

# AGENDA

## DEVELOPMENT DETERMINATION PANEL MEETING

Notice is hereby given that a Meeting of the Development Determination Panel will be held on

**WEDNESDAY 13 MAY 2020**



**Ashleigh Sherry**  
**Manager Business Systems and Administration**





## **Agenda for a Meeting of the Development Determination Panel to be held on Wednesday 13 May 2020**

<b>1.0</b>	<b>APOLOGIES &amp; DECLARATIONS OF INTEREST</b>	
<b>2.0</b>	<b>MINUTES OF PREVIOUS MEETING</b>	
2.1	Minutes of Development Determination Panel held 22 April 2020	
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## **2.0 CONFIRMATION OF MINUTES OF PREVIOUS MEETINGS**

### **2.1 MINUTES OF DEVELOPMENT DETERMINATION PANEL HELD 22 APRIL 2020**

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#### **RECOMMENDATION**

That the Panel note that the Minutes of the Development Determination Panel held 22 April 2020 were approved by all Panel Members and have been posted on Council's website.

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### 3.0 DEVELOPMENT DETERMINATION PANEL REPORTS

ITEM 3.1	REV2020/0013 - 87 NARRABEEN PARK PARADE, MONA VALE - REVIEW OF DETERMINATION OF APPLICATION DA2019/0954 FOR ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SECONDARY DWELLING AND SWIMMING POOL
REPORTING MANAGER	Rodney Piggott
TRIM FILE REF	2020/256832
ATTACHMENTS	1 Assessment Report 2 Site Plan & Elevations

#### PURPOSE

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

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#### RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER

THAT Council as the consent authority **refuse** Development Consent to REV2020/0013 for Review of Determination of Application DA2019/0954 for alterations and additions to a dwelling house including a secondary dwelling and swimming pool on land at Lot 20 DP 15762, 87 Narrabeen Park Parade, Mona Vale.

## REVIEW OF DETERMINATION ASSESSMENT REPORT

<b>Application Number:</b>	REV2020/0013
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<b>Responsible Officer:</b>	Catriona Shirley
<b>Land to be developed (Address):</b>	Lot 20 DP 15762, 87 Narrabeen Park Parade MONA VALE NSW 2103
<b>Proposed Development:</b>	Review of Determination of Application DA2019/0954 for Alterations and additions to a dwelling house including a secondary dwelling and swimming pool
<b>Zoning:</b>	E4 Environmental Living
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Nina Simone Salerno
<b>Applicant:</b>	Urbanesque Planning Pty Ltd

<b>Application Lodged:</b>	16/03/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	27/03/2020 to 10/04/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 994,500.00
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### Executive Summary

The application seeks a review of the determination of DA2019/0954, for the alterations and additions to a dwelling house, including a secondary dwelling and swimming pool, which was refused by Northern Beaches Council on 14 November 2019.

The application was refused due to the non-compliance with the Pittwater Development Control Plan. The non-compliance of the proposal with the Front Building Line, Side Building Line, Building Envelope and Landscaped area contributed to a bulk and scale that Council considered inconsistent with the E4 Environmental Living zone, the character of the area, and the streetscape.

In response to the Development Applications refusal, the applicant has submitted an amended design, with no change to the built form of the dwelling house, secondary dwelling, or landscaped area. The amendments include changes to the fence fronting Bruce Street and the submission of a landscape plan.

The notification of the review application resulted in one (1) submissions objecting to the development. A number of concerns each raised in the submissions are concurred with by Councils assessment of the application, particularly those relating to impacts of the built form and proposed landscaping.

Therefore, the proposed amendments made under this review application are not sufficient to satisfactorily address the issues identified in the original assessment report and the reasons for refusal.

Accordingly, the application is referred to the Development Determination Panel with a re-affirmed recommendation for refusal.

### **PROPOSED DEVELOPMENT IN DETAIL**

The application seeks a review of the refusal of DA2018/1930, for the alterations and additions to the building including a swimming pool and secondary dwelling.

The application was refused for the following reasons:

- Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A4.14 Warriewood Locality of the Pittwater 21 Development Control Plan.
- Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D14.7 Front building line of the Pittwater 21 Development Control Plan.
- Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D14.8 Side and rear building line of the Pittwater 21 Development Control Plan.
- Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D14.13 Landscaped Area - Environmentally Sensitive Land of the Pittwater 21 Development Control Plan.

The application is accompanied amended plans. The amendments to the design include the following:

- A reduction in the height of the fence fronting Bruce Street from 1.8m to 1.2m, with new open style panels and sandstone piers.
- A new landscape scheme for the identical sized landscape area.

Section 8.3(3) of the EP&A Act, 1979 provides that the applicant may amend the proposal, however the consent authority must be satisfied that the amended proposal remains substantially the same as that considered in the original development application.

Council is satisfied that the amended proposal is substantially the same, and as such the application is referred to the Development Determination Panel for determination.

Therefore, in summary, the revised proposal comprises of the following works:

#### **Lower Ground Floor:**

- Renovate existing bathroom and ensuite,
- Remodel wet bar area,
- Alterations to existing internal stairs leading to the above ground floor.

**Ground Floor:**

- Relocating kitchen to the western side of the dwelling, the new kitchen will have a walk-in pantry and laundry,
- Replace existing study with a new powder room,
- Alterations to existing internal stairs,
- Extending the existing terrace south to provide access to the new dining room area,
- New pergola roof over the terrace area.

**First Floor:**

- Relocating existing internal stairs,
- Extending the first floor to the east to provide three (3) additional bedrooms, sitting room and bathroom. The master bedroom will be located on the first floor and will contain an ensuite and dressing room.

