2.1 Wall Height	West: 6.9m	4.5m (ground floor) 7.7m (first floor)	4.6m (privacy screen)	Yes
4.1.2.3 Roof Height	Height: 2.5m	0.6m	0.6m	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6.0m	7.5m (dwelling)	7.5m (dwelling) 0.2m (bin enclosure)	Yes No (see comments)
4.1.4.2 Side Setbacks	East: Ground Floor: 1.73m First Floor: 2.67m	1.4m-3.2m	1.4m-3.2m	No (but as approved)
		1.4m-3.1m	1.4m-3.1m	
	West: Ground Floor: 1.53m First Floor: 2.57m	0.9m-2.7m	0.9m-2.55m	No (see comments) Yes (pergola)
		2.7m-3.5m 1.7m (pergola)	2.55m-3.4m 0m (bin area) 2.0m (pergola)	
	Rear timber screen at western elevation: 1.53m	2.2m	1.9m (timber screen)	Yes
4.1.4.4 Rear Setbacks	8.0m	8.4m (to pool deck)	8.4m (to pool deck)	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Min. 55% of Site Area (597.85m ²)	74.5% (810m ²)	74.5% (810m ²)	Yes
	Max. 25% of Total Open Space (202.5m ²)	195m ²	197.5m ²	
4.1.5.2 Landscaped Area	Min. 35% of Total Open Space (283.5m ²)	49.3% (400m ²)	49.3% (400m ²)	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.4 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
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.10 Safety and Security	Yes	Yes
4.1 Residential Development Controls	Yes	Yes
4.1.1 Dwelling Density, Dwelling Size and Subdivision	Yes	Yes
4.1.1.1 Residential Density and Dwelling Size	Yes	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Description of non-compliance

The proposal involves changes to an approved bin storage area toward the front of the site. The bin storage area is setback 0.2m from the front boundary and this does not comply with the front setback control of 6.0m.

Merit consideration:

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

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

Comment:

The proposed bin storage area is 1.45m-1.8m above natural ground level and located in the front western corner of the site in a location that blends in design with other front wall and fences in the street, the neighbouring side wall and surrounding vegetation. As a comparison to the front walls and

fences across the front boundaries, the width of the bin area (1.725m) is only 8.6% of the frontage and is slightly setback from the front boundary. This sufficiently minimises the visual impact of the structure in the street.

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

Comment:

The street contains front fence structures which are constructed of various materials. The proposed bin enclosure is to be constructed with a timber frame and fibre cement sheet lining. Along with the height of the enclosure being similar to a front fence, these materials will contribute to the structure complementing the surrounding front fences and identified streetscape.

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

Comment:

In this situation, a wall to surround the bin area is an appropriate outcome for the site given the existing character of the street which involves fences and walls on each side of the road. The proposal also involves soft landscaping to the front of the site so as to appropriately integrate with the built form.

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

3.4.1 Sunlight Access and Overshadowing

Merit consideration:

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

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

Comment:

The subject sites north-south orientation results in some impact on access to light and sunshine to both the neighbour at 29 Ponsonby Parade and the neighbour at 33 Ponsonby Parade. Given this orientation, the majority of sunshine that penetrates the subject site and neighbouring sites is to the front of the properties. The front setback of the proposed development compliant and aligned similarly to the surrounding dwellings. This allows equitable sunlight to penetrate the front of all dwellings. In combination with this, the compliant building height and modulated building setbacks, provides an equitable outcome for access to light and sunshine. This is contributed to by the setback of 3.35m from the north-western corner of the top level so as to provide a corridor that allows for light and sunshine access to 33 Ponsonby Parade.

A condition has also been imposed to require that the height of planting along the western boundary is limited. This contributes to providing a reasonable balance between promoting natural features on site and protecting the amenity (including access to light) for the western neighbour.

Objective 2) To allow adequate sunlight to penetrate:

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

Comment:

The rear setback of the proposed dwelling and the adjoining dwellings ensure that there is a substantial amount of private open space that has access to sunlight throughout the day and year.

Given the opportunity for sunlight to access the front of the adjoining properties and the maintenance of sunlight to windows even during winter solstice, the proposal with compliant height and modulated side setbacks is reasonable in terms of allowing adequate sunlight to penetrate living spaces and habitable rooms of adjoining properties.

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

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

Comment:

The proposal has a compliant rear setback, which in this situation is the southern side of the development. Along with the compliant building height, this provides a situation in which the design maximises the opportunity for sunlight to penetrate living areas.

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

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

Description of non-compliance

The proposal involves modifications to the elevations at the eastern and western boundary.

As a part of this proposed modification, there is no further encroachment to the side setback at the eastern elevation or at the ground level of the western elevation (see built form controls table above).

The proposal does not comply with the numerical control for a section of the western elevation at first floor level. A reduction in setback from 2.7m to 2.55m results in a minor non-compliance with the control (2.57m), being 200mm.

The proposal also involves a bin storage area which is 0m from the western boundary.

Merit consideration:

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

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

Comment:

The proposed modification would result in a dwelling that remains compliant with the controls for front setback, floor space ratio and building height. Along with the modulation of the built form at the side elevations and adequate landscaping at the front of the site, the proposal would provide a character that is desirable for the area.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

The proposal maintains modulation of the built form at the side elevations, and has the first floor setback from the lower floor at the western elevation. This modulation, along with the front section of the dwelling being offset from the western neighbour, provides a situation in which the built form is designed to protect local amenity by providing appropriate separation and an offset orientation to the neighbouring properties.

A condition has also been imposed to reduce the potential height of trees adjacent to this western elevation to provide a greater opportunity for light to penetrate this area.

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

Comment:

Flexibility is warranted in allowing a 200mm variation to the side setback control due to the lack of unreasonable amenity impact caused by this variation. This includes that there are not windows on this elevation that would cause unreasonable overlooking impact and that adequate access to sunlight will be maintained, due to the compliant building height and open corridor toward the front of the site formed by the front upper section of the dwelling angling away from the boundary.

Objective 4) To enhance and maintain natural features by:

- *accommodating planting, including deep soil zones, vegetation consolidated across sites, native vegetation and native trees;*
- *ensuring the nature of development does not unduly detract from the context of the site and*

- *particularly in relation to the nature of any adjoining Open Space lands and National Parks; and ensuring the provisions of State Environmental Planning Policy No 19 - Urban Bushland are satisfied.*

Comment:

The proposal remains compliant with the control for landscaped open space and provides various vegetation on the landscape plan.

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

Comment:

The proposal is not within a bush fire prone land in Council's mapping system.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

Conclusions on the Assessment of the Application

The modification to the proposed development includes various minor changes which are suitable for the site due to a lack of unreasonable amenity or visual impact. These issues are as follows:

- A reduction to part of the western setback which does not comply with the numerical side setback control under the Manly DCP. The reduction from the approved situation is 0.15m and this results in a minor non-compliance with the numerical control of 0.02m. As a result of the modulated nature of the built form at the top of the western elevation, the proposal provides an outcome with spacing which ensures the proposal remains consistent with the objectives of the control.
- The enclosure of the approved bin area will present similarly to fences within the street and will be consistent with the objectives for *Clause 3.1 Streetscapes and Townscapes*, under the the Manly DCP.
- The change in design and location to the privacy screen at the rear complies with the numerical control for wall height and side setbacks. This contributes to a design with bulk and scale that is appropriate.

A condition has also been imposed to require that the height of planting along the western boundary is limited. This provides a reasonable balance between promoting natural features on site and protecting the amenity of the western neighbour.

On balance, the proposal should be approved as the design is reasonable for the site and locality by virtue of the appropriate scale and separation from surrounding development, and the condition imposed to ensure there will not be unreasonable amenity impacts.

Therefore, the application is recommended for approval.

It is considered that all processes and assessments have been satisfactorily addressed and that proposed development constitutes the proper and orderly planning for the site or the locality. It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council as the consent authority grant approval to Modification Application No. Mod2019/0421 for Modification of Development Consent 10.2017.164.1 granted for demolition and construction a new dwelling house. on land at Lot 288 DP 4889,31 Ponsonby Parade, SEAFORTH, subject to the conditions printed below:

A. Add Condition No.1A - Modification of Consent - Approved Plans and supporting Documentation to read as follows:

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

a) Modification Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
A100- Site Plan - Rev C	27.08.2019	Builtform
A103- Basement Plan - Rev D	27.08.2019	Builtform
A-104- Ground Floor Plan - Rev D	27.08.2019	Builtform
A-105- First Floor Plan - Rev B	27.08.2019	Builtform
A116- Bin & Utility Enclosure Detail- Rev A	27.08.2019	Builtform
A117- Front Fence and Gate Plan- Rev A	27.08.2019	Builtform
A118- Landscape Plan- Rev A	27.08.2019	Builtform
A300- North Elevation- Rev B	27.08.2019	Builtform
A301- East Elevation (North)- Rev D	27.08.2019	Builtform
A303- South Elevation- Rev D	27.08.2019	Builtform
A304- West Elevation- Rev D	27.08.2019	Builtform

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

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

Landscape Plans (subject to condition below)		
Drawing No.	Dated	Prepared By
A118 - Landscape Plan	27.08.2019	Builtform

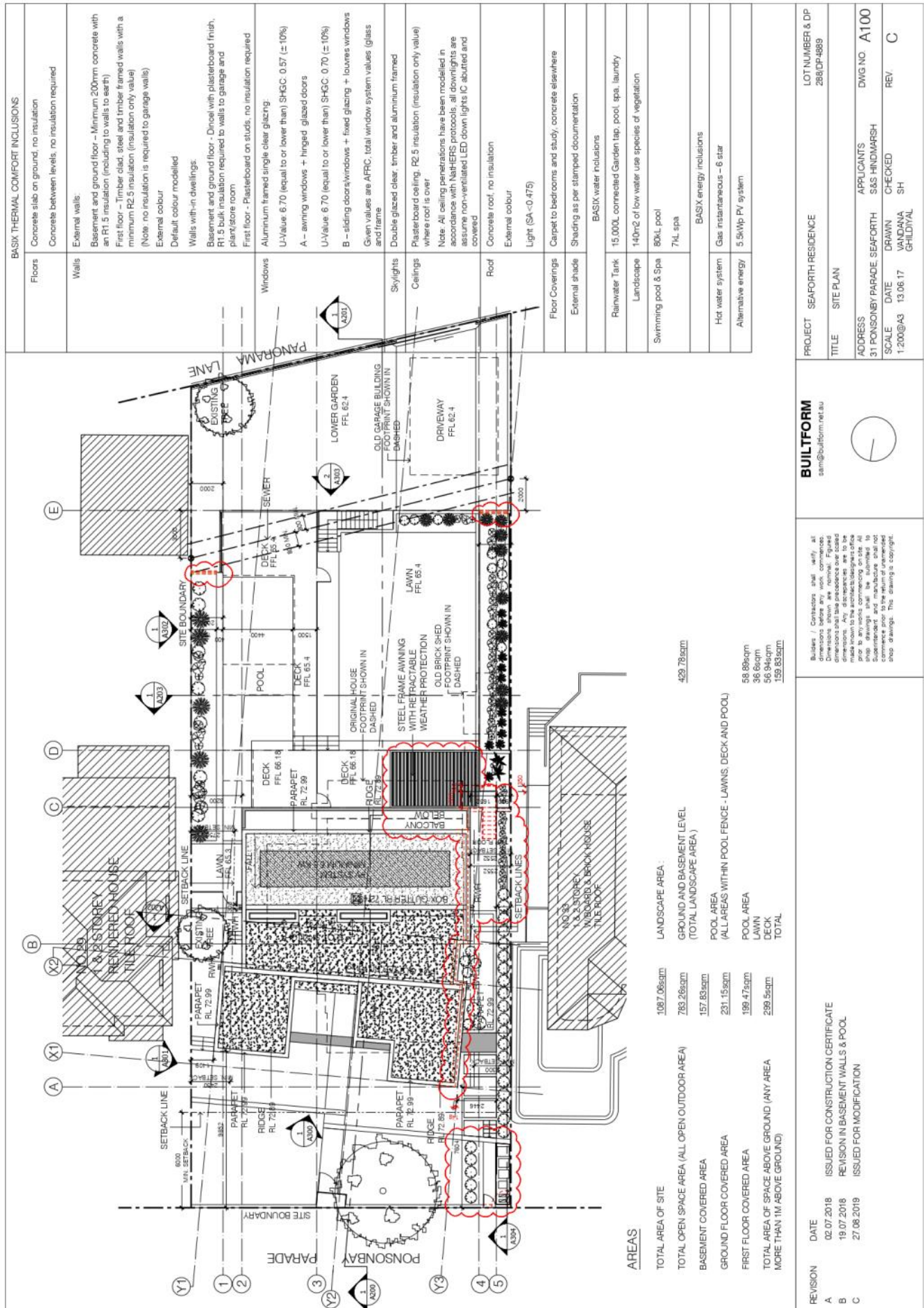
Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

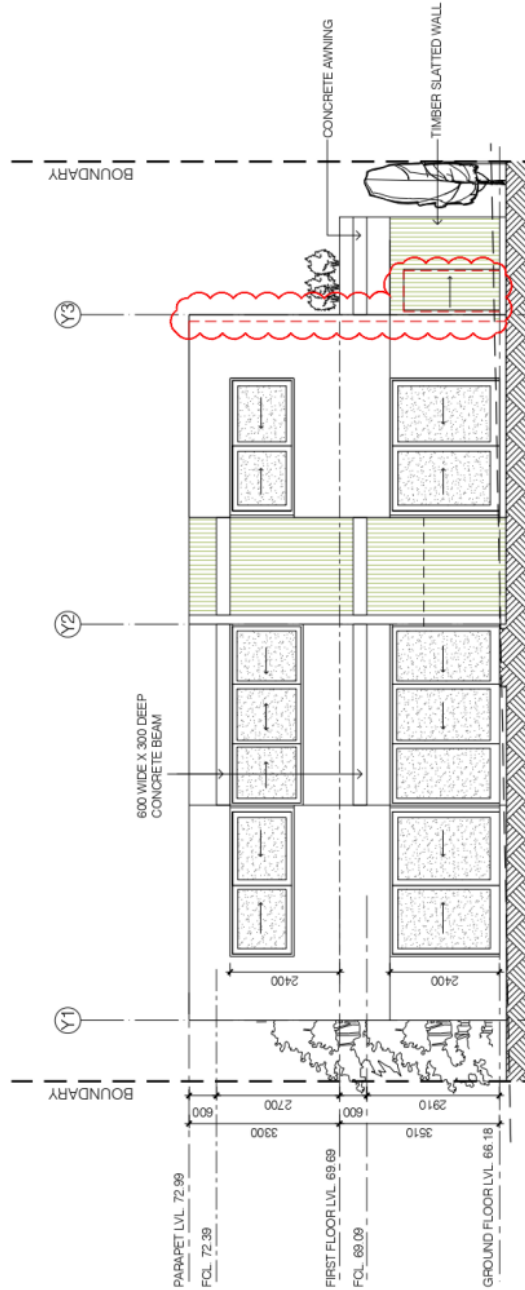
B. Add Condition 19A - Limitation on the height of Planting on western boundary to read as follows:

The row of planting as shown on the Landscape plan, along the western boundary extending from the bin area to (and including) the Agonosis Flexuosa "Lemon Lime" is to be maintained to a height of no greater than 6.0m or replaced with a species which has a mature height of no greater than 6.0m.

The landscape plan is to be amended to show this detail prior to the issue of a Construction Certificate.

