

AGENDA

DEVELOPMENT DETERMINATION PANEL MEETING

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

WEDNESDAY 11 MARCH 2020



Ashleigh Sherry
Manager Business Systems and Administration

**Agenda for a Meeting of the Development Determination Panel
to be held on Wednesday 11 March 2020
in the Walamai Room, Civic Centre, Dee Why**

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2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS

2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 26 FEBRUARY 2020

RECOMMENDATION

That the Panel note that the Minutes of the Development Determination Panel held 26 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	DA2019/1363 - 24A HAY STREET, COLLAROY - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Anna Williams
TRIM FILE REF	2020/125702
ATTACHMENTS	<ul style="list-style-type: none">1 Assessment Report2 Site Plan & Elevations3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/1363 for alterations and additions to a dwelling house on land at Lot 2 DP 1082108, 24A Hay Street, Collaroy, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1363
Responsible Officer:	Penny Wood
Land to be developed (Address):	Lot 2 DP 1082108, 24 A Hay Street COLLAROY NSW 2097
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:	Gail Philippa Donaldson Gary James Donaldson
Applicant:	Gail Philippa Donaldson Gary James Donaldson
Application Lodged:	29/11/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	16/12/2019 to 21/01/2020
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	4.3 Height of buildings: 19.5%
Recommendation:	Approval
Estimated Cost of Works:	\$ 529,465.00

EXECUTIVE SUMMARY

The application seeks consent for Alterations and additions to a dwelling house.

The subject dwelling has an existing height of 8.975m and therefore breaches the permissible Height development standard by 5.6%. The development proposes to increase the height by an additional 1.185m creating an overall height of 10.16m which will equate to an overall breach of 19.5%

Notification of the application resulted in no submission to the proposed development.

The application has been referred to the Development Determination Panel (DDP) as the development

has a non-compliance with the height in excess of 10% for a single dwelling house (Class 1 Building).

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

PROPOSED DEVELOPMENT IN DETAIL

The subject development application proposes the following works:

Garage

A new double garage is proposed off Bedford Crescent. A new crossing and driveway is proposed in the south eastern corner of the site. The garage will be supported on concrete piers and will have a colorbond pitched roof and finished in rendered brick to match the existing dwelling.

Lower Ground Floor

The development proposes to utilise the existing single garage as additional floor area with a new staircase providing access to the existing ground floor. An addition to the eastern elevation of the lower ground floor is proposed to create a rumpus room. External access to the rumpus room is provided along the eastern elevation via sliding doors. An entry door to the rumpus room is provided along the northern elevation.

Ground Floor

At ground floor level, the development proposes to extend the existing terrace over the proposed rumpus room along the eastern elevation. The terrace will be increased in size from 13.5m² to 41m² and will sit directly over the rumpus room. A new door is proposed along the eastern elevation providing access to the terrace from the existing bedroom located along the southern side of the site. A new staircase is proposed between two (2) existing bedrooms along the eastern elevation.

First Floor

New internal staircase to proposed second floor. Access into kitchen from proposed external staircase and lift.

Second Floor Level

The application proposes a bedroom, ensuite and balcony along the eastern elevation. The proposed bedroom will be accessible by and internal staircase and the proposed lift which is located along the western elevation of the dwelling.

ASSESSMENT INTRODUCTION

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

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

- determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings
Warringah Development Control Plan - B1 Wall Heights
Warringah Development Control Plan - B3 Side Boundary Envelope
Warringah Development Control Plan - B5 Side Boundary Setbacks
Warringah Development Control Plan - B7 Front Boundary Setbacks

SITE DESCRIPTION

Property Description:	Lot 2 DP 1082108 , 24 A Hay Street COLLAROY NSW 2097
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Hay Street.</p> <p>The site is irregular in shape with the northern boundary measuring 45.63m and the south eastern boundary measuring 27.885m. The site does not have a traditional street frontage with the northern and south eastern side boundaries meeting at a point along the northern boundary fronting Hay Street. The south western boundary of the site has a secondary frontage to Bedford Crescent measuring 33.785m. The site has a surveyed area of 694.8m².</p> <p>The site is located within the R2 Low Density Residential zone from WLEP 2011 and accommodates a two/three storey rendered dwelling with vehicular access provided from Hay Street along the northern side of the site. An ground swimming pool is located in the backyard of the site along northern side of the site. The rear of the site is heavily vegetated and has been landscaped with garden beds bed and retaining walls stepping up the site to Bedford Crescent due to the slope of the site.</p> <p>The site falls approximately 10.0m from the south western corner of the site fronting Bedford Crescent to the north eastern corner of the site fronting Hay Street. The site currently enjoys extensive northern and eastern ocean views towards Long Reef and Collaroy Beach.</p> <p>Adjoining and surrounding development is characterised by residential dwellings of a similar size and scale to the subject site.</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:

- DA2005/887 Approved on 4 November 2005 for Upper storey addition, new deck and stairs.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>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>Clause 50(1A) of the EP&A Regulation 2000 requires</p>

Section 4.15 Matters for Consideration'	Comments
	<p>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>Clauses 54 and 109 of the EP&A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p>Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p>Clause 143A of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 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 Matters for Consideration	Comments
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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
NECC (Development Engineering)	<p>The applicant proposed a new driveway crossing and garage on Bedford Crescent.</p> <p>The proposed driveway will be built on Council's road embankment. In general, the driveway shall be a self supported structure which does not add any additional load on the existing embankment. Also, an additional geotechnical information shall be required on the embankment before any commencement of work.</p> <p>Development Engineering has no objection to the application subject to the conditions of consent. However, the application may be sent to Transport & Civil Infrastructure Assets for assessment.</p> <p><u>Planner Comment</u></p> <p>The development application was referred to Transport & Civil Infrastructure Assets for assessment on 4 March 2020 with the following comments received on 4 March 2020.</p> <p><i>The Development Engineers need to condition the DA approval ensure the driveway crossing and associated structures on the road reserve meet Council requirements. This has been done with</i></p>

Internal Referral Body	Comments
	<p><i>condition relating to Road Act application.</i></p> <p><i>As such, no specific objection to the proposed DA.</i></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. A356376, 15 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) 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	10.16m	19.5%	Yes

Compliance Assessment

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

Detailed Assessment

4.6 Exceptions to development standards

Description of non-compliance:

The development proposes to increase the height of the dwelling to 10.16m. The development standard for the site is 8.5m. The proposed development will create a 19.5% variation to the Height development standard.

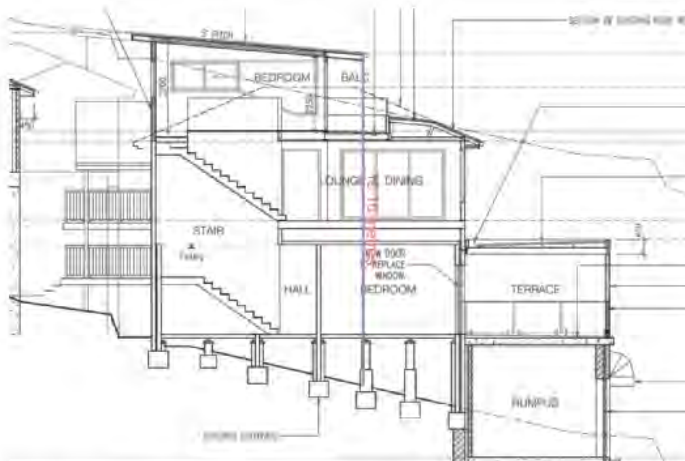


Image 1: Calculation of Height

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the 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, in part:

- "The proposed addition will not result in any unreasonable impacts upon adjoining properties in terms of views, privacy or overshadowing.
- When viewed from Bedford Crescent, the proposed addition will present as a single storey height above the street level which is compatible with the prevailing and surrounding development which has been constructed to provide off street parking for a dwelling.
- The modulation of the front facade along with the compliant side setbacks will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.
- The proposed low height skillion roof will reduce the overall building height and will significantly reduce the bulk of the dwelling.
- The addition has been located on the southern side of the dwelling to minimise the overall height and bulk of the dwelling to the northern side of the dwelling."

The proposed alterations and additions to the existing residential dwelling have been designed in a way that minimises the visual bulk and scale of the structure, as well as achieving consistency with the visual continuity of the existing streetscape of both Hay Street and Bedford Crescent. The proposed development is unlikely to impact upon amenity of adjoining properties and will serve to increase the usability and amenity of the subject site.

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 proposed alterations and additions to the existing dwelling house are contained towards the southern side of the dwelling. Along the northern side of the site, the existing dwelling presents as a three (3) storey structure towards the front of the dwelling with the southern side presenting as a two (2) storey dwelling. The site slopes down from Bedford Crescent towards Hay Street with the site also falling from the south to the north by approximately 2.0m across the middle portion of the dwelling. The location of the second storey addition along the southern elevation will ensure the development is proposed in a position which will not create a development which is of a bulk and scale out of character with the surrounding streetscape of Hay Street and Bedford Crescent, and due to the non-compliant portion of the development being located towards the secondary frontage (Bedford Crescent), the building breach is not considered to impact on the desired character of the locality.

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

Comment:

The proposed second storey addition to the dwelling will have no impact on existing views enjoyed by adjoining and surrounding properties. The location of the second storey addition is located along the southern side of the site and will sit behind the rear building line of 24 Hay Street and will not disrupt any northern views obtained from the second floor of 24 Hay Street. The properties to the south and south west of the subject site are located at a higher level due to the topography of the surrounding locality and therefore will retain extensive views towards the ocean. No windows are proposed along the southern elevation of the second storey addition. A balcony is proposed along the eastern elevation of the second storey addition, however due to the orientation of the site and the use of the

balcony off a bedroom, no privacy issues are anticipated towards adjoining properties. Whilst the addition is proposed along the southern side of the dwelling, the overshadowing impacts are not considered to have a significantly greater impact than the existing situation which and is compliant with the solar access controls outlined in the WDCP.

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

Comment:

The proposed second level addition is generally compliant with setbacks and has proposed a low form skillion roof to minimise the bulk and scale of the overall development when viewed from a public place. The proposed materials and finishes are of a darker nature which will be more compatible with the surrounding scenic quality of the bush and coastal environment.

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

Comment:

The siting of the second floor addition will not be overly visible when viewed from Bedford Crescent due to the natural topography of the site and the location of the double garage which will present as the main built form element along the south western elevation. Whilst the site does not form a traditional street frontage to Hay Street, the location of the second storey addition will be set significantly behind the front building line of the subject dwelling and in particular the adjoining dwellings of 24 Hay Street and 26 Hay Street. The skillion roof over the proposed addition will contribute to a building form which is more compatible with the natural topography of the site and will not impact on the development when viewed from public places.

The underlying objectives of the R2 Low Density Residential zone:

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

Comment:

The subject site will continue to provide for the housing needs of the community.

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

Comment:

The subject site will continue to be used as a single dwelling and will not impact on other surrounding land uses.

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

Comment:

The proposed development will maintain the existing residential land use.

Conclusion:

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

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

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, issued by the NSW Department of Planning & Infrastructure, 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 Height of building Development Standard associated with a single dwelling house (Class 1 building).

Warringah Development Control Plan

Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B1 Wall height	7.2m	8.2m	13.8%	No
B3 Side Boundary Envelope	N: 4m	Within envelope	N/A	Yes
	SE: 4m	Breach of 177mm in height for a length of 100mm	1%	No
B5 Side Boundary Setbacks	N: 0.9m	0m - stairs	100%	No
	SE: 0.9m	0m - stairs	100%	No
B7 Front Boundary Setbacks - Secondary	3.5m	820mm	N/A	No
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (277.92m ²)	42.8% (297.9m ²)	N/A	Yes

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

Compliance Assessment

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

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	No	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	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E10 Landslip Risk	Yes	Yes

Detailed Assessment

B1 Wall Heights

Requirement

The maximum wall height control allows 7.2m.

Description of non-compliance

8.27m along the southern boundary.

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 second floor addition is located on the southern side of the dwelling and proposes a skillion roof. The highest part of the wall is located centrally within the site and is behind the rear building line of 24 Hay Street which is located to the south of the subject site. As a result of the irregular shaped site and the siting of the subject dwelling, this wall will not have a visual impact on the neighbouring property and will not impact on any views currently enjoyed from 24 Hay Street and other surrounding properties.

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

Comment:

The proposed development will sit generally beneath the existing tree canopy. The development proposes to retain some large canopy trees along Bedford Crescent which will ensure the proposed works will not dominate the existing streetscape.

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

Comment:

The proposed second floor addition to the dwelling will ensure existing views are maintained for the surrounding properties and reasonable view sharing is maintained.

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

Comment:

The proposed development will have a minimal impact on the amenity of adjoining and nearby properties. The subject site is located on a sloping site with Bedford Crescent (secondary frontage) located along the south western boundary. Due to the existing topography of the immediate vicinity, the proposed works will not be overly visible and will have a minimal impact on the character of the streetscape when viewed from Bedford Crescent. The second storey addition will not create any adverse overshadowing towards adjoining properties.

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

Comment:

The second storey addition is proposed along the southern side of the dwelling and results in a minimal excavation of the natural landform. Due to the natural fall of the site, the location of the second storey addition responds more positively to the overall responds well to the natural topography of the site with the development being located on the southern side of the dwelling. The location of the second storey along the southern side results in a lesser overall building height and wall height and will also be located behind the proposed new garage off Bedford Crescent reducing the overall bulk on the secondary frontage.

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

Comment:

The development proposes a skillion roof which is in keeping with the natural slope of the site and will reduce the overall height of the development when viewed from both Bedford Crescent and Hay Street.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of the 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

The development proposes a breach to the required building envelope of 177mm in height for a length of 100mm within the eastern corner of the second storey addition along the south eastern elevation.

Merit consideration

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

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

Comment:

The minor breach to the building envelope control does not create a development which is visually dominant by virtue of its height and bulk. The addition responds positively to the topography of the site, is adequately setback from the south eastern boundary and incorporates a skillion roof which assists in reducing the overall height of the development when viewed from a public place.

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

Comment:

The development proposes a generous setback of 4.09m - 4.19m from the south eastern boundary where the non-compliance with the building envelope occurs. The setback from the south eastern boundary increases as a result of the irregular shaped site. This generous separation along with the siting of the second storey addition within the site ensures the amenity of the surrounding buildings is maintained and not compromised as a result of the minor non-compliance with the building envelope control.

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

Comment:

The breach to the building envelope control is located within the eastern corner of the second storey addition. The breach is considered a minor non-compliance in relation to the slope of the site, with the location of the addition having the least impacts in regard to the amenity of neighboring properties and the appearance of the development when viewed from both Hay Street and Bedford Crescent.

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

B5 Side Boundary Setbacks

Description of non-compliance

The WDCP requires a minimum 900mm setback to side boundaries. Due to the irregular shape of the subject site, the side boundaries are identified as the south eastern side and northern side of the site. The development proposes stairs along the south eastern and northern side boundaries creating a nil setback to both. The development proposes to extend the dwelling at ground level towards Hay Street and utilise the existing garage for additional floor area and an internal staircase.

The development proposes the following setbacks for the lower ground floor addition:

South eastern side: 1.66m

Northern side: 900mm

Merit consideration

The WDCP allows for a variation to the side setback control for structures no greater than 1.0m in height. The proposed stairs within the side setbacks are less than 1.0m in height on both the south eastern and northern boundaries. The stairs will not impact on the appearance of the dwelling when viewed from Hay Street and due to the slope of the site are considered necessary to be able to access the rear of the site. The development has been assessed against the objectives of the Side Boundary Setback controls in the WDCP and is considered acceptable.

B7 Front Boundary Setbacks

Description of non-compliance

The WDCP allows a site with a double street frontage where the minimum front building setback is 6.5 metres to both frontages, the front building setback may be reduced to 3.5m for the secondary frontage. The subject site is unique in that it does not provide a traditional front building setback due to the irregular shape of the site. However as the existing dwelling does front Hay Street and has vehicular access from Hay Street, Bedford Crescent is considered the secondary frontage of the site. Whilst it is difficult to ascertain an exact front building setback of the existing dwelling to Hay Street, the existing dwelling does sit behind the front building line of both neighbouring properties at 24A Hay Street and 26 Hay Street.

The proposed setback of the new garage to Bedford Crescent is 821mm - 5.7m creating a maximum 76% variation to the secondary frontage 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 create a sense of openness.*

Comment:

The proposed garage will maintain a sense of openness for the site as the setback of the garage to Bedford Crescent will increase due to the irregular shape of the site. The proposed garage complies with the maximum 8.5m height standard for the site and is located within the widest part of the site where the site is densely vegetated therefore maintaining an area which remains predominantly open when viewed from Bedford Crescent.

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

Comment:

A similar development has been constructed south of the subject site at 24 Bedford Crescent. The proposed garage will be of a similar size and scale as the adjoining garage and with a generous separation between the two (2) structures will not ensure a visual continuity of structures along Bedford Crescent is attained without creating development which dominates the street.

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

Comment:

The proposed garage will be located on concrete piers which will result in the structure being visible from Bedford Crescent. However due to the slope of the site falling away from Bedford Crescent towards Hay Street, the floor level of the garage will sit slightly lower than street level. The garage roof has been designed as to minimise any visual impact on the street and due to the siting of the garage, the setback to Bedford Crescent increases from 820mm to 5.7m and with the location of substantial canopy trees along Bedford Crescent, the garage does not present as a dominant structure to the street.

- *To achieve reasonable view sharing.*

Comment:

The proposed garage will not impact on any existing views enjoyed by the surrounding dwellings. This is due to the topography of the subject site and adjoining sites. Properties located on the western side of Bedford Crescent are accessed from Lancaster Crescent which runs parallel to Bedford Crescent with a nature strip separating the two (2) streets. The dwellings located to the west of the site along Lancaster Crescent are located substantially higher than the subject site and therefore will not be impacted at all by the proposed garage therefore retaining their ocean views.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of the 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 \$5,295 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$529,465.

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

That Northern Beaches Council as the consent authority vary clause 4.3 Height of Building development standard pursuant to clause 4.6 of the WLEP 2011 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.

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

RECOMMENDATION

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Warringah Local Environmental Plan 2011 seeking to justify a contravention of Clause 4.3 Height of Buildings has adequately addressed and demonstrated that:

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

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

Accordingly Council as the consent authority grant Development Consent to DA2019/1363 for Alterations and additions to a dwelling house on land at Lot 2 DP 1082108, 24 A Hay Street, COLLAROY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
1 Rev A - Site Plan / Site Analysis Plan	November 2019	Michael Airey
9 Rev A - Proposed Lower Ground Floor	November 2019	Michael Airey
10 Rev A - Proposed Ground Floor Plan	November 2019	Michael Airey
11 Rev A - Proposed First Floor Plan	November 2019	Michael Airey
12 Rev A - Proposed Loft Floor Plan	November 2019	Michael Airey
13 Rev A - Proposed Roof Plan	November 2019	Michael Airey
14 Rev A - Proposed South Elevation	November 2019	Michael Airey
15 Rev A - Proposed West Elevation	November 2019	Michael Airey
16 Rev A - Proposed North Elevation	November 2019	Michael Airey

17 Rev A - Proposed East Elevation	November 2019	Michael Airey
18 Rev A - Section A-A	November 2019	Michael Airey
20 Rev A - Proposed Landscaped Area	November 2019	Michael Airey

Engineering Plans		
Drawing No.	Dated	Prepared By
25 Rev A - Proposed Driveway Longitudinal Section - Centreline Parking 1	November 2019	Michael Airey
26 Rev A - Proposed Driveway Longitudinal Section - Left Hand Edge	November 2019	Michael Airey
27 Rev A - Proposed Driveway Longitudinal Section - Right Hand Edge	November 2019	Michael Airey

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
BASIX Certificate No. A356376	15 November 2019	Michael Airey Building Design & Drafting
Geotechnical Report	26 July 2019	White Geotechnical Group

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
Northern Beaches Waste Management Plan	26 November 2019	Vaughan Milligan

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

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

2. Prescribed Conditions

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

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

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

Reason: Legislative requirement.

3. General Requirements

- (a) Unless authorised by Council:
Building construction and delivery of material hours are restricted to:
- 7.00 am to 5.00 pm inclusive Monday to Friday,
 - 8.00 am to 1.00 pm inclusive on Saturday,
 - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

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

FEES / CHARGES / CONTRIBUTIONS

4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$5,294.65 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 \$529,465.00.

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.

6. **Construction, Excavation and Associated Works Security Bond (Crossing / Kerb)**

The applicant is to lodge a Bond of \$ 20000 as security against any damage or failure to complete the construction of any vehicular crossings, kerb and gutter, any footpath works and removal of any redundant driveways required 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 WARRINGAH WATER MANAGEMENT POLICY PL850.

Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

8. 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.

9. 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 driveway and retaining structure which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

- The width and location of the access driveway at Bedford Crescent must be designed in accordance with section 3.2 of Australian/New Zealand Standard AS/NZS 2890.1:2004 Parking facilities - Off-street car parking.
- A turning path is to be submitted to demonstrate the accessibility from Bedford crescent to the access driveway.
- Safety devices must be installed on the proposed driveway.
- No load bearing on the existing wall from the proposed slab/ structure. Alternative, the design must either replace existing retaining wall to maintain support of road or reinforce existing wall to extend life (100 years)
- The crossing slab between the kerb and gutter and the existing retaining wall must be on ground slab
- The design must demonstrate that the kerb and gutter system along Bedford crescent

has sufficient capacity to cater for the 1 in 20 year ARI stormwater event. The proposed driveway layback and vehicle crossing in Bedford Crescent does retain the gutter flow within the road carriageway.

The application is to include a geotechnical report that is prepared by an appropriately qualified Geotechnical Engineer to assess the existing retaining wall and the related area between the retaining to the property boundary along Bedford Crescent. The report must include:

- a full assessment of the existing retaining wall including the stability assessment of the wall
- a proposal either to replace the existing sandstone wall to maintain support for road or reinforce the existing wall to extend the design life to 100 years. Any structural design must be prepared by a qualified structural engineer.
- the proposed excavation, including any recommendations for shoring works that may be required to ensure the stability of the excavation
- the provision of appropriate protection for the retaining wall during and after completion of construction works.