**Secondary Dwelling:**

- Construction of a detached 55.4sqm secondary dwelling, which will be situated on the Bruce Street frontage,
- The secondary will include a bedroom, study, bathroom and kitchen/living room.

**External/Outdoor Area:**

- Various cosmetic changes to the existing dwelling's facade and roof,
- Construction of a new in-ground pool and associated paved areas,
- Resurfacing existing double garage,
- Construction of a 1.2m boundary fence along the Bruce Street frontage,
- Affiliated landscaping works.

**Road Reserve (Bruce Street):**

Remove the existing paving on the road reserve, which is in front of the proposed secondary dwelling and replace it with turf.

**ASSESSMENT INTRODUCTION**

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

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

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

### **SUMMARY OF ASSESSMENT ISSUES**

Environmental Planning and Assessment Act 1979 - Section 8.3 - Environmental Planning and Assessment Act 1979 - Section 8.3  
 Pittwater Local Environmental Plan 2014 - Zone E4 Environmental Living  
 Pittwater 21 Development Control Plan - A4.14 Warriewood Locality  
 Pittwater 21 Development Control Plan - C1.1 Landscaping  
 Pittwater 21 Development Control Plan - C1.5 Visual Privacy  
 Pittwater 21 Development Control Plan - C1.11 Secondary Dwellings and Rural Worker's Dwellings  
 Pittwater 21 Development Control Plan - D14.1 Character as viewed from a public place  
 Pittwater 21 Development Control Plan - D14.7 Front building line  
 Pittwater 21 Development Control Plan - D14.8 Side and rear building line  
 Pittwater 21 Development Control Plan - D14.11 Building envelope  
 Pittwater 21 Development Control Plan - D14.13 Landscaped Area - Environmentally Sensitive Land  
 Pittwater 21 Development Control Plan - D14.15 Fences - General  
 Pittwater 21 Development Control Plan - D14.18 Scenic Protection Category One Lands

### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 20 DP 15762 , 87 Narrabeen Park Parade MONA VALE NSW 2103
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the eastern side of of Narrabeen Park Parade and the western side of Bruce Street.</p> <p>The site is irregular in shape with a frontage of 15.24m along Narrabeen Park Parade and 14.91m along Bruce Street with a depth of 37.10m. The site has a surveyed area of 551.10m<sup>2</sup>.</p> <p>The site is located within the Environmentally Living E4 zone and accommodates a three storey brick residence.</p> <p>The site slopes from the Narrabeen Park Parade frontage to the eastern boundary (Bruce Street frontage).</p> <p>The Narrabeen Park Parade frontage contains grassed areas and hedges. The Bruce Street frontage contains a diverse range of exotics and shrubbery. The subject site contains no canopy trees or endangered species.</p>



**Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by 2-3 storey dwelling houses. Warriewood beach is directly east of the subject site.

Map:



**SITE HISTORY**

On 3 September 2019, Development Application No. **DA2019/0954** for alterations and additions to the dwelling house including a swimming pool and secondary dwelling was lodged with Council.

On 13 November 2019, the application was refusal for the following reasons:

- Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A4.14 Warriewood Locality of the Pittwater 21 Development Control Plan.
- Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D14.7 Front building line of the Pittwater 21 Development Control Plan.
- Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D14.8 Side and rear building line of the Pittwater 21 Development Control Plan.
- Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D14.13 Landscaped Area - Environmentally Sensitive Land of the Pittwater 21 Development Control Plan.

Subsequently, the current application was lodged with Council on the 17 March 2020, with an amended design to seek a review of the original determination.

**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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;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&amp;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&amp;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&amp;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&amp;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	<p>(i) <b>Environmental Impact</b></p> <p>The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater</p>

Section 4.15 Matters for Consideration'	Comments
the natural and built environment and social and economic impacts in the locality	21 Development Control Plan section in this report.  (ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.  (iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development, in so far as the proposal represents an inappropriate and overdevelopment of the site.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	This assessment has found the proposal to be contrary to the relevant planning controls and will result in a development which will create an undesirable precedent such that it would undermine the desired future character of the area and be contrary to the expectations of the community. In this regard, the development, as proposed, is not considered to be in the public interest.

In accordance with Section 8.3 of the Act, an applicant may request Council to review a determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 8.3 (2) of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application. The application was determined on 13 November 2019 and the notice of determination was issued on 14 November 2019. The review was lodged on 16 March 2020 and is to be considered by Development Determination Panel on 13 May 2020, which is within 6 months of the date of determination.

Section 8.3 (3) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the ‘Detailed Description of Works’ section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended design (being subject of the 8.3 review) and the nature of the intended land use remains the same. Accordingly it is concluded that the amended scheme is substantially the same as the original proposal. Accordingly, it is considered that the proposal satisfies the requirement of Section 8.3 (3) of the Act

#### **EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

### **BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

### **NOTIFICATION & SUBMISSIONS RECEIVED**

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

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

<b>Name:</b>	<b>Address:</b>
Ms Janet Stewart Mahony Dr Terry Mahony	85 Narrabeen Park Parade MONA VALE NSW 2103

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

- Building Envelope
- Landscaping

The matters raised within the submissions are addressed as follows:

- ***There is concern that the building envelope variation, and the additional roof structure over first floor terrace will have a negative amenity impact to the southern adjoining site.***

Comment:

The proposal (as amended) does not include any significant design change that address the building envelope variation non-compliance to reflect a more low-impact residential development. The proposal (as amended) does not attempt to minimise the visual impacts and the review concludes that there continues to be unreasonable bulk and scale that will have a negative impact on the character of the immediate area.