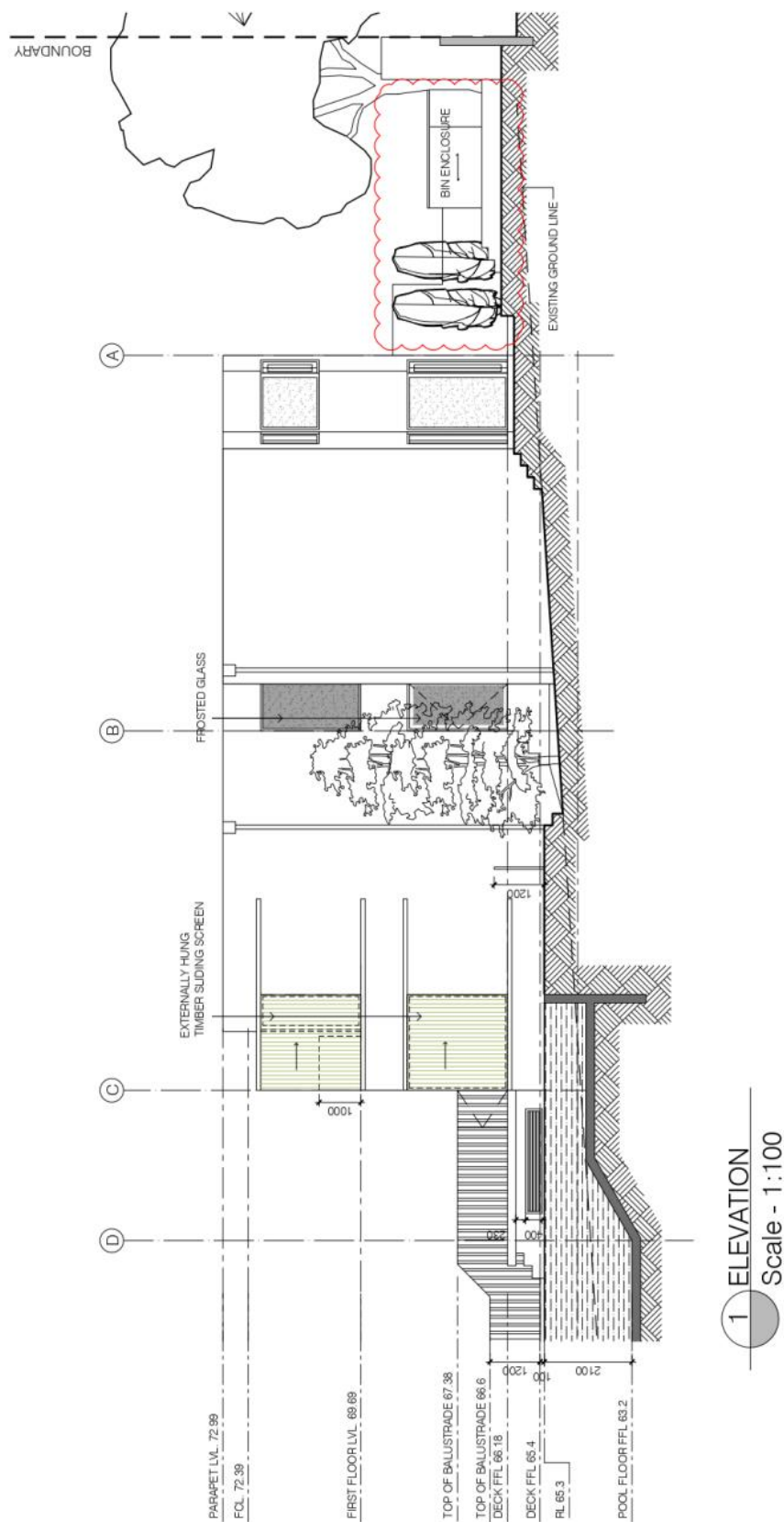
Reason: To ensure approved vegetation does not have an unreasonable amenity impact on the neighbour at 33 Ponsonby Parade.



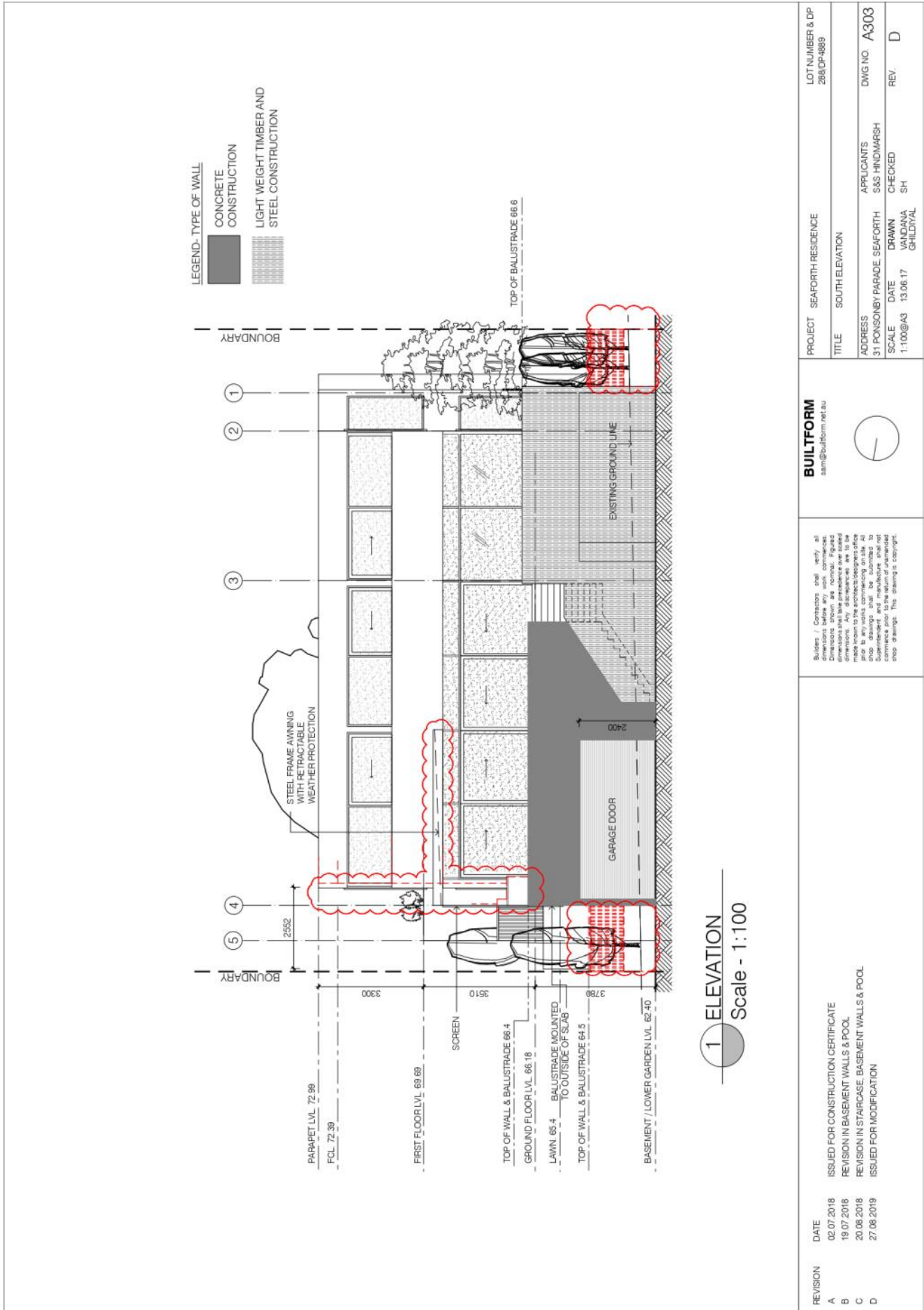


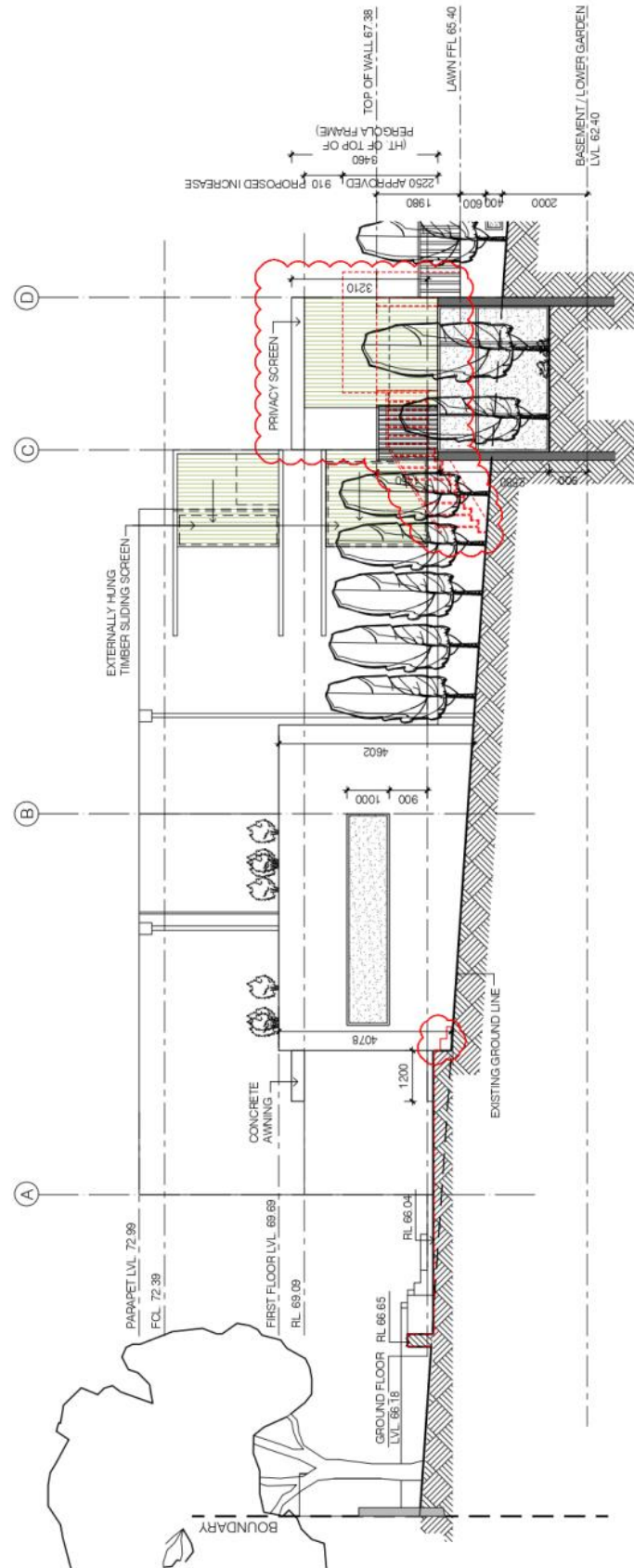
1 ELEVATION
Scale - 1:100

REVISION	DATE	ISSUED FOR CONSTRUCTION CERTIFICATE	PROJECT	SEAFOORTH RESIDENCE	LOT NUMBER & DP
A	02.07.2018		TITLE	NORTH ELEVATION	288/DP-4989
B	27.08.2019	ISSUED FOR MODIFICATION	ADDRESS	31 PONSONBY PARADE SEAFOORTH	APPLICANTS
			SCALE	1:100@A3	S&S HINDMARSH
			DATE	13.06.17	CHECKED
			DRAWN	VANDANA GHILDYAL	REV
			DATE	13.06.17	B
			DRAWN	VANDANA GHILDYAL	



REVISION	DATE	ISSUED FOR CONSTRUCTION CERTIFICATE	<p>Buildings / Contractors shall verify all dimensions before any work commences. All dimensions shall be checked at intervals and dimensions shall have precedence over noted dimensions. Any discrepancies are to be the responsibility of the contractor. Shop drawings shall be submitted to the architect prior to any work commencing on site. All shop drawings shall be submitted to the architect prior to the start of any work. All dimensions shall be checked prior to the start of any work. All dimensions shall be checked prior to the start of any work. This drawing is copyright.</p>	<p>BUILT FORM sam@builtform.net.au</p>	<p>PROJECT SEAFORTH RESIDENCE</p> <p>TITLE EAST ELEVATION (NORTH)</p> <p>ADDRESS 31 PONSONBY PARADE SEAFORTH S43 HINDMARSH</p> <p>APPLICANTS S43 HINDMARSH</p> <p>SCALE 1:100@A3</p> <p>DWG NO. A301</p> <p>DATE 13.06.17</p> <p>CHECKED VANDANA SH</p> <p>REV. D</p>	<p>LOT NUMBER & DP 288(PG-4889)</p>
A	02.07.2018	REVISION IN BASEMENT WALLS & POOL				
B	19.07.2018	REVISION IN STAIRCASE, BASEMENT WALLS & POOL				
C	20.06.2018	REVISION IN STAIRCASE, BASEMENT WALLS & POOL				
D	27.06.2019	ISSUED FOR MODIFICATION				





1 ELEVATION
Scale - 1:100

REVISION	DATE	ISSUED FOR CONSTRUCTION CERTIFICATE	PROJECT	SEAFOORTH RESIDENCE	LOT NUMBER & DP
A	02.07.2018	REVISION IN STAIRCASE, BASEMENT WALLS & POOL	TITLE	WEST ELEVATION	288/DP-4989
B	20.08.2018	ADDITION OF DIMENSIONS AS MARKED	ADDRESS	31 PONSONBY PARADE, SEAFOORTH	APPLICANT'S
C	15.11.2018	ISSUED FOR MODIFICATION	SCALE	1:100@A3	DWG NO. A304
D	27.08.2019		DATE	13.06.17	REV. D
			CHECKED	SH	
			DRAWN	VANDANA GHILDYAL	

BUILTFORM
sam@builtform.net.au



Builders / Contractors shall verify all dimensions before any work commences. Dimensions shown are nominal. Figured dimensions are to be used for construction. Any discrepancies are to be made known to the architect/designer's office immediately. The architect/designer's office shall not be responsible for any errors or omissions in shop drawings and manufacture shall not commence prior to the return of unamended shop drawings. This drawing is copyright.

ITEM 3.6	DA2019/1179 - 157 VICTOR ROAD, DEE WHY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	RODNEY PIGGOTT
TRIM FILE REF	2020/085015
ATTACHMENTS	1 ↓ Assessment Report 2 ↓ Site and Elevation Plans 3 ↓ Clause 4.6 Report

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 grant Development Consent to DA2019/1179 for Alterations and additions to a dwelling house on land at Lot A DP 378435, 157 Victor Road, Dee Why, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1179
Responsible Officer:	Catriona Shirley
Land to be developed (Address):	Lot A DP 378435, 157 Victor Road DEE WHY NSW 2099
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Warringah LEP2011 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Philip Martin Spencer Sophie Justine Spencer
Applicant:	Philip Martin Spencer
Application Lodged:	24/10/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	07/11/2019 to 21/11/2019
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 52.9%
Recommendation:	Approval
Estimated Cost of Works:	\$ 510,000.00

This report involves consideration of a proposal for the alteration and additions to a dwelling house at 157 Victor Road Narraweena, permissible with consent in the R2 Low Density Residential zone of Warringah Local Environmental Plan 2011.

The dwelling house proposal comprises an extension to the existing Ground Floor and Lower Ground Floor, with a new First Floor addition and improved open carport.

The site is 563.7m² in size, and located on the spur of the downward slope of the Victor Road escarpment, having a very steep fall of over 14m from the front to the rear.

The proposal does not comply with the building height development standard of 8.5m under the LEP. Therefore, the applicant has lodged a request under Clause 4.6 to vary the standard.

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

The proposal involves variations to the built form controls under the Warringah Development Control Plan 2011 in relation to wall height, building envelope and front setbacks. The variations were found to be generally consistent with the relevant objectives and requirements. In this regard, the proposal will not detrimentally impact on the amenity of neighbouring properties, the streetscape or the character of the Narraweena area.

The proposal will have an impact on the existing view lines from the adjoining, and nearby properties. However, it is considered that the view loss is not unreasonable and the potential view loss associated with the application, is consistent with the objectives of D7 - Views of the WDCP and the the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140.

The proposed development was notified and three (3) submissions were received. The submission concerns particularly related to impacts upon the streetscape, building height, built form control variations, privacy levels and views.

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

Accordingly, the application is referred to the Northern Beaches Council Development Determination Panel with a recommendation for approval subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The development proposal is for the internal and external alterations and additions to the existing dwelling house.

The proposed works are as follows:

Lower Ground Floor

- Extension of the lower ground floor to the east;
- Reconfiguration of the floor plan to provide an office, bedroom, bathroom, laundry and internal access stairs;
- External balcony, privacy screen and stairs; and
- Addition of a swim spa.

Ground Floor

- Extension of the ground floor to the east;
- Reconfiguration of the floor plan to include a living room, kitchen, two bedrooms, bathroom, dinning area and access stairs; and
- New external balcony area.

First Floor

- New master bedroom and ensuite.

External Front Area / Parking

- New double carport; and
- New 1.8m entry gate in the existing front wall; and
- New sliding gate to the carport.

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 - 6.2 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 - D3 Noise
Warringah Development Control Plan - D7 Views
Warringah Development Control Plan - D8 Privacy
Warringah Development Control Plan - D9 Building Bulk
Warringah Development Control Plan - D13 Front Fences and Front Walls

SITE DESCRIPTION

Property Description:	Lot A DP 378435 , 157 Victor Road DEE WHY NSW 2099
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Detailed Site Description:

The site is legally identified as Lot A within Deposited Plan 378435, and known as 157 Victor Road Dee Why. The site is located within the R2 Low Density Residential Zone as mapped in the Warringah Local Environment Plan 2011.