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.

10. **Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

11. **Pre-commencement Dilapidation Report**

The applicant must prepare and submit a pre-commencement dilapidation report providing an accurate record of the existing condition of adjoining public property and public infrastructure (including roads, gutter, footpaths, etc). A copy of the report must be provided to Council, any other owners of public infrastructure and the owners of adjoining and affected private properties.

The pre-construction / demolition dilapidation report must be submitted to Council for written approval and the written approval is then to be submitted to the Certifying Authority prior to the issue of the any Construction Certificate and the commencement of any works including demolition.

Reason: Protection of Council's Infrastructure during construction.

12. **Compliance with Standards**

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

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

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

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

14. **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.

15. **Civil Works Supervision**

The Applicant shall ensure all civil works approved in the section 138 approval and construction certificate 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.

16. **Traffic Control During Works**

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

Reason: Public Safety.

17. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 5 metres wide in accordance with Northern

Beaches Council Drawing No A4-3330/3 NL and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

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

18. **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.

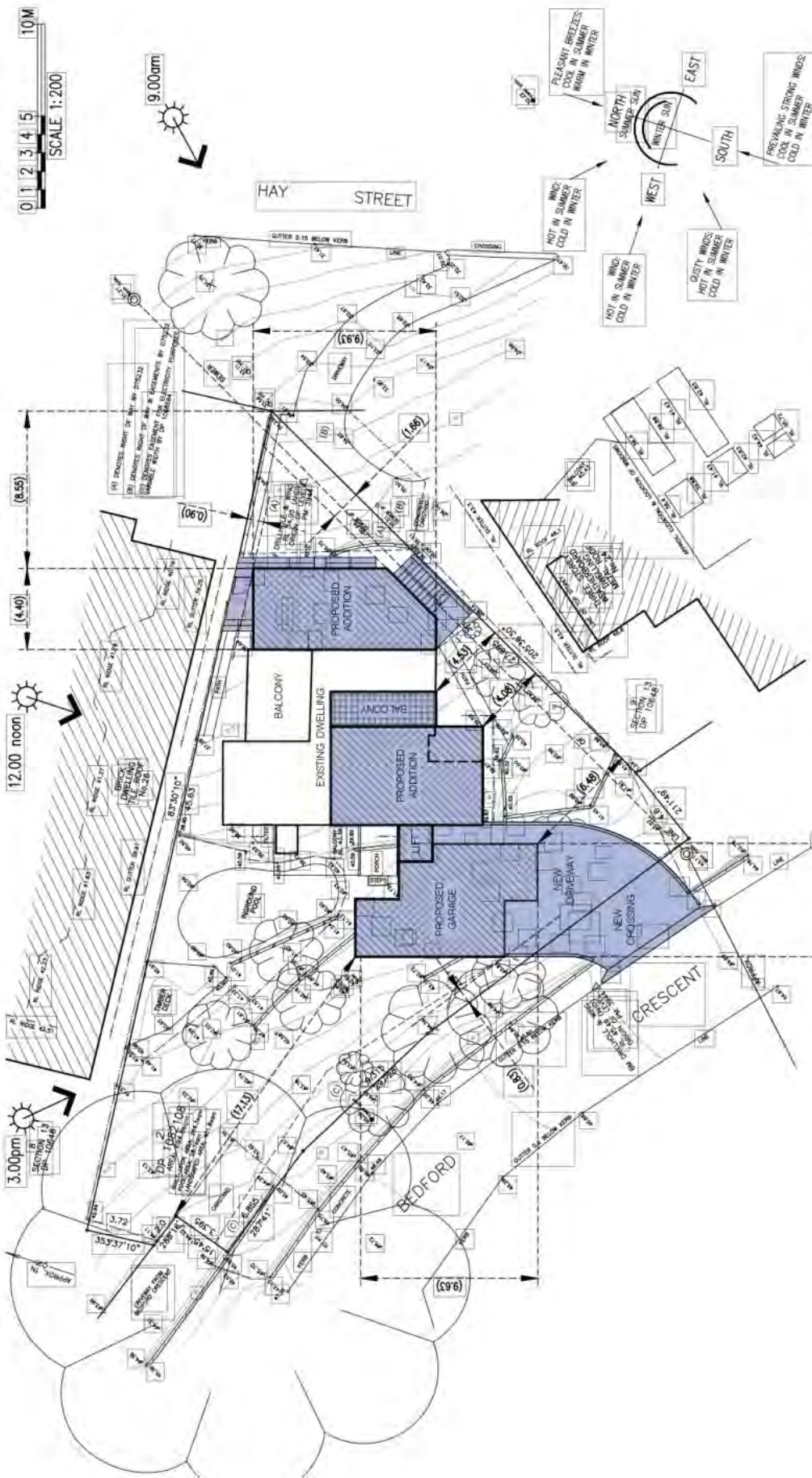
Reason: To ensure appropriate provision for the disposal of stormwater arising from the development.

19. **Post-Construction Road Reserve Dilapidation Report**

The applicant must bear the cost of all restoration works to Council's road, footpath and drainage assets damaged during the course of this development.

A Post Construction Dilapidation Report after the completion of all building works is to demonstrate that there is no damage to Council infrastructure prior to the refund of any security deposits.

Reason: To ensure security against possible damage to Council property.



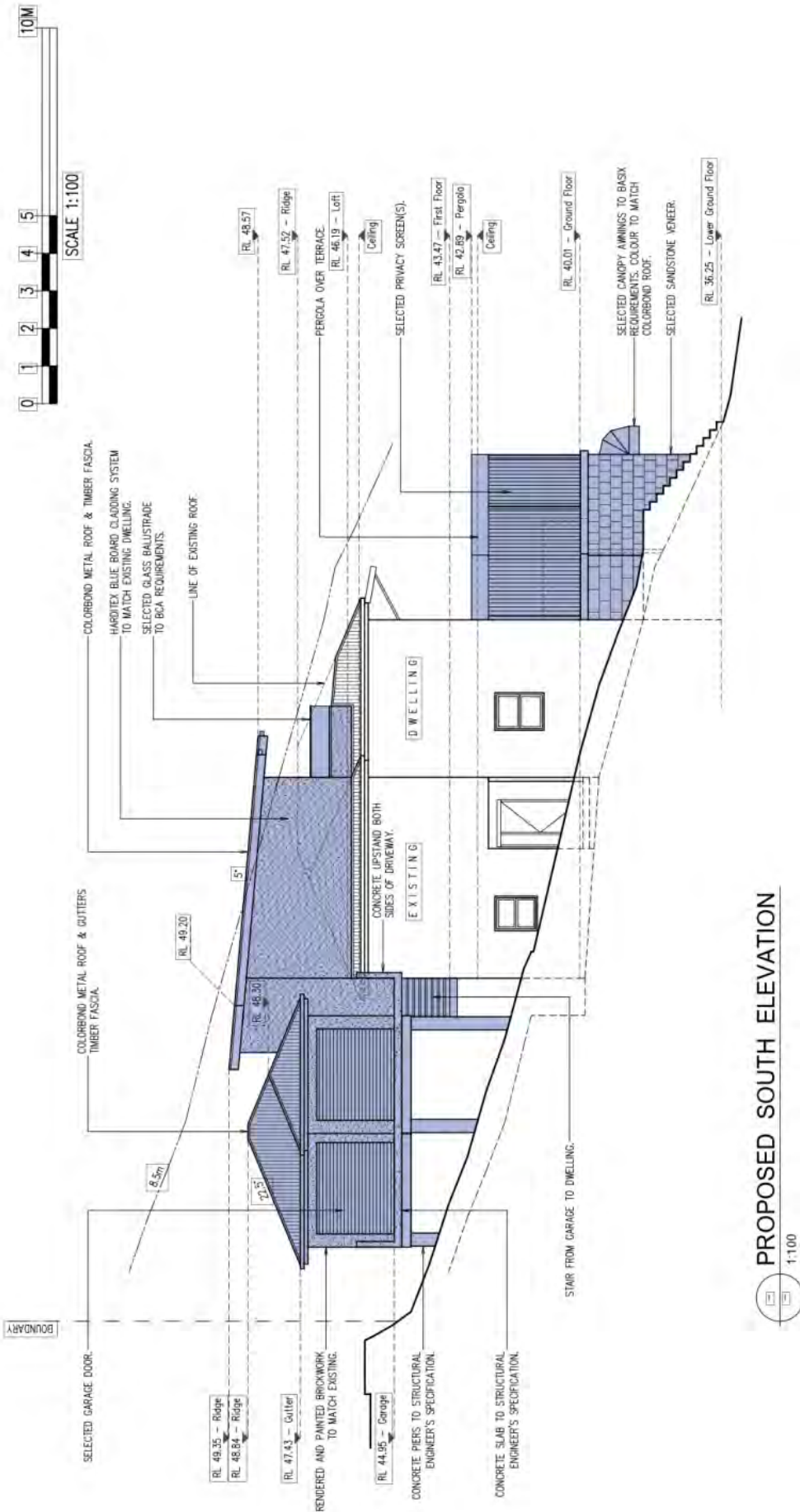
No. 24A HAY STREET, COLLAROY
PROPOSED ALTERATIONS & ADDITIONS
APPLICANT: MR & MRS DONALDSON
SITE PLAN / SITE ANALYSIS PLAN

LOT 2, DP 1082108

SITE ANALYSIS		(m ²)
SITE AREA		694.80
EXISTING SITE COVERAGE		119.63
PROPOSED SITE COVERAGE		209.75
PROPOSED LANDSCAPED AREA		(43.07%) 299.23

SITE PLAN / SITE ANALYSIS PLAN
1:200

SCALE 1:200
DATE NOVEMBER 2019
MICHAEL AIREY
20/28 MCCONALD STREET, FRESHWATER NSW 2096
PHONE 9905 1483, MOBILE 0418 289 585
EMAIL mair@aireydesign.com.au
DRAWING NO. **1**
REV. **A**



No.24A HAY STREET, COLLAROY
PROPOSED ALTERATIONS & ADDITIONS
APPLICANT: MR & MRS DONALDSON
PROPOSED SOUTH ELEVATION

SCALE 1:100
DATE NOVEMBER 2019

MICHAEL AIREY
20/28 McDONALD STREET, FRESHWATER NSW 2096
PHONE 9905 1483, MOBILE 0418 289 585
EMAIL mlairey@bigpond.com.au

DRAWING NO. **14**
REV **A**



DRAWING NO. **15**

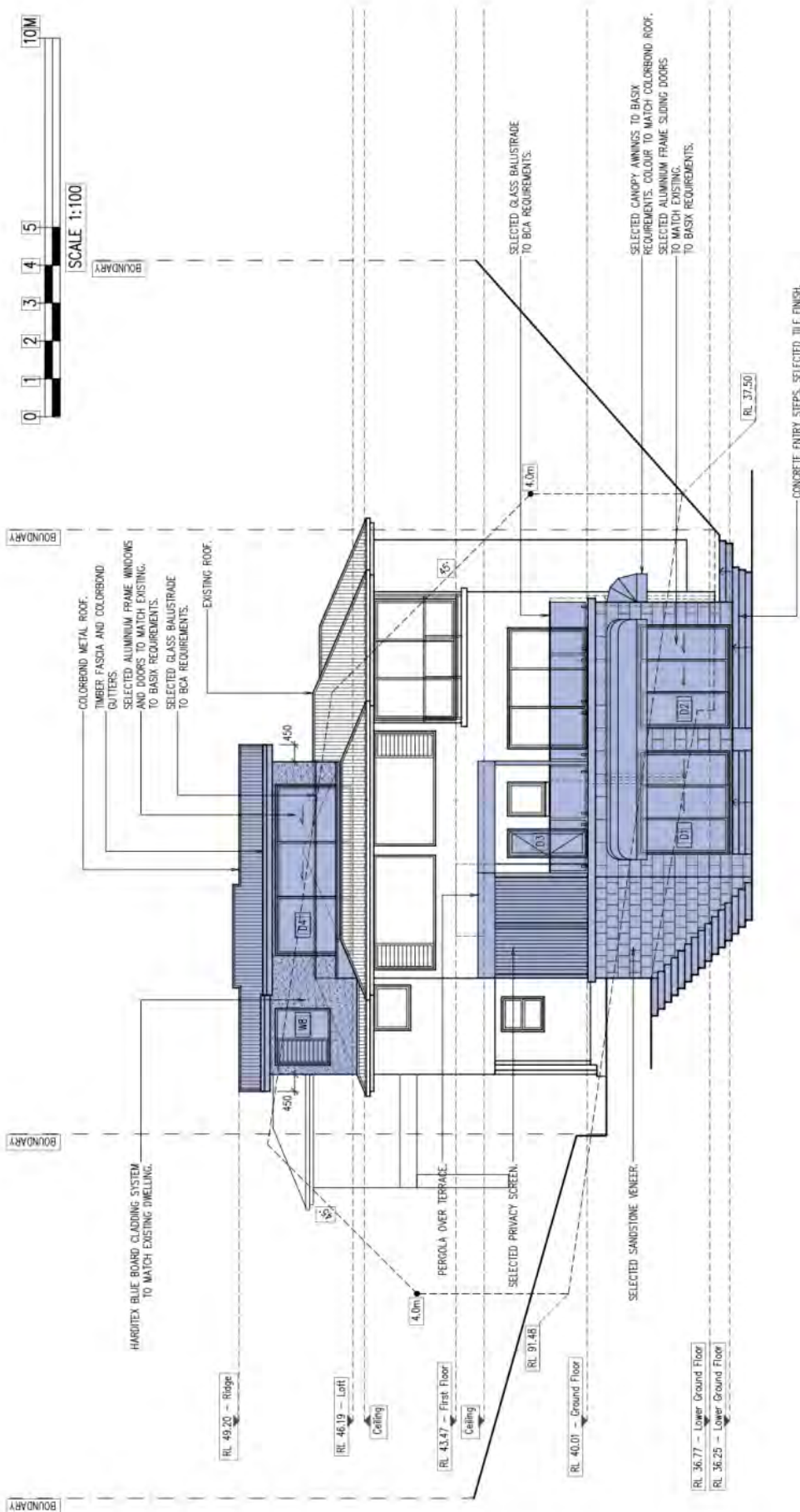


No. 24A HAY STREET, COLLAROY
PROPOSED ALTERATIONS & ADDITIONS
APPLICANT: MR & MRS DONALDSON
PROPOSED NORTH ELEVATION

SCALE 1:100
DATE NOVEMBER 2019

MICHAEL AIREY
20/28 McDONALD STREET, FRESHWATER NSW 2096
PHONE 9905 1483, MOBILE 0418 289 585
EMAIL mlairey@bigpond.com.au

DRAWING NO. **16**
REV **A**



PROPOSED EAST ELEVATION

1:100

No.24A HAY STREET, COLLAROY
PROPOSED ALTERATIONS & ADDITIONS
APPLICANT: MR & MRS DONALDSON
PROPOSED EAST ELEVATION

SCALE 1:100
DATE NOVEMBER 2019

MICHAEL AIREY
20/28 McDONALD STREET, FRESHWATER NSW 2096
PHONE 9905 1483, MOBILE 0418 289 585
EMAIL mlairey@bigpond.com.au
ABN 126 749 291 556

DRAWING NO. **17**
REV. **A**

Vaughan Milligan Development Consulting Pty Ltd

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

24A HAY STREET, COLLAROY

**CONSTRUCTION OF ALTERATIONS AND ADDITIONS TO EXISTING DWELLING INCLUDING NEW
GARAGE, DRIVEWAY & CROSSING**

For: Proposed construction of alterations and additions to an existing dwelling including a new garage, driveway and crossing
At: 24A Hay Street, Collaroy
Owner: Mr & Mrs Donaldson
Applicant: Mr & Mrs Donaldson
C/- Vaughan Milligan Development Consulting

1.0 Introduction

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

2.0 Background

Clause 4.3 restricts the height of a building and refers to the maximum building height noted within the "Height of Buildings Map."

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

The new roof over the loft level will provide a height of up to 9.7m which exceeds Council's maximum building height by 1.2m or 14.1% 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.

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3.0 Warringah Local Environmental Plan 2011 ("WLEP")

3.1 Clause 2.2 and the Land Use Table

Clause 2.2 and the Land Zoning Map provide that the subject site is zoned R2 Low Density Residential (the R2 zone) and the Land Use Table in Part 2 of WLEP 2011 specifies the following objectives for the R2 zone:

- *To provide for the housing needs of the community within a R2 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 development is for the purpose of additions and alterations to an existing dwelling house which is a permissible use in the R2 Low Density Residential zone.

3.2 Clause 4.3 – Height of buildings

Clause 4.3 of WLEP sets out the maximum height of a building as follows:

- (1) *The objectives of this clause are as follows—*
 - (a) *to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
 - (b) *to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
 - (c) *to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
 - (d) *to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the [Height of Buildings Map](#).*
- (2A) *If the [Height of Buildings Map](#) specifies, in relation to any land shown on that map, a Reduced Level for any building on that land, any such building is not to exceed the specified Reduced Level.*

The Height of Buildings Map specifies a maximum building height of 8.5m.

3.2 The Dictionary to WLEP operates via clause 1.4 of WLEP. The Dictionary defines "building height" as:

building height (or height of building) means—

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*

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(b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,*

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

3.3 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of WLEP provides:

(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.*

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

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Clause 4.6(2) of WLEP provides:

- (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.*

Clause 4.3 (the Height of Buildings development standard) is not excluded from the operation of clause 4.6 by clause 4.6(8) or any other clause of WLEP.

Clause 4.6(3) of WLEP provides:

- (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.*

The proposed development does not comply with the height of buildings development standard pursuant to clause 4.3 of WLEP which specifies a maximum building height of 8.5m however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of WLEP provides:

- (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.*

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In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]). The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest ***because*** it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 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 cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of WLEP provides:

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

The Council has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b). Council should consider the matters in cl 4.6(5) 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; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development.

Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation.

Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.3 of WLEP from the operation of clause 4.6.

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4.0 The Nature and Extent of the Variation

- 4.1 This request seeks a variation to the height of buildings development standard contained in clause 4.3 of WLEP.
- 4.2 Clause 4.3(2) of WLEP specifies a maximum building height of 8.5m which is noted on the Height of Buildings Map for the subject site.
- 4.3 The proposal has a maximum height of 9.7m to the north-eastern corner of the loft level. The non-compliance is 1.2m which equates to a variation of 14.1%.

5.0 Relevant Caselaw

- 5.1 In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:
 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
 19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
 20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
 21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with*

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the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

development that contravenes the development standard is that the concurrence of the

- 5.2 The relevant steps identified in Initial Action (and the case law referred to in Initial Action) can be summarised as follows:

1. Is clause 4.3 of WLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the R2 Low Density zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3 of WLEP?

6.0 Request for Variation

6.1 Is clause 4.3 of WLEP a development standard?

- (a) The definition of "development standard" in clause 1.4 of the EP&A Act includes:

(c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,

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- (b) Clause 4.3 relates to the height of a building. Accordingly, clause 4.3 is a development standard.

6.2 Is compliance with clause 4.3 unreasonable or unnecessary?

- (a) This request relies upon the 1st way identified by Preston CJ in *Wehbe*.
- (b) The first way in *Wehbe* is to establish that the objectives of the standard are achieved.
- (c) In response to the first way in *Wehbe*, the objective of the maximum building height standard and the reasoning why compliance is unreasonable or unnecessary is set out below:

- ***To provide for the housing needs of the community within a R2 Low Density Residential environment.***

The R2 Low Density Residential Zone contemplates low density residential uses on the land. The housing needs of the community are appropriately provided for in this instance through the proposed additions to an existing residential dwelling which will provide for an appropriate level of family accommodation and in a form which respect the predominant height and scale of the surrounding dwellings.

The development will see a noncompliance with the building height control of up to 1200mm as a result of the siting of existing development, and the compatible building form with a low skillion roof and the darker external finishes considered to suitably reduce the visual bulk of the dwelling.

Further, the modulation of the front façade and building elevation, together with the increased side setbacks and recessive external finishes to the upper level will ensure the development minimises the visual impact when viewed from the surrounding public and private areas.

The compatible form and scale of the new works to the dwelling will meet the housing needs of the community within a single dwelling house which is a permissible use in this low density residential zone.

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

The development does not suggest any alternate land uses and this Objective is not directly relevant to the subject single residential proposal.

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

The proposal provides for alterations and additions to the existing dwelling in a manner

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which will retain the single dwelling character of the site and the immediate area.

Further, the modulation of the front façade and side elevations where visible from the public domain minimises the visual impact of the development and respects the existing single dwelling form.

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

The view of the dwelling from Bedford Crescent will remain that of a modest, single storey height above the street level and the height is consistent with the prevailing height of other buildings in the near vicinity that have been altered and been added to in order to provide increased floor area and off street parking facilities.

The proposal will not obscure any important landscape and townscape features beyond that which would be anticipated by the development of a residential dwelling, which is stepped to maintain a predominantly two storey height on the site.

The proposal will be consistent with and complement the existing detached style single dwelling housing within the locality and the wider Warringah area.

This objective is achieved in that the proposal will not require any significant further site disturbance or excavation, with minimal alteration to the natural ground levels and through the retention of a generous soft landscaped area, will maintain the balance between landscaping and built form.

The proposal has been well designed to complement the streetscape. The desired future character is not defined in the planning controls, but the proposal is consistent with the existing streetscape and with recent works in the area.

Consistent with the decision of Roseth SC in Project Ventures Developments v Pittwater Council [2005] NSWLEC 191, it is my opinion that "most observers would not find the proposed building offensive, jarring or unsympathetic".

Further, the modulation of the front façade and building elevations where visible from the public domain minimises the visual impact of the development.