Therefore, the proposal has not been amended to sufficiently minimise bulk and scale, or lessen the visual impact of the proposed development as viewed from Bruce Street or adjoining properties.

The overshadowing of the original proposal was considered and it was concluded that a reasonable level of amenity and solar access is provided to both the occupants of the dwelling and the neighbouring properties.

Therefore, the bulk and scale concern is concurred with and the matter continues to warrant the refusal of the application.

- ***There is concern that the new landscaping design will have a negative amenity impact to the southern adjoining site.***

Comment:

A Landscape Plan is provided with the application. There is concern that the particular species of plants will have a negative amenity impact, particularly on the view lines from the southern neighbouring site.

The Landscape Plan was assessed by Council's Landscape Officer, who does not support the application. The submitted Landscaping Plan does not provide appropriate landscape design to adequately soften the built form through landscape treatment as required under C1.1 and D14.1. The Landscape species within the landscape plan were also in question as to their adequacy and their location on the site.

Therefore, the amended landscape proposal and listed plant species do not sufficiently minimise bulk and scale, or lessen the visual impact of the proposed development as viewed from Bruce Street or adjoining properties.

Therefore, the landscape design concern is concurred with and the matter continues to warrant the refusal of the application.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Landscape Officer	<p>The proposal seeks approval for alterations and additions to the existing dwelling including the construction of a secondary dwelling and a new swimming pool.</p> <p>The proposal in terms of landscape outcome is acceptable subject to the protection of existing trees and vegetation within adjoining properties, and the completion of landscaping including the requirement to provide native canopy tree planting to satisfy Pittwater 21 DCP.</p> <p>This application is assessed by Council's Landscape Referral section against the following Pittwater 21 DCP Controls: C1.1 Landscaping C1.11 Secondary Dwellings D14 Warriewood Locality, and in particular 14.1 Character as viewed from a public place.</p> <p>A Landscape Plan is provided with the application. No existing trees of significance are located within the property. The landscape proposal provides one Palm to the frontage of Narrabeen Park Parade and one Water Gum to the frontage at Bruce Street.</p>



Internal Referral Body	Comments
	<p>C1.1 requires a range of low-lying shrubs, medium-high shrubs and canopy trees shall be retained or provided to soften the built form, including at least 2 canopy trees in the front yard and 1 canopy tree in the rear yard with each tree to have a minimum area of 3 metres x 3 metres to ensure growth is not restricted. Canopy trees are to be located a minimum of 5 metres from existing and proposed built structures. The front of buildings (between the front boundary and any built structures) shall be landscaped to screen those buildings from the street as follows: 60% for a single dwelling house, secondary dwelling, rural workers' dwellings, or dual occupancy.</p> <p>D14.1 requires that the visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation.</p> <p>It is considered that the location of the Water Gum tree planting within the Bruce Street frontage will not reduce the built form as it is located at the side boundary, offering no opportunity to screen the built form from the street as required under C1.1, and the selected Phoenix Date Palm will not adequately reduce the built form as it is a slow growing palm that will not be able to screen built form for some decades. The Phoenix Date Palm is also an Exempt Species that can be removed without consent. Conditions imposed for such retention may not be fully understood by a future owner and as such no reliance can be successfully placed on retention of this species.</p> <p>The proposal does not soften the built form through landscape treatment as required under C1.1 and D14.1.</p> <p>In its current form the proposal is not supported.</p>
NECC (Bushland and Biodiversity)	<p>The determination and additional documentation were reviewed against applicable biodiversity controls. The requested review will not result in additional impact to biodiversity (native trees or vegetation). The original referral recommendation is therefore upheld.</p>
NECC (Development Engineering)	<p>The application has been re-assessed with the revised architectural plans. The original stormwater plans and Geotechnical report from DA2019/0954 have been relied upon to complete this assessment. The proposed development does not require OSD and the concept drainage plan is satisfactory. The submitted Geotechnical report satisfies the relevant DCP controls. The existing driveway crossings are to remain and the applicant proposes to remove the existing paving on the road reserve in Bruce St and replace it with turf which is satisfactory.</p> <p>No objection to approval, subject to conditions as recommended.</p>

**ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\***

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

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

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

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

#### **SEPP 55 - Remediation of Land**

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

#### **SEPP (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 are located within the Coastal Use Area and Coastal Environment Area as identified by State Environmental Planning Policy (Coastal Management) 2018 (CM SEPP), and the provisions of this policy are applicable in relation to the proposal.

Following detailed assessment of the proposed development, the consent authority can be satisfied of the following:

- the proposal is not likely to cause an adverse impact upon the matters listed in clause 13(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 13(1) of the CM SEPP,
- the proposal is not likely to cause an adverse impact upon the matters listed in clause 14(1) of the CM SEPP,
- the proposal has been designed, sited and will be managed to avoid adverse impacts on the matters listed in clause 14(1) of the CM SEPP,
- the proposal is not likely to cause increased risk of coastal hazards on the site or other land.

As such, the proposal is considered to be consistent with the provisions of the CM SEPP, including the matters prescribed by clauses 13, 14 and 15 of this policy.

#### **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?	No

#### Principal Development Standards

Standard	Requirement	Original Proposal (DA2019/ 0954)	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.24m	8.24m	-	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.4 Controls relating to miscellaneous permissible uses	Yes
5.10 Heritage conservation	Yes
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.10 Essential services	Yes

#### Detailed Assessment

#### **Zone E4 Environmental Living**

The proposed alterations and additions, despite the amendments made, remains inconsistent with the objectives of the E4 Environmental Living zone with regard to the presentation of bulk and scale to the streetscape and public areas.