The subject site consists of one (1) allotment located on the eastern side of Victor Road.

The site is regular in shape with a surveyed area of 563.7m². The frontage measures 15.24m along Victor Road and the depth varies between 37.41m and 36.5m.

The site displays a very steep slope, with a significant fall of over approximately 14m from the frontage on Victor Road to the rear of the site.

The site currently accommodates a two-story residential dwelling with a detached carport, within a landscaped setting.

Extensive environmental features such as rock outcrops, and canopy trees existing on the site.

Surrounding properties consist of one, two and three storey dwelling houses, of varying ages, within a landscaped setting.

Map:



SITE HISTORY

The following relevant Development Applications relevant to the subject site include the following:

- Development Application **DA2019/0106** for the alterations and additions to a dwelling house

was lodged with Council on 8 February 2019. A request to withdraw the application was requested due to concerns regarding inaccurate and inconsistent plans and reporting information. The application was withdrawn on the 20 May 2019

- A Pre-Lodgment Meeting **PLM2018/0267** was held on the 20 November 2018 for the alterations and additions to a dwelling house.
- Development Application **DA2018/0894** for the alterations and additions to a dwelling house was lodged with Council on 29 May 2018. Council wrote to the applicant on 11 July 2018 requesting that the application be withdrawn due to inaccurate and inconsistent architectural plans and geotechnical report, as well as concerns to the identified view loss experienced by No. 154 Victor Road. The application was not withdrawn, and as such the Development Determination Panel refused the application on the 26 of September 2018.
- Development Application **DA2017/1048** was lodged with Council on the 24 October 2017 for the alterations and additions to the approved **CDC2017/0021** comprising of an extension to the approved footprint forward of the building line. The application was subsequently withdrawn on the 8 March 2018 due to the inability to modifying an approved but unbuilt CDC plan through a Development Application process.
- Complying Development Certificate **CDC2017/0021** for the alterations and additions was issued on the 5 April 2017, by Comcert Building Certifiers. A site inspection undertaken as part of the assessment of the current development application has confirmed that these works have not been physically commenced.
- Complying Development Certificate **CDC2016/0518** for alterations and additions was refused by Council on the 17 September 2016. The application was refused because it did not comply with the following provisions/standards of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008:
 - (a) Number of storeys;
 - (b) Privacy;
 - (c) Maximum height; and
 - (d) Drainage.
- Development Application **DA2015/0860** for the alterations and additions to a dwelling house was withdrawn from Council on the 21st October 2015. The application was not supported by Council due to insufficient information in regards to the building height non-compliance and the potential loss of views to the surrounding neighbours.

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	Warringah Development Control Plan applies to this

Section 4.15 Matters for Consideration'	Comments
development control plan	proposal.
Section 4.15 (1) (a)(iii) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><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 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 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 Matters for Consideration'	Comments
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

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

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

Name:	Address:
Mr Robert George Graham Kirsten Dorothy Prince	154 Victor Road NARRAWEENA NSW 2099
Timothy Michael Powell Ms Frances Elizabeth Powell DM Planning	159 Victor Road DEE WHY NSW 2099
Dr Sek Cheong Kim Cheng Dr Jessica Stolp	156a Victor Road NARRAWEENA NSW 2099

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

- **Building Height / Unacceptable Clause 4.6 Variation**
- **View Loss**
- **Bulk and Scale**
- **Built Form Non-compliance**
- **Presentation to the Streetscape**
- **Privacy Impacts**
- **Cumulative impacts from future Complying Development Applications**

The matters raised within the submissions are addressed as follows:

- ***Concern was raised that the proposed building height does not meet the objections of the Warringah Local Environment Plan (WLEP) 2011, and subsequently the submitted Clause 4.6 is not sufficient.***

Comment:

The proposal does not comply with the development standard for building height under the WLEP 2011. Despite this, a merit assessment of the application has found that this non-compliance would not have unreasonable visual or amenity impact.

Additionally, a written request to vary the standard has been provided in accordance with Clause 4.6 of the WLEP, where it is agreed that there are sufficient environmental planning grounds to vary the development standard for the proposed design. Whilst it is recognised that some surrounding properties may have more compliant building heights, the proposal is considered to be consistent in the context of the steeply sloping topography and the surrounding development. The building height non-compliance does not create a development that is out of character nor has an unreasonable presentation of bulk and scale to the adjoining properties, on a site which an older existing building will be substantially retained.

The development meets the objectives of the zone and the height of buildings development standard, whereby the design of the dwelling and the lack of unreasonable amenity impact caused by the section of the dwelling that does not comply with the standard form the basis of this conclusion.

In this regard, the applicant's written Clause 4.6 request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard and this issue does not warrant refusal of the application.

- ***Concern that the height and scale of the building will create view loss impacts on properties to the north, north-west and west.***

Comment:

The proposal will create view impacts on surrounding land via a new upper storey element, and additions to the rear. A detailed view sharing analysis has been made under the heading Part D7 Views within this report. In summary, considerations have been made as set out in the Planning Principle established by the NSW Land and Environment Court in *Tenacity Consulting v Warringah Council* (2004) NSWLEC 140. Overlooking view lines across the site change substantially due to the broad angle of the view across front and side boundaries (being angles of up to 180 degrees from various properties).

While the additions will cause view sharing impacts from some positions within the overlooking properties other views are maintained from alternative viewing angles / positions. Views include district views, ocean, Dee Why Lagoon and the coastal area around Dee Why/Long Reef beach. The views toward Dee Why Lagoon are distant views but include iconic elements which have been considered on balance in the detailed view assessment made.

Conditions are included to ensure the view intrusions created by the upper storey addition are consistent with view sharing considerations outlined in the Warringah DCP 2011.

In summary, the proposal is not considered to have an unreasonable impact on views for properties that overlook the site, subject to conditions, to improve view sharing.

Therefore, this issue does not warrant refusal of the application.

- ***Concerned was raised the the proposal is out of character with surrounding development and will reduce neighbourhood amenity, including streetscape presentation and neighbourhood character, via building bulk and visual impact.***

Comment:

Surrounding development is dominated by low density residential development of either one, two or three storeys, mostly with skillion, hipped and gable roofs in a landscape setting. The architectural style of the proposal including external materials and colours will be broadly consistent with the residential character of the area, which includes the common use of external colours such as white, brown, grey, and earthy colours. The use of external materials of brick or rendered walls, glass sliding doors and timber / glass privacy screens and the like appears in the streetscape.

The building maintains a consistent landscape setback to the street and a residential character by the use landscaped surrounds, pedestrian entry treatment and more than generous side setbacks for the First Floor. The proposal is able to maintain some selected trees as practicable in the front setback to ensure consistency with the landscaped character and setting of this section of Victor Road. The proposal is considered to be satisfactory, subject to conditions addressing the relevant issues.

In summary, this issue has been addressed by the design and does not warrant refusal of the application.

- ***Concern was raised that the building has a bulky and massed extension to the rear and a first floor that is inconsistent with adjacent buildings.***

Comment:

There is varied built form along the downward slope of Victor Road created by the steeply sloping topography. The sloping nature of the site requires the alterations and additions to be matched in with the existing house as practicable. The proposal sites as a consistent two storey dwelling house from the street, and generally steps down the site to reduce bulk.

The built form is consistent with surrounding front setbacks in the area. The carport front setback displays similar setbacks as five (5) other nearby dwellings who display carparking within the front setback. The first floor maintains the existing dwelling house front setback of 5.7m, then transitions further into the site to 6.9m. This transition serves to move the higher bulk further back from the street.

Overall, the proposal has only non-compliance with the building height, building envelope and wall height on the northern elevation only. These non-compliance's, corresponds with the steep topography of the site. A detailed assessment of the proposal under the Warringah planning provisions is provided within this report and demonstrates that the proposal is compatible and consistent with the character and streetscape by its visual appearance, landscaping and design layout, subject to conditions.

In summary, the position of the dwelling is suitable for the site without creating unreasonable impacts on the character of the area of neighbours amenity subject to conditions and does not warrant refusal of the application.

- ***Concern has been raised that the proposal does not comply with the WDCP 2011 Built Form requirements, which causes unreasonable amenity impacts.***

Comment:

The proposal responds appropriately to the numeric development controls of side boundary rear boundary setbacks and landscape open space and is considered to satisfy the objectives of those controls.

A merit consideration has been applied to other controls of wall height, building envelope and front boundary setback. Notwithstanding, the proposal has given consideration to the design merit of the side boundary envelope, front boundary setback, and wall height and have been determined to satisfy the objectives of the controls. Other design issues including view impacts, building bulk and the like are addressed within the content of this report and by conditions.

In summary, the proposal is satisfactory, subject to conditions conditions as appropriate, to address design issues and any related impacts, and does not warrant refusal of the application.

- **Concern that the building will create privacy issues for the northern adjoining site of No. 155 Victor Road including the rear living areas and balconies, including the new pool area.**

Comment:

Privacy screens or wall planes with minimal window spaces have been provided along both side elevations for the proposed living areas, balconies and terraces. The privacy screens will be conditioned to be either opaque glazed panels or louvered screens angled to prevent overlooking toward No. 155 Victor Road and highlight windows are used to also maintain privacy to adjacent land.

The topography and high elevation translates to the rear of the dwelling having a line of view toward the natural focal point of Dee Why Lagoon, beach area and the ocean/horizon. Therefore, some overlooking element over the rear neighbouring areas is unavoidable, however existing canopy trees and vegetation assist in screening and the view lines.

The proposal has maintained privacy between living areas and no unreasonable impacts will occur for the principal living spaces, or outdoor recreational areas.

This issue has been addressed in detail within the content of this report and does not warrant refusal of the application.

- **Concern is raised that there will be more development on this site undertaken as a Complying Development Certificate.**

Comment:

The proposed works are to be approved as a Development Assessment under the provisions of the WLEP 2011, and the WCDP 2011. Any further works on the site that require planning approval and building approval will either need to be applied for under a Complying Development or a further Development Application. If any future works meet the specific standards in the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, a CDC application is entitled to be made without the need for a full development assessment.

This issue cannot warrant refusal of the application.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	The plans indicate works over and adjacent to rock outcrops across the site. The area of outcrop affected by lower level works appears to have been disturbed previously. Other works cantilever over rock

Internal Referral Body	Comments
	<p>outcrops. No significant trees are indicated for removal, however conditions have been included requiring appointment of a Project Arborist to oversee works adjacent to the existing trees on and adjacent to the site.</p> <p>There are no objections with regard to landscape issues subject to conditions as recommended.</p>
NECC (Development Engineering)	An easement statement has been received from downstream property owner, and therefore the information submitted is in accordance with clause C4 Stormwater. There are no objections to the proposed development, subject to conditions.

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. A226459_08 dated 23 October 2019). The BASIX Certificate is supported by an ABSA Assessor Certificate (see Certificate No. A226459_08 dated 23 October 2019).

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

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

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

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	5.2m - 13m	up to 52.9%	No

Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	5.2m - 13m
Percentage variation to requirement:	up to 52.9%

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 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 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, that:

"The variation to the 8.5m height control is the result of site topography, noting rock outcrop positioned diagonally across the site. The development proposal complies with the height limit at the street frontage. Due to site slope the existing dwelling historically presents a variation in height at the north eastern corner.

The additional height is confined to the north-eastern corner of the built form visually recessed behind existing vegetation. The variation to the height limit is partly a response to view assessment, concentrating the upper level building bulk to the northern portion of the site maintaining a 5.5m setback to the southern boundary and view corridor across the site.

Strict compliance with the height control would not achieve a better environmental planning outcome as the location of the built form to the north of the site preserves a view corridor across the site, maintaining a 5.5m setback to the southern boundary.

The additional building height is located at north eastern corner of the built form and will not generate unnecessary overshadowing to dwelling to south."

Consideration of Increase in Building Height

The reasons presented by the applicant in their written request are considered adequate to demonstrate that it is both unreasonable and unnecessary to require full compliance with this development standard. It is agreed that the breach is largely unavoidable due to the considerable slope of the land.

In the circumstances of the steep site conditions and the existence of important environmental features, variation of the development standard of 8.5m, while continuing to allow for a consistent architectural style throughout the building, that limits the excavation of the site to protect significant environmental rock outcrops, is not considered unreasonable.

The orientation of the building also allows for the additions to be suitably separated from adjoining neighbors to provide an appropriate outcome for privacy, amenity and an appropriate visual presentation. It is determined that the extent of non-compliance does not result in an unreasonable impact upon the views and privacy levels 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 cls 1.3 (c) and (g) of the EPA Act.

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

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

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

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

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

Comment:

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

Objectives of development standard

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

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

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

Comment:

The development is located on the spur of a downward slope of the Victor Road escarpment which is characterised by undulating topography along Victor Road. This results in variable built forms along the street such that there is no consistent height and scale in which to be compatible with.

Notwithstanding, the proposal reflects the established built form character of the immediate Victor Road area where multi-level, variably stepped houses are prevalent, due to the steeply sloping topography of the land.

The proposed majority of the building height variation occurs at the north eastern corner corresponding to the sloping topography, as shown in Figure 1. below.

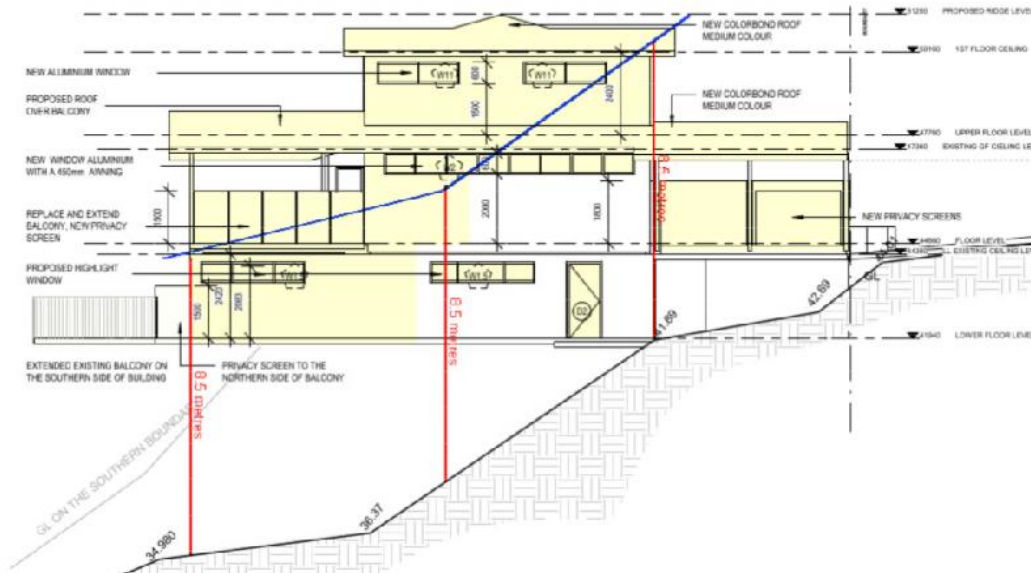


Figure 1. Non-compliant building height shown above the blue line.

It is important to note that the building height complies on the southern elevation, due to the lower gradient of the topography of the site, as shown in Figure 2. below.

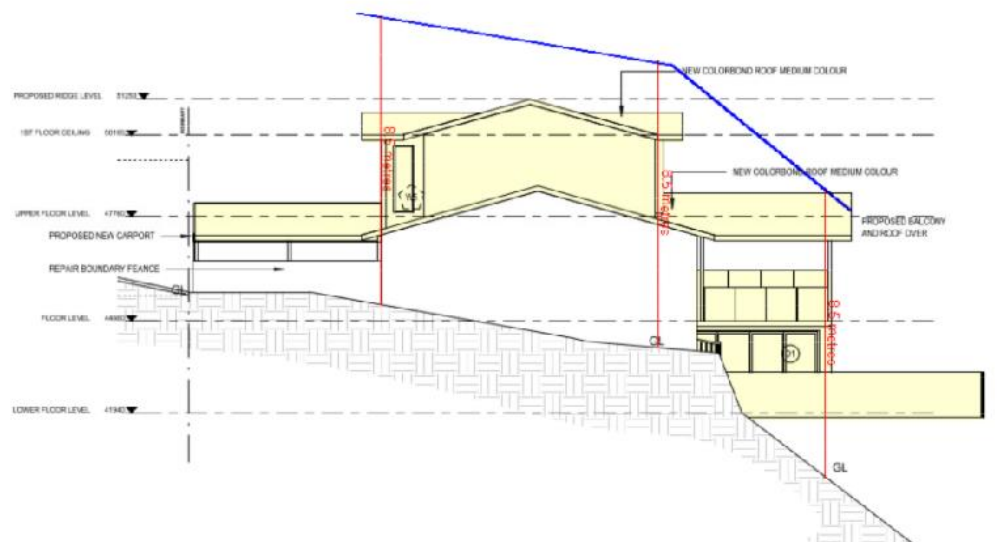


Figure 2. Compliant built form on the southern elevation.