The proposal presents a compatible height and scale to the surrounding development and the articulation to the building facades and low height skillion roof form of the loft level will suitably distribute the bulk of the new floor area.

6.3 Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. 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

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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.

24. The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].

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

The aspect of the development which contravenes the development standard is the portion of the loft roof where the property falls towards the north.

The proposal seeks to retain the existing dwelling and locate the higher portion of the building, being the new loft area, centrally over the lower levels in order to maintain generous setbacks to the side boundaries.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The design of the building facilitates ecologically sustainable development through the retention and adaptation of the existing dwelling and re-use as a dwelling (1.3(b)).
- The proposal promotes the orderly and economic use and development of land through the efficient use of the existing infrastructure to meet the housing needs of the community (1.3(c)).
- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants, with improved access throughout the building through the introduction of the lift to connect all levels (1.3(h)).

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The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development, particularly the provision of a building that provides sufficient floor area for future occupants whilst reducing the height and envelope visible from the street to minimise the impacts of bulk and scale and maintain and create views over and past the building from the public domain. These are not simply benefits of the development as a whole, but are benefits emanating from the breach of the maximum building height control.

The new loft area provides an accessible bedroom area for the building's occupants which is at level within the building which can better enjoy the amenity from the views and outlook available to the site.

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

6.4 Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3 and the objectives of the R2 Low Density Residential zone?

- (a) Section 4.2 of this written requests demonstrates that the proposed development meets each of the applicable objectives of clause 4.3. As the proposed development meets the applicable objectives it follows that the proposed development is also consistent with those objectives.
- (b) Each of the objectives of the R2 Low Density Residential Zone and the reasons why the proposed development is consistent with each objective is set out below.

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

The Objective of Clause 4.3 (1)(a) seeks to ensure buildings are compatible with the height and scale of surrounding and nearby development.

The surrounding area is predominantly characterised by two and three storey development, often located over basement garages and service rooms.

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The proposal seeks to accommodate the new additions within a compatible building form, with the slope of the site towards the street resulting in a portion of the roof being up to 9.7m in height.

The overall building height respects the surrounding character and the design seeks to minimise the visual height by providing for increasing setbacks to the upper floor level.

The proposed external colour and materials palette utilises receive finishes to the upper floor level and is intended to ensure that the building's visual height and scale is further minimised.

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

Due to the general slope of the site towards the north, the properties to the south and west enjoy views towards the ocean and Long Reef. Views past the site are generally along the side setback areas.

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

The proposal will provide for varied setbacks for the new loft level addition which will allow for suitable views and access to sunlight to be maintained through and over the site.

Views from the surrounding public spaces are not adversely affected.

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

The proposal is located within an established residential zone and any longer distance view of the proposed additions will not read the works as out of scale or incompatible with its neighbours.

The proposal will not have any direct impact on the nearby coastal or bush environment.

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

The site is not within a recreation or environmental protection zone and is well removed from the foreshore area. The site is not within a conservation area or in the vicinity of any heritage items.

The proposal is intended to reflect the predominant scale and form of the surrounding development in Hay Street and will reflect the existing single dwelling uses in the vicinity.

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The proposal will maintain a generous area of soft landscaping which will maintain an appropriate balance between the landscaping and the built form.

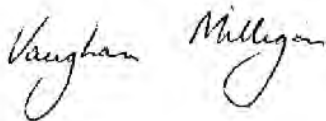
6.6 Has council obtained the concurrence of the Director-General?

Under cl 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 cl 4.6, subject to the conditions in the table in the notice

6.7 Has the Council considered the matters in clause 4.6(5) of WLEP?

- (a) The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed additions and alterations to the existing dwelling house and for the particular site and this design is not readily transferrable to any other site in the immediate locality, wider region of the State and the scale or nature of the proposed development does not trigger requirements for a higher level of assessment.
- (b) As the proposed development is in the public interest because it complies with the objectives of the development standard and the objectives of the zone there is no significant public benefit in maintaining the development standard.
- (c) there are no other matters required to be taken into account by the secretary before granting concurrence.

In summary, the proposal satisfies all of the requirements of clause 4.6 of WLEP 2013 and the exception to the development standard is reasonable and appropriate in the circumstances of the case.



Vaughan Milligan
27 November 2019

ITEM 3.2	DA2019/1317 - 26 WEST STREET, BALGOWLAH - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2020/125713
ATTACHMENTS	1 Assessment Report 2 Site Plans & Elevations 3 Clause 4.6

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/1317 for alterations and additions to a dwelling house on land at Lot 901 DP 546541 26 West Street, Balgowlah, subject to the conditions outlined in the Assessment Report.

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1317
Responsible Officer:	Ashley Warnest
Land to be developed (Address):	Lot 901 DP 546541, 26 West Street BALGOWLAH NSW 2093
Proposed Development:	Alterations and additions to a dwelling house
Zoning:	Manly LEP2013 - Land zoned R2 Low Density Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Gaenor Anne Meakes Mark Jonathon Richards
Applicant:	Kerrie Shimeld
Application Lodged:	21/11/2019
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:	0
Clause 4.6 Variation:	4.3 Height of buildings: 60%
Recommendation:	Approval
Estimated Cost of Works:	\$ 98,654.00

EXECUTIVE SUMMARY

The proposal involves alterations and additions to a existing dwelling house. Specifically, the application involves the rear extension of the upper floor level over the existing rear deck.

The proposed alterations and additions result in a non-compliance with the height of buildings, wall height, and side setback requirements. The non-compliance of these requirements can be attributed to the steep topography of the site, being 66.1%, and the location of the existing development onsite. A Clause 4.6 Variation request has been submitted in relation to the non-compliance with the building height development standard under MLEP 2013.

The proposal will not result in a significant increase in the bulk and scale of the existing dwelling. The proposal has been designed to minimise any impact on views and does not result in any unreasonable impacts to adjoining or surrounding properties.

The application has also 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. 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 variations to the planning controls be supported and the application be approved.

PROPOSED DEVELOPMENT IN DETAIL

Development consent is sought for alterations and additions to the existing dwelling house. The proposed works are as follows:

- Upper floor rear extension over existing deck
- New roof with hipped style roof to replace the existing roof with gable ends
- Remove external stairs between upper and lower floor level
- Extend southern portion of lower floor deck to bring inline with the existing deck

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 - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of

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

SITE DESCRIPTION

Property Description:	Lot 901 DP 546541 , 26 West Street BALGOWLAH NSW 2093
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the eastern side of West Street.</p> <p>The site is regular in shape with a frontage of 17.07m along West Street and a depth of 28.3m.</p> <p>The site has a surveyed area of 565.4m² and a slope of 66.1% that falls from the west to the east.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates an existing elevated two storey rendered brick dwelling house.</p> <p>The rear of the site contains a variety of low lying shrubs and vegetation and several palm trees. The unmade road to the north of the site is heavily vegetated.</p> <p><u>Detailed Description of Adjoining/Surrounding Development</u></p> <p>Along the eastern side of West Street and adjoining and surrounding development is characterised by similar elevated two to three storey dwelling houses with the street presence of a single storey dwelling house.</p> <p>The western side of West Street is characterised by Two to three storey residential dwelling houses.</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:

- Development Application - 179/11
Alterations and additions to the existing dwelling house, determined 18/08/2011

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	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) –	<u>Division 8A</u> of the EP&A Regulation 2000 requires the consent

Section 4.15 Matters for Consideration'	Comments
Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p>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 Manly Development Control Plan section in this report. In summary, the proposed development is found to be consistent with the desired future character for the locality and relevant controls. The proposed alterations and additions are respectful to the site and the adjoining neighbours.</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 as the key characteristics of the site, including its location, orientation, aspect, character, size, and topography make the site suitable for residential development of the type proposed, which is consistent with the zoning of the land and predominantly complying with the DCP controls that applicable to the subject site.
Section 4.15 (1) (d) – any	No submissions were received in regards to this application.

Section 4.15 Matters for Consideration'	Comments
submissions made in accordance with the EPA Act or EPA Regs	
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest. The public interest is best served by the orderly and economic use of land for purposes which are permissible and which, in their design, configuration and operation, satisfy the intent of the relevant controls. In the subject case, the proposal is 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 of the application Council received no submissions.

REFERRALS

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. A361902, Dated 14/11/2019).

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

SEPP (Infrastructure) 2007

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

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

Comment

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

Manly Local Environmental Plan 2013

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	13.6m	60%	No
Floor Space Ratio	0.45:1	0.43:1	N/A	Yes

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	Yes
4.5 Calculation of floor space ratio and site area	Yes
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.12 Essential services	Yes

Detailed Assessment

4.6 Exceptions to development standards

Description of Non-Compliance

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	13.6m
Percentage variation to requirement:	60%

Assessment of Request to vary a Development Standard

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

Clause 4.6 Exceptions to Development Standards:

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

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

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

Comment

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

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

Comment

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

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

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

Comment

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part:

"An exception to the development standard is sought, as compliance is unreasonable given the extremely steep natural topography and limited building platform of the site. The existing side and front setbacks and location of the established dwelling restrict development, expansion or renovation to any other dimension.

The proposal does not seek to increase the number of storeys nor raise the ridge or floor levels or existing approved building height, but merely extend a lower pitch of roof over the existing decking to provide additional space to the living, kitchen and bedroom. Exceedance of the height control will not create additional building bulk nor result in unreasonable environmental impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in this bulk would not create additional benefit for the locality or adjoining properties."

It is agreed that the breach occurs as a result of the steep topography of the site and the siting of the existing dwelling. It is also agreed that the breach does not result in any unreasonable impacts to any surrounding properties.

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

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 the Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – ‘Height of Buildings’ of the MLEP 2013 are:

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

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

Comment

A portion of the proposal seeks to change a small section of the existing roof form however, there will not result in an increase in overall height of the existing dwelling house. The existing dwelling has a single storey street presence which is consistent with the existing streetscape along the eastern side of West Street. The proposed works are predominantly located to the rear of the dwelling and are consistent with the desired future character.

b) to control the bulk and scale of buildings,

Comment

The proposal does not comply with the wall height and side setback built form controls. Compliance with these controls would be difficult to achieve due to the steep topography of the site and the height of the existing building. The bulk and scale is minimised through utilising the existing hard surface area being the rear deck to facilitate the additional internal floor space. In addition, substantial open space and landscaping has been maintained on site.

c) to minimise disruption to the following:

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

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

(iii) views between public spaces (including the harbour and foreshores),

Comment

The proposal has been designed to minimise the impact on views to and from public and private places.

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

Comment

A reasonable level of solar access is maintained to public and private open spaces as well as habitable room of adjoining dwellings.

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

Comment

Not Applicable

Conclusion

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the building height development standard.

Objectives for the R2 Low Density Residential Zone

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

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

Comment

The proposal maintains the existing low density residential use of the site.

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

Comment

The proposal seeks to provide additional internal floor space to maximise the amenity for the residents of the dwelling.

Conclusion

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, 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 Height of building Development Standard associated with a single dwelling house (Class 1 building).

Manly Development Control Plan

Built Form Controls

Built Form Controls	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	N: 8.0m (based on gradient 1:1.2)	12.0m	50%	No
	S: 8.0m (based on gradient 1:1.1)	13.2m	65%	No
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Maximum Height: 2.5m	1.9m	N/A	Yes
	Pitch: maximum 35 degrees	26 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line	Consistent with prevailing setback	N/A	Yes
4.1.4.2 Side Setbacks and Secondary Street Frontages	N: 4.0m (based on wall height)	1.0m	75%	No
	S: 4.4m (based on wall height)	1.0m	77.3%	No
	Windows: 3.0m minimum	1.0m	66.7%	No
4.1.4.4 Rear Setbacks	8.0m	15.6m	N/A	Yes
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area	62.1%	N/A	Yes
	Maximum open space above ground 25% of total open space	10.7%	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	89.3%	N/A	Yes
	3 native trees	4 trees	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	37.7sqm	N/A	Yes

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

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 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

Clause	Compliance with Requirements	Consistency Aims/Objectives
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.6 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)	No	Yes
4.1.3 Floor Space Ratio (FSR)	Yes	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 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
4.4.4.2 Awning supported from the ground	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes

Detailed Assessment

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

The proposal does not comply with the wall height requirements along the northern and southern elevations. The proposal provides for a wall height of 12.0m along the northern elevation and 13.2m along the southern elevation, where the requirement is 8.0m. With regard to the consideration for the variations, the development is considered against the underlying Objectives of the Height of Buildings standard under the Manly LEP (as are stated are particularly relevant) of the controls as follows:

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

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

Comment

A portion of the proposal seeks to change a small section of the existing roof form however, there will not result in an increase in overall height of the existing dwelling house. The existing dwelling has a single storey street presence which is consistent with the existing streetscape along the eastern side of West Street. The proposed works are predominantly located to the rear of the dwelling and are consistent with the desired future character.

b) to control the bulk and scale of buildings,

Comment

The proposal does not comply with the wall height and side setback built form controls. Compliance with these controls would be difficult to achieve due to the steep topography of the site and the height of the existing building. The bulk and scale is minimised through utilising the existing hard surface area being the rear deck to facilitate the additional internal floor space. In addition, substantial open space and landscaping has been maintained on site.

c) to minimise disruption to the following:

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

Comment

The proposal has been designed to minimise the impact on views to and from public and private places.

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

Comment

A reasonable level of solar access is maintained to public and private open spaces as well as habitable room of adjoining dwellings.

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

Comment

Not Applicable.

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

The proposed 1.0m side setback to the northern and southern side boundaries do not comply with the requirements of 4.0m to the northern boundary and 4.4m to the southern boundary. The new windows

proposed along the northern elevation do not comply with the 3.0m side setback requirement for new windows. 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 1.0m side setbacks are consistent with the existing development on the subject site. In addition, the side setback of 1.0m is consistent with adjoining and surrounding development maintaining the pattern of development along West Street. The existing streetscape will not adversely be impacted by the proposal.

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

A reasonable level of amenity currently enjoyed by the residents of the subject site and the surrounding and adjoining properties will not be impacted by the proposal. The new windows along the northern elevation do not present a privacy concern as there is no adjoining neighbours to the north of the site, the north being an unmade road. The windows are not excessive in size and there is sufficient spatial separation between the windows and surrounding dwellings.

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

Comment

The proposed works are located within the existing footprint of the dwelling and will result in a reduction in the extent of the existing upper level deck to accommodate larger internal floor area. No unreasonable impacts to the adjoining properties will arise from the proposed works.

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 will not result in a reduction in the existing level of landscaping onsite. The existing level of landscaping onsite is sufficient to accommodate a variety of planting.

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

Comment

The subject site is not located in a bushfire zone.

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

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

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

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

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

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2019

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

CONCLUSION

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

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

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

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

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

Conclusions on the Assessment of the Application

The proposed development includes a rear extension of the upper floor level of the existing dwelling house to maximise the internal amenity for the residents of the subject site. Whilst there is a non-compliance with the height of buildings development standard under the MLEP 2013 and the wall height and side setback requirements under the MDCP 2013, the bulk and scale of the existing dwelling will not be significantly increased upon. The proposal is suitable for the site considering the manner in which it is designed on this significantly constrained site (steep slope) and the lack of unreasonable amenity or visual impact.

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 on the basis that there will not be unreasonable amenity impacts.

Therefore, the variations to the planning controls should be supported and the application approved.

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 Northern Beaches Council as the consent authority vary clause 4.3 Height of Building 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 DA2019/1317 for Alterations and additions to a dwelling house on land at Lot 901 DP 546541, 26 West Street, BALGOWLAH, 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
DWG 1219 - 1, 2, 3, and 4	November 2019	Shimdesign

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	20/11/19	Shimdesign

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.

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

FEES / CHARGES / CONTRIBUTIONS

4. Security Bond

A bond (determined from cost of works) of \$1,500 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

5. **Compliance with Standards**

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

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

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

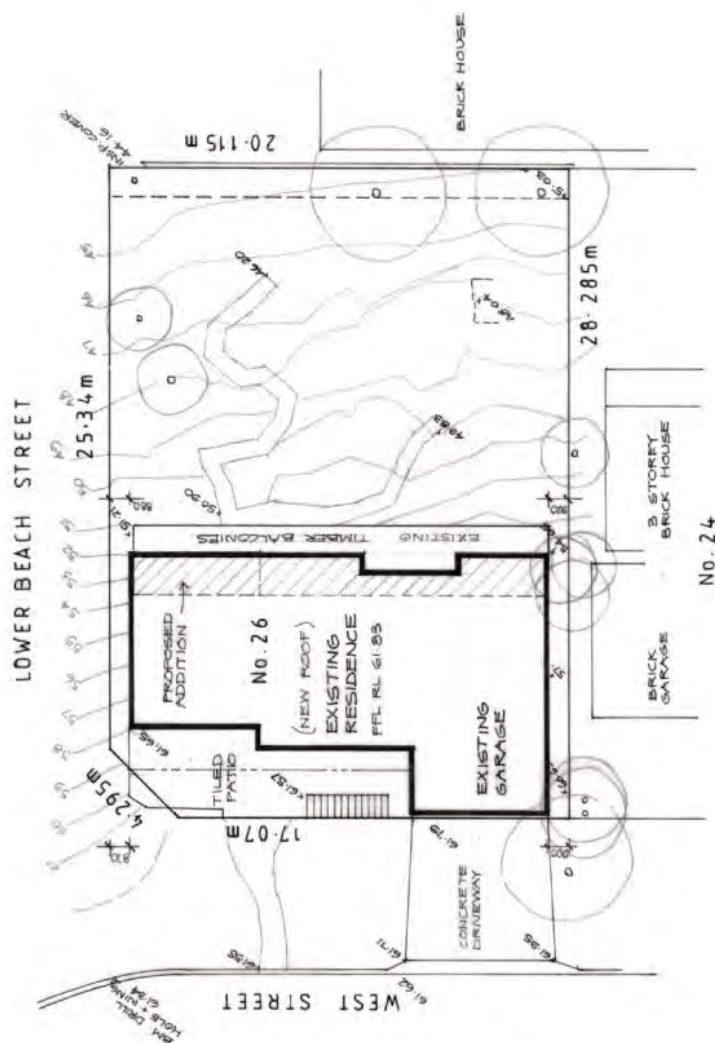
CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

6. **House / Building Number**

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

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

Reason: Proper identification of buildings.

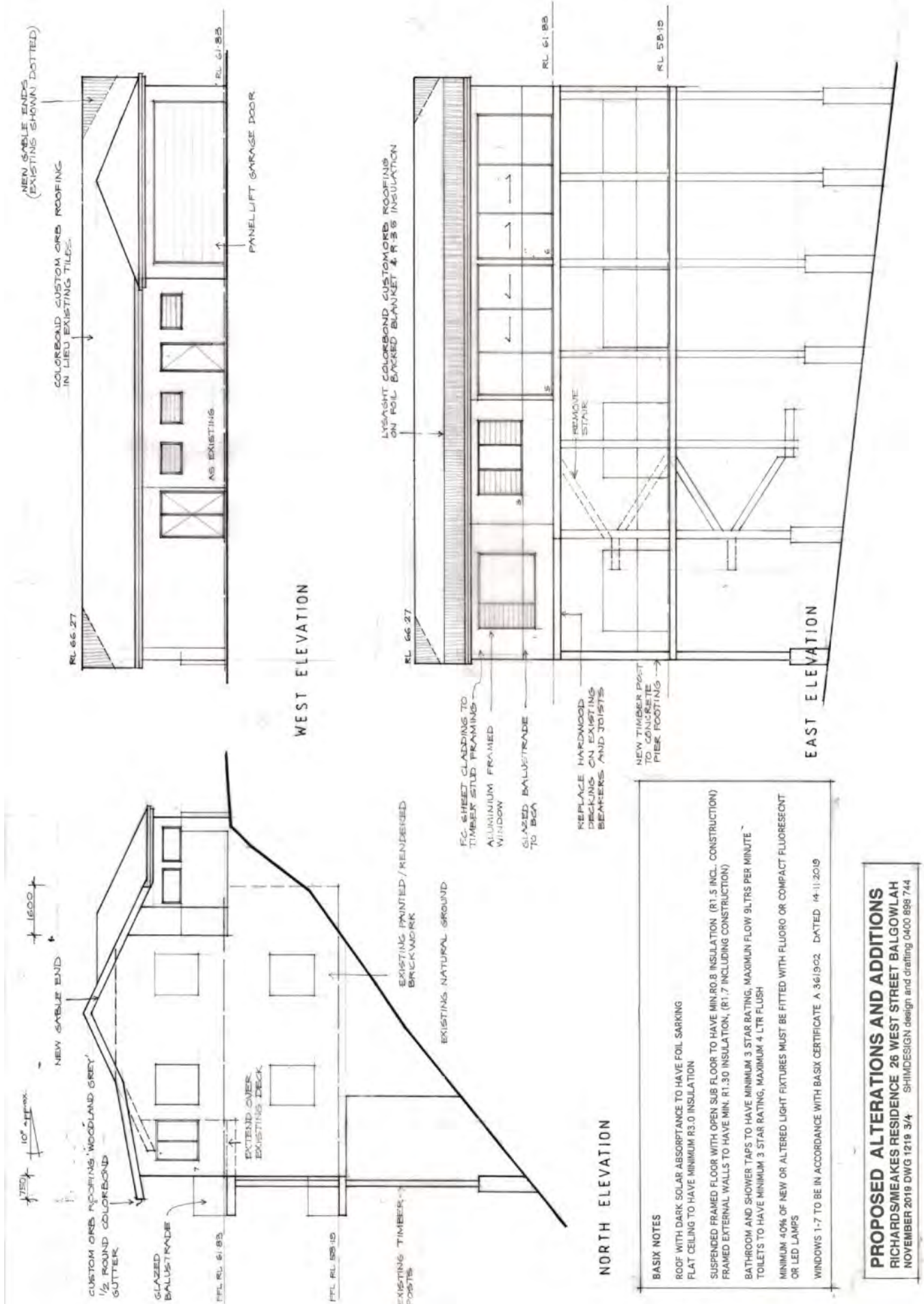


SITE PLAN 1:200
LOT 901 DP 546541
AREA 565.4m

NOTES

ALL DIMENSIONS SHOULD BE VERIFIED ON SITE BY THE BUILDER WHO WILL BE RESPONSIBLE FOR THE ACCURATE SETTING OUT OF THE JOB
ALL CONSTRUCTION IS TO COMPLY WITH THE RELEVANT BUILDING CODES AND LOCAL COUNCIL REQUIREMENTS
ALL DIMENSIONS THAT RELATE TO SITE BOUNDARIES AND EASEMENTS ARE SUBJECT TO VERIFICATION BY A SITE SURVEY
ROOF WATER AND SUBSOIL DRAINAGE TO BE DISPOSED OF IN THE APPROVED MANNER OR AS DIRECTED
DOWN PIPE LOCATION TO BE DETERMINED BY THE ROOF PLUMBER
ELECTRICAL, POWER AND LIGHT OUTLETS TO BE DETERMINED BY THE OWNER
STRUCTURAL DETAIL AND DESIGN TO BE APPROVED BY A STRUCTURAL ENGINEER
ANY ADDITIONAL DETAILING SHALL BE RESOLVED BETWEEN THE OWNER AND THE BUILDER
ALL LEVELS TO AUSTRALIAN HEIGHT DATUM

PROPOSED ALTERATIONS AND ADDITIONS
RICHARDS/MEAKES RESIDENCE 26 WEST STREET BALGOWLAH
NOVEMBER 2019 DWG 1219 1/4 SHIMDESIGN design and drafting 0400 898 744



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4-03-2020

Dear Ashley

DA 2019/1317 26 West Street, Balgowlah

REQUEST FOR VARIATION TO HEIGHT OF BUILDINGS DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6(3) OF MANLY LEP2013

Clause 4.3 Building Height

Clause 4.3 of the Manly LEP 2013 and the associated map prescribe a maximum building height of 8.5m for this site. Due to the existing development and the topography of the site, the proposed new works will have a maximum height of approximately 13m.