Therefore, the proposal continues to be inconsistent with the following objectives:

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

The amended development will not have the appearance of a "low impact" residential dwelling house in a natural landscaped setting, integrated with the scenic landform and aesthetic values, as there continues to be excessive built form on the site, particularly in the eastern area of the property.

The proposed additions to the dwelling house displays a significant vertical bulk that has amenity impacts to the adjoining properties. The existing presentation of the garages on a nil setback, combined with the walled presentation of the secondary dwelling will be visually prominent and will negatively impact on the Bruce Street streetscape and does not reflect the predominant character of residential development in the immediate Bruce Street area.

The bulk and scale of the development (as amended) is also inconsistent with the zone objectives in that it is not considered to be a sensitive design solution for this site. Whilst it is recognised that the proposal is surrounded by a mix of buildings with varying bulk and scale, it cannot be said that the proposed development has been designed to minimise bulk and scale, or lessen the visual impact of the proposed development as viewed from Bruce Street or adjoining properties.

A submission has been received in objection to the development, particularly with regard to the bulk and scale of the built form and its inconsistency with the character of the locality. Those concerns are concurred with.

Overall, the proposal (as amended) is inconsistent with the desired objectives and future character of the E4 Environmental Living zone.

#### **Pittwater 21 Development Control Plan**

##### **Built Form Controls**

<b>Built Form Control</b>	<b>Requirement</b>	<b>DA2019/0954</b>	<b>Proposed as Part of Review</b>	<b>% Variation*</b>	<b>Complies</b>
Front building line	6.5m	6.5m (Dwelling)	<b>No Change</b> 6.5m (Dwelling)	-	Yes
Secondary Front building line	3.25m (Bruce Street)	3.7m (Secondary dwelling) 5.9m (Swimming pool)	<b>No Change</b> 3.7m (Secondary Dwelling) 5.9m (Swimming Pool)	-	No
Side building line	2.5m North	1.0m (Secondary dwelling) 1.5m (First floor extension)	<b>No Change</b> 1.0m (Secondary Dwelling) 1.5m (First Floor Extension)	40% - 60%	No
	1m South	1.5m (First floor extension) 1.5m (Ground floor terrace)	<b>No Change</b> 1.5m (First floor extension) 1.5m (Ground floor terrace)	-	Yes



		2.1m (Swimming pool)	2.1m (Swimming pool)		
Building envelope	3.5m North	Outside envelope (One encroachment between 1.65m - 1.25 for a length of 2.46m)	<b>No Change</b> Outside envelope (One encroachment between 1.65m - 1.25 for a length of 2.46m)	36% - 47%	<b>No</b>
	3.5m South	Outside envelope (One encroachment between 2.1m - 1.79m for a length of 2.50m)	<b>No Change</b> Outside envelope (One encroachment between 2.1m - 1.79m for a length of 2.50m)	51% - 60%	<b>No</b>
Landscaped area	60%	47.3% (260.6sqm)	<b>No Change</b> 47.3% (260.6sqm)	21%	<b>No</b>

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.14 Warriewood Locality	No	No
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B4.5 Landscape and Flora and Fauna Enhancement Category 3 Land	Yes	Yes
B5.1 Water Management Plan	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.7 Stormwater Management - On-Site Stormwater Detention	Yes	Yes
B5.8 Stormwater Management - Water Quality - Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.1 Landscaping	No	No
C1.2 Safety and Security	Yes	Yes
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	Yes	Yes
C1.5 Visual Privacy	No	Yes
C1.6 Acoustic Privacy	Yes	Yes
C1.7 Private Open Space	Yes	Yes
C1.9 Adaptable Housing and Accessibility	Yes	Yes
C1.11 Secondary Dwellings and Rural Worker's Dwellings	No	No
C1.12 Waste and Recycling Facilities	Yes	Yes
C1.13 Pollution Control	Yes	Yes
C1.17 Swimming Pool Safety	Yes	Yes
C1.19 Incline Passenger Lifts and Stairways	Yes	Yes
C1.23 Eaves	Yes	Yes
C1.24 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
D14.1 Character as viewed from a public place	No	No
D14.3 Building colours and materials	Yes	Yes
D14.7 Front building line	No	No
D14.8 Side and rear building line	No	No
D14.11 Building envelope	No	No
D14.13 Landscaped Area - Environmentally Sensitive Land	No	No
D14.15 Fences - General	Yes	Yes
D14.17 Construction, Retaining walls, terracing and undercroft areas	Yes	Yes
D14.18 Scenic Protection Category One Lands	No	No

#### Detailed Assessment

#### **A4.14 Warriewood Locality**

The design (as amended) does not satisfy the desired future character of the Warriewood locality. The design (as amended) makes no change to address how the three storey dwelling house, secondary dwelling and double garage on a nil setback provides the appropriate balance between the landform and landscape, nor how the built form will be sufficiently integrated within a landscaped setting.

Additionally, as stated in the original application, secondary dwellings are permitted within these residential areas when situated in appropriate locations with minimal environmental impacts. However, the proposal (as amended) continues to propose the construction of a secondary dwelling and swimming pool, while refurbishing the existing double garage, all of which are contained within the eastern portion of the site. This continues to demonstrate an excessive amount of development within the eastern portion and consequently restricts the establishment of substantial landscaping to adequately soften the visual impact of the built form.

Overall, the proposal (as amended) is inconsistent with the desired future character of the Warriwood locality.