The proposal presents as a two (2) storey development when viewed from Victor Road and a three (3) storey development when viewed from the neighbouring properties to the north (No.159 Victor Road) and south (No.155 Victor Road).

The proposal is compatible with the existing non-compliant building height and three (3) storey presentation of the property to the north (No.159 Victor Road), and the overall ridge height to the

property to the south (No. 155 Victor Road).

The proposals two storey design when viewed from Victor Road, and three storey design with open style balcony areas, provides a more "stepped" look when viewed from neighbouring properties without having to excavating into the significant rock outcrops or remove canopy trees that exist on the site.

Because of the topographical nature of the site and the local area, and the resulting variety of built forms along the side of Victor Road the noncompliance is considered to not unreasonably conflict with the height and scale of surrounding and nearby development. In this context, the proposed height is considered to be compatible.

The development satisfies this objective.

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

Comment:

The matters of view sharing, privacy and solar access are addressed elsewhere in this report (refer to Clauses D6, D7 and D8 of the WDCP 2011).

In summary, it has generally been found that the development does not result in any unreasonable loss to view sharing, privacy or solar access.

However, for the purposes of addressing this particular objective, the following details are provided with regard to the non-compliance in question:

View Sharing

It is acknowledged that the non-compliance of the First Floor roof does obstruct the viewing angle from the properties to the west (No.154 Victor Road and No. 156a Victor Road) such that it reduces the filtered ocean views to a minor extent.

The non-compliance from the the Lower Ground Floor extension obstruct the viewing angle from the property to the north (No.157 Victor Road) such that it reduces the filtered ocean views to a minor extent.

For properties No.154 and No.165a Victor Road, the term 'minor extent' is based upon the comparative retention of the views available through the view corridors from the living rooms of both properties and front balcony area of No. 154 Victor Road which remains intact.

For property No. 157 Victor Road, the term 'minor extent' is based upon the comparative retention of the uninterrupted (bar existing vegetation) arc from the Long Reef headland to the downward views of Dee Why Lagoon and Beach as well as adjacent district views of which will remain intact. The reduction occurs within a relatively narrow section, over the southern side boundary.

The proposed works have attempted to minimise the First Floor design by providing generous side setbacks of 3.5m to the north, and 5.5m to create sufficient view corridors, and an applied condition to reduce the overall ridge height of the First Floor will minimise the impact on these views.

Privacy

The non-compliance includes the upper floor, the ground floor and the lower ground floor windows and balcony areas. It is considered that the non-compliance does not have an unreasonable impact upon the privacy of the existing northern or southern dwellings in that privacy is effectively mitigated by the incorporation of high-sil windows and appropriate privacy screen along the northern and southern elevations to minimise unreasonable privacy impacts.

Solar Access

The development application includes shadow diagrams (see Plan No. D40 - D42 dated 16 October 2019 as prepared by Woodhouse and Danks Architects). The diagrams indicate that the development will cast shadow over the neighbouring property to the south (No. 155 Victor Road) between 9.00am and 3.00pm on 21 June.

However, it should be noted here that overshadowing is controlled by Clause D6 in the WDCP 2011 which requires that at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of three hours of sunlight between 9.00am and 3.00pm on June 21. In this regard, the diagrams indicate that the development will have minor overshadowing impacts to the rear private open space of the neighbouring property from 12noon - 3.00pm. The development therefore complies with the requirements of that particular control.

Given the findings in those clauses, the development satisfies this objective.

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

Comment:

The development is for the alterations and additions to an existing dwelling house. There is no change to the existing canopy trees onsite that will soften and filter the built form, with the dwelling house continuing to exist below the tree canopy.

The residential nature of the development and the non-compliance, is considered to be consistent with the objectives of the zone and the urban context of the local area.

The development satisfies this objective.

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

Comment:

Despite the topographical and environmental constraints of the site, the design continues to create articulation, and visual interest and is sufficiently setback from the boundaries such that the visual impact of the building will be appropriately managed.

It is anticipated that the more contemporary design of the building will not offend the visual appearance of this area of Victor Road.

The development satisfies this objective.

Zone objectives

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

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

Comment:

The retained use of the land for residential purposes will continue to enable other supporting land uses continue to provide facilities or services to meet the day to day needs of residents. The proposal is integrated with the existing dwelling and the steep landform, and responds to the vegetated context in which the site is located.

It is considered that the development satisfies this objective.

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

Comment:

The retained use of the land for residential purposes will continue to enable other supporting land uses continue to provide facilities or services to meet the day to day needs of residents.

It is considered that the development satisfies this objective.

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

Comment:

The development includes 53.4% landscaped area and retains the existing canopy trees, and significant rock outcrops on the site.

The provision of landscaped area and the retention of the significant canopy trees and rock outcrops complies with the objectives and requirements of Clause D1 in the WDCP 2011. The retention of the canopy trees maintain and enhance the streetscape, filter and screen the additional built form, whilst providing habitat for local wildlife.

Therefore, it is considered that the development will not dominate the existing landscaped environment with the bulk and scale continuing to be consistent with the surrounding area.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

Concurrence dated 24 May 2019, 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 for which Council has an exemption for dwelling houses that can be determined by the Development Determination Panel.

6.2 Earthworks

The proposal will see some excavation of the site due to the additional footings and piers for the additions, however all works will be carried out as per the recommendations of the Geotechnical Assessment prepared by D.Katauskas Geotechnical Consultant, Reference No. 822-C, dated 21 July 2019. The recommendations of the Geotechnical Assessment will ensure that the amenity and safety of the subject and neighbouring dwellings will be protected.

Additionally, Council's Landscape officers have applied conditions to ensure the impact of the earthworks will not unreasonably impact or disrupt vegetation on the property.

As such, the proposal is considered to be consistent with the provision and the matters prescribed by Clause 6.2 Earthworks within the Warringah Local Environment Plan 2013.

6.4 Development on sloping land

The site is identified as being within the Landslip Risk Map area B in Warringah Development Control Plan, and the objectives of this clause are applicable in relation to the proposal. The proposal is accompanied by a Geotechnical Assessment prepared by D.Katauskas Geotechnical Consultant, Reference No. 822-C, dated 21 July 2019. This report and its recommendations are included within the conditions of consent to ensure there is no additional adverse impacts to surrounding properties resulting from the proposal on sloping land.

As such, the proposal is considered to be consistent with the matters prescribed by Clause 6.2 Development on Sloping Land, within Warringah Local Environment Plan 2013.

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	Northern - 8.7m - 10.9m (existing wall height 7.4m - 9m) Southern - up to 6.7m (existing wall height up to 4.1m)	up to 51% -	No No Yes Yes
B3 Side Boundary Envelope	4m	Northern - length of 8.3m for a height of 0.6m - 2m, and for a length of 8.1m for a height of 2.8m - 5.6m. (existing encroachment was for a length of 6.7m at a height of up to 4.4m)	140%	No
	4m	Southern - No encroachment	-	Yes
B5 Side Boundary Setbacks	0.9m North	0.99m Carport	-	Yes
		1.8m Ground Floor Decking	-	Yes

		1.8m Lower Ground Floor Decking 3.5m First Floor	- -	Yes Yes
	0.9m South	1.0m Lower Ground Floor Decking 6.4m Ground Floor Decking 5.5m First Floor	- - -	Yes Yes Yes
B7 Front Boundary Setbacks	6.5m	0.0m Carport 5.7m Dwelling House Ground Floor 5.7m - 6.9m Dwelling House First Floor	100% Existing 12.3%	No N/A No
B9 Rear Boundary Setbacks	6m	13.8m Lower Floor Decking	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (225.5sqm)	53.4% (301.3sqm)	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	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
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	No	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
D13 Front Fences and Front Walls	No	Yes

Figure 3. Proposed wall height shown in green, existing wall height shown in blue.

The additional wall height variation is located at the north-eastern corner of Bedroom 4 (Lower Ground Floor), and the kitchen (Ground Floor Level). The wall then steps in at the upper Floor Level (by 2.3m) and is not counted as a continuous wall height.

Merit consideration:

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

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

Comment:

The non-compliance occurs in the mid-section and eastern area of the site, and is setback from the front boundary by approximately 8.2m. Therefore, the variation is not able to be seen from the front setback area.

The extent of the visual impact to the northern adjoining property is minimised by a number of factors, including: a design that responds to the site topography; variation in the materials of the through the use of masonry for the ground floor elevations, highlight windows, open balcony areas, and conditioned changes of materials for the privacy screens; and modulation of the north elevation through variations in the floor floor setbacks from the side boundaries.

Through the use of these design elements, the variation to the wall height control will not cause an adverse visual impact when viewed from the northern adjoining property or the public domain of Victor Road.

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

Comment:

The building has a two storey appearance from the street and steps down the site so to not compromise the topographical relationship of the dwelling to the slope of the site. Existing mature canopy trees in the front setback area and adjacent road reserve are generally of a similar height to the dwelling and provide additional screening of the first floor. Therefore, the proposal does not unreasonably dominate the natural surroundings.

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

Comment:

This matter is discussed elsewhere in this report (refer to Clause D7 (Views) of the WDCP 2011).

In summary, the development was found to have minor impact upon district views to the east, and south east, and that the extent of view loss was considered to be reasonable under the circumstances.

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

Comment:

The wall height non-compliance is only located on the northern elevation of the subject site and, as such, does not create any unreasonable impact upon that neighbouring property in terms of overshadowing or view loss.

Five highlight windows, and privacy screens have been provided on the northern wall, which will not cause any unreasonable privacy impacts to the northern adjoining land.

The shadow diagrams submitted by Woodhouse & Danks Architects indicate that the development will cast additional shadow over the neighbouring property to the south (No.155 Victor Road). However, it is noted that the extent of shadow cast complies with the requirements of this clause in that, at least 50% of the principle private open space area at the rear of the neighbouring property will have access to direct sunlight for a minimum of 3 hours on 21 June (ie: between 9.00am and 1.00pm).

Therefore, the development is considered to be consistent with this objective.

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

Comment:

The development is constrained by two features which conspire to emphasise the non-compliance, these being the framework of the existing building and the sloping topography of the site which drops steeply around the centre alignment. In the circumstances of the steep site conditions and the existence of important environmental features, variation of the wall height control, while continuing to allow for a dwelling house that limits the excavation of the site to protect significant environmental rock outcrops, is not considered unreasonable.

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

Comment:

The development provides for a pitched roof that has been adapted to join suitably to the existing pitched roof form, and responds to the layout and contemporary design of the building.

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

B3 Side Boundary Envelope

Description of non-compliance

Clause B3 requires that a building must be sited within the building envelope which is determined by projecting planes at 45° from a height of 4.0m above the ground level.

The development exhibits existing non-compliance to the side boundary envelope, with the proposed extension to the Lower Ground, Ground and First Floor creating additional non-complaint areas.

The development encroaches into the northern elevation side boundary envelope in two areas, for a length of 8.3m for a height of between 0.6m - 2.0m for the First Floor, and for a length of 8.1m at a height of between 2.8m to 5.6m as demonstrated.

There are no building envelope variations on the southern elevation.

The existing and additional side boundary envelope breaches on the northern elevation are highlighted below.

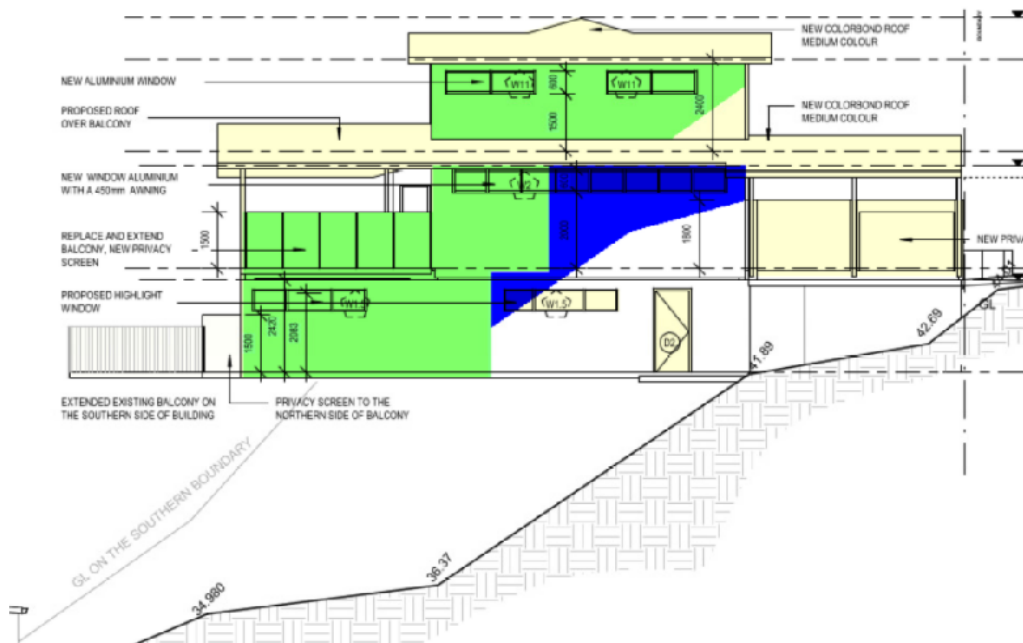


Figure 4. The proposed building envelope non-compliance shown in green, existing non-compliance shown in blue.

As shown in figure 4 above, the non-compliant areas on the northern elevation vary in extent as a direct result of the very steep sloping topography of the site.

Merit consideration

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

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

Comment:

The breach along the northern side boundary envelope is a result of the topography of the site which slopes downward from the western boundary to the eastern boundary by approximately

14m. In order to establish a level floorplate at the eastern area of the site and to minimise excavation, the building is raised along the northern elevation.

Due to the presence of existing walls, the breach to the building envelope most notably occurs where the slope of the site is most acute and where the new build accommodate the addition to the lower, ground and first floor.

The proposal presents as a two storey dwelling house to the street, with the majority of the breach towards the rear of the dwelling, not readily seen from the front setback. Existing mature canopy trees in the front setback area and adjacent road reserve are generally of a similar or greater height than the non-compliance, therefore the First Floor breach does not unreasonably dominate the natural surroundings.

With respect to the visual impact from the northern adjoining property, the breach to the recessed First Floor is not as noticeable due to the stepping of the first floor 3.5m from the northern side boundary, and the lower topography and siting of the northern adjoining dwelling creates a viewing angle whereby the breach is not easily identified from most windows and outdoor recreational areas.

The breach to the Ground and Lower Ground Floor because of the sloping topography of the site, achieves a scale which relates to the bulk and scale surrounding residential development, particularly to the northern neighbouring site, and the non-compliance does not offend the visual relationship to the northern neighbouring site.

In this respect, it is considered that the breach to the northern side boundary envelope will not result in the development becoming unreasonably visually dominant by virtue of its height and bulk when viewed from the neighbouring property to the north or the street.

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

Comment:

Solar Access

The development includes shadow diagrams prepared by Woodhouse & Danks Architects.

The shadow diagrams indicate that the development will cast additional shadow over the neighbouring property to the south (No.155 Victor Road). However, it is noted that the extent of shadow cast complies with the requirements of this clause in that, at least 50% of the principle private open space area at the rear of the neighbouring property will have access to direct sunlight for a minimum of 3 hours on 21 June (ie: between 9.00am and 1.00pm).

The northern neighbouring property at No. 159 Victor Road will not be affected by any overshadowing due to its northern location to the development.

Therefore, development ensures that adequate light and sunlight access is provided to neighbouring properties (as required under Clause D6 - Access to Sunlight under the WDCP 2011).

Privacy

The non-compliance includes the northern side walls to the Lower Ground Floor, Ground Floor, and First Floor.

As discussed under Clause D8 - Privacy later in this report, the development includes additional windows and additional balcony areas at the rear of the dwelling. However it is considered that the envelope breach does not have an unreasonable impact upon the privacy of No. 159 Victor Road, nor to the properties adjoining the rear of the subject site.

The proposal includes two additional windows and the replacement of the existing door and a small balcony area on the Lower Ground Floor.

Window W1.5 services a Bedroom and window W1.5 services the Hallway. Both windows are proposed to include clear glass and have a sill height of 1.6m. Given that one window is associated with a non-habitable space and the other adjoins a bedroom the proposed sill height of 1.6m will not introduce any unreasonable overlooking opportunity.