The proposal is considered acceptable and meets the objectives of the clause, with sufficient environmental planning grounds to justify contravening the development standard.

Compliance is impossible and unnecessary in this case, as the proposal achieves the objectives of the clause.

The objectives of Clause 4.3 are as follows;

- (a) to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future streetscape character in the locality,*
- (b) to control the bulk and scale of buildings,*
- (c) to minimise disruption to the following:*
 - (i) views to nearby residential development from public spaces (including the harbour and foreshores),*
 - (ii) views from nearby residential development to public spaces (including the harbour and foreshores),*
 - (iii) views between public spaces (including the harbour and foreshores),*
- (d) to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- (e) to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Clause 4.6 Exceptions to Development Standards

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

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

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

The clause goes on to state:

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

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

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

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

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

(a) the consent authority is satisfied that:

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

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

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

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

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

Clause 4.6(3) and 4.6(4)

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

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

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

This objection relies on this method.

Compliance with the objectives of the height standard is addressed under Point 4 below.

Additionally,

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

-Exceedance of the height control will not create additional building bulk nor result in unreasonable environmental impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity and a reduction in this bulk would not create additional benefit for the locality or adjoining properties.

-The proposal does not seek to increase the number of storeys nor raise the ridge or floor levels or existing approved building height, but merely extend a lower pitch of roof over the existing decking to provide additional space to the living, kitchen and bedroom.

-Compliance is unreasonable given the extremely steep natural topography and limited building platform of the site. The existing side and front setbacks and location of the established dwelling restrict development, expansion or renovation to any other dimension.

2. There are sufficient environmental planning grounds to allow Council to be satisfied that a variation to the development standard should be supported.

-The proposal achieves the desired outcomes of the development standard in that the proposed height and roof form is consistent with the topographic landscape and prevailing building height. The proposal preserves the environmental and solar amenity of neighbouring properties and public views and access and is consistent with the height, bulk and scale of the desired future character of the locality with negligible impact to the streetscape or neighbouring properties.

-The development is constrained by the siting of the existing development and sloping topography of the site.

-The proposal promotes good sustainable design and enhances the amenity of the occupants and the immediate area, justifying the flexible application of the development standard.

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3. The applicants written request has adequately addressed the matters required to be demonstrated.

4. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed.

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

Comment: The existing surrounding development comprises a mix of one, two and three storey detached residential dwellings on varied sized allotments. The proposed roof extension is over the existing decking and follows the slope of the land.

Objective b) *To control the bulk and scale of the building.*

Comment: The existing approved wall and roof heights lie outside the 8.5m limit.

Objective c) *To minimize disruption to the following – views to and from nearby residential development and public spaces and views between public spaces.*

Comment: The proposed height variation does not affect any neighbouring property or views or vistas to or from a public space. The neighbours to the high side of West Street have been approached and are happy that the ridge height shall not be altered and their ocean and harbour views shall not be affected. The neighbouring dwelling to the southern side is set forward of the proposed works. (Only the garage lies adjacent)

Objective d) *To provide solar access to public and private spaces and maintain adequate sunlight access to private open space and habitable rooms of adjacent dwellings.*

Comment: Solar access to the unformed Lower Beach Street and public pathway shall not be affected as it lies to the Northern boundary. There is a significant landscaped buffer to the pathway.

Objective e) *To ensure the height and bulk of any proposed structure has regard to existing vegetation and topography and any other aspect that may conflict with bushland.*

Comment: The proposed works do not result in any variation to the existing landscaped area or impervious area. The site is within a residential setting with significant bushland and indigenous landscaping to the lower eastern half of the site.

Conclusion

This submission is considered to adequately address the matters required by Clause 4.6 and demonstrates that strict compliance with the development standard would be unreasonable and unnecessary.

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This proposal is consistent with the height standard and zone objectives and the lack of adverse impact arising demonstrates sufficient environmental planning grounds to justify contravening the standard and supporting the submission. Thus the development shall also be within the public interest.

Yours sincerely

Kerrie Shimeld
For Mark Richards and Gaenor Meakes

ITEM 3.3	MOD2019/0450 - 15 THYRA ROAD, PALM BEACH - MODIFICATION OF DEVELOPMENT CONSENT N0373/11 GRANTED FOR ALTERATIONS AND ADDITIONS TO THE EXISTING DWELLING INCLUDING A NEW CARPORT AND DRIVEWAY
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2020/125767
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Mod2019/0450 for Modification of Development Consent N0373/11 granted for alterations and additions to the existing dwelling including a new carport and driveway on land at Lot 15 DP 18612, 15 Thyra Road, Palm Beach, subject to the conditions outlined in the Assessment Report.

APPLICATION FOR MODIFICATION ASSESSMENT REPORT

Application Number:	Mod2019/0450
Responsible Officer:	Jordan Davies
Land to be developed (Address):	Lot 15 DP 18612, 15 Thyra Road PALM BEACH NSW 2108
Proposed Development:	Modification of Development Consent N0373/11 granted for alterations and additions to the existing dwelling including a new carport and driveway
Zoning:	E4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Jill Frances Lloyd-Jones
Applicant:	Walter Barda Design Pty Ltd
Application Lodged:	18/09/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Alterations and additions
Notified:	07/10/2019 to 21/10/2019
Advertised:	Not Advertised
Submissions Received:	0
Clause 4.6 Variation:	Nil
Recommendation:	Approval

Executive Summary

This Section 4.55(2) modification seeks amendments to development consent N0373/11 which approved alterations and additions to a dwelling house. The amendments consist of changes to the rear garden area which consist of amendment to the pool location including a spa, amendment to landscaping, new pergola structure and staircase. The application was notified for a period of 14 days and no submissions were received. There are no variations to any development standards contained within PLEP 2014. The application is referred to the Development Determination Panel (DDP) as it involves a Section 4.55(2) Modification of an application previously determined by an equivalent panel.

PROPOSED DEVELOPMENT IN DETAIL

The proposal includes the modification of consent N0373/11 for 'Alterations and Additions to the

existing dwelling including new carport and driveway'.

The modifications are limited to the rear setback area consisting of landscaping, stairs and the pool area. The dwelling design and carport remains unchanged. Specifically, the modification of the consent involves:

- Existing pool to be demolished and reconstructed in new location (previous development consent was for refurbishment of existing pool) along with spa;
- Existing paving to be removed and replaced with soft landscaping;
- New masonry (pool barrier) wall setback 0.9m from northern boundary;
- Existing pergola structure to be demolished & replaced with new structure containing pool equipment enclosure and BBQ area (previous development consent was for refurbishment to structure); and
- Existing stair structure to be demolished & replaced with new stone stairs integrated into natural rock face.

ASSESSMENT INTRODUCTION

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

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

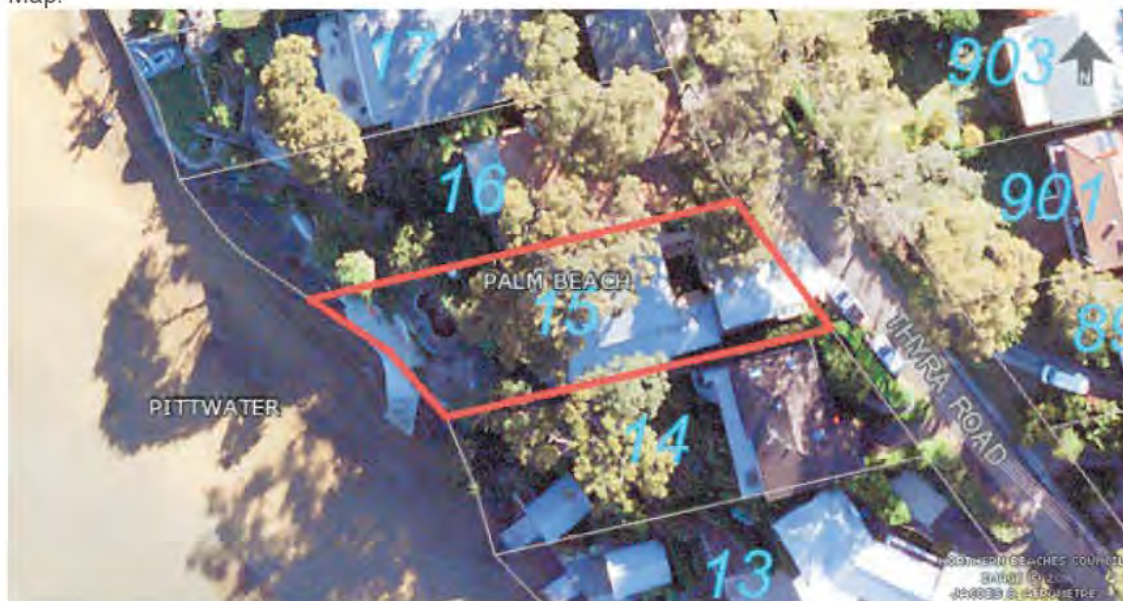
SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils
Pittwater Local Environmental Plan 2014 - 7.2 Earthworks
Pittwater Local Environmental Plan 2014 - 7.6 Biodiversity protection
Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
Pittwater Local Environmental Plan 2014 - 7.8 Limited development on foreshore area
Pittwater Local Environmental Plan 2014 - 7.10 Essential services
Pittwater 21 Development Control Plan - D12.6 Side and rear building line
Pittwater 21 Development Control Plan - D12.10 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot 15 DP 18612 , 15 Thyra Road PALM BEACH NSW 2108
Detailed Site Description:	<p>The subject site consists of one (1) allotment located on the western side of Thyra Road. The site also has a frontage to the Pittwater which is located to the west of the site.</p> <p>The site is regular in shape with a frontage of 16.45m along Thyra Road and a depth of 47m. The site has a surveyed area of 668.8m².</p> <p>The site is located within the E4 Environmental Living zone and accommodates a two storey dwelling house, pool, stairs and decking.</p> <p>The site slopes upwards from the waterfront towards Thyra Road, with a series of stair cases providing access between the dwelling and the foreshore.</p> <p>The site has a number of low and medium height canopy trees within the rear setback. There are some more significant canopy trees on the adjoining sites adjacent to the east north and south boundaries within the rear setback.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by detached one and two storey dwellings with ancillary structures such as boat sheds and pools. Immediately to the north and south are two storey dwellings.</p>

Map:



SITE HISTORY

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

Application **N0373/11** for Alterations and additions to the existing dwelling including a new carport and driveway was approved by Pittwater Council on 23/11/2012 by the Development Unit.

Application **N0373/11/S96/1** for Alterations and additions to the existing dwelling including a new carport and driveway. The proposed modifications included amendment to the deck and dwelling design. The application was approved under delegated authority on 04/09/2015 by Pittwater Council.

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 NO373/11, 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	<p>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 NO373/11 for the following reasons:</p> <ul style="list-style-type: none"> • The original application involved rebuilding of an inground swimming pool - The proposed works involve the building of an in-ground swimming pool within proximity to the previous pool location; • The original application involved rebuilding of a pergola structure in the same location - The proposed

Section 4.55 (2) - Other Modifications	Comments
	<p>works involved an improved structure of similar size and location.</p> <ul style="list-style-type: none"> The original application involved landscaping works - The proposed works involves landscaping. <p>Therefore, given the similarities of the proposed works to those approved under the original consent, the application is considered to be substantially the same development and can be considered under a Section 4.55 (2) modification application.</p>
(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 NO373/11 did not require concurrence from the relevant Minister, public authority or approval body.
(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, Pittwater Local Environmental Plan 2011 and 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.	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 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	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 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. Additional information was requested in relation to increased setback to masonry wall.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition in the original consent.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition in the original consent.</p> <p><u>Clause 143A</u> of the EP&A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
Section 4.15 (1) (b) – the likely 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 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	No submissions were received.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is 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 of the application Council received no submissions.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Following from the initial comments, an updated arboricultural review titled Addendum Report - Arboricultural issues prepared by Tree & Landscape Consultants, dated 6 December 2019, provides recommendations for construction near existing tree T11, including excavation for the pergola posts to be hand dug so as to avoid potential impacts to the tree root system.</p> <p>All works shall comply with the recommendations of the Addendum</p>

Internal Referral Body	Comments
	<p>Report - Arboricultural issues prepared by Tree & Landscape Consultants, dated 6 December 2019.</p> <p>Additionally, the masonry walling shall be setback 900mm from the boundary, as demonstrated on drawings A-1900 (issue 6), and A-2100 (issue 11).</p> <p>The above amendments to the initial Modification application are acceptable in terms of the landscape outcome.</p> <p><i>Initial MOD2019/0450 comments:</i></p> <p>In review of the modification, it is unclear what impact results from excavation for new paving under the pergola and from excavation for pergola footings near tree 11 located on the adjoining property at 16 Thyra Road. Council does not support any damage to trees within adjoining properties regardless of the type of species and condition of the species.</p> <p>The location of the structure and therefore paving should be determined based on preservation of existing major roots from T11, and thus an updated report shall be issued to determine a construction / built setback from T11, or to confirm that the proposed setback is able to be achieved without any impact to T11.</p>
NECC (Bushland and Biodiversity)	<p>Council's Natural Environment - Biodiversity section raises no objections to the proposed development, subject to conditions.</p> <p>This application was assessed against Pittwater LEP Clause 7.6 Biodiversity and Pittwater DCP B4.7 Pittwater Spotted Gum EEC.</p> <p>The proposed modification includes the demolition of the existing pool and construction of a new pool, new retaining walls and changes to landscaping. No native trees or vegetation are proposed to be removed.</p> <p>The submitted Addendum Report - Arboricultural Issues letter (TALC 06/12/19) assesses the impacts of the proposed works on T11 including excavation and provides specific tree protection measures to be implemented throughout demolition and construction.</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>

Internal Referral Body	Comments
	<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 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>Comment:</p> <p>On internal 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 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</p>

Internal Referral Body	Comments
	<p>2.59m 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 floor level for the proposed additions and alterations is above the applicable EPL of 2.59m 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 submitted letter by the Geotechnical Engineer states that the original report is still relevant with respect to the proposed amendments. It is considered that this letter be added to the Decision heading of the consent. The plans indicate the reinstatement of the letter box structure in the road reserve. This may require a Minor Encroachment Application by Road Assets. It is considered that the proposal be assessed by Road Assets in this regard.</p> <p>No objection to approval subject to the comment above with no additional or modified conditions of consent recommended.</p>
Road Reserve	Modifications do not impact on existing road assets.

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 was submitted with the original application which involved alterations and additions to the dwelling, and landscaping.

The proposed modifications do not alter the internal floor area or arrangement of the dwelling. The proposed pool is less than 40,000 litres and therefore, an amended BASIX is not required as part of this modification application.

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:

13 Development on land within the coastal environment area

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

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

Comment:

The proposal has been considered against the matters listed (a) - (g) and the extent of the modifications are not considered to have a detrimental impact upon the coastal environment area. An assessment has been undertaken by Council's NECC Coastal officer and they have confirmed acceptance of the proposal with regard to the matters listed in Clause 13.

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
 - (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
 - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Comment:

The proposal involves relocation of the existing pool to elsewhere within the site, consisting of an inground swimming pool which will have limited additional visual impact upon the coastal area. The proposal to rebuild the pergola does not create an impact upon the coastal environment area and is placed no further into the foreshore area of the site. Therefore, the proposal is considered to have been designed and sited to avoid adverse impacts to the coastal environment.

14 Development on land within the coastal use area

- (1)
 - (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
 - (b) is satisfied that:

- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
- (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposal does not inhibit the existing access arrangements along the foreshore. The proposal to replace the pedestrian steps are an improvement of the existing access stairs. There are no known aboriginal sites in proximity to the proposal works which would be impacts. Therefore, the proposal is considered to have been designed and sited to avoid adverse impacts to use of the coastal area.

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

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

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

Comment:

Council's coastal team have reviewed the proposal with regard to Clause 15 and are satisfied that the proposal is not likely to cause increased risk of coastal hazards.

Pittwater Local Environmental Plan 2014

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

Principal Development Standards

Development Standard	Requirement	Approved	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.7m	8.7m - Dwelling (unchanged via this application) 3.4m - Masonry Wall	N/A	Yes - New works comply

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	Yes
7.8 Limited development on foreshore area	Yes
7.10 Essential services	Yes

Detailed Assessment

7.1 Acid sulfate soils

The rear of the site is located within a Class 1 Acid Sulfate Soils area, under Clause 7.1 of the Pittwater LEP.

The proposed pool excavation will disturb more than 1 tonne of soil and is located within the Class 1 Area. Therefore, an Acid Sulfate Soils Management Plan is to be provided to Council in accordance with Clause 7.1 of the Pittwater LEP.

The applicant has provided a report prepared by a suitably qualified geotechnical engineer addressing the presence of Acid Sulfate Soils within the site. The report reveals that there is no evidence of estuarine sediments within the property boundary which would result in the development being located within a high risk Acid Sulfate Soils area and therefore, a detailed management plan is not required to be undertaken in this circumstance.

Therefore, Council can be satisfied that the presence of Acid Sulfate Soils has been adequately dealt with under the application by way of a report prepared by a suitably qualified person.

7.2 Earthworks

Earthworks are required to facilitate the proposed in-ground swimming pool up to 2m in depth. Council's development engineers have considered the proposed developments impact on the drainage patterns of the locality and accept the proposal subject to conditions. The location of the excavation is located away from the southern boundary and not considered to have an adverse impact on adjoining properties. There are no known heritage items or archaeological sites which will be disturbed as a result of the excavation.

Therefore, Council can be satisfied that the development complies with the requirements of the clause.

7.6 Biodiversity protection

The applicant has provided an updated arborist report to assess the impact of the development upon trees on the site and adjoining the site (in particular the trees on the adjoining land to the north). The applicant has demonstrated that there will be no unacceptable impacts upon vegetation and Council's biodiversity team have confirmed that the proposal is acceptable following a review of the application.

Therefore, Council is satisfied the development meets the requirements of the clause.

7.7 Geotechnical hazards

The applicant has provided an addendum letter to the original geotechnical report which was provided in support of the original application (NO373/11). The addendum letter is prepared by a suitably qualified geotechnical engineer and states that the proposed modifications do not alter the original recommendations of the geotechnical report and the site is suitable for the development with regard to landslip risk and geotechnical hazards. Council's development engineer has reviewed the report provided with the application and is satisfied that it adequately addresses geotechnical risk.

Therefore, Council is satisfied that the proposal is compliant with the Clause.

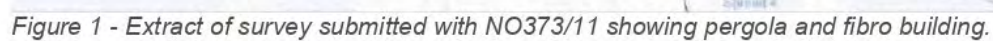
7.8 Limited development on foreshore area

The proposal involves works within the foreshore area which consist of:

- Waterway Access Stairs;
- Swimming Pool;
- Fencing; and
- Rebuilding of a pergola.

In accordance with Clause (2)(b), development consent may be granted for waterway access stairs, swimming pools and fencing within the Foreshore Area.

In accordance with Clause (2)(a), consent may be granted for the extension, alterations and rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area. Under the original application, NO373/11, consent was granted to rebuild the existing pergola in the same location. Figure 1 shows the location of the pergola to be rebuild under NO373/11, which included an enclosed fibro building.