### **C1.1 Landscaping**

As mentioned above, the design (as amended) has been assessed by Councils Landscape officers, who do not support the landscape design due to the inconsistency with a number of provisions being:

- *A built form softened and complemented by landscaping,*
- *Landscaping reflects the scale and form of development.*

As detailed by Councils Landscape Officer, the location of the Water Gum tree planting within the Bruce Street frontage, will not reduce the built form as it is located at the side boundary, offering no opportunity to screen the built form from the street. The selected Phoenix Date Palm species will not adequately reduce the built form as it is a slow growing palm that will not be able to screen built form for many decades.

Ultimately the landscaping does not minimise the visual dominance of the proposed built form. Further reductions should be made to the built form to ensure the bulk and scale of the proposal is not overbearing, whilst providing additional areas of landscaping to accommodate deep soil landscaping that will provide plantings that reasonably satisfy the provisions of the control.

Therefore, the design of the landscaping continues to be inconsistent with a number of provisions of clause and is not supported.

### **C1.5 Visual Privacy**

Concern was raised in the assessment of the original scheme in relation to the potential overlooking of adjoining properties. Overlooking was associated with the 'first floor' terrace area with regard to potential overlooking into No. 85 Narrabeen Park Parade's first floor bedroom window.

The amended development has made no attempt to further resolve overlooking of the proposed first floor terrace area to the southern existing site and no additional privacy mitigation measures have been incorporated into the amended design.

As there are no proposed design changes to minimise the potential privacy impacts, there are no grounds to change the assessment and determination in relation to privacy impacts. Notwithstanding as per the original assessment, if consent is granted to this application imposed conditions would ensure that the first floor terrace balustrades are made translucent. This will ensure that views into the concerned window are not readily accessible from the 'first floor' terrace.

### **C1.11 Secondary Dwellings and Rural Worker's Dwellings**

As mentioned above, the amended proposal makes no change to the setbacks, nor bulk and scale of the proposed secondary dwelling and continues to be inconsistent with a number of provisions being:

- *Limitation of the visual bulk and scale of development.*
- *Retention of natural vegetation and facilitation planting of additional landscaping.*

As stated within the original assessment report, the proposed presentation to the Bruce Street streetscape will comprise of a double garage (existing) on a nil setback, with the new secondary

dwelling on a reduced setback, with a limited landscaped area of 23.5sqm between the secondary dwelling and the new front boundary fence.

The design (as amended) has made no attempt to address the non-compliance with the visual presentation, nor the landscaping area to the Bruce Street streetscape. Overall, the amended proposal provides no increase opportunities for the establishment of landscaping that will effectively reduce the impact of the built form and positively contribute to the streetscape.

Overall, the design (as amended) continues to be inconsistent with a number of provisions of clause and is not supported.

#### **D14.1 Character as viewed from a public place**

Concern continues to be raised with the design (as amended), as there has been no attempt to address Bruce Street frontage. The proposal continues to demonstrate excessive built form within the eastern portion of the site with a lack of deep soil landscaping.

As stated in the original assessment, the existing dwelling is located in an elevated position, readily visible when viewed from Bruce Street. Therefore, the site is dependent upon the small landscaped area within the Bruce Street frontage in order to to screen and soften the existing double garage, the three storey dwelling house, and secondary dwelling.

The design (as amended), has made no increase to the previous deficient landscaped area of 23.5sqm, and due to this area continuing to be utilised as the main private open space area for the proposed secondary, there will continue to be inadequate opportunities for appropriate landscaping that is of a size and scale that can visually reduce the built form.

Overall, as there are no proposed design changes to minimise the potential visual impact impacts to the Bruce Street street view, and no grounds to change the previous assessment and determination in relation to streetscape character impacts. There, the proposal (as amended) is not supported.

#### **D14.7 Front building line**

The design (as amended) provides no change to the front setback of 3.68m to the secondary dwelling. The built form to Bruce Street will continue to comprised of a double garage (existing) on a nil setback, the new secondary dwelling on a reduced setback, a small pocket of landscaped area (23.5sqm) between the secondary dwelling, the new 1.2m high front boundary fence and a narrow entrance corridor.

As stated in the previous application this design does not a demonstrate a visually compatible setback outcome with the Bruce Street streetscape.

Overall, the amended design makes no attempt to minimise the built form on the site, nor increase the non-compliant landscaped area, and as such, the proposed development is considered to be unreasonable and inconsistent with the objectives and requirements of the front building line clause.

#### Merit Consideration:

A review of the design (as amended), and the demonstrated non-compliance has been provided in accordance with the outcomes of the control, as below.

- ***To achieve the desired future character of the Locality.***

#### Comment:

The amended development continues to be inconsistent with the desired future character of the



Warriewood Locality, particularly as there is no change to the proposed secondary front building line which does not provide adequate opportunities to ensure that the visual impact of the development is secondary to landscaping.

Consequently, the proposal (as amended) **does not** satisfy this control.

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

Comment:

The proposal will continue to not result in the loss of views.

Consequently, the proposal (as amended) does satisfy this control.

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

Comment:

The proposed secondary dwelling adjoins Bruce Street, which is not a main road.

Consequently, the proposal (as amended) does satisfy this control.

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

Comment:

The amended design will continue to demonstrate a front setback and streetscape to Bruce Street that will comprise of a double garage (existing) on a nil setback, the new secondary dwelling on a reduced setback, a limited landscaped area of 23.5sqm between the secondary dwelling and the new 1.2m high front boundary fence.

As assessed in the original assessment the streetscape in Bruce Street features larger areas of deep soil landscaped areas that provide a balance between built form and landscaping.

As a consequence, the subject proposal (as amended) provides no increase to landscape area to provide for the establishment of landscaping that will successfully reduce the impact of the built form and contribute to the streetscape of Bruce Street.