Replacement door D2 services the Hallway. Because of its elevation above ground level and northerly orientation, the door could offer overlooking opportunities into the principal private open space area of the northern neighbouring property and it is considered that a opaque glazing or a solid door should be installed to prevent downward viewing into this property. An appropriate condition is imposed to address this matter.

The balcony proposes fixed privacy screens at a height of 1.5m to prevent downward viewing into private open space of the property to the north, including its outdoor pool area. An appropriate condition will be imposed to raise this height of the proposed screens to 1.65m, and to ensure that either fixed opaque glass panels or fixed louvers be installed to address this matter.

The proposal includes one additional window and a balcony on the Ground Floor.

Window W2.0 services the Kitchen and Stairwell and is proposed to include clear glass and have a sill height of 2m. The balcony proposes fixed privacy screens at a height of 1.5m to prevent downward viewing into the private open space of the property to the North, including its outdoor pool area. An appropriate condition will be imposed to raise this height of the proposed screens to 1.65m, and to ensure that either opaque glass panels or fixed louvers be installed to address this matter.

The proposal includes two additional windows on the First Floor.

The windows W11 service the Master Bedroom and, given the proposed sill height of 1.5m will not introduce any unreasonable overlooking opportunity to the northern adjoining property.

The proposal includes three additional windows and two additional door areas facing the eastern rear elevation.

The eastern rear elevation includes window W9 and W10 (First Floor) which service the Master Bedroom and Door D3 (Ground Floor) which services the Kitchen and Living area. These windows are proposed to include clear glass and have a sill height of 0.7m, with the doors also being of clear glazing. Due to the significant elevation above ground level and orientation towards the ocean views of Dee Why and Long Reef, there is no unreasonable impact to the property to the east.

On the Lower Ground Floor, Window W1 and Door D1.5 service a Bedroom and Office. Window (W1) proposes clear glass and a sill height of 1m, with door D1 also being of clear glazing. the demonstrated elevation will not introduce any unreasonable overlooking opportunity.

Subject to addressing the above conditions relating to privacy, it is considered that the breach to the side boundary envelope will not result in unreasonable impact to light, sunlight access and privacy.

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

Comment:

The development is constrained by two features which conspire to emphasise the non-compliance, these being the framework of the existing building and the sloping topography of the site which drops steeply around the centre alignment.

The development on the Lower Ground and Ground Floor is an extension to the east of the existing dwelling structure and, as such, is guided by the existing built form. The proposed development has demonstrated adequate articulation and variation to the design providing a sufficient stepped profile.

The proposed development has responded to this site constraint by proposing a first floor addition that displays reasonable setbacks, including front and side setbacks, to reduce the impact on the side boundary envelope. Therefore, the addition of Level 1 is not considered to compromise the topographical relationship of the dwelling to the slope of the site.

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

B7 Front Boundary Setbacks

Description of non-compliance

The development proposes the following front setbacks:

- Carport: 0m;
- Ground Floor: 5.6m to 5.71m (existing); and
- First Floor: 5.6m to 6.9m.

The non-compliance equate to variations of between 12.3% (at 5.7m) and 100% (at 0.0m).

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 non-compliant elements are generally consistent with the variable setbacks along this immediate section of Victor Road and with the front setback of the existing dwelling.

The setback of the dwelling house is based upon the existing dwelling, which has occupied the site for a significant period of time. The upper level of the dwelling is setback at 5.7m, and this level is smaller in area than the preceding ground level as the first floor transitions further into the site to 6.9m. This transition serves to move the higher bulk further back from the street. Based on these circumstances, a sufficient sense of openness is provided for the first floor addition.

The siting of the carport is forward of the building line due to the steeply sloping site and results in a open style built form which is consistent with the character of this section of Victor Road. There numerous examples of existing carports within the front setback, for example No. 145, No.153, No 155, No.159 and No.161 Victor Road. Therefore, the design is consistent with the existing character of the streetscape.

The proposed carport is open in design and despite the location within the front setback area, will not result in a degradation to the existing sense of openness of the site.

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

Comment:

The visual continuity of Victor Road is dominated by open and varied front setbacks, with some dwellings located in a more forward position and car parking within the front setback. Therefore, the development is not dissimilar to other development along this section of Victor Road where and parking structure, and dwelling houses close to the front boundary are frequent.

In this case, the dwelling first floor wall setback will align with the existing ground setback and then provide an increased setback of 6.9m. property, with the carport maintaining an open style. Therefore, the proposed first floor and carport do not create an unreasonable disruption to the visual continuity of the streetscape.

It is also noted that the front setback of the site is occupied by landscaped elements and canopy trees, that when combined with the modernised additions will result in an aesthetic improvement when viewed from the street.

Under these circumstances, adequate visual continuity and building pattern is provided and this objective is achieved.

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

Comment:

The property will maintain a frontage of landscaping elements in order to maintain the visual quality of the streetscape. The change to the upper storey does not unreasonably disrupt the existing visual quality of the street since consistent building setbacks are maintained between adjacent dwellings, for example southern adjoining property No.155 Victor Road demonstrates a 6.1m front setback to the dwelling house and 0.2m to the carport, with No.153 Victor Road demonstrating a 6.8m front setback to the dwelling house and 0.0m to the carport.

Therefore, the proposal is considered to maintain this objective.

- *To achieve reasonable view sharing.*

Comment:

Consideration has been made for views in accordance with *Tenacity Consulting Pty v Warringah Council* in consideration of views obtained over the site toward the coastal area, pursuant to the Planning Principle established by the NSW LEC with regard to view sharing. It was concluded that the upper storey element displaying the existing building setback does not unreasonably affect any coastal or district views.

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

D3 Noise

The acoustic level would be consistent with current residential living.

D7 Views

During the notification period of this application, three submissions were received from adjoining and nearby property owners.

As a result, Council undertook three view loss inspection from the following properties:

- 159 Victor Road (northern)
- 154 Victor Road (western)
- 156a Victor Road (north-western)

The relevant sections of the submissions which relate to view loss read as follows:

159 Victor Road

"The proposal not only results in view impacts to the properties to the west, the eastern projection of the ground floor level will result in the loss of views from my client's rear open space as well as from internal areas at ground level (the kitchen and dining areas).

The front yard of 159 Victor Rd is used as a secondary private open space area and contains a pizza oven, fire pit and seating. This area enjoys a view corridor of the Pacific Ocean between the two dwellings. The eastern projection of the proposed development will result in the loss of this water view from the front outdoor entertaining area.

The eastward projection of the proposed development will also result in the loss of views currently available from the open plan kitchen and dining area located at the ground level of my client's property. While expansive views are available from the east facing windows, doors and balconies, the water view which is available in a south-easterly direction will be affected by the proposed development."

154 Victor Road

"The breach of these planning controls results in a development that blocks the significant views from 154 Victor Road."

156a Victor Road

"This breach of height limit will completely obstruct the easterly aspect views we currently enjoy from our principal living area, kitchen, and dining area of the Dee Why lagoon and the ocean (including breaking waves)."

Height poles, certified by Hill & Blume Consulting Surveyors, were erected on the site to demonstrate the proposed height and the likely impact of the development on existing view lines.

Properties in the area have district and coastal views and view sharing in the area varies by the topography and existing development pattern.

As part of the assessment, full consideration of the potential view loss associated with the application, consistent with the objectives of D7 - Views of the WDCP and the four (4) planning principles outlined within the Land and Environment Court Case of Tenacity Consulting Pty Ltd Vs Warringah Council (2004) NSWLEC 140, is provided below.

Merit consideration

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

To allow for the reasonable sharing of views.

Comment:

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

1. Nature of the views affected

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

Comment to Principle 1:

The surrounding development pattern contains a mix of houses with either a street outlook or a district outlook, that may include coastal views if made possible by the elevated topography.

154 & 156a Victor Road

A site visit of the subject properties, demonstrates the views enjoyed across the site is broad coastal views including the ocean horizon, parts of Dee Why Lagoon and the coastal interface. The focal area of both properties is toward the ocean expanse. The district views along the coastline also form part of the periphery north-east and south-east due to the ridgeline location above Narrabeena. The view is heavily obscured by canopy trees, power lines and the sequence of roof lines along Victor Road. The existing views are shown in Photo 1 and 2 below.



Photo 1. Photo of the current view from the Lounge/Dinning room of 156a Victor Road (note:smoke levels where high and filtered the view).



Photo 2. Photo of the current view from the front deck 154 Victor Road.



Photo 3. Photo of the current view from the lounge room of 154 Victor Road.

These views do not have a strong water view component (such as a close coastal / beach interface) as Dee Why Lagoon is located over approximately 2 kilometers (km), Long Reef Beach over approximately 2.3 kilometers and Dee Why Beach is approximately 2.3 kilometers (km) to the east and partly obscured by the canopy trees.

159 Victor Road

A site visit of the subject property, demonstrates the views enjoyed across the whole site are district views towards the Dee Why and Long Reef coastline, broad coastal views including the ocean horizon, parts of Dee Why Lagoon and the coastal interface. The focal area is in an easterly direction toward the ocean expanse. The district views along the coastline also form part of the periphery north-east and south-east due to the ridgeline location above Narrabeena. Being located on the edge of the ridgeline, the property sits at a higher topography whereby the view from the property towards the east is unobstructed, however the views toward the south-east are obstructed by the Narrabeena escarpment and canopy trees.

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

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

Comment to Principle 2:

156a Victor Road

The views from the elevated one storey dwelling house are towards the ocean, and horizon are obtained over the front boundaries. The view lines to be affected are over the rooflines of the dwelling houses on the eastern side of Victor Road, including the subject site.

From the elevated position of the site, the property enjoys the view lines from the large east-facing lounge/dinning room window. The views are obtained from a sitting and standing position. Views from sitting positions are more affected than from standing positions.

154 Victor Road

The views from the elevated one storey dwelling house are towards the ocean, and horizon are obtained over the front boundaries. The view lines to be affected are over the rooflines of the dwelling houses on the eastern side of Victor Road, including the subject site.

All views are obtained from the kitchen, main living room, and front balcony in both a sitting and standing position. Views from sitting positions are more affected than from standing positions.

159 Victor Road

The view to the east is common to dwellings in this immediate section of Victor Road in-so-far as many are configured to capitalise on the easterly outlook, not necessarily a street outlook. Good views are obtained from all the upper and middle level of the three storey dwelling house (where higher topography permits). In general, views are partly or substantially obscured at the lower level due to topography existing buildings and from other structures such as trees / vegetation.

The views to the beach, Dee Why Lagoon, ocean, and horizon are obtained over the eastern rear and both the northern and southern side boundaries.

The views are from multiple locations, over multiple levels as you move down the escarpment. However, the main view lines are from the lounge room, kitchen, family room, bedroom two (2) and bedroom (3), master bedroom, and rear deck areas. The view lines are gained or compromised from different locations within the property due to the angled view lines that are across rear and side boundaries.

3. Extent of impact

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

Comment to Principle 3:

156a Victor Road

It is considered that the view loss from the lounge room will be a minor portion of ocean, horizon and tree canopy to the south-east as demonstrate in. The view loss impact is considered to be **minor**.

154 Victor Road

The view loss from the front balcony, lounge area, kitchen and front entry is a portion of the ocean, horizon and tress canopy over the front boundary. Reasonable view corridors are maintained on either side of the First Floor addition. The view loss is considered to be **minor**.

The impact to No.156a and No.154 Victor Road is not assessed as a higher rating due to the existing view being limited. Both sites view lines are over the roof line of the subject site and is subject to the existing foreground development, trees and structures having already reduced the quality of the viewing corridor. In addition to this, the site is a long distance from the coastline, meaning the view is more characterised a district outlook with a distant ocean elements secondary to the foreground vegetation.

159 Victor Road

Given the architecture of the Objector's home, water and district views are obtained from the majority of

the internal spaces and over the rear boundary. Most predominantly, the views are enjoyed from the outdoor areas (decks), the primary living room, kitchen and bedrooms.

It was assess that no room or part of the Objector's property will be impacted upon in a way that the existing provision of views will be significantly reduced. The dwelling will still retain all easterly and north-easterly views.

In conjunction with the planning principle, the view loss subject of this development application is qualitatively assessed as follows:

- Outdoor Rear Deck Areas - Negligible - **Minor**
- Primary Living Room - Negligible - **Minor**
- Secondary Living Room - Negligible - **Minor**
- Kitchen - Negligible - **Minor**
- Bedroom two (2) - **Moderate** (*see Photo 4*)
- Bedroom three (3) - **Negligible**
- Front Entertaining Area - **Sever** (*see Photo 5*)

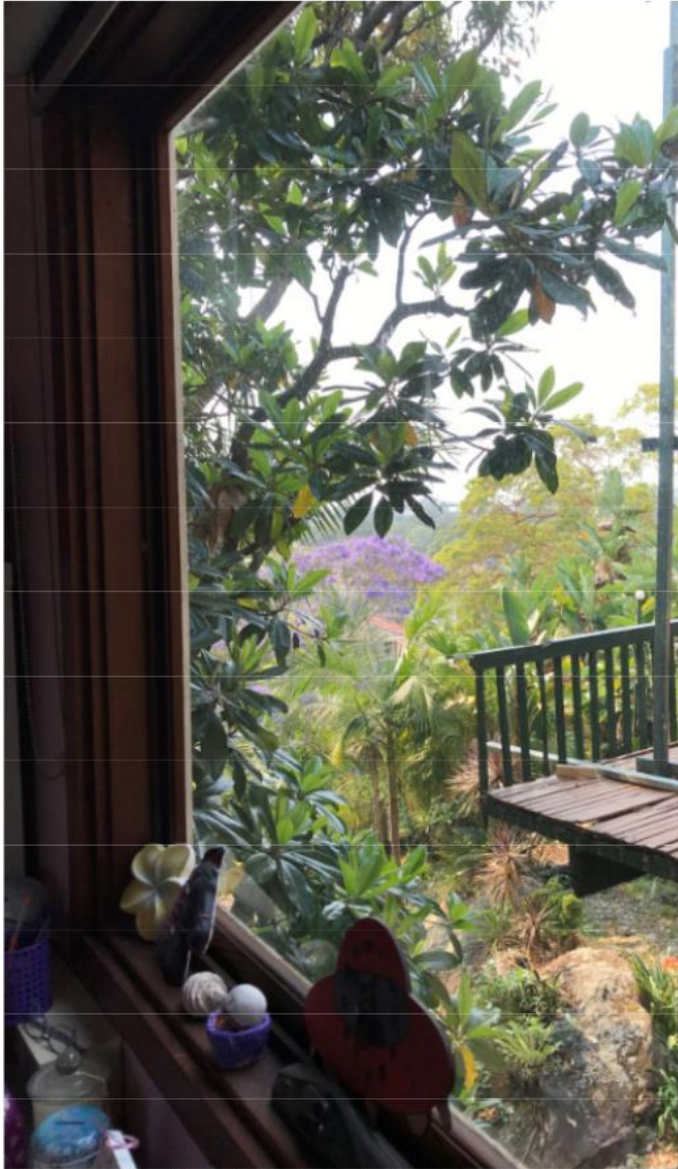


Photo 4. View lines to be impacted from bedroom 2 by the proposed Lower Ground Floor (note: smoke levels were high and filtered the view) for the photo.

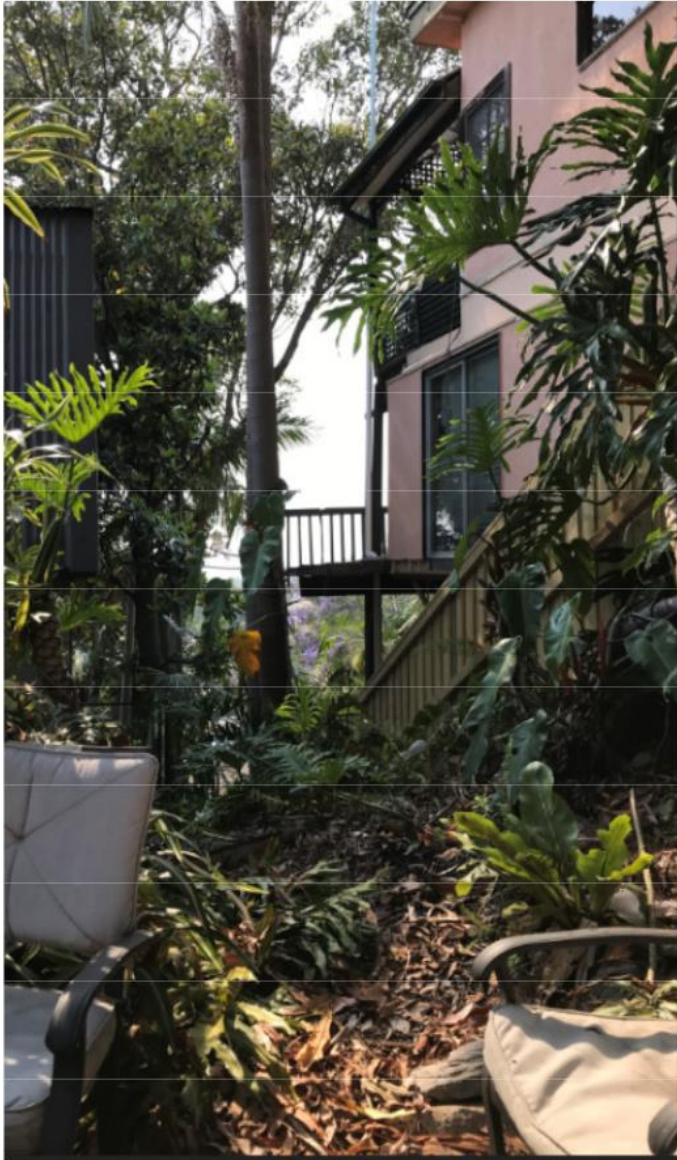


Photo 5. View lines from the front setback recreational area to be impacted from the proposed Lower Ground Floor (note: smoke levels were high and filtered the view for the photo).