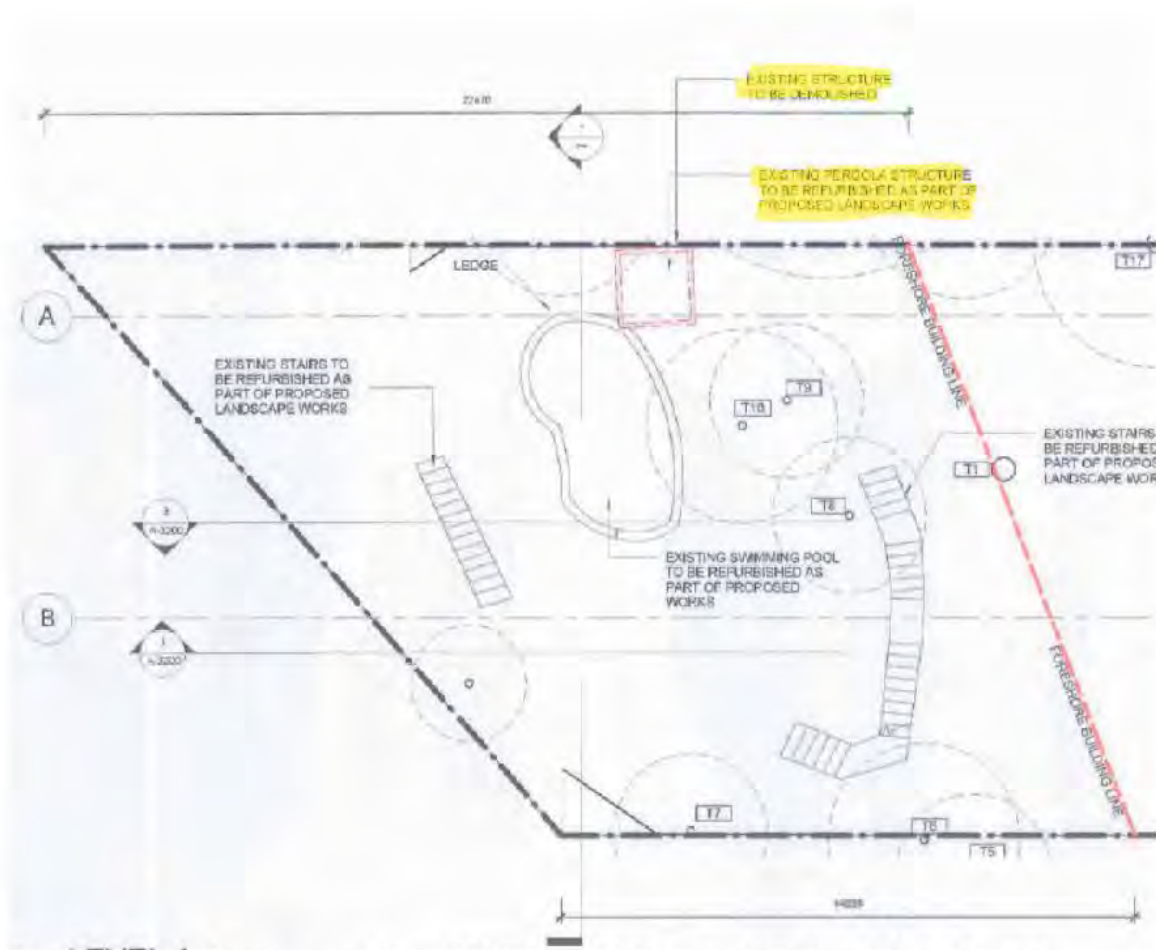


Figure 2 - Extract from approved plans NO373/11 which indicate existing pergola structure to be demolished and refurbished.

The proposal under this Section 4.55(2) seeks to rebuild the pergola, however with an increased setback to the side boundary. As shown in Figure 3, the proposed new location of the pergola does not result in the footprint of the building extending further into the Foreshore Area. Therefore, the proposal to rebuild the pergola within the foreshore area is considered to be in accordance with Clause (2)(b) and Council may grant consent to the rebuilding of the structure.

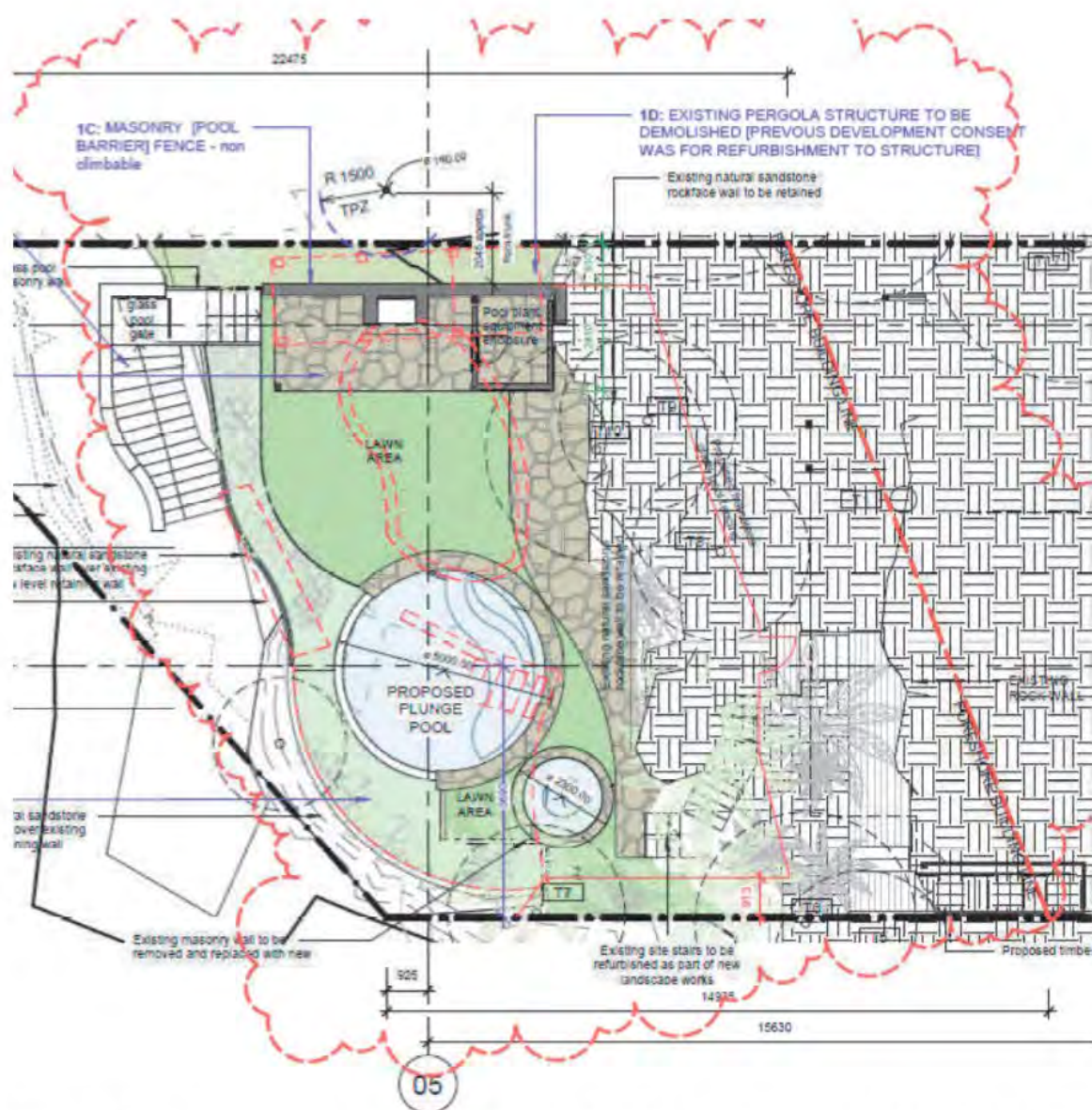


Figure 3 - Extract of proposed plans showing location of existing pergola to be demolished and rebuilt.

Prior to granting development consent for the proposed works within the Foreshore Area, Council are required to be satisfied of the following:

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

Comment: The proposal is considered to be low impact development which involves the replacement of existing structures which will not result in unreasonable environmental impacts. This is consistent with the E4 Environmental Living Zone objectives.

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

Comment: The replacement of the staircase will be of stone construction, along with a masonry pergola which is considered compatible with the surrounding development. The proposed pool will be in-ground with stone coping.

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

- (i) pollution or siltation of the waterway, or*
- (ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habi*
- (iii) an adverse effect on drainage patterns, or*
- (iv) the removal or disturbance of remnant riparian vegetation, and*

Comment: Council's development engineer, biodiversity officer and coastal officer have all reviewed the proposal and area satisfied the proposal will not cause environmental harm. Additional vegetation will not be removed as part of the modifications.

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

Comment: The proposal maintains existing access arrangements via a staircase between the site and waterway area.

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

Comment: The proposal staircase, although slightly enlarged, will not compromise public access along the foreshore.

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

Comment: The significance of the waterway locality will be maintained and the proposed modifications involve replacement of existing structures with new and improved structures.

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

Comment: The proposal to rebuild the existing pergola will result in a structure of like size and consist of materials that will not be to the detriment of the aesthetic appearance of the foreshore.

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

Comment: Council's coastal environment team have reviewed the proposal with regard to sea rise and have raised no concerns regarding this. The location of the structures are not considered to cause further coastal erosion.

Subclause (5) requires Council to consider whether and to what extent the development would encourage the following:

(a) continuous public access to and along the foreshore through or adjacent

to the proposed development

Comment: The location of the proposed stairs will not discourage public access along the foreshore, being located within an existing concrete area within the site behind the existing seawall.

(b) public access to link with existing or proposed open space

Comment: The proposed works will not have a detrimental impact on encouraging links to public open space. The works are located clear of any public space access points.

(c) public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land

Comment: No covenants or easement required as there is no detrimental impact to public access to the foreshore as a result of the proposal.

(d) public access to be located above mean high water mark

Comment: Public access arrangements are maintained and the proposed location of the development will not have a detrimental impact on public access along the foreshore.

(e) the reinforcing of the foreshore character and respect for existing environmental conditions.

Comment: The proposal involves the replacement of existing structures which are of high quality and reflect the surrounding development in the area.

Therefore, Council have considered each of the matters listed in Clause 7.8 and are satisfied that development consent can be granted for the proposed works within the Foreshore Area as permitted under Clause 7.8.

7.10 Essential services

Existing services are available to the site that can be augmented as necessary to serve the development. Therefore, Council is satisfied that the site has access to appropriate services including water, electricity and sewer connection.

Pittwater 21 Development Control Plan

Built Form Controls

Built Form Control	Requirement	Approved	Proposed	Complies
Front building line	6.5m	0.5m Carpot 7.6m to dwelling	unaltered	No - However no change
Foreshore Building Line	Foreshore Building Line	Rebuild of existing pergola within FSBL	Rebuild of existing pergola within FSBL - No further encroachment.	Yes
Side building line	1m - North	Nil to 1m	Dwelling - Unchanged. 0.9m to masonry wall/pergola	No

	2.5m - South	1.15m	unaltered	No - However no change
Building envelope	3.5m - North	Within	unaltered	Yes
	3.5m - South	Outside envelope	unaltered	No - However no change
Landscaped area	60%	41.7% / 279sqm	42% / 281.7sqm	No - However increased from approved

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.12 Palm Beach Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.1 Landslip Hazard	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.7 Pittwater Spotted Gum Forest - Endangered Ecological Community	Yes	Yes
B4.15 Saltmarsh Endangered Ecological Community	Yes	Yes
B4.16 Seagrass Conservation	Yes	Yes
B4.19 Estuarine Habitat	Yes	Yes
B4.20 Protection of Estuarine Water Quality	Yes	Yes
B5.11 Stormwater Discharge into Waterways and Coastal Areas	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
C1.1 Landscaping	Yes	Yes
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	Yes	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C5.1 Landscaping	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D12.1 Character as viewed from a public place	Yes	Yes
D12.3 Building colours and materials	Yes	Yes
D12.6 Side and rear building line	No	Yes
D12.8 Building envelope	Yes	Yes
D12.10 Landscaped Area - Environmentally Sensitive Land	No	Yes
D12.13 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D12.14 Scenic Protection Category One Areas	Yes	Yes

Detailed Assessment

D12.6 Side and rear building line

Description of non-compliance

The proposed outdoor BBQ area is setback 0.91m from the northern boundary. The control requires a minimum setback of 1m.

Merit Assessment

The proposed outdoor BBQ area is proposed to replace an existing outbuilding and pergola which has become dilapidated. The existing structure has a nil to 200mm setback to the northern boundary and was approved to be refurbished under the original development consent. However, the applicant seeks to remove the dilapidated structure and replace with a new structure, setback 0.91m from the boundary. The proposed siting of the new structure with an increased setback is considered to be an improvement over the existing situation, and therefore, warrants support this this circumstance.

In assessing the variation to the control, the proposal is considered against the outcomes of the control as follows:

To achieve the desired future character of the Locality.

Comment: The structure is not inconsistent with the existing structure, or the surrounding development which includes small outbuildings and swimming pools within the rear yard.

The bulk and scale of the built form is minimised. (En, S)

Comment: The building is a single storey structure and maximum height between 2m-3.4m (variable due to the slope of the land). The structure, when compared to the surrounding development, will not be visually prominent or bulky.

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

Comment: The structure will not give rise to any unreasonable view impacts being located on the low side of the site.

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

Comment: The proposal facilitates view sharing for neighbours.

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

Comment: The proposed structure does not contain any windows which would allow for overlooking. The structure does not present any overshadowing being located at the northern extent of the site.

Substantial landscaping, a mature tree canopy and an attractive streetscape. (En, S)

Comment: The applicant has provided a detailed landscape plan demonstrating the ability of the site to establish canopy tree planting.

Flexibility in the siting of buildings and access. (En, S)

Comment: Access is available for maintenance between the structure and northern boundary.

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

Comment: The proposed structure does not require removal of any significant vegetation.

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

Comment: Not applicable to the development.

The proposal is considered to be consistent with the desired outcomes of the Control within the PDCP and therefore, the variation to the control is supported in this particular circumstance.

D12.10 Landscaped Area - Environmentally Sensitive Land

The original application NO373/11 was supported with a total landscaped area of 41.7% (279sqm). As a result of the proposed modifications, the applicant has proposed to increase the landscaped area for the site which will result in a total landscaped area of 42% (281sqm).

Therefore, the proposed modifications will result in an improvement to the non-compliance approved as part of the original application and is supported in this 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

Section 7.12 contributions were levied on the Development Application.

CONCLUSION

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

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

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

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

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

In summary, the proposed amendments are considered to be reasonable in the context of the site and result in no unreasonable impacts for the neighbouring properties or the natural environment. Therefore, the Section 4.55(2) application is recommended for approval to the DDP. 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. Mod2019/0450 for Modification of Development Consent N0373/11 granted for alterations and additions to the existing dwelling including a new carport and driveway on land at Lot 15 DP 18612, 15 Thyra Road, PALM BEACH, 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
A-1900, Rev 6	6/12/2019	Walter Barda Design
A-2100, Rev 11	6/12/2019	Walter Barda Design
A-3100, Rev 10	6/12/2019	Walter Barda Design
A-3101, Rev 10	6/12/2019	Walter Barda Design
A-3200, Rev 7	6/12/2019	Walter Barda Design

Reports / Documentation – All recommendations and requirements contained within:		
Report No. / Page No. / Section No.	Dated	Prepared By
Arboricultural Assessment, Ref 4900, Addendum Report	6/12/2019	Tree and Landscape Consultants
Geotechnical Report, Project 72372.02	13/02/2020	Douglas Partners

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:

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

B. Add Condition Prior to the Issue of the Construction Certificate - Engage a Project Arborist, to read as follows:

A Project Arborist with a minimum of AQF Level 5 is to be appointed for the duration of the works. The Project Arborist is to implement pre-construction tree protection measures and undertake direct supervision of all works within 5m of significant trees.

Evidence demonstrating Project Arborist engagement is to be provided to the Principal Certifying Authority prior to the issue of Construction Certificate.

Reason: Tree protection in accordance with relevant Natural Environment LEP/DCP controls.

C. Add condition Prior to the Issue of a Construction Certificate - Estuarine Hazard Design Requirements, to read as follows:

The following applies to all development:

All development or activities must be designed and constructed such that they will not increase the level of risk from estuarine processes for any people, assets or infrastructure in surrounding properties; they will not adversely affect estuarine processes; they will not be adversely affected by estuarine processes.

To ensure Council's recommended flood evacuation strategy of 'shelter-in-place', it will need to be demonstrated that there is safe pedestrian access to a 'safe haven' above the Estuarine Planning Level.

Reason: To minimise potential hazards associated with development in an estuarine habitat.

D. Add condition Prior to the Issue of a Construction Certificate - Estuarine Planning Level

Requirements, to read as follows:

An Estuarine Planning Level (EPL) of 2.59m AHD has been adopted by Council for the subject site and shall be applied to all development proposed below this level as follows:

- All structural elements below 2.59m AHD shall be of flood compatible materials;
- All electrical equipment, wiring, fuel lines or any other service pipes and connections must be located either above 2.59m AHD or waterproofed to this level; and
- The storage of toxic or potentially polluting goods, chemicals or materials, which may be hazardous or pollute the waterway, is not permitted below 2.59m AHD.
- All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.59m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.59m AHD to avoid the likelihood of contact with splashing waves and spray.

Reason: To ensure aspect of the development are built at the appropriate level

E. Add Condition Prior to Any Commencement - Compliance with Arborist's Report Recommendations Pre-Construction, to read as follows:

All pre-construction tree protection measures specified in the submitted Arborist Report including Appendix C (Tree and Landscape Consultants 06/12/19) and these conditions of consent are to be implemented at the appropriate stage of development. Compliance with pre-construction measures is to be certified in writing by the project arborist and provided to the Principal Certifying Authority prior to issue of the Construction Certificate.

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

F. Add condition to be Complied with during Demolition and Building Work - Compliance with Arborist's Recommendations – During Construction, to read as follows:

All tree protection measures to be implemented during construction, as specified in the submitted Arborist Report including Appendix C (Tree and Landscape Consultants 06/12/19) and these conditions of consent are to be implemented at the appropriate stage of development. Compliance with these measures is to be certified in writing by the project arborist, including photographic evidence, and submitted to the Principal Certifying Authority prior to issue of the Occupation Certificate.

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

G. Add condition to be complied with prior to the issue of an Occupation Certificate - Compliance with Arborist's Recommendations - During an Post-construction

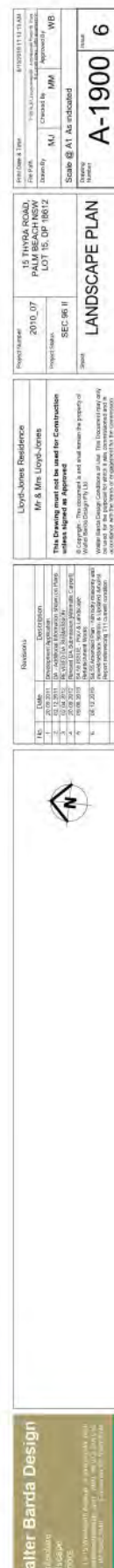
All tree protection measures to be implemented following construction, as specified in the submitted Arborist Report including Appendix C (Tree and Landscape Consultants 06/12/19) and these conditions of consent, are to be implemented. Written certification of compliance is to be prepared by the project arborist and submitted to the Principal Certifying Authority prior to issue of the Occupation Certificate.

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

H. Add condition to be complied with prior to the issue of an Occupation Certificate - New Vegetation Planing, to read as follows:

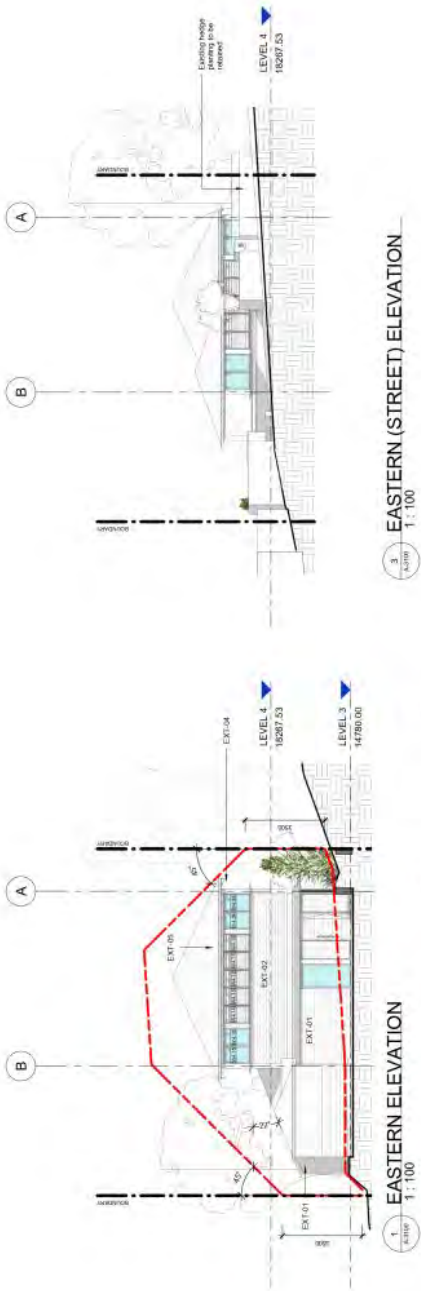
Prior to the issue of any Occupation Certificate, evidence that the new landscaping comprises a minimum of 80% locally native vegetation species chosen from the Pittwater Spotted Gum EEC community as a proportion of the total number of plants is to be provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.