Consequently, the proposal (as amended) **does not** satisfy this control.

- ***Vehicle manoeuvring in a forward direction is facilitated.***

Comment:

The proposed works will not have an effect on vehicle manoeuvring.

The proposal complies with this outcome.

- ***To preserve and enhance the rural and bushland character of the escarpment and the locality.***

Comment:

The proposed Bruce Street frontage (as amended) makes no change to the limited landscaped area of 23.5sqm between the secondary dwelling and the new 1.2m high front boundary fence and a narrow entrance corridor. As this area will continue to be utilised as the main private open space area for the proposed secondary dwelling, the proposal (as amended) provides no additional opportunities within the Bruce Street frontage for the establishment of any trees and

landscape features. This results in a development that weakens the bushland character of the escarpment and the locality. Councils Landscape Officers have also agreed that the submitted landscape design will not adequately reduce and screen the built form.

Consequently, the proposal (as amended) **does not** satisfy this control.

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

Comment:

The design (as amended) includes a landscape plan. As detailed in the Landscaping Officers response, the proposal (as amended), is not satisfactory as the location and species of canopy trees will not screen nor soften the built form when viewed from the streetscape. However, the proposed secondary dwelling continues to comply with Council's maximum building standard.

Consequently, the proposal (as amended) **does not** satisfy this control.

- ***To encourage attractive street frontages and improve pedestrian amenity.***

Comment:

The front setback, as a part of the design (as amended), continues to demonstrate built form that comprises of a double garage (existing) on a nil setback and the new secondary dwelling on a reduced setback. The area between the secondary dwelling and the new 1.2m high front boundary fence will continue to be only 23.5sqm of landscape area.

The adjoining properties on the eastern side of Bruce Street minimise the visual impact of their dwellings through the larger setbacks containing adequate landscaping areas.

Therefore, as there is no change to the setbacks or landscape area there is no change to the previous assessment. Overall, the proposal (as amended) does not demonstrate, nor attempt to create an attractive and consistent street frontage along Bruce Street.

Consequently, the proposal (as amended) **does not** satisfy this control.

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

Comment:

The proposal (as amended) makes no attempt to increase the front setbacks to the proposed secondary dwelling, nor provided additional deep soil landscaped areas to provide a more reasonable balance between built form and landscaping.

Additionally, the visual impact of adjoining dwellings and associated structures have been further minimised through adequate separation from the Bruce Street boundary. Overall, the proposal (as amended) does not ensure new development responds to, reinforces, or sensitively relates to the spatial characteristics of the existing urban environment.

Consequently, the proposal (as amended) **does not** satisfy this control.

Based on the above, the proposed development (as amended) makes no attempt to address the objectives of the control and therefore maintains inconsistency with the outcomes of the control and the non-compliance is not supported.

#### D14.8 Side and rear building line

##### Description of non-compliance:

There is no change to the minimal side setbacks of the proposal (as amended), being 1.0m to the secondary dwelling and 1.5m to the first floor extensions. The development continues to exhibit excessive bulk, scale and mass when viewed from both the street and the neighbouring properties, and does not provide sufficient space to alleviate amenity impacts such as privacy.

Side setbacks in a higher intensity development (secondary dwelling) should respond to the local character by providing greater setbacks to maintain more appropriate spatial separation.

##### Merit Consideration:

A review of these non-compliance's will be given in accordance with the outcomes of the control, as below.

- ***To achieve the desired future character of the Locality.***

##### Comment:

The proposal (as amended) is inconsistent with the desired future character of the Warriewood Locality. As stated in the original assessment, the amendments do not provide adequate opportunities to ensure that the visual impact of the development is secondary to landscaping.

The non-compliant northern side setback of the secondary dwelling do not provide sufficient spatial separation to provide for an adequate landscape buffer to ensure the development is integrated within the landform.

Consequently, the proposal (as amended) **does not** satisfy this control.

- ***The bulk and scale of the built form is minimised.***

##### Comment:

The proposed secondary dwelling is set back 1.0m from the northern side boundary, whereas the control requires an northern side setback of 2.5m. This spatial distance would provide a more reasonable landscape area to one side boundary that would assist in visually breaking down the built form. Overall, it is not considered that the proposal's design reasonably mitigates the visual impact of the built form.

Consequently, the proposal (as amended) **does not** satisfy this control.

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

##### Comment:

The proposed works are appropriately sited in relation to the preservation of views. However, the proposed landscaping has the potential to impact the existing view lines to the southern adjoining site.

Consequently, the proposal (as amended) **does not** satisfy this control.

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

##### Comment:

The proposed works are appropriately sited in relation to the preservation of views. However, the proposed landscaping has the potential to impact the existing view lines to the southern adjoining site.

Consequently, the proposal (as amended) **does not** satisfy this control.

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

Comment:

The proposed side setback non-compliance will not result in any unreasonable impact on light, or solar access.

The amended development has made no attempt to further resolve overlooking of the proposed first floor terrace area to the southern existing site and no additional privacy mitigation measures have been incorporated into the amended design.

Consequently, the proposal (as amended) **does not** satisfy this control.

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

Comment:

The proposal (as amended) is continues to demonstrate non-compliance with the 60% landscape control and does not provide any increase to the northern side setback, which would reflect greater consistency with neighbouring and nearby properties.

The positioning of the proposed secondary dwelling continues to prevent the site from having a reasonable landscaping area along the northern boundary setback. Thus, there is no attempt to address the requirements of creating an attractive streetscape, thorough reducing the visual impact of the built form.

Consequently, the proposal (as amended) **does not** satisfy this control.