In this regard, the overall view loss is considered to be "minor", based on the only view corridor to be impacted is in a south-east direction over a side boundary, with all views over the rear and north east side boundary, including views to the significant feature of Dee Why not affected.

4. Reasonableness of the proposal that is causing the impact

"The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be

asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable."

Comment to Principle 4:

Whilst the proposal is compliant with the side boundary setbacks, the element of the proposal causing the view impact is generally the rear northern end and mid-section of the building and upper roof lines, whereby the site slopes toward the north and the existing topography falls away steeply from RL41.89 to RL34.98 through central area of the site. Therefore, the non-compliances with the 7.2m wall height control, and side boundary envelopes on the northern elevation are accentuated by the variable gradients down the length of the site and the horizontal distances of each floor.

The question of a more skillful design has been considered. Overall, the building design, particularly the First Floor retains more than sufficient side setbacks of 3.5m and 5.5m to allow sufficient view corridors to be provided to the neighbouring sites on the opposite side of Victor Road. Given that the minimum requirement for a habitable room is 2.4m, and 2.1m for the non-habitable room, it is considered that the design of the First Floor floor to ceiling height cannot be reduced further without impacting the amenity of the occupants. However, the maximum overall ridge height impacts the views, particularly from No.154 Victor Road and the extent of view loss could be minimised by the reduction in the over all ridge height from RL51.250 to RL50.85 (further reduction of 0.4m), which will be undertaken via an applied condition.

Relocating the upper storey element to the eastern side of the dwelling, was also considered. However, it was determined view site visit that relocation under the proposed Lower Ground Floor could create further view and amenity impacts on No.155 Victor Road.

On balance it is recognised that design demonstrate the reasonable exercising of development potential versus maintaining amenity that is affected by the constraints of a steep topography of the site. The view loss is minor, however, the proposal will maintain consistency with view sharing principles as applied in this assessment. Therefore, the view impact, subject to conditions, is considered to be supportable.

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

Comment:

The site is constrained by the steep topography and rock ledges within the site, therefore single storey presentation to the Victor Road streetscape is an unlikely design option.

The proposed First Floor addition is sited and designed to accommodate view sharing by providing sufficient side boundary setbacks of 3.5m and 5.5m respectively to allow for the retention of more than reasonable view corridors to be maintained. A condition is recommended to ensure the maximum ridge line is reduced by 0.4m to remove additional height causing unnecessary intrusion into the view lines.

The development will modernise the existing dwelling to provide a contemporary family home for the occupants of the site, with the proposal being consistent with the height, bulk and appearance of other modernised homes on the upper edge of the Narrabeena escarpment of Victor Road.

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

Comment:

There are existing canopy trees on the subject site and surrounding causing significant obstruction to views. The proposal does not include the removal of any canopy trees in order to gain views.

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

D8 Privacy

The development includes additional windows, doors and balcony areas on all three (3) Levels.

Given the topography of the area, and the elevation and distance from the side boundaries (i.e. 2.6m from the northern boundary for the lower and ground floor, 3.5m for the First Floor and 5.5m from the southern boundary for the First Floor) additional windows and balcony areas have the potential to overlook into the rear private open space area of No. 155 Victor Road (which contains a swimming pool in the rear yard).

Overlooking of the properties to the rear is unlikely given the elevation and setback of over 17m from the rear boundary, and screening vegetation.

A submission was received on behalf of the the northern neighbouring property (No. 155 Victor Road) who raised concern with respect to overlooking. The submission raised that the proposed windows on the northern elevation and the new elevated decks within the northern side of the site will impact upon privacy, see extract of the submission below.

"My clients have concerns regarding the inadequate spatial separation of the proposed development with their dwelling, as well as the numerous windows in the northern elevation, the large balcony on the northern elevation and the inadequate height of privacy screens."

Merit consideration

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

- *To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.*

Comment:

All windows proposed on the northern elevation include clear glass and have a varying sill heights of sill height 1.5m of 2m. Therefore, the windows will not introduce any unreasonable overlooking opportunities.

The development includes rear elevated balcony areas which could overlook the principal private open space area of the neighbouring property at No. 155 Victor Road.

The balcony servicing the Kitchen and Lounge Room on the Ground Floor has incorporated 1.5m privacy screening to be installed along the northern side edge of the balcony to mitigate

overlooking opportunity (and the perception of being overlooked) to the private open space and swimming pool at No. 155 Victor Road. An appropriate condition will be imposed to raise this height of the proposed screens to 1.65m, and to ensure that either fixed opaque glass panels or louvred screens, spaced and angled such that downward viewing is not achievable but permits a horizontal line of sight across the neighbouring properties.

Although the Lower Ground Floor balcony on the northern elevation, servicing a bedroom and an office, is only 0.9m in width, it is designed to be used as an outdoor area in which to actively stand and/or sit which could lead to direct overlooking. However, the northern elevation of the balcony has proposed 1.5m privacy screening to be installed along the northern side edge of the balcony to mitigate overlooking opportunity (and the perception of being overlooked) to the private open space and swimming pool at No. 155 Victor Road. An appropriate condition will be imposed to raise this height of the proposed screens to 1.65m, and to ensure that either fixed opaque glass panels or louvred screens, spaced and angled such that downward viewing is not achievable but permits a distant horizontal line of sight across the neighbouring properties.

The carport also proposes privacy screens on the northern elevation to mitigate direct overlooking to the front recreational area of No. 155 Victor Road. An appropriate condition will be imposed to ensure that either fixed opaque glass panels or louvred screens, spaced and angled such that downward viewing is not achievable but permits a distant vertical line of sight across the neighbouring properties.

Door D2 is existing, therefore there is no additional unreasonable privacy amenity impacts from this transitional zone. However, the replacement door D2 because of its elevation above ground level and orientation could offer overlooking opportunities into the principal private open space area of the neighbouring property to the north via the choice of materials for the door. It is considered in this circumstance that it is appropriate to apply a condition that requires the applicant to provide opaque glazing or a solid door to prevent downward viewing into the neighbouring property.

It is noted that the rear boundaries of the subject site include advanced vegetation which screens overlooking towards the rear adjoining properties.

The development includes additional window on the southern elevation servicing the stairwell of the First Floor, 8.2m from the southern property boundary. A condition will be applied to require this window to be of opaque glazing to ensure the window does not have an unreasonable impact upon the privacy of the existing dwelling at No. 153 Victor Road.

The southern neighbouring dwelling house sites at a higher elevation, such that the Lower Ground Floor doors and deck area will not cause any unreasonable direct overlooking.

Subject to addressing the above conditions relating to privacy, it is considered that the breach to the side boundary envelope will not result in unreasonable impact to light, sunlight access and privacy.

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

Comment:

Subject to conditions to address some potential privacy concerns along the northern elevation the dwelling design via privacy screens and high sill windows maintains reasonable privacy to adjacent land.

- *To provide personal and property security for occupants and visitors.*

Comment:

The development provides for the personal and property security for occupants and visitors.

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

D9 Building Bulk

Merit consideration

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

- *To encourage good design and innovative architecture to improve the urban environment.*

Comment:

The proposal does not include large areas of continuous wall planes within the front setback area to Victor Road and contains sufficient variation to building setbacks to provide visual relief and address the street.

Sufficient techniques have been used to provide visual interest, via fenestration, change of materials (i.e privacy screens) and articulate walls to reduce building mass and reduce the appearance of building bulk along the northern elevation.

Landscape plantings are also adequate to reduce the visual bulk of the building, provide effective screening and a landscaped setting for the bulk and scale of the building. In addition, the design has avoided extensive excavation and radical changes in site levels that will remove the existing unique natural rock features of the property.

Therefore, the presentation is does not disrupt the established visual quality of the streetscape with the proposal being compatible with the visual building bulk of the surrounding predominant pattern and scale of housing along the downward slope of Victor Road escarpment.

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

Comment:

The development has sufficient building articulation and fenestration along the side walls and whilst the proposal presents as a three storey dwelling from the rear (similar to the presentation of No.155 & No.153 Victor Road), and sites as a two storey dwelling from the street.

Landscaping (up to 53.4% the site area), wide building setbacks of 4.5m to 5.5m of the First Floor, building articulation, use of window fenestration, sympathetic use of materials and colours assists in reducing the perceived building bulk and minimise the visual impact of the development when viewed from adjoining properties and the street.

The resultant built form therefore appropriately respond to the local character of the existing

residential area.

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

D13 Front Fences and Front Walls

Description of non-compliance

The proposed works include retaining the existing rendered front wall, creating a new access opening within the front wall, and a new sliding gate across the carport to a height of 1.8m. The control allows for a maximum height of 1.2m. Exceptions are granted for a front fence to a maximum height of 1.8m where it can be demonstrated that a solid 1.8m high fence is consistent with the existing streetscape and is required to mitigate traffic noise.

In this regard, the front fence at a maximum height of 1.8m is existing and therefore is not part of this application. However, the new 1.8m sliding gate and entry gate is not considered to be consistent with the existing Victor Road streetscape or required to mitigate traffic noise as Victor Road is a residential street located within a low density area.

Therefore, a condition has been included in the recommendation of this report requiring the reduction in the height of the entry gate and sliding gate to a maximum of 1.65 metres when measured from existing ground level to ensure consistency with the objectives of the control.

Merit consideration

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

- *To ensure that fencing, terracing and retaining walls are compatible with the existing streetscape character while creating visual interest in the public domain.*

Comment:

Victor Road includes a range of fencing types, with the dominant streetscape being for no front fencing or low open style front fencing. There are situations of higher fencing that have occurred fronting Lynwood. However, these are corner Lots and in these cases have 1.8m fences for the secondary frontage. Therefore, higher styles of front fencing along this section of Victor Road are an exception to the dominant style of no fencing or lower open fencing.

The Warringah DCP encourages low open style of front fencing with more than 50% of the structure being open (gaps). To ensure consistency, a condition will be applied that will see the front sliding gate demonstrating a overall height of 1.65m with a high element of visual openness (transparency).

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

Comment:

The proposed fencing is not an innovative design solution that is consistent with the DCP. In order to be consistent with the Warringah DCP 2011 and meet the requirements of this clause a

maximum height of 1.65m is recommended for the sliding gate and entry gate. The slat style and materials used for the sliding gate fencing are not recommended to be changed, only the overall height.

The proposed mixed style of masonry wall combined slatted fencing, of varying height provides a design solution for safety and security for the occupants, whilst improving the overall outlook of the built environment.

- *To avoid a 'walled in' streetscape.*

Comment:

The proposed visual impact of the front fencing is mostly a 1.8m solid masonry wall and slatted gates. This creates a 'walled-in' streetscape and is not consistent with the Warringah DCP as shown in Figure 6 below.

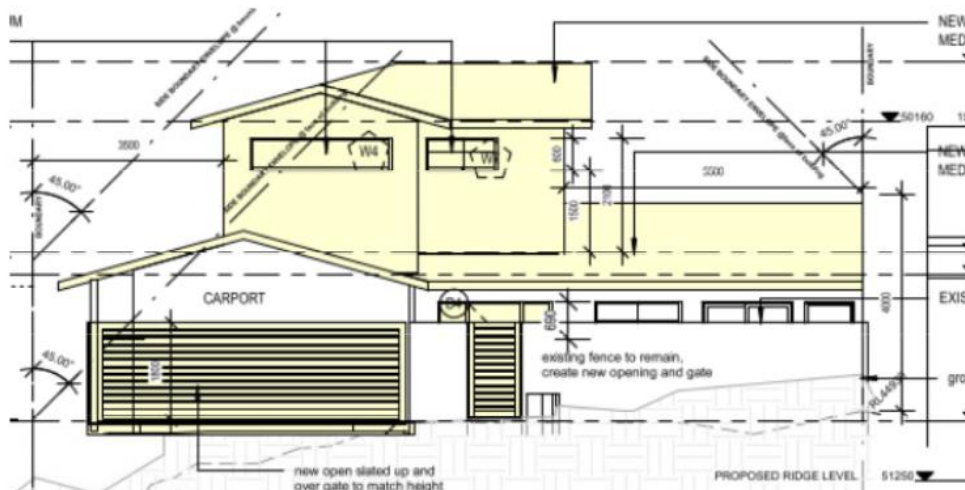


Figure 5. Proposed sliding gates height of 1.8m in height creating a visual "walled in" presentation to Victor Road.

The DCP provides a visual style guide for front fencing and in order to be consistent with the DCP it is recommended that the maximum height of the sliding gate of the carport be reduced from 1.8m to 1.65m to remove the "walled in" visual impact to the Victor Road streetscape.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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 \$5,100 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$510,000.

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 EPs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

Council is satisfied that:

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

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

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

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

This report provides a detailed assessment of the Development Application for a new dwelling house at 157 Victor Road, Narraweena.

This assessment has taken into consideration the plans, Statement of Environmental Effects, clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of clause 4.3 Height of Buildings development standard, other documentation supporting the application and public submissions.

The assessment of the proposed development against the provisions of WLEP 2011 found that the proposal does not comply with the 'Height of Buildings' Development Standard which permits a maximum building height of 8.5m within the R2 Low Density Residential zone.

In this case, the non-compliance is located at the northern and mid area of the proposal. Whilst the building height variation is significant, the non-compliance is largely unavoidable due to the steep slope of the site and the need to avoid impacts on the natural features of the site such as rock outcrops and canopy trees.

The applicant's written request under clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of clause 4.3 Height of Buildings development standard has adequately addressed and demonstrated that compliance with the standard is unreasonable or unnecessary and that there are sufficient environmental planning grounds in the circumstances of this highly constrained site and the encroachment does not result in any unreasonable impacts to surrounding residential properties.

In addition, the assessment of the proposed development against the provisions of the Warringah DCP 2011 has found that the proposal does not comply with a number of controls, i.e wall height, side boundary envelope and front boundary setback. Given the constraints on the development by virtue of the escarpment location and the presence of significant environmental features, some flexibility in applying these controls is necessary. There will not be unreasonable amenity impacts on adjoining properties and the proposal will be consistent with the vegetated character of Victor Road and the Locality.

The critical concerns relating to the view loss as a result of the non-compliant Building Height, the building envelope, and building wall height have been addressed and the proposal does not create unacceptable or unreasonable privacy, amenity or view impacts to the adjoining properties.

Three (3) submissions were received in response to the notification of the application. The issues raised in the submissions have been addressed in the "Public Notification Section" of this report and subject to applied conditions are not a reason for refusal.

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

Accordingly, the application is referred to the Northern Beaches Development Determination Panel with a recommendation for approval.

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

RECOMMENDATION

Accordingly Council as the consent authority grant Development Consent to DA2019/1179 for Alterations and additions to a dwelling house on land at Lot A DP 378435, 157 Victor Road, DEE WHY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. **Approved Plans and Supporting Documentation**

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Site Plan D01	16/10/2019	Woodhouse & Danks Architects
Lower Ground Floor D10	16/10/2019	Woodhouse & Danks Architects
Ground Floor D11	16/10/2019	Woodhouse & Danks Architects
Upper Floor Level D12	16/10/2019	Woodhouse & Danks Architects
Roof Level D13	16/10/2019	Woodhouse & Danks Architects
North Elevation D20	16/10/2019	Woodhouse & Danks Architects
West & East Elevation D21	16/10/2019	Woodhouse & Danks Architects
South Elevation D22	16/10/2019	Woodhouse & Danks Architects
Section 1 D30	16/10/2019	Woodhouse & Danks Architects
Section 2 D32	16/10/2019	Woodhouse & Danks Architects

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Geotechnical Assessment - Updated Revision	21 July 2019	D. Katauskas Consulting Geotechnical Engineer

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 \$5,100.00 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 \$510,000.00.