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



**Schedule of Amendments for
S4.35 Submission**

1. The following amendments have been made to the S4.35 Submission:
a. The following amendments have been made to the S4.35 Submission:
b. The following amendments have been made to the S4.35 Submission:
c. The following amendments have been made to the S4.35 Submission:
d. The following amendments have been made to the S4.35 Submission:
e. The following amendments have been made to the S4.35 Submission:
f. The following amendments have been made to the S4.35 Submission:
g. The following amendments have been made to the S4.35 Submission:
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q. The following amendments have been made to the S4.35 Submission:
r. The following amendments have been made to the S4.35 Submission:
s. The following amendments have been made to the S4.35 Submission:
t. The following amendments have been made to the S4.35 Submission:
u. The following amendments have been made to the S4.35 Submission:
v. The following amendments have been made to the S4.35 Submission:
w. The following amendments have been made to the S4.35 Submission:
x. The following amendments have been made to the S4.35 Submission:
y. The following amendments have been made to the S4.35 Submission:
z. The following amendments have been made to the S4.35 Submission:



**2 NORTHERN ELEVATION
1:100**

PROPOSED COLOUR LEGEND



Project Name	11 THURLEIGH PALM RESIDENCE
Project No.	LOT 15, DP 18812
Project Date	2010_07
Project Status	SEC 98 II
Project Sheet	
Project Scale	Scale @ A1 As indicated
Project Drawing	A-3100 10

Project Name	11 THURLEIGH PALM RESIDENCE
Project No.	LOT 15, DP 18812
Project Date	2010_07
Project Status	SEC 98 II
Project Sheet	
Project Scale	Scale @ A1 As indicated
Project Drawing	A-3100 10

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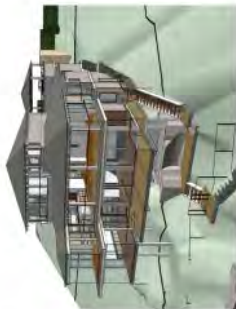
Project Name	11 THURLEIGH PALM RESIDENCE
Project No.	LOT 15, DP 18812
Project Date	2010_07
Project Status	SEC 98 II
Project Sheet	
Project Scale	Scale @ A1 As indicated
Project Drawing	A-3100 10

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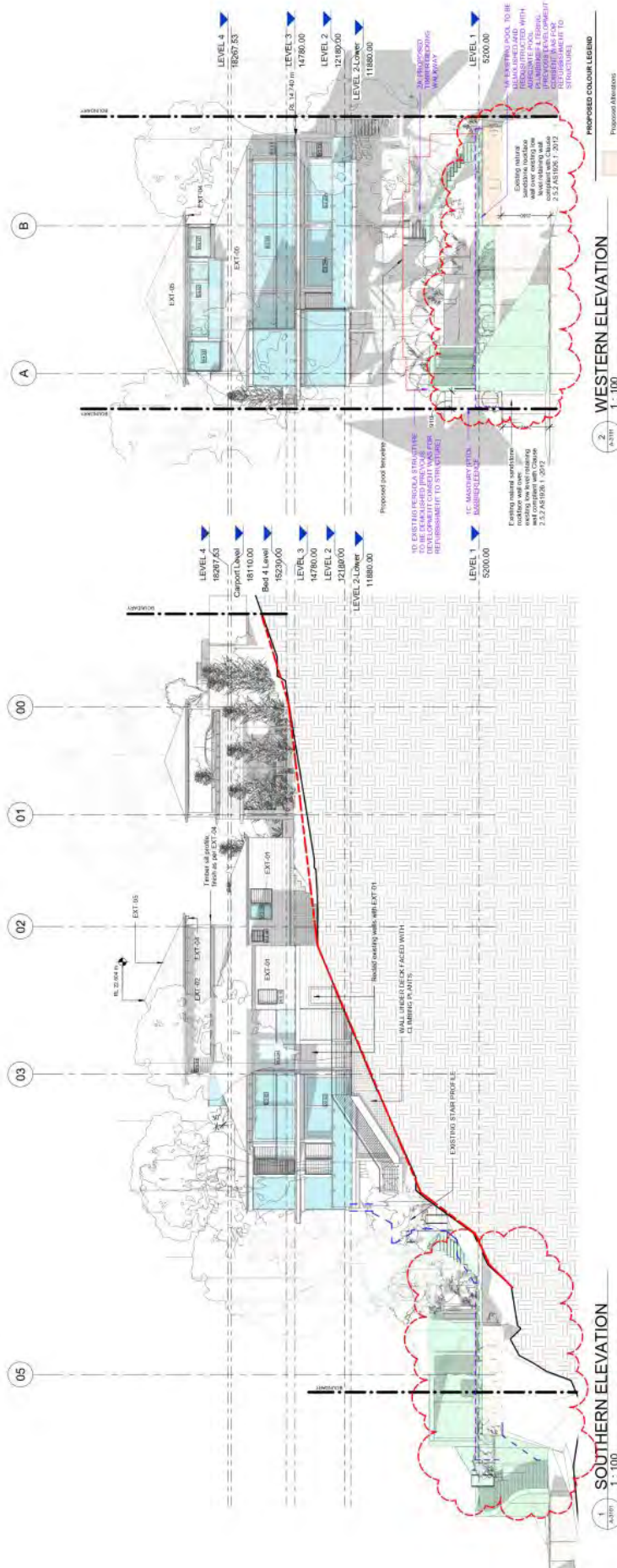


3 Envelope Perspective 1

4 Envelope Perspective 2

5 Envelope Perspective 3

Envelope Perspective 4




Walter Barda Design
 Architectural
 Engineering
 Interior Design
 1130 W. 19th Street, Austin, TX 78703
 Phone: 512.444.1111 Fax: 512.444.1114
 Email: walter@barda.com

ITEM 3.4	DA2019/1284 - 54 GOLF PARADE, MANLY - CONSTRUCTION OF A DWELLING HOUSE
REPORTING MANAGER	Steve Findlay
TRIM FILE REF	2020/125778
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations 3 Clause 4.6 - Floor Space Ratio 4 Clause 4.6 - Height of Building

PURPOSE

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

RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **approve** Development Consent to DA2019/1284 for Construction of a dwelling house on land at Lot 25 DP 1248867, 54 Golf Parade, Manly, subject to the conditions outlined in the Assessment Report.



DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2019/1284
Responsible Officer:	Thomas Prosser
Land to be developed (Address):	Lot 25 DP 1248867, 54 Golf Parade MANLY NSW 2095
Proposed Development:	Construction of a dwelling house
Zoning:	Manly LEP2013 - Land zoned R1 General Residential
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	DDP
Land and Environment Court Action:	No
Owner:	Jeremy James Rawson
Applicant:	Hall & Hart Homes Pty Ltd
Application Lodged:	15/11/2019
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Residential - Single new detached dwelling
Notified:	02/12/2019 to 16/12/2019
Advertised:	Not Advertised
Submissions Received:	3
Clause 4.6 Variation:	4.3 Height of buildings: 12.9% 4.4 Floor space ratio: 10.6%
Recommendation:	Approval
Estimated Cost of Works:	\$ 520,000.00

EXECUTIVE SUMMARY

The proposal involves an application for a new dwelling house. The subject site is a corner allotment and is within flood prone land.

In particular, the proposal relates to a two storey dwelling that has a raised ground floor level, to be RL3.65. This is to comply with the flood planning level.

The proposal does not comply with the development standard for Floor Space Ratio and does not comply with the development standard for Building Height. However, written requests by the applicant have sufficiently justified varying the standards. Despite the non-compliance with the development standards, the application will involve a visual presentation that is not visually dominant or inconsistent with the desired character due to sufficient landscaping and modulation of the building. Furthermore,



the dwelling involves sufficient physical separation from neighbours to minimise amenity impact.

Three submissions have been received from the two neighboring properties to the east and the property to the rear (north). These submissions raised concerns particularly relating to privacy, impacts to neighbouring properties and height of planting.

Conditions have been imposed to provide a privacy screen to the alfresco area, provide a re-design of two large windows to the northern elevation, and a restriction to the height of planting on the boundary.

The application has also been assessed against the planning controls of the MDCP 2013, and whilst there are still minor variations to the wall height control, open space, and front and rear 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 privacy impact.

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

Therefore, it is recommended that the application be approved, subject to conditions.

PROPOSED DEVELOPMENT IN DETAIL

The proposal is for the construction of a new two storey dwelling house involving:

Ground Floor

- Porch and entry
- Theatre
- Guest room
- Ensuite
- Lounge
- Store
- WIP
- Powder room
- Kitchen and Dining area
- Family room
- Laundry

First Floor

- Four bedrooms
- Ensuite
- Bathroom
- Sitting room
- WC

External

- Alfresco
- Carport
- A 3000L Rainwater Tank
- Removal of trees (T2, T3, T4, T6, T7 and T10)



ASSESSMENT INTRODUCTION

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

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

SUMMARY OF ASSESSMENT ISSUES

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards
 Manly Development Control Plan - 3.1 Streetscapes and Townscapes
 Manly Development Control Plan - 3.4.2 Privacy and Security
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation
 Manly Development Control Plan - 4.1.5 Open Space and Landscaping
 Manly Development Control Plan - 4.1.8 Development on Sloping Sites

SITE DESCRIPTION

Property Description:	Lot 25 DP 1248867 , 54 Golf Parade MANLY NSW 2095
Detailed Site Description:	<p>The subject site consists of a corner allotment located on the northern side of Golf Parade and the eastern side of Balgowlah Road.</p> <p>The site is regular in shape with a frontage of 15.315m along Golf Parade and a depth of 26.125m. The site has a surveyed area of 406.2m².</p> <p>The site is located within the R1 General Residential zone and accommodates a dwelling house on site.</p> <p>The site is a relatively flat site with landscaping surrounding the dwelling.</p>



Detailed Description of Adjoining/Surrounding Development

Adjoining and surrounding development is characterised by residential development.

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:

- DA518/2002- Alterations and/or additions to existing fencing approved on 12 March 2003.
- DA539/2003- Alterations and additions including a first floor addition approved on 25 June 2004.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

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



Section 4.15 Matters for Consideration	Comments
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>Clause 50(1A) 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>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p>Clauses 93 and/or 94 of the EP&A Regulation 2000 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This clause is not relevant to this application.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Manly Development Control Plan section in this report.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (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 Christopher John Collard	C/- PO Box 3606 PARRAMATTA NSW 2124
Mrs Laura Cellene Ogier	52 Golf Parade MANLY NSW 2095
Mrs Michele Terese Kaye	1 Balgowlah Road MANLY NSW 2095

The matters raised within the submissions are addressed as follows:

- **Building height- In relation to building height the following further issues have been raised: excessive floor to ceiling height, excessive roof pitch, lack of control on bulk and scale, impact on privacy and solar access, lack of consistency with streetscape character**
Comment:

A request to vary the development standard for Building Height has been made under Clause 4.6 of the Manly LEP. This request has been supported as a result of the lack of unreasonable amenity impact and appropriate visual presentation of the proposed dwelling in each streetscape (Balgowlah Road and Golf Parade). The presentation of the roof pitch and the floor to ceiling levels are also comparable to many other houses in the area, and the impacts caused by bulk and scale of the building will also be well mitigated with appropriate setbacks and landscaping. Conditions have also been imposed to minimise privacy impact.

- **Non-compliances with DCP controls**
Comment:

For each of the numerical non-compliances with a control, a merit assessment has been made against the objectives of that control in this report. These assessments have found the proposed non-compliances to be reasonable (subject to conditions).

- **FSR non-compliance and lack of sufficient justification**
Comment:

A request to vary the development standard for Floor Space Ratio has been made under Clause 4.6 of the Manly LEP. This departure from the standard is supported as a result of the presentation of bulk and scale being appropriate given the character of the area, the appropriate landscaping, and the lack of unreasonable amenity impact.

- **Lack of open space and rear setback**



Comment:

A merit assessment has been made in regard to setbacks and open space on site. This assessment has found that the proposal will provide a presentation that involves sufficient natural features and separation that will sufficiently reduce amenity impact.

- **Flooding concerns with proposed flood fencing**

Comment:

Council's Flood Officer and Development Engineer have reviewed the application and have provided conditions to address matters relating to flooding and Stormwater runoff.

- **Impact on Privacy; overlooking from alfresco and windows surrounding the dwelling**

Comment:

A condition has been imposed to require a privacy screen to be erected on the northern and eastern elevation of the proposed terrace. A condition has also been imposed to require redesign of the windows associated with the guest and theatre room (to be highlight style windows or obscured) to minimise potential for overlooking.

- **Parking- concern with reduction of on-site parking and number of spaces in proposed carport**

Comment:

The proposed car park involves sufficient space for two car spaces and this complies with the numerical control for car parking on site. The two car parking spaces on site sufficiently contributes to replacing the loss of any on street parking.

- **Building and construction- Lack of site working hours, noise, traffic management, parking for construction personnel, protection of neighbouring assets, impact on clothesline, control of dog.**

Comment:

Conditions have been imposed to ensure appropriate management of the site during building and construction. This includes a condition for a Construction Management Plan and dilapidation reports for neighbouring properties.

- **Concern with the height of the bamboo; concern with noise from water feature**

Comment:

A condition has been imposed to replace the bamboo on the boundary with a native species that has a mature height of no more than 4 metres. A condition has also been imposed to ensure there is no mechanical equipment provided in relation to the water feature.

REFERRALS

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



Internal Referral Body	Comments
	The subjected site is located at High Risk Flood precinct. A referral must be sent to Council's floodplain planning & response team for assessment.
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposed DA generally meets the flood controls in the DCP and LEP.</p> <p>Prior to CC, it must be shown on the plans that there is sufficient openings in the perimeter walls below the 1% AEP flood level to allow for flood waters to flow through unimpeded. 50% of the perimeter of the underfloor area is to be of an open design between the natural ground level and the 1% AEP flood level.</p> <p>All new fencing on the property must also be flood compatible with 50% of the fence being of an open design between the natural ground level and the Flood Planning Level.</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	<p>The proposal was referred to Ausgrid. the following response was provided:</p> <p><i>"Ausgrid has no objection to this development application, however the design submission must comply with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice for construction works near existing electrical assets.</i></p> <p><i>The "as constructed" minimum clearances to Ausgrid's infrastructure must not be encroached by the building development. It also remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.</i></p> <p><i>Ausgrid's Network Standards can be sourced from Ausgrid's website, www.ausgrid.com.au</i></p> <p><i>Should you have any enquiries, please contact Ausgrid at Development@ausgrid.com.au."</i></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. 1037319S_02).

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

Commitment	Required Target	Proposed
Water	40	44
Thermal Comfort	Pass	Pass
Energy	50	52

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

SEPP (Infrastructure) 2007

Ausgrid

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

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

Comment:

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

SEPP (Coastal Management) 2018



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

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

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

Comment:

The proposal will not have any unreasonable impact on coastal wetlands.

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:

The proposal will not significantly impact on the above.

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:

The proposal is not likely to alter processes or provide risk to the coastal area.

13 Development on land within the coastal environment area

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

Comment:

The proposal will not have an adverse impact.

- (2) *Development consent must not be granted to development on land to which this clause applies*



unless the consent authority is satisfied that:

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

Comment:

The proposal will not have an adverse impact.

14 Development on land within the coastal use area

(1)

- (a) has considered whether the proposed development is likely to cause an adverse impact on the following:
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,
 - (iv) Aboriginal cultural heritage, practices and places,
 - (v) cultural and built environment heritage, and
- (b) is satisfied that:
 - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and
- (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.

Comment:

The proposal will not have an adverse impact on the coastal use area.

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

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

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

Comment:

The proposal is not likely to cause increased risk to coastal hazards.

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	% Variat
Height of Buildings:	8.5m	9.6m	12.9%
Floor Space Ratio	FSR: 0.6:1 (243.72m ²)	FSR: 0.66:1 (269.6m ²)	10.6%

Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.6 Exceptions to development standards	No
6.2 Earthworks	Yes
6.3 Flood planning	Yes
6.4 Stormwater management	Yes
6.12 Essential services	Yes

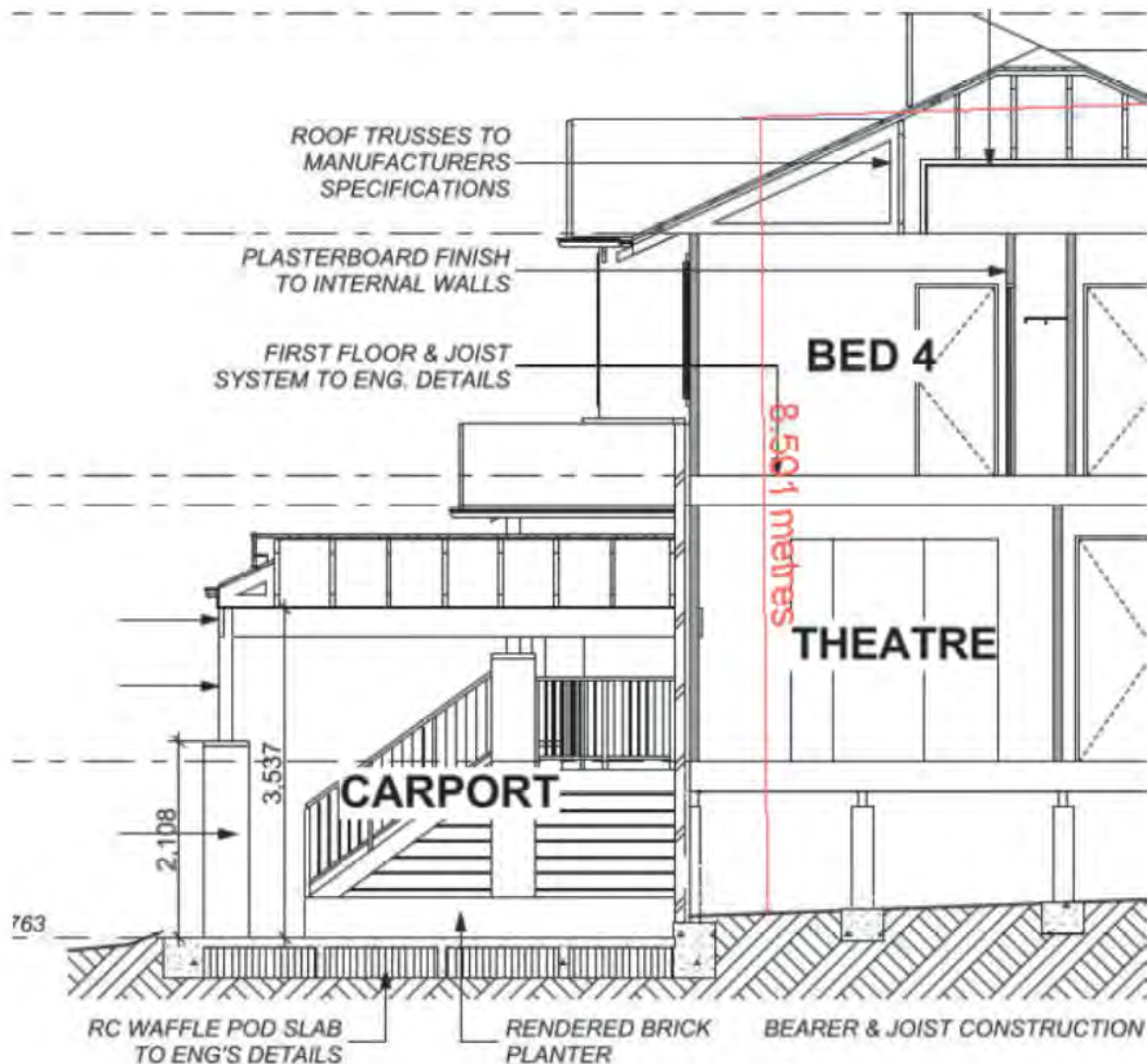
Detailed Assessment

4.6 Exceptions to development standards

Height of building

Description of non-compliance:

Development standard:	Height of Buildings
Requirement:	8.5m
Proposed:	9.6m
Percentage variation to requirement:	12.9%



A-A

Figure 1: Section of proposed development (submitted by the applicant) with 8.5m development standard for building height shown.

Assessment of request to vary a development standard:

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

Clause 4.6 Exceptions to development standards:

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



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

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

Comment:

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

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

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

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

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

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

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

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

Comment:

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

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



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

Comment:

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

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

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

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

The applicants written request argues, in part (summarised):

- The proposal is compatible with the style of surrounding properties and the majority of the non-compliance is a result of then Flood Planning Level. It is further argued that compliance would not serve any benefit to surrounding properties or be beneficial to the presentation of the building in the streetscape.

It is acknowledged that the style of dwelling with a pitched roof is consistent with predominant style of dwelling in the vicinity. It is also agreed that the proposal will not have any unreasonable amenity impact to surrounding properties as a result of the height non-compliance.

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore



satisfying cls 1.3 (c) and (g) of the EPA Act.

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

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

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

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

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

Comment:

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

Objectives of the Development Standard

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the MLEP 2013 are:

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

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

Comment:

The proposal involves a two story dwelling with a pitched roof on a site which has a slight slope from the rear to the front of the site. Along with the building being raised above ground level to meet requirements for flooding, the pitched roof and gable feature results in the building breaching the numerical development standard for building height (see figure below). Despite the numerical breach, the pitched roof form and gable feature matches and complements the predominant style of roof form in the immediate area. Furthermore, the two storey presentation and the modulation of the building across the site, provides a presentation of building height that is desirable in the streetscape.

b) to control the bulk and scale of buildings,

Comment:

The proposal complies with the numerical development standard for building height toward the front and rear of the site. This exemplifies a modulation of the built form across the site which contributes to a sufficient control of bulk and scale. In particular, the presentation of the dwelling is stepped back from the street to provide an adequate presentation of bulk and the rear section



of the dwelling is limited in height so as to not cause unreasonable amenity impact to the neighbouring properties. Adding to this, the section of the building which does not comply with the numerical standard is centralised on the site and well separated from the neighbouring properties and street.

c) to minimise disruption to the following:

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

Comment:

The proposal will not have any unreasonable impact on views. The modulation of the dwelling also ensures that vistas through the site are retained.

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

Comment:

The proposed dwelling has a north-south orientation and much of the shadow from the dwelling would fall toward Golf Parade (being at the southern boundary). As such, the proposal complies with the requirements for Sunlight Access and Overshadowing under the Manly DCP. This compliance with requirements and shadowing to the street, provides an appropriate outcome for solar access.

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

Comment:

The subject site is not within or directly adjacent to any environmental protection zone.

Zone Objectives

The underlying objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*

Comment:

The proposal maintains the residential use of the site and therefore continues to contribute to providing housing needs for the community.

It is considered that the development satisfies this objective.

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

Comment:



The proposed dwelling contributes to the variety of housing types and densities in the area.

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 proposal involves a residential land use which is appropriate for the zone.

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 R1 General Residential zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, 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 Height of Buildings Development Standard associated with a single dwelling house (Class 1 building).