- ***Flexibility in the siting of buildings and access.***

Comment:

The proposal (as amended) does not provide adequate flexibility in the siting of buildings, as the secondary dwelling continues to provides a non-compliant northern side setback (1.0m). It would be expected that an increased side setback of a minimum of 2.5m would be provided to the secondary dwelling to provide appropriate visual presentation and minimisation of built form for the site.

Consequently, the proposal (as amended) **does not** satisfy this control.

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

Comment:

The proposal (as amended) provides no change to the previous landscaped area of 47.3% (260.6sqm), whereas the control requires a minimum of 60% (330.7sqm).

As stated in the previous application, the non-complaint landscaped area provision when combined with the non-compliant side setback of the proposed secondary dwelling does not provide for adequate separation for the establishment of more considerable landscape planting.



It is agreed that the proposal (as amended) will increase the sites green coverage. However, as per the original design, a significant portion of this is elevated and shallow (300mm) grassed areas. Therefore, the proposal (as amended) continues to fail to provide adequate areas for substantial landscape planting, to visually reduce the built form.

Consequently, the proposal (as amended) **does not** satisfy this control.

- ***To preserve and enhance the rural and bushland character of the locality.***

Comment:

The non-compliant northern side setback will remove the ability to establish any reasonable trees and landscape features that would screen and soften the built form, thereby resulting in a development that will detract from the bushland character of the Bruce Street escarpment and the locality.

Consequently, the proposal (as amended) **does not** satisfy this control.

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

Comment:

The subject site is located within, and is surrounded by, residential zones, therefore, this outcome is not applicable.

The proposal complies with this objective.

Therefore, the proposal (as amended) has not sufficiently addressed the spatial separation concerns and continues to be inconsistent with several objectives of clause. Based on the above, the proposed development (as amended) is inconsistent with the outcomes of the control and is not supported.

#### **D14.11 Building envelope**

Description of non-compliance:

The proposal (as amended) makes no change to the breaches of Council's building envelope control on both side boundaries, with the encroachment on the northern boundary being between 1.65m - 1.25m for a length of 2.46m and the encroachment on the southern boundary between 2.1m - 1.79m for a length of 2.50m.

Notwithstanding, the concerns raised in the original assessment (excessive development in the eastern portion of the site with inadequate landscaped area) have not been addressed via the amended design, with the proposal continuing to demonstrate non-compliance with the following outcomes;

- *Vegetation is retained and enhanced to visually reduce the built form.*
- *The bulk and scale of the built form is minimised.*

Consequently, the concerns raised in the original assessment report are not alleviated by the amended design and therefore there are no reasonable grounds to change the previous determination in relation to the building envelope.

#### **D14.13 Landscaped Area - Environmentally Sensitive Land**

Description of non-compliance:

The proposal (as amended) provides 47% (260.6sqm) of the site as landscaped area.

The control requires a minimum of 60% (330.7sqm) of the total site area as landscaped area. However, it is important to note that a large percentage of this landscaped area is elevated and shallow (300mm) grassed areas that fails to provide adequate areas for deep soil landscaping for the establishment of canopy trees that will screen, soften and visually reduce the built form.

Merit Consideration:

Further consideration of the non-compliance is given in accordance with the outcomes of the control, as below.

- ***Achieve the desired future character of the Locality.***

Comment:

The proposal (as amended) is not reflective of the desired future character for the Warriewood locality, particularly as the proposal does not effectively integrated with the landform and landscape.

The proposal's continued non-compliance with the 60% landscaped area requirement is reflective of an excessive amount of development within the eastern portion of the site. A large proportion of the sites green coverage is in the form of elevated and shallow (300mm) grassed areas. Therefore, the proposal (as amended) continues to fail to provide adequate landscaped areas that create opportunities to reduce the visual impact of the development that is secondary to landscaping.

Consequently, the proposal (as amended) **does not** satisfy this control.

- ***The bulk and scale of the built form is minimised.***

Comment:

The proposal (as amended) involves no increase to the original landscaped area of 47.3% (260.6sqm), nor to the two areas capable for the establishment of deep soil planting. The primary street frontage (Narrabeen Park Parade), will continue to include one landscaped area sized 57.9sqm. While the proposed secondary front setback (Bruce Street) will continue to include one landscaped area sized 23.5sqm, which will also continue to be the main private open space for the proposed secondary dwelling.

Therefore, there the subject site continues to be unable to provide reasonable and adequate landscape areas that have sufficient soil depth for the establishment of landscaping that is of a size and scale that can actually visually reduce the built form.

Consequently, the proposal (as amended) **does not** satisfy this control.

- ***A reasonable level of amenity and solar access is provided and maintained.***

Comment:

The proposal will ensure a reasonable level of amenity and solar access is provided to both the occupants of the dwelling and the neighbouring properties.

The proposal complies with this outcome.

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

Comment:

The proposal (as amended) makes no change to the excess amount of development in the eastern portion of the site, nor to the areas of landscaping that could provide for the establishment of landscaping that is of a size and scale that can visually reduce the built form.

Consequently, the proposal (as amended) **does not** satisfy this control.

- ***Conservation of natural vegetation and biodiversity.***

Comment:

No native trees or vegetation are proposed for removal. In addition, the development is supported by Council's Natural Environment Biodiversity Team.

The proposal complies with this outcome.

- ***Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels.***

Comment:

The development (as amended) continues to provide insufficient areas that are of sufficient soil depth for the infiltration of stormwater. It is considered that stormwater runoff will not be reasonably reduced as a result of this proposal.

Consequently, the proposal (as amended) **does not** satisfy this control.