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

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

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

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

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

5. **Security Bond**

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

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

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

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

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

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

6. Amendments to the approved plans

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

- a) The maximum roof ridge height of the development is to be RL50.85.
- b) Door (D2) on the northern side of the Lower Ground Floor shall be of either a solid style construction (no clear glazing), or an opaque glass door in materials that complement the design of the approved development to prevent overlooking to No. 155 Victor Road.
- c) The privacy screen on the northern side of the Ground Floor Carport shall be of fixed opaque glass panels or louver style construction (with a maximum spacing of 20mm) which are positioned horizontally to prevent downward viewing of the front setback open space area of No. 155 Victor Road and in materials that complement the design of the approved development.
- d) The privacy screens on the northern side of the Lower Floor and Ground Floor rear decks are to have a maximum height of 1.65 metres above the finished floor. The privacy screens shall be of fixed opaque glass panels or louver style construction (with a maximum spacing of 20mm) which are positioned horizontally to prevent downward viewing of the swimming pool/private open space area of No. 155 Victor Road and in materials that complement the design of the approved development.
- e) The front sliding gate (servicing the carport) and entry gate (within the front boundary wall) is to be reduced in height to a maximum of 1.65 metres when measured from existing ground level.

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

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

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 NB Consulting Engineers, Job Number 170112, drawing number D01, D02 & D03, Revision D, dated 26/08/2019. 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. Tree Protection Plan

In order to protect and enhance onsite vegetation and trees the following applies to the development site:

- (a) A Tree Protection Plan prepared by a AQF Level 5 Arborist (or equivalent) showing the following:

- Layout of the approved development
- Location of trees identified for retention
- Extent of canopy spread
- Location of tree protection fencing / barriers (fencing in accordance with AS2470 – 2009)
- General tree protection measures

(b) The Tree Protection Plan is to be submitted to the Principal Certifying Authority for approval prior to issue of a Construction Certificate.

(c) Tree protection measures identified on the plan 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.

9. **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.

10. **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.

11. **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:

- "Tap in" details - see <http://www.sydneywater.com.au/tapin>
- Guidelines for Building Over/Adjacent to Sydney Water Assets.

Or telephone 13 000 TAP IN (1300 082 746).

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

12. **Waste Management Plan**

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

Details demonstrating compliance must be provided to the 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

13. Tree trunk, branch and root 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 the Project Arborist on site.
 - ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by the Project 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.

14. Project Arborist

- i) A Project Arborist with minimum qualification AQF Level 5 is to be appointed prior to commencement of works.
- ii) The Project Arborist is to oversee all tree protection measures, removals and works adjacent to protected trees as outlined in the approved Tree Protection Plan and AS4970-2009 Protection of trees on development sites.
- iii) 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.

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

15. 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.

16. Removing, Handling and Disposing of Asbestos

Any asbestos material arising from the demolition process shall be removed and disposed of in

accordance with the following requirements:

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

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

17. **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 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.

18. **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.

19. **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.

20. **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****21. 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.

22. 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.

23. 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.

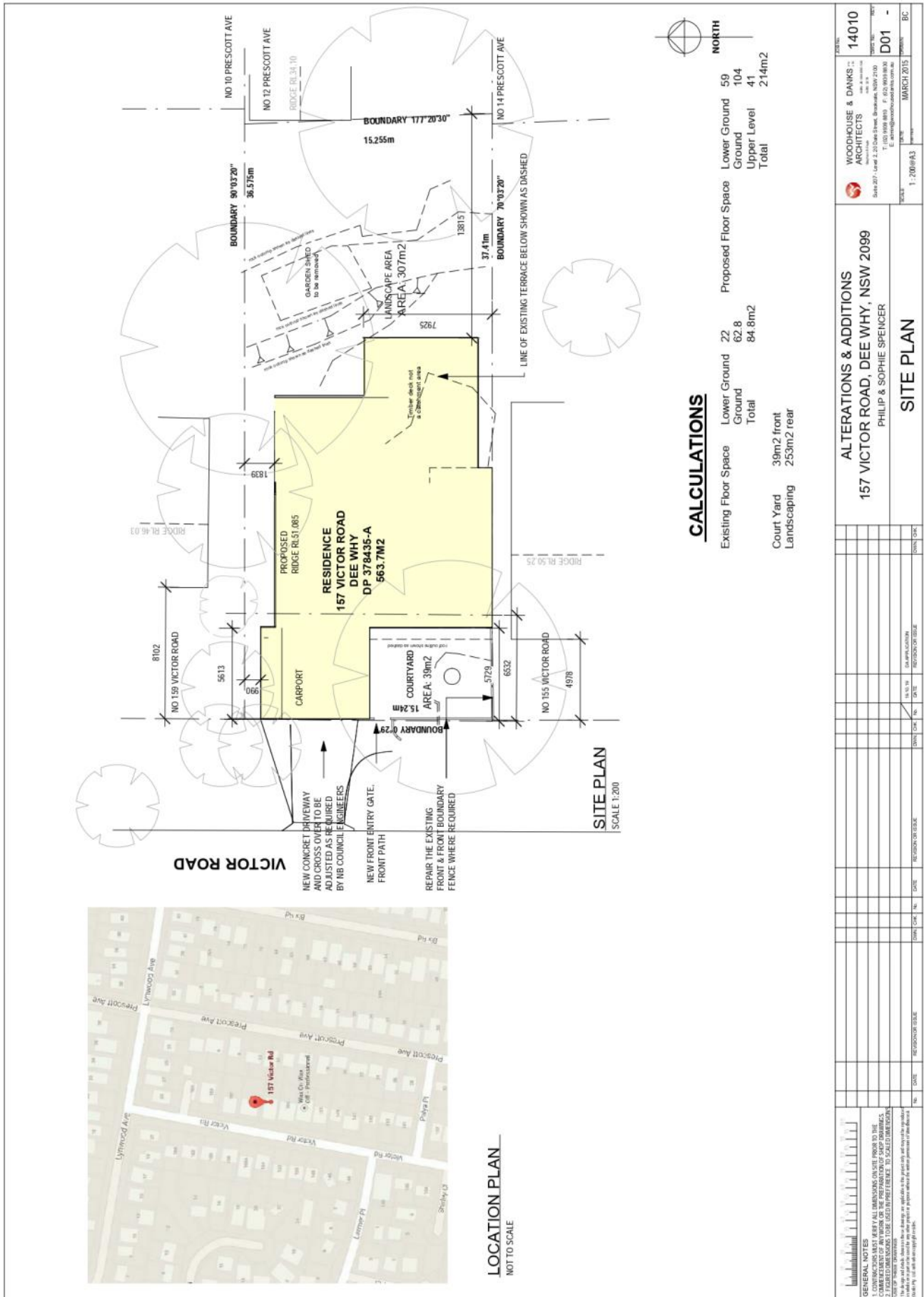
Reason: To ensure the on-site stormwater detention/disposal system is maintained to an appropriate operational standard.

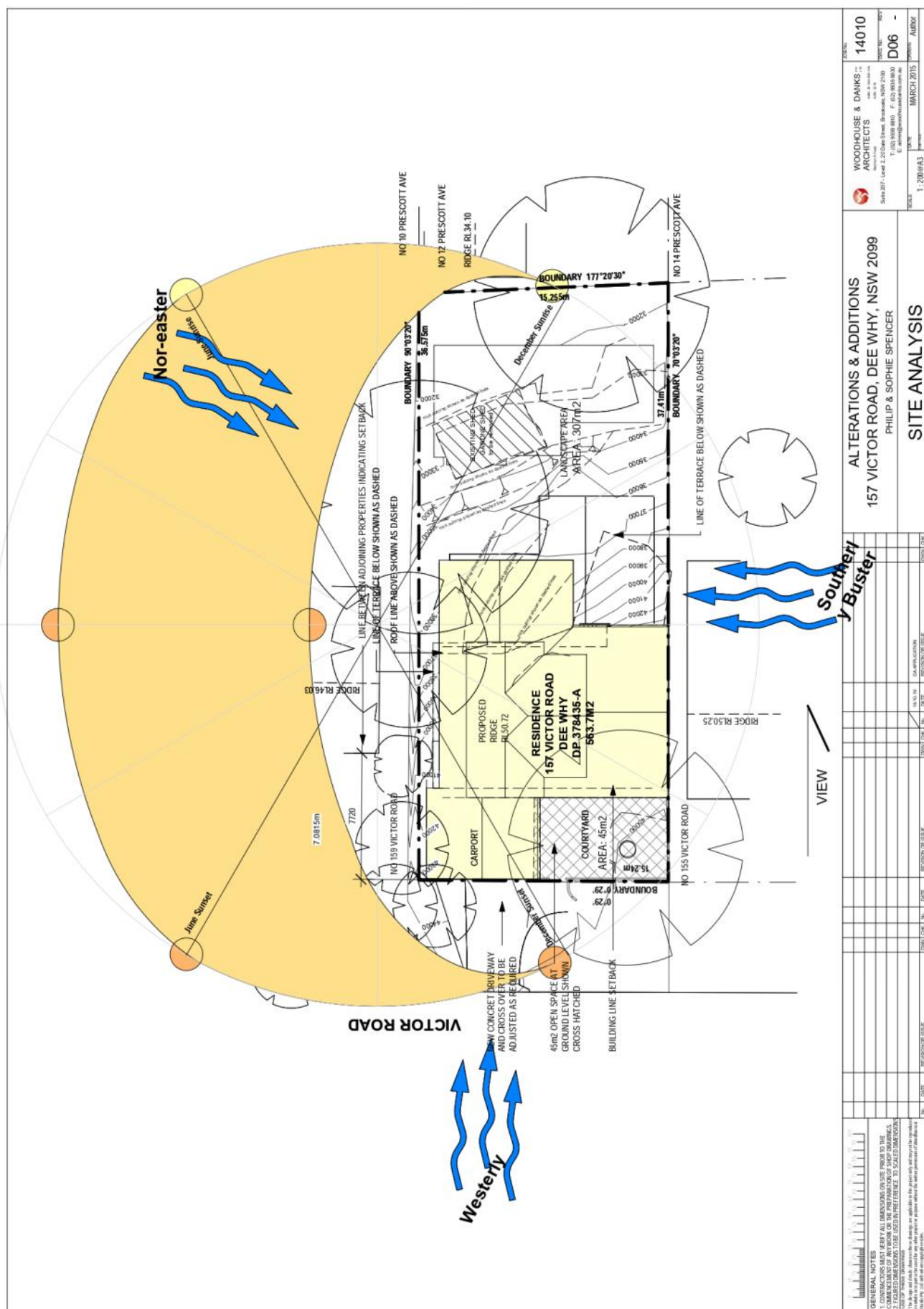
24. Waste Management Confirmation

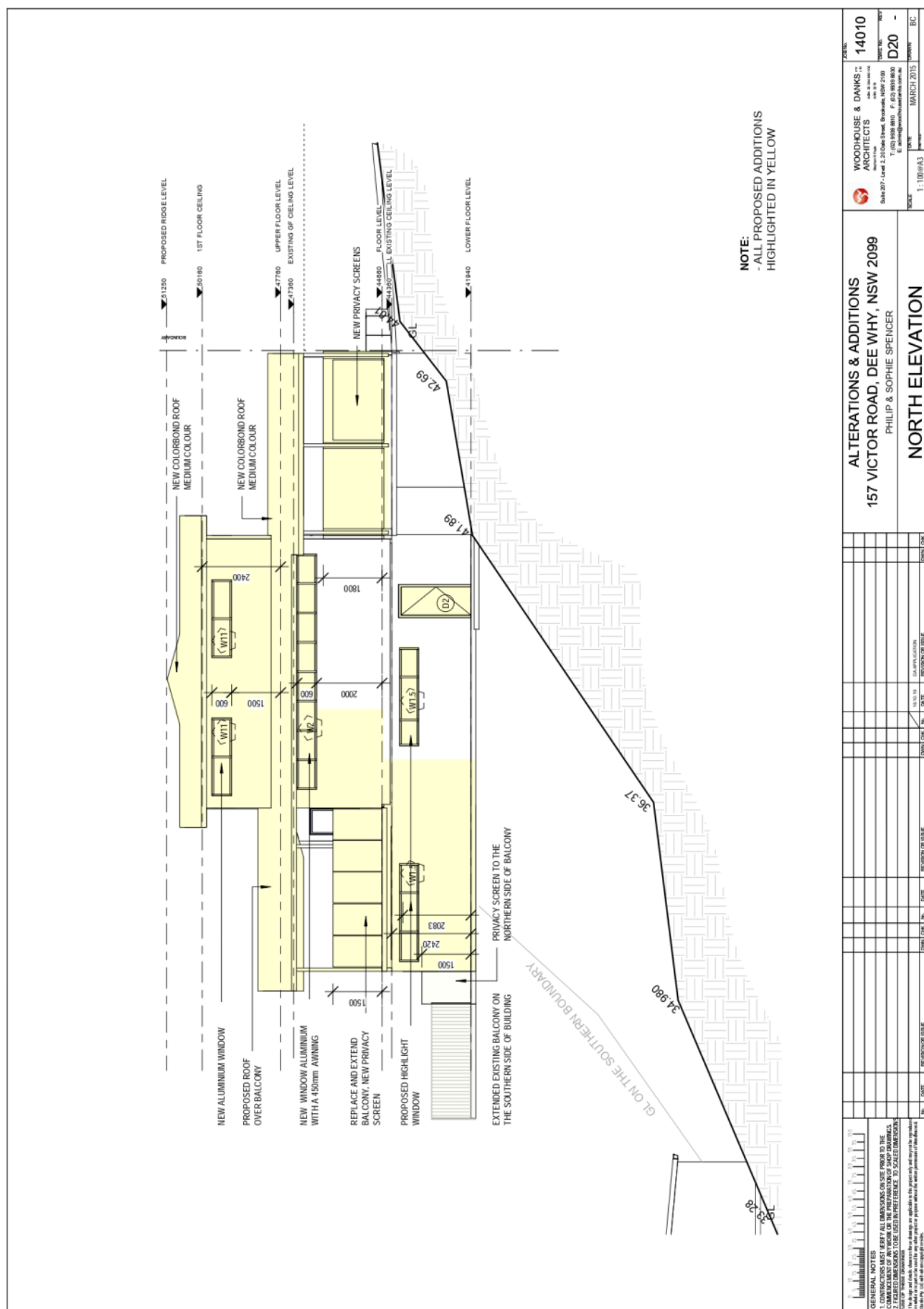
Prior to the issue of a Final Occupation Certificate, evidence / documentation must be submitted to the Principal Certifying Authority that all waste material from the development site arising from

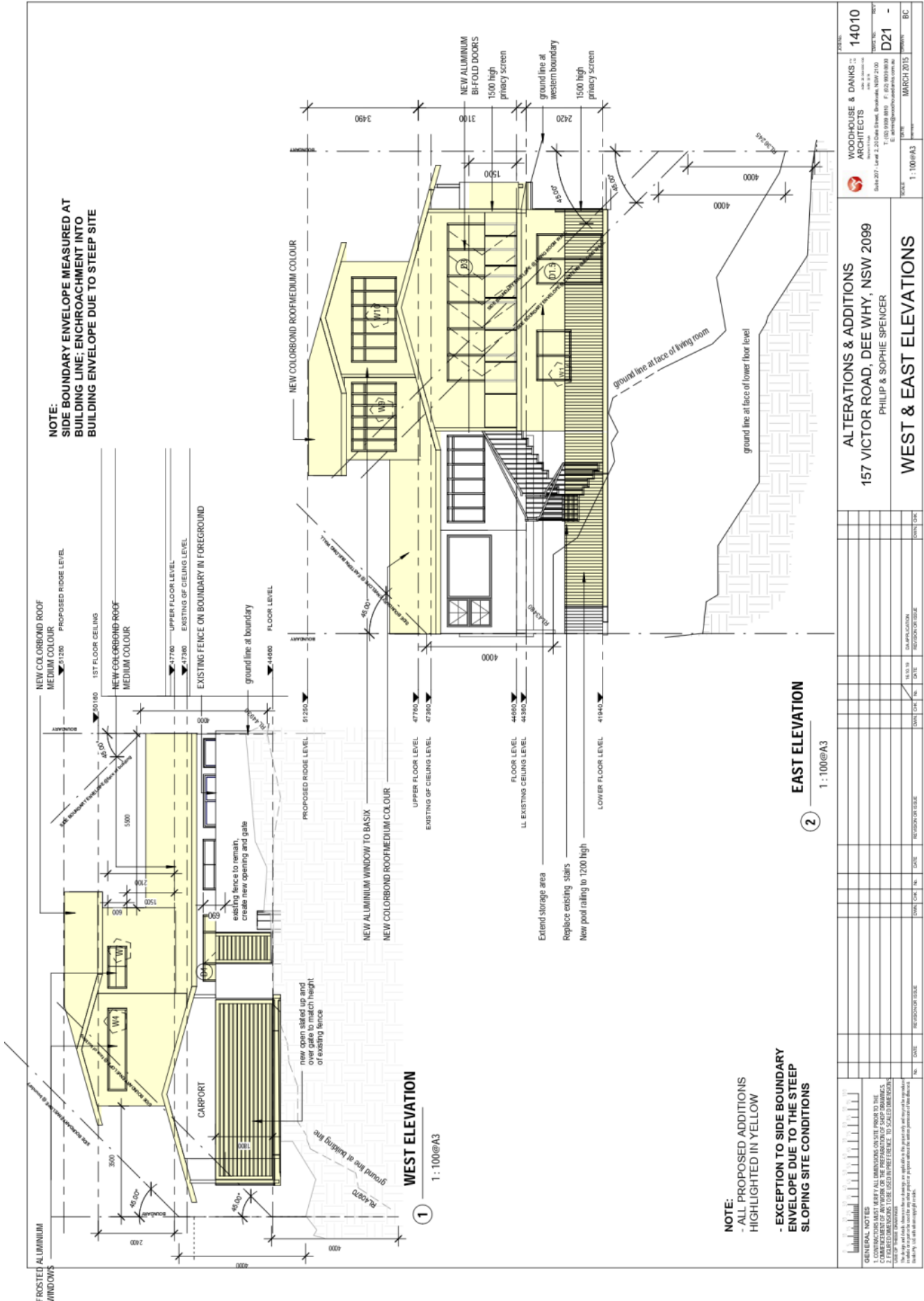
demolition and/or construction works has been appropriately recycled, reused or disposed of generally in accordance with the approved Waste Management Plan.