Floor Space Ratio

Description of non-compliance:

Development standard:	Floor Space Ratio
Requirement:	FSR: 0.6:1 (243.72m ²)
Proposed:	FSR: 0.66:1 (269.6m ²)
Percentage variation to requirement:	10.6%

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 (summarised):

- The height, bulk and scale of the development is reflective of the established surrounding development including adjoining development and development generally within the visual catchment of the site.

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



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

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

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

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

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

Comment:

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

Objectives of Development Standard

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

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

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

Comment:

The proposed dwelling involves modulation to the front elevation and side setbacks which comply with the numerical controls. This contributes to the situation in which the proposed two storey dwelling will provide spatial proportions that are desirable for the streetscape. Furthermore, the landscaping to the front, sides and rear of the site provide a situation in which the bulk and scale of the development is well integrated with natural features so as to be consistent with existing and desired streetscape character.

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

Comment:

The proposal complies with the controls for side setback and provides a modulation at the front elevation to ensure that bulk is well controlled and surrounding features are not substantially obscured.



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

Comment:

The site will involve landscaping to surround the dwelling and this establishes a relationship in which natural features will be appropriately integrated with the built form.

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

Comment:

The proposal provides sufficient separation from neighbouring properties so as to minimise amenity impact. Furthermore, overshadowing will be predominantly toward the street and will not have an unreasonable impact on public or private space.

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

Comment:

The subject site is not within a business zone.

Zone Objectives

The underlying objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*

Comment:

The proposal maintains the residential use of the site and therefore continues to contribute to providing housing needs for the community.

It is considered that the development satisfies this objective.

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

Comment:

The proposed dwelling contributes to the variety of housing types and densities in the area.

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 proposal involves a residential land use which is appropriate for the zone.



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 R1 General Residential zone.

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

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

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, 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: 406.2m ²	Requirement	Proposed	% Variation*	Complies
4.1.2.1 Wall Height	East: 6.7m (based on gradient 1:30)	7.3m	12.3%	No (see comments)
	West: 6.7m (based on gradient 1:30)	7.3m	12.3%	No (see comments)
4.1.2.2 Number of Storeys	2	2	N/A	Yes
4.1.2.3 Roof Height	Height: 2.5m	2.5m	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6.0m	0m (carport) 4.6m-5.5m	N/A	No (see comments)
4.1.4.2 Side Setbacks and Secondary Street Frontages	2.43m (based on wall height)	2.5m-2.66m	N/A	Yes
	Secondary Street: prevailing	consistent with prevailing		
	Windows: 3.0m	2.5m	N/A	No (see comments)
4.1.4.4 Rear Setbacks	8.0m	5.31m-5.47m	N/A	No (see comments)
4.1.5.1 Minimum Residential Total Open Space Requirements Residential Open Space Area: OS3	Open space 55% of site area (223.41m ²)	44.3% (180m ²)	N/A	No (see comments)
4.1.5.2 Landscaped Area	Landscaped area 35% of open space	12.8% (23.0m ²)	N/A	No. However, the proposal complies with the imposed



		With condition: 46% (83.0m ²)		condition.
4.1.5.3 Private Open Space	18.0m	18.0m	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	6.0m (37.5%)	N/A	Yes
Schedule 3 Parking and Access	Dwelling 2 spaces	2 spaces	N/A	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
3.4 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
3.6 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
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	No	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
5.4.3 Flood Prone Land	Yes	Yes

Detailed Assessment

3.1 Streetscapes and Townscapes

Merit consideration:



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

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

Comment:

The proposal involves an open carport structure to the front setback at Golf Parade. This is in a location on Golf Parade in which there are various structures within the front setback including walls, carports and garages. The proposed open carport will fit in with this character and also minimise visual impact by complying with the control which requires car parking to be a maximum of 50% of the width of the frontage. Furthermore, the site maintains vegetation in the front setback to integrate natural features with the built form and minimise visual impact.

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

Comment:

The proposal involves a dwelling which complies with side setback controls and will comply with the requirement for landscaped area (subject to conditions). The presentation of the dwelling is that of two storeys with a pitched roof and a raised ground floor level. These characteristics are common for dwellings in the area. Furthermore, the compliance with setbacks, sufficient modulation across the site and the landscaping to surround the site, provides a situation in which the dwelling will complement the identified character of the streetscape.

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

Comment:

The proposal involves a carport structure as well as natural features at the frontage. This provides a balanced presentation akin to the presentation of other dwellings in the street.

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.

3.4.2 Privacy and Security

Merit consideration:

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

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

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



Comment:

Conditions have been imposed to require a privacy screen to surround the rear alfresco area and for the large windows at the eastern elevation to be redesigned. Along with sufficient physical separation between the dwelling and neighbouring properties, these conditions will ensure loss of privacy is adequately minimised.

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

Comment:

The requirement for a 1.6m high privacy screen will provide an appropriate balance between maintaining privacy but also allowing for sufficient light and air to the alfresco area.

Objective 3) To encourage awareness of neighbourhood security.

Comment:

The proposal involves sufficient openings and entrances to allow for appropriate opportunity for neighbourhood awareness.

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

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

Description of non compliance

The proposal involves walls with a height of up to 7.3m. The control for wall height on the site (based on the gradient of 1:30) is 6.7m.

Merit Consideration

With regard to the consideration for the variations, the development is considered against the underlying Objectives of the Height of Buildings standard under the Manly LEP (as are stated are particularly relevant) of the controls as follows:

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

Comment:

The proposal involves a two storey dwelling with a pitched roof on a site which has a slight slope from the rear to the front of the site. Along with the building being raised above ground level to meet requirements for flooding, the pitched roof and gable feature results in the building breaching the numerical development standard for building height (see figure below). Despite the numerical breach, the pitched roof forms and gable feature matches and complements the predominant style of roof form in the immediate area. Furthermore, the two storey presentation and the modulation of the building



across the site, provides a presentation of building height that is desirable in the streetscape.

b) to control the bulk and scale of buildings,

Comment:

The proposal complies with the numerical development standard for building height toward the front and rear of the site. This exemplifies a modulation of the built form across the site which contributes to a sufficient control of bulk and scale. In particular, the presentation of the dwelling is stepped back from the street to provide an adequate presentation of bulk and the rear section of the dwelling is limited in height so as to not cause unreasonable amenity impact to the neighbouring properties. Adding to this, the section of the building which does not comply with the numerical standard is centralised on the site and well separated from the neighbouring properties and street.

c) to minimise disruption to the following:

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

Comment:

The proposal will not have any unreasonable impact on views. The modulation of the dwelling also ensures that vistas through the site are retained.

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

Comment:

The proposed dwelling has a north-south orientation and much of the shadow from the dwelling would fall toward Golf Parade (being at the southern boundary). As such, the proposal complies with the requirements for Sunlight Access and Overshadowing under the Manly DCP. This compliance with requirements and shadowing to the street, provides an appropriate outcome for solar access.

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

Comment:

The subject site is not within or directly adjacent to any environmental protection zone.

The proposed development satisfies the underlying objectives of the clause.

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

Description of non-compliance

The proposal does not comply with the control for front setback (6.0m/prevaling building line). The proposal involves a setback of 0m to the front carport and 4.6m-5.5m to the dwelling.

The proposal also does not comply with the control for setback to windows facing the boundary (3.0m).



In this regard, there are windows which face the boundary which are 2.5m from the boundary.

The proposal also does not comply with the control for rear setback (8.0m). In this regard, the proposal involves a setback of 5.31m-5.47m from the rear 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 proposal involves an open car parking structure with landscaping at the front of the site, and a front elevation of the dwelling that is well modulated. This provides a spacing and sense of openness that is consistent with the desired spatial proportions of the street.

Objective 2) To ensure and enhance local amenity by:

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

Comment:

Conditions are imposed so as to reduce the opportunity for overlooking from the alfresco areas and from large windows. Along with the sufficient physical separation between the neighbouring living spaces and the dwelling, this provides a situation in which the setbacks provide a suitable outcome for privacy.

The proposal also maintains appropriate modulation and separation to provide for a satisfactory outcome for views, character of the street and for traffic conditions.

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

Comment:

Subject to conditions related to privacy, the proposal involves an adequate siting for both amenity and visual presentation. This includes that the setback to the both the primary and secondary street is sufficient for the character of each streetscape, and that the separation between the north and east elevation is sufficient to minimise amenity impact.

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:

Subject to conditions, the proposal will provide landscaped area that complies with the control under the Manly DCP. This landscaped area which surrounds the dwelling ensures that natural features can be appropriately maintained and enhanced on the site.

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

Comment:

The proposal is not within a bush fire prone land.

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.

4.1.5 Open Space and Landscaping

Description of non-compliance

The proposal does not comply with the control for total open space (55%). In this regard, the proposal involves 44.3% or 180m² of the total site as open space area.

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 proposal does not involve any significant loss of canopy trees and would not have an unreasonable impact on flora and fauna.

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 proposal complies with the numerical control for landscaped area on site (subject to conditions). Along with the ground level open space to surround the dwelling, this provides an appropriate opportunity for tree planting and natural features.



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

Comment:

The open space proposed across the site sufficiently contributes to providing an appropriate buffer and physical separation to enhance and maintain amenity.

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

Comment:

The proposal complies with the control for landscaped area and this sufficiently maximises opportunity for stormwater infiltration as well as minimising opportunity for stormwater runoff.

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

Comment:

The proposal does not involve weeds and would not give unreasonable opportunity for the spread of weeds.

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

Comment:

The proposal involves open space corridors to surround the dwelling and this appropriately provides potential for wildlife.

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

4.1.8 Development on Sloping Sites

An assessment has been made under Schedule 11 of the Manly DCP 2013 and has found that the lack of history of slope instability, lack of cuts/excavations, developed nature of the site, provide a situation in which it is not necessary to require a report for the site (which has a slight slope).

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 \$5,200 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$520,000.

CONCLUSION

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

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

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

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

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

Council is satisfied that:

1) The Applicant's written request under Clause 4.6 of the Manly Local Environmental Plan 2013 seeking to justify a contravention of Clause 4.3 Height of Buildings and Clause 4.4 Floor Space 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.

Conclusions on the Assessment of the Application

The proposed development does not comply with the 'Height of Buildings' development standard of 8.5m or the 'Floor Space Ratio' Development Standard of 0.6:1 under the MLEP 2013. However, the



breaches of the development standards does not give rise to any unreasonable amenity impact or visual impact, and are consistent with the objectives of the MLEP 2013.

In this case, the proposed dwelling provides a design that involves sufficient modulation and sufficient physical separation from neighbours. Conditions also provide a balanced outcome in design for privacy for windows at the eastern elevation and the alfresco area. Furthermore, an assessment against the objectives of the development standards has found the proposal to be consistent and reasonable.

On balance, the proposal should be approved as the design is reasonable for the site and locality by virtue of a presentation which is consistent with characteristics of the area (two storey, pitched roof and car parking structure at the front setback), and also provides sufficient spacing and modulation to reduce any unreasonable impact caused by bulk.

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 Northern Beaches Council as the consent authority vary clauses 4.3 Height of Building and 4.4 Floor Space Ratio development standards 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 DA2019/1284 for Construction of a dwelling house on land at Lot 25 DP 1248867, 54 Golf Parade, MANLY, subject to the conditions printed below:

DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

1. Approved Plans and Supporting Documentation

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

a) Approved Plans

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Page 2 of 12 - Site Plan	15/10/2019	Hall and Hart Homes
Page 3 of 12 - Demolition Plan	15/10/2019	Hall and Hart Homes
Page 4 of 12 - Ground Floor Plan	15/10/2019	Hall and Hart Homes
Page 5 of 12 - First Floor Plan	15/10/2019	Hall and Hart Homes
Page 6 of 12 - Elevations	15/10/2019	Hall and Hart Homes



Page 7 of 12 - Elevations	15/10/2019	Hall and Hart Homes
Page 8 of 12 - Sections/Basix	15/10/2019	Hall and Hart Homes
Page 9 of 12- Site Management/ Sediment Plan	15/10/2019	Hall and Hart Homes

b) Arboricultural Development Impact Assessment Report dated 8th November 2019.

c) 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 (Demolition):

(a) 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 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
- (ii) 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.

(b) 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.

(c) 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.

Reason: Legislative Requirement.

3. **General requirements (Demolition):**

(a) Unless authorised by Council:

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 a Notice of Commencement to Council, a copy of the Development Consent is to remain onsite at all times until completion of demolition works. 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) The applicant shall bear the cost of all works that occur on Council's property.

(f) No building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.

(g) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.

(h) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)

(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.

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 \$5,200.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan 2019. The monetary contribution is based on a development cost of \$520,000.00.

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

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

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

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

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

5. **Security Bond**

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

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

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

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

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

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

6. **Stormwater Disposal**

The applicant is to submit Stormwater Engineering Plans for the new development within this



development consent, prepared by an appropriately qualified and practicing Civil Engineer, indicating all details relevant to the collection and disposal of stormwater from the site, buildings, paved areas and where appropriate adjacent catchments. Stormwater shall be conveyed from the site to Golf Parade.

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

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

7. Vehicle Crossings Application

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

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

Reason: To facilitate suitable vehicular access to private property.

8. Waste Management Plan

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

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

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

9. Flooding

In order to protect property and occupants from flood risk the following is required:

Building Components and Structural Soundness – C1

All new development shall be designed and constructed as flood compatible buildings in accordance with Reducing Vulnerability of Buildings to Flood Damage: Guidance on Building in Flood Prone Areas, Hawkesbury-Nepean Floodplain Management Steering Committee (2006).

Building Components and Structural Soundness – C2

All new development must be designed and constructed to ensure structural integrity up to the Probable Maximum Flood (5.65m AHD), taking into account the forces of floodwater, wave action, flowing water with debris, buoyancy and immersion. Structural certification shall be provided confirming the above.

Building Components and Structural Soundness – C3

All new electrical equipment, power points, wiring, fuel lines, sewerage systems or any other service pipes and connections must be waterproofed and/or located above the Flood Planning Level. All existing electrical equipment and power points located below the Flood Planning Level must have residual current devices installed cut electricity supply during flood events.



Storage of Goods – D1

Hazardous or potentially polluting materials shall not be stored below the Flood Planning Level unless adequately protected from floodwaters in accordance with industry standards.

Flood Emergency Response – E2

Appropriate access to the shelter in place refuge should be available from all areas of the new development.

Floor Levels – F1

New floor levels within the development shall be set at or above the Flood Planning Level of 3.65m AHD.

Floor Levels – F2

The underfloor area of the dwelling below the 1% AEP flood level is to be designed and constructed to allow clear passage of floodwaters. The underfloor perimeter of the dwelling is to have a minimum of 50% open area below the 1% AEP level. Only 50% of the perimeter would be permitted to be solid.

Car parking – G4

Vehicle barriers or restraints are to be installed to a minimum height of the Flood Planning Level to prevent floating vehicles leaving the site.

Car parking – G6

Car ports are to be designed to allow flood waters to pass through and are to have a minimum of 50% open area below the 1% flood level.

Fencing – H1

Fencing (including pool fencing, boundary fencing, balcony balustrades and accessway balustrades) shall be open for passage of flood waters - All new fencing on the property must be design with a minimum of 50% open area between the Flood Planning Level (3.65m AHD) and natural ground level, to allow flood waters to pass through.

Recommendations

The development must comply with all recommendations outlined in:

- The Flood Management Report by Zait Engineering Solutions Pty Ltd dated 10/08/2019.

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

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.



10. **Landscaped Open Space**

The synthetic turf to the rear of the site is to be replaced with deep soil landscaping. Notation of this is to be provided on Landscape Plans and all approved plans.

Reason: To ensure there is an appropriate amount of landscaped area for the development.

11. **Privacy Screen to Rear Alfresco**

A privacy screen of 1.6m in height is to surround the northern and eastern elevation of the alfresco area.

Details are to be provided prior to the issue of a Construction Certificate.

Reason: To minimise opportunities for overlooking toward neighbouring living spaces.

12. **Redesign of Guest and Theatre windows**

The proposed guest and theatre windows at the eastern elevation are to be redesigned as follows:

- (a) Highlight windows with a solid sill height to a level of 1.5m from finished floor level; or
- (b) Wholly obscured and fixed (not able to be opened) glazing up to a height of 1.5m; or
- (c) Provided with fixed louvre screens to a level of 1.5m above finished floor level with no individual opening greater than 30 millimetres.

Details are to be provided prior to the issue of a Construction Certificate.

Reason: To reasonably minimise privacy impact between the subject site and adjoining properties.

13. **Construction Management Program**

A Construction Traffic Management Plan is to be prepared for the development given its unusual location and access arrangements.

The Construction Traffic Management Plan should include (but not be limited to) the following:

- (a) Details for maintaining access to adjacent properties
- (b) Details regarding access to the site for trucks
- (c) Details for storage of materials
- (d) Provision of parking for workers
- (e) Details for loading and unloading of materials

The Management Plan is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate and complied with for the duration of works.

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 in a manner that respects adjoining owner's property rights and protects amenity in the locality, without unreasonable inconvenience to the community.

14. **Planting along Northern and Eastern boundaries**

All planting along the northern and eastern boundary is to be replaced with native species which reach a mature height of no more than 4m.

Details are to be provided prior to the issue of a Construction Certificate.

Reason: To minimise amenity impact provide by tall planting in the consent.



15. **Water feature at northern boundary**

No mechanical equipment is to be provided in conjunction with the water feature at the northern boundary.

Details are to be shown on the plans prior to the issue of a Construction Certificate.

Reason: To minimise noise.

CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

16. **Pre-Construction Dilapidation Report**

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). The reports must detail the physical condition of those properties listed below, both internally and externally, including walls, ceilings, roof, structural members and other similar items.

Property / Properties: 1 Balgowlah Road and 52 Golf Parade.

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.

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 arising from the works.

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

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

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

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

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

CONDITIONS TO BE COMPLIED WITH DURING DEMOLITION AND BUILDING WORK

18. **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.

19. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 5 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/1 N and the driveway levels application approval. An Authorised Vehicle Crossing Contractor shall construct the vehicle crossing and associated works within the road reserve in plain concrete. All redundant laybacks and crossings are to be restored to footpath/grass. Prior to the pouring of concrete, the vehicle crossing is to be inspected by Council and a satisfactory "Vehicle Crossing Inspection" card issued.

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

Reason: To facilitate suitable vehicular access to private property.

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

20. **Stormwater Disposal**

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

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

21. **Post-Construction Dilapidation Report**

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

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

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

Details demonstrating compliance with this condition are to be submitted to the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

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

22. **Reinstatement of Kerb**

The Applicant shall reinstate all redundant laybacks and vehicular crossings to conventional kerb and gutter, footpath or grassed verge as appropriate with all costs borne by the applicant.

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



Reason: To facilitate the preservation of on street parking spaces.

23. **Structural stability of the Shelter in Place**

A suitably qualified structural engineer is to certify the structural stability of the shelter in place considering lateral flood flow, buoyancy, suction effects, and debris load impact up to the Probable Maximum Flood (5.65m AHD) design flood depths and velocities. Details demonstrating compliance are to be submitted to the Certifying Authority for approval.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

24. **Undercroft Area**

A restriction shall be imposed on the title of the land, pursuant to S88B of the Conveyancing Act confirming that the undercroft area is not to be enclosed.

Reason: To reduce the impact of flooding and flood liability on owners and occupiers of flood-prone property and reduce public and private losses in accordance with Council and NSW Government policy.

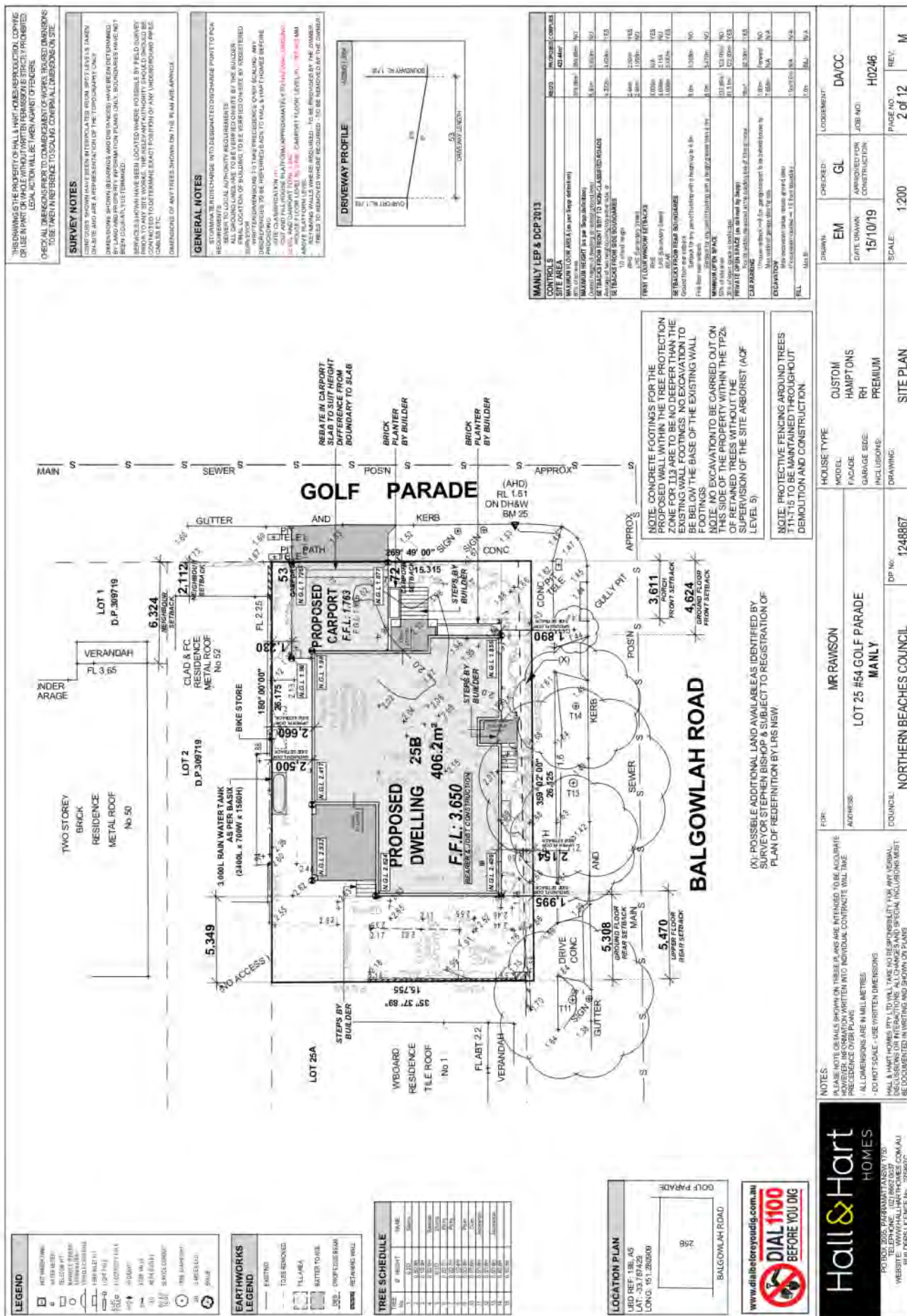
In signing this report, I declare that I do not have a Conflict of Interest.

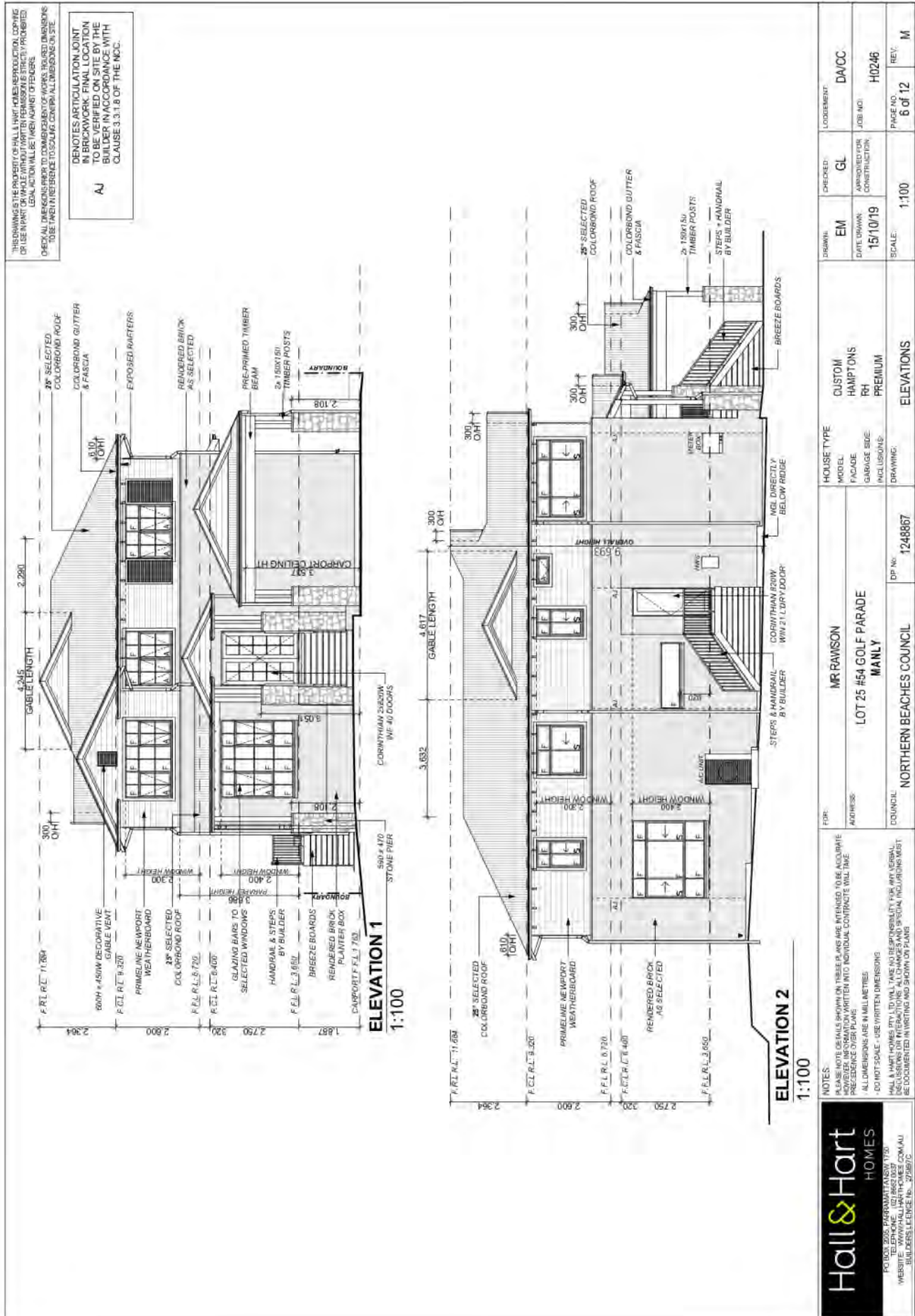
Signed

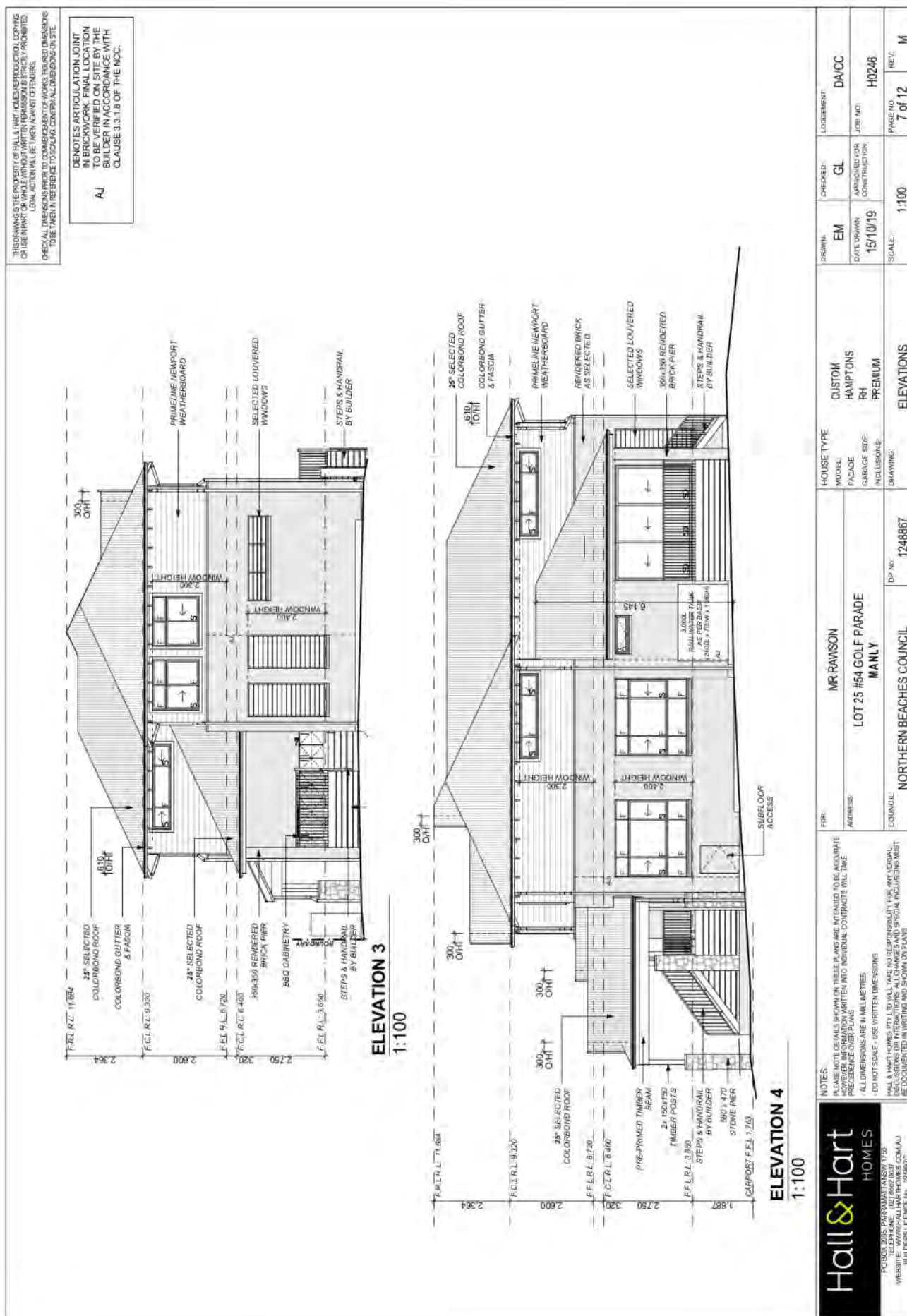
Steven Findlay, Manager Development Assessments

The application is determined on //, under the delegated authority of:

Steven Findlay, Manager Development Assessments







Suite T No 9 Narabang Way Belrose NSW 2085 • tel (02) 577 768
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BostonBlythFleming
Town Planners

29th February 2020

The General Manager
Northern Beaches Council
Po Box 882
MONA VALE NSW 1660

Attention: Thomas Prosser – Town Planner

Dear Sir,

Clause 4.6 variation request – FSR
Development Application DA2019/1284
Proposed dwelling house
54 Golf Parade, Manly

1.0 Introduction

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, *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.

2.0 Manly Local Environmental Plan 2013 (“MLEP”)

2.1 Clause 4.4 – Floor space ratio

Pursuant to Clause 4.4 MLEP 2013 the maximum FSR for development on the site is 0.6:1 representing a gross floor area of 249.66 square metres. The stated objectives of this clause are:

- (a) *to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*

- (c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

It has been determined that the proposal has a gross floor area of 266.68 square metres, as defined, representing a floor space ratio of 0.62:1 and therefore non-compliant with the FSR standard by 81.9 square metres or 16.9%.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of MLEP provides:

(1) 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.*

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or

impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of MLEP provides:

(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.

This clause applies to the clause 4.4 Floor Space Ratio Development Standard.

Clause 4.6(3) of MLEP provides:

(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.*

The proposed development does not comply with the floor space ratio provision at 4.4 of MLEP which specifies a maximum building height however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of MLEP provides:

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

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

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 4.6(4)(a)(ii)) is that the proposed development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 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 cl 4.6, subject to the conditions in the table in the notice.

Clause 4.6(5) of MLEP provides:

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

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) 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; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as to note that it does not exclude clause 4.4 of MLEP from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

- 17. *The first and most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: Wehbe v Pittwater Council at [42] and [43].*
- 18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the*

consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].

19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.*
22. *These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all of the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.*

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.4 of MLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:

- (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
- 3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 and the objectives for development for in the zone?
 - 4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
 - 5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.3A of MLEP?

4.0 Request for variation

4.1 Is clause 4.4 of MLEP a development standard?

We are of the opinion that the clause 4.4 MLEP floor space ratio standard is a development standard to which clause 4.6 MLEP applies.

4.2 Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the floor space ratio standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

Response: The bulk and scale of the development as reflected by GFA/FSR are consistent with the built form characteristics established by existing surrounding development and development generally within the site's visual catchment as depicted in Figures 1

and 2 below and over page. The building presents a 2 storey building height to the street with the floor space appropriately distributed to provide a complimentary and compatible building form consistent with the desired character of the area.



Source: Google Earth

Figure 1 – Photograph of development located on the eastern side of Golf Parade



Source: Google Earth

Figure 1 – Photograph of development to the east of the site on the northern side of Golf Parade

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of *Project Venture Developments v Pittwater Council* (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development by virtue of its bulk and scale offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the sites visual catchment.

The bulk and scale of development is consistent with the existing and desired streetscape character and therefore consistent with this objective.

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

Response: The distribution of floor space across the site will ensure that important landscape and townscape features are not obscured as viewed from adjoining properties and the public domain.

The proposal is consistent with this objective.

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

Response: The application proposes the implementation of an enhanced site landscape regime and provides for a building footprint which is compliant with the total open space and landscaped area MDCP control. The building will sit within a landscaped setting.

The proposal is consistent with this objective.

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

Response: Having identified available view lines over and past the site I have formed the considered opinion that the proposal will not give rise to any adverse public or private view affectation. A view sharing scenario is maintained between adjoining properties in accordance with the clause 3.4.3 MDCP control and the principles established in the matter of Tenacity Consulting Pty Ltd v Warringah Council [2004] NSWLEC140 and Davies v Penrith City Council [2013] NSWLEC 1141.

The accompanying shadow diagrams demonstrate that the proposed dwelling will not give rise to any non-compliant shadowing impact with a majority of shadowing falling over the adjoining road reserve street. In relation to privacy, the spatial relationship maintained between adjoining development and the appropriate use and design of window treatments will prevent direct overlooking between properties. I have formed the considered opinion that these measures will maintain an appropriate level of visual and aural privacy between properties. Further, the design and siting of the development minimises adverse impacts on the public domain.

The proposal, by virtue of its design, minimises adverse environmental impacts on the use or enjoyment of adjoining land and the public domain and is therefore consistent with this objective.

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

Response: This objective is not applicable.

Having regard to the above, the proposed building form which is noncompliant with the FSR standard will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the FSR standard.

Given the developments consistency with the objectives of the FSR standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.

Consistency with zone objectives

The subject site is zoned R1 General Residential pursuant to the provisions of MLEP. Dwelling houses are permissible in the zone with the consent of council. The stated objectives of the zone are as follows:

- *To provide for the housing needs of the community*

Response: The development seeks to reinstate a dwelling house on the site which will provide for the housing needs of the community. The proposal is consistent with this objective.

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

Response: The development seeks to reinstate a dwelling house on the site which will provide for a variety of housing types and densities in the zone. The proposal is consistent with this objective.

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

Response: N/A

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant development, as it relates to FSR, demonstrates consistency with objectives of the R1 General Residential zone and the FSR standard objectives. Adopting the first option in *Wehbe* strict compliance with the FSR standard has been demonstrated to be is unreasonable and unnecessary.

Such conclusion is supported by the findings of Handley JA Giles JA Sheppard AJA in the matter of *Fast Buck\$ v Byron Shire Council* [1999] NSWCA 19 (19 February 1999) where they found that strict compliance could be found to be unreasonable and unnecessary where a modest variation was proposed to a development standard and in circumstances where the underlying objectives of the standard were not defeated.

4.3 Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *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.*
24. *The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds.*

The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

In this regard, I 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.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).

- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

It is noted that in *Initial Action*, the Court clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

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

4.4 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.3A and the objectives of the R2 Low Density Residential zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in *Initial Action* (Para 27) described the relevant test for this as follows:

“The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out. It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest. If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).”

As demonstrated in this request, the proposed development it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.5 Secretary’s concurrence

By Planning Circular dated 21st February 2018, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a nonnumerical standard, because of the greater scrutiny that the LPP process and determination s are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

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 FSR 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 FSR 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 FSR 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; and
- (g) Concurrence of the Secretary can be assumed in this case.

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- (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.

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of an FSR variation in this instance.

Boston Blyth Fleming Pty Limited



Greg Boston
B Urb & Reg Plan (UNE) MPIA
Director

**APPENDIX B – CLAUSE 4.6 VARIATION
VARIATION OF A DEVELOPMENT STANDARD REGARDING THE MAXIMUM
BUILDING HEIGHT REQUIRED BY CLAUSE 4.3 OF THE MANLY LOCAL
ENVIRONMENTAL PLAN 2015**

For: Proposed New Dwelling
At: 54 Golf Parade, Manly
Applicant: Mr Jeremy Rawson

Introduction

This objection is made pursuant to the Clause 4.6 of Manly Local Environmental Plan 2013. This variation is a written request for Council's support a variance to a development application for the construction of a new 2 storey dwelling at **54 Golf Parade, Manly**.

The specified maximum building height under Clause 4.3 (1) of the Manly Local Environmental Plan 2013 (the LEP) is restricted to 8.5m. Due to Flood Controls for the site, the development is proposing a maximum height of 9.693m

The controls of the Clause 4.3 development standards requires a variation under Clause 4.6 of the Manly Local Environmental Plan 2013 (the LEP) to permit the granting of consent to the development application.

PURPOSE OF CLAUSE 4.6

The Manly Local Environmental Plan 2013 contains its own variations clause (Clause 4.6) to allow a variance from a development standard. Clause 4.6 of the Standard Instrument 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 Standard Instrument should be assessed. These cases are taken into consideration in this request for variation.

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 construction of a new secondary dwelling, which is consistent with the stated Objectives of the R1 General Residential Zone, which are noted as:

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

As required by the zone objectives, the proposal will provide for the construction of a two storey dwelling. Notwithstanding the non-compliance, the design aesthetically adds to the existing character of the neighbourhood whilst providing for the general residential requirements.

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.*

JUSTIFICATION OF PROPOSED VARIANCE

There is jurisdictional guidance on how variations under Clause 4.6 of the Standard Instrument should be assessed in *Samadi v Council of the City of Sydney [2014] NSWLEC 1199*.

Paragraph 27 of the 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)(i)).

Precondition 1 - Consistency with zone objectives

The land is located in the R1 – Low Density Residential Zone. The objectives of the R1 zone are:-

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

Comments

The development proposal provides for the construction of a new dwelling maintaining the general residential environment. The development provides a 2 storey dwelling which adds to the existing character of the neighbourhood whilst providing for the general residential requirements.

Accordingly, the proposal can achieve the zone objectives notwithstanding the maximum height non-compliance.

Precondition 2 - Consistency with the objectives of the standard

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

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

Comments

The proposal provides for the construction of a new dwelling that is compatible with the existing surrounding development in terms of height. The proposal provides for a reasonable-pitched roof form of 25 degrees which is compatible with more recent developments in the locality. The overall height is affected by the Flood Management controls and the required Flood Planning Level of 3.65m AHD, which is approximately 1.65m above the NGL. The proposal has ceiling heights of 2,750mm and 2,600mm which is not considered excessive and is consistent with the prevailing neighbourhood. The proposal achieves this objective.

- (b) *to control the bulk and scale of buildings,*

Comments

It is considered that the proposal adequately addresses this objective by providing for a new dwelling that is well articulated and modulated. The front and secondary façade provides for substantial articulation through the use varied setbacks, gables and change in external finishes. The use of modulation limits the impact overall size and bulk. The proposal is generally consistent with the height and scale of the locality, which is generally 2 storey dwellings.

- (c) *to minimise disruption to the following:*
(i) *views to nearby residential development from public spaces (including the harbour and foreshores),*

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

Comments

The proposal does not obstruct any significant views from the adjoining properties. It is noted that the properties do not currently enjoy any views due to the natural topography and as such the proposal will not have any impact on these properties in terms of views. The proposal thereby achieves compliance with this objective.

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

Comments

Given the orientation of the allotments on this portion of Golf Parade being North-South, all properties receive very shadowing as. Shadow diagrams have been prepared which demonstrate that at least 2 hours of solar access is maintained to the private open space and living room windows on the winter solstice. The proposal complies with this objective.

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

Comments

This objective does not apply.

For the above reasons, we are of the view that the variation requested and the resultant development is consistent with the objectives of the development standard.

Precondition 3 - To a consider 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 given the pre-determined Flood Planning Levels. The majority of the non-compliance is a result of the required FFL of 3.65 AHD. Given that the proposal has non-excessive ceiling heights and roof pitch, it can be argued that the non-compliance solely due to the mitigating flood measures. The proposal results in a dwelling that is compatible with the adjoining properties and reducing the proposal to ensure strict compliance would not serve any benefit to the adjoining properties or when viewed from the streetscape.

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

When 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.

The existing surrounding development and the desired architectural outcome combine to produce a meritorious development despite the minor numerical variation to the building height standard.

In the recent 'Four2Five' judgement (Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90), Pearson C outlined that a Clause 4.6 variation necessitates recognition of grounds that are unique to the circumstances to the proposed development. Which is to imply that that simply meeting the objectives of the zone is insufficient to justify a Clause 4.6 variation.

Staying with the 'Four2Five' judgement, a Judge of the Court, and later the Court of Appeal, upheld the Four2Five decision but explicitly noted that the Commissioner's decision on that point was simply a discretionary (subjective) opinion. 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.

Taking into consideration the more recent case of *Randwick City Council vs Micaul Holdings Pty Ltd* [2016], the council mounted an appeal against the original Clause 4.6 determination, producing advanced arguments detailing that the applicant failed to thoroughly justify the non-compliances in the LEP, and that the commissioner failed to adequately assess the Clause 4.6 variance. In February 2018 the Chief judge dismissed the appeal on the basis that the previous ruling had not faulted in its assessment and determination of the variances to the FSR and height controls.

With reference to the Four2Five v Ashfield case once more, the judge, although falling short of overturning the judgement in Four2Five's favour, did raise an

important discussion point that the consent authorities 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 reiterated this again:

"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".

In regards to the proposed development at 54 Golf Parade, 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:-

In this regard the following has been considered: -

- The non-compliance is a direct result of the Flood Planning Controls.
- The proposal does not result in any loss of privacy or solar access to the adjoining properties.
- The proposal retains existing views from adjoining properties.

CONCLUSION

The development proposes a departure from the maximum building height control.

The proposal produces an appropriate development outcome. The variation to the control occurs due to the Flood Controls required for Flood Risk Management.

As there is no material impact on adjoining properties or the public domain arising from the variation to the building height development standard and the objectives of the control are satisfied, it is considered that strict compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

This objection to the maximum building height specified in Clause 4.3 of the Manly LEP 2013 adequately demonstrates that the objectives of the standard will be met.

Therefore, we request that council support the variation on the basis that there are sufficient environmental planning grounds to justify a variance to the development standard.

Nicholas Rawson
Town Planner
October 2019