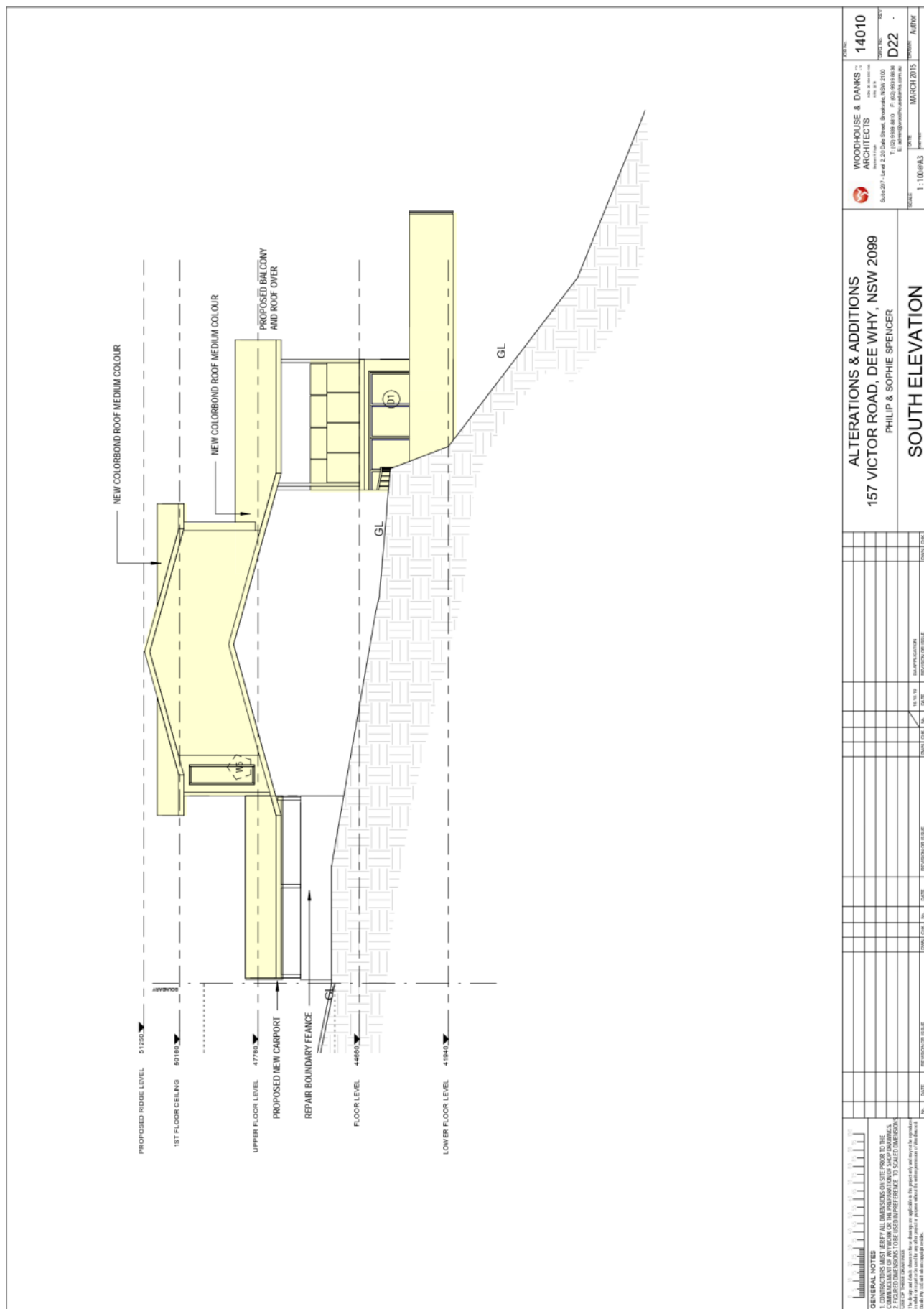
Reason: To ensure demolition and construction waste is recycled or reused and to limit landfill.











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Clause 4.6 Variation to Development Standard

Property Description: 157 Victor Road, Dee Why

Development: Alterations to Existing Dwelling House

Development Standard: Height of Buildings

Introduction

This is a clause 4.6 variation to support the development proposal for alterations and additions to the dwelling house at 157 Victor Road, Dee Why. This clause 4.6 variation seeks variation to the 8.5m building height development standard contained in clause 4.3 – Height of Buildings of the *Warringah Local Environmental Plan 2011*.

The height of buildings is measured from the existing ground level to the maximum height of the development. The subject site contains a rock outcrop running diagonally across the centre of the site, presenting a fall of 6m over the length of the existing building footprint.

There is currently a view corridor across the southern portion of the site, with the view obstructed by vegetation at the northern portion of the site. The siting of the upper level to the north, preserves this view corridor.

The development proposal presents a maximum height of 7m at the street frontage and a height 12.95m measured from RL37.23 at the north eastern corner, with the rock outcrop resulting in a variation to the height limit.

The development application is supported by a roof plan including relative levels at DA13 prepared by Woodhouse and Danks. An extract is provided below.



environmental planning outcome than a development that complies with the development standard.” [88]

Accordingly, this Clause 4.6 variation request is set out using the relevant principles established by the Court. It is noted, it also reflects the further finding by Commissioner O'Neill for *Initial Action Pty Ltd v Woollahra Municipal Council* [2019] NSWLEC 1097 when the case was remitted back to the LEC as a Class 1 Appeal.

Matters required to be demonstrated under clause 4.6(3) of the LEP

Compliance with the development standard is unreasonable or unnecessary in this particular case

Pursuant to clause 4.6(3)(a) of the LEP, the variation to the height of buildings development standard is acceptable in the circumstances of this case and compliance with the development standard is considered unreasonable and unnecessary because the proposed works to the dwelling house are consistent with the objectives of the R2 – Low Density Residential zone and the development meets the objectives of the height of buildings standard, notwithstanding non-compliance with the standard.

• Objectives of the R2 – Low Density Residential Zone

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

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

The proposed alterations to the dwelling house meet the relevant objectives of the R2 – Low Density Residential zone regardless that the development results in a variation to the building height development standard based on the following assessment:

- The proposal provides for the housing needs of the owner of the property improving the amenity and functionality of the existing dwelling;
- The form and scale of the proposed development is consistent with building forms in the immediate locality;
- The proposal maintains the sites landscape setting to the public domain;

- **Objectives of the Building Height Development Standard**

The objectives of the development standard are at clause 4.3(1) of the LEP as follows:

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

The proposed alterations to the dwelling house meet the objectives of the height of buildings development standard (notwithstanding non-compliance with the standard) based on the following assessment:

Objective (a) - The proposed 2 storey form is consistent with the built form in the locality noting the topography restricting a large floorplate design.

Objective (b) - The additional height will not result in additional view loss noting the additional height is at the rear of the building and the dwelling presents to Victor Road as a two storey form, consistent with the intent of 8.5m height limit.

The variation to the height limit is a response to site constraints, and view assessment concentrating the upper level building bulk to the northern portion of the site maintaining a 5.5m setback to the southern boundary and a view corridor across the site.

The additional building height is located at north eastern corner of the building and will not generate unnecessary overshadowing to dwelling to south.

Objective (c) - The additional height is confined to the north-eastern corner of built form at the rear of the site noting the site features a fall from Victor Road, the primary street frontage. The development proposal complies with the 8.5m height of buildings development standard at the street frontage. The additional height is consistent with adjoining dwellings and visually recessed behind existing vegetation when viewed from the dwellings to the east.

Objective (d) – The height of the building is consistent with adjoining dwellings and will not present overbearing bulk and scale when viewed from dwellings and Prescott Road to the east. Further the additional height is confined to the north-eastern corner of built form visually recessed behind existing vegetation.

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

Pain J held in *Four2Five vs Ashfield Council* [2015] NSWLEC 90 that to satisfy clause 4.6(3)(b), a clause 4.6 variation must do more than demonstrate that the development meets the objectives of the development standard and the zone – it must also demonstrate

that there are **other** environmental planning grounds that justify contravening the development standard, preferably being grounds that are specific to the site.

Pursuant to clause 4.6(3)(b) of the LEP, there are sufficient environmental planning grounds to justify the variation to the height of buildings development standard because:

- The variation to the 8.5m height control is the result of site topography, noting rock outcrop positioned diagonally across the site. The development proposal complies with the height limit at the street frontage. Due to site slope the existing dwelling historically presents a variation in height at the north eastern corner.
- The additional height is confined to the north-eastern corner of the built form visually recessed behind existing vegetation. The variation to the height limit is partly a response to view assessment, concentrating the upper level building bulk to the northern portion of the site maintaining a 5.5m setback to the southern boundary and view corridor across the site.
- Strict compliance with the height control would not achieve a better environmental planning outcome as the location of the built form to the north of the site preserves a view corridor across the site, maintaining a 5.5m setback to the southern boundary.
- The additional building height is located at north eastern corner of the built form and will not generate unnecessary overshadowing to dwelling to south.

Clause 4.6 (4)(a)(i) – The consent authority is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3)

As demonstrated above, the proposed development has satisfied the matters required to be demonstrated in Clause 4.6(3) by providing a written request that demonstrates:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, by establishing that the objectives of the development standard are achieved notwithstanding the non-compliance.
2. The environmental planning grounds relied on are sufficient to justify the development standard.

In accordance with the findings of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the Consent Authority under Clause 4.6(4)(a)(i) must only be satisfied that the request addresses Clause 4.6(3). Under Clause 4.6(4)(a)(i) the Consent Authority is not to determine in their opinion whether the request satisfies the requirements of Clause 4.6(3)(a) and (b), just that the request has been made and that these items have demonstrated.

The relevant items in Clause 4.6(3) have been demonstrated above.

The proposed development is in the public interest

In relation to clause 4.6(4)(a)(ii) of the LEP, the proposed development is in the public interest because it is consistent with the objectives of the applicable height of buildings standard and the objectives for development in the R2 - Low Density Residential zone in accordance with the planning assessment provided above, as follows:

Objective	Consistency
<i>to ensure that buildings are compatible with the height and scale of surrounding and nearby development,</i>	The proposed 2 storey form is consistent with the built form in the locality noting the topography restricting a large floorplate design.
<i>to minimise visual impact, disruption of views, loss of privacy and loss of solar access,</i>	<p>The additional height will not result in additional view loss noting the additional height is at the rear of the building and the dwelling presents to Victor Road as a two storey form, consistent with the intent of 8.5m height limit.</p> <p>The variation to the height limit is a response to site constraints, and view assessment concentrating the upper level building bulk to the northern portion of the site maintaining a 5.5m setback to the southern boundary and a view corridor across the site.</p> <p>The additional building height is located at north eastern corner of the building and will not generate unnecessary overshadowing to dwelling to south.</p>
<i>to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,</i>	The additional height is confined to the north-eastern corner of built form at the rear of the site noting the site features a fall from Victor Road, the primary street frontage. The development proposal complies with the 8.5m height of buildings development standard at the street frontage. The additional height is consistent with adjoining dwellings and visually recessed behind existing vegetation when viewed from the dwellings to the east.
<i>to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.</i>	The height of the building is consistent with adjoining dwellings and will not present overbearing bulk and scale when viewed from dwellings and Prescott Road to the east. Further the additional height is confined to the north-eastern corner of built form visually recessed behind existing vegetation.

In addition to the above reasons, the proposal is also in the public interest because:

- The proposed 2 storey form is consistent with the built form in the locality and the intent of 8.5m height limit. The additional height will not be read from the street

frontage, being located at the rear of the site, and will not present overbearing bulk and scale when viewed from dwellings to the east noting consistent form with adjoining dwellings.

- The subject site enjoys an approval for a Complying Development Certificate for alterations and additions to the dwelling house CDC2017/0201. The complying development, whilst compliant with the height limit presents a ridge height of RL51.350. The proposed ridge height is RL51.085, 265mm lower than the approved complying development design. Further, the complying development features an upper level located over the southern portion of the site, obstructing an existing view corridor. As such, regardless of the additional height at the north eastern corner of the site, the proposed design presents a better environmental outcome for the site.
- The location of the built form to the north of the site preserves a view corridor across the site, maintaining a 5.5m setback to the southern boundary.

Taking into consideration the above, the proposed development is in the public interest as it is consistent with the objectives of the development standard and the R2 – Low Density Residential zone.

The proposal and does not undermine the intent and effectiveness of the maximum building height development standard in Clause 4.3 or the objectives of the height development standard and the zone for achieving positive outcomes on environmental planning grounds.

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

The concurrence of the Secretary

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning, Industry and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under clause 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under clause 4.6 of the LEP, subject to the conditions in the table in the notice.

The matters in clause 4.6(5) of the LEP should be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100 and Wehbe at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

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

The proposal is not likely to raise any matter of significance for State or regional environmental planning. As addressed above the non-compliance with the building height standard is considered to be in the public interest because the proposed development is consistent with the objectives of the height standard and the objectives of the R2 - Low Density Residential zone.

The public benefit of maintaining the development standard is not considered significant because the building meets the 8.5m height standard – as viewed from Victor Road. The variation to height is a result of the site topography and the proposed development is compatible with existing dwellings in the locality.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted under clause 4.6(5) of the LEP. The exceedance of the standard will not result in adverse amenity impacts and is in the public interest.

Conclusion

The development proposal has a variation to the 8.5m building height control contained in Clause 4.3(2) of the Warringah LEP 2011; notwithstanding, the proposal has been designed with a built form that is consistent with the intent of the height limit and height of adjacent dwellings.

The variation to the 8.5m height control is the result of site topography and view assessment, concentrating the upper level building bulk to the northern portion of the site maintaining a 5.5m setback to the southern boundary and view corridor across the site.

The variation to the building height standard does not attempt to affect the planning outcome for the locality, rather the variation is a result of the site topography, and the view analysis dictating the locations of the upper level over the northern portion of the building to preserve views across the site.

Further, the portion of the building exceeding the 8.5m height control will not present unacceptable bulk and scale to the public domain or result in unreasonable amenity impacts noting it is confined to the rear of the building.

In my opinion the application to vary the building height development standard is well founded and as addressed the proposed height meets the objectives of the building height development standard and achieves an acceptable outcome for the subject site that is in the public interest. In accordance with the environmental planning grounds addressed in this clause 4.6 variation, the building height can be supported.

[Chapman Planning Pty Ltd](#)