- ***To preserve and enhance the rural and bushland character of the area.***

Comment:

The design (as amended) makes no change in the size or available area capable for the establishment of deep soil planting. Therefore, there continues to be insufficient opportunities within the site for the establishment of any trees and landscape features that would provide integration of the built form with the bushland character of the escarpment and the locality.

Consequently, the proposal (as amended) **does not** satisfy this control.

- ***Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management.***

Comment:

There is no change to the original assessment, in that the site is not considered to provide adequate areas across the site that are of sufficient soil depth to minimise run-off and assist with stormwater management.

The proposal (as amended) **does not** satisfy this control.

Based on the above, the proposed development (as amended) continue to be inconsistent with the outcomes of the control and is not supported.

#### **D14.15 Fences - General**

The proposal (as amended) demonstrates an attempt has be made to provide consistency with the

provisions of clause D14.15 Fences of PDGP 21, which prescribes that the height and the design of the fence should not dominate the street frontage and must minimise the visual impact on the streetscape.

The proposed mixed style of sandstone pillars combined with slatted fencing provides a design solution for safety and security for the occupants, whilst improving the overall outlook of the built environment.

The review concludes that the amended fence design demonstrates consistency with the objectives of these development controls and is therefore supported.

#### **D14.18 Scenic Protection Category One Lands**

As discussed previously, there has been no attempt to address the excessive amount of development within the eastern portion of the site. As a result of the proposed additions there is a lack of deep soil landscaping area on the site, and particularly along the the Bruce Street frontage creating unacceptable and unreasonable amenity and visual impacts to adjoining properties and the streetscape. Therefore, the proposal (as amended) does not achieve consistency with the desired future character of the locality and is not be supported.

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

#### **CONCLUSION**

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

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

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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



This Section 8.2 Review Application has been assessed having regard to the reasons for refusal and the previous assessment in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979, the PLEP 2014, PDGP 21 and the relevant codes and policies of Council.

This assessment has taken into consideration the revised plans, revised Statement of Environmental Effects, other documentation supporting the application and public submissions.

The amendments to the proposal and new documentation have not resolved the built form, character and site suitability issues forming the basis of the reasons for refusal of the Development Application.

The critical concerns relating to the the built form being secondary to landscaping as a result of the non-compliant front and side setback, building envelope and landscape area have not been addressed by change in design of the front fence to Bruce Street and the amended landscaping. With no change to the built form particularly within the eastern end of the site, the proposal continues to creates unacceptable and unreasonable amenity impacts to the adjoining properties and does not achieve consistency with the desired future character of the locality.

One (1) submissions where received in response to the notification of the review application. The issues raised in the submissions have been addressed in the "Public Notification Section" of this report and are concurred with.

The proposal does not display reasonable scale and density compatible with the surrounding development. Therefore, proposed amendments made under this review are not sufficient to address and overcome the issues identified in the previous assessment nor satisfy the reasons for refusal.

Accordingly, the application is referred back to the Development Determination Panel with a re-affirmed recommendation for refusal.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No REV2020/0013 for the Review of Determination of Application DA2019/0954 for Alterations and additions to a dwelling house including a secondary dwelling and swimming pool on land at Lot 20 DP 15762,87 Narrabeen Park Parade, MONA VALE, for the reasons outlined as follows:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause Zone E4 Environmental Living of the Pittwater Local Environmental Plan 2014.
2. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause A4.14 Warriewood Locality of the Pittwater 21 Development Control Plan.
3. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.1 Landscaping of the Pittwater 21 Development Control Plan.
4. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C1.11 Secondary Dwellings

and Rural Worker's Dwellings of the Pittwater 21 Development Control Plan.

5. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D14.1 Character as viewed from a public place of the Pittwater 21 Development Control Plan.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D14.7 Front building line of the Pittwater 21 Development Control Plan.
7. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D14.8 Side and rear building line of the Pittwater 21 Development Control Plan.
8. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D14.11 Building envelope of the Pittwater 21 Development Control Plan.
9. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D14.13 Landscaped Area - Environmentally Sensitive Land of the Pittwater 21 Development Control Plan.



1. XXXXX residential task collecting at least 30 items of real ones.
2. Interview used to gather information a busy working mother could water connection point.
3. Provide 10/5/000 to get into the building and resident to enter back walls (not, relating walls).
4. Provide 14/5/000 calling residents to additional real insulation request.
5. Provide aluminum framed clear glazing throughout.
6. Provide 5 star rated refrigerating gas RMS.
7. Provide energy efficient lighting (fluores, compact fluores & LED) throughout.
8. Gas cooktop & electric oven.
9. Provide well ventilated refrigerator space in kitchen.
10. Provide an interior or under cover clothes drying rack.
11. Provide a fixed outdoor clothes line (provides minimum 2hrs available in 1 yr).

01  
4-6  
EXIST GARAGE & PROPOSED GRANNY FLAT PLAN  
Scale 1: 100

[illegible]







<b>ITEM 3.2</b>	<b>DA2019/1374 - 8 BEVERLEY PLACE, CURL CURL - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE</b>
<b>REPORTING MANAGER</b>	<b>Anna Williams</b>
<b>TRIM FILE REF</b>	<b>2020/256813</b>
<b>ATTACHMENTS</b>	<b>1 Assessment Report 2 Site Plan &amp; Elevations 3 Clause 4.6</b>

### **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.

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### **RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approve** Development Consent to DA2019/1374 for Alterations and additions to a dwelling house on land at Lot 3 DP 532882, 8 Beverley Place, Curl Curl, subject to the conditions outlined in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/1374
<b>Responsible Officer:</b>	Maxwell Duncan
<b>Land to be developed (Address):</b>	Lot 3 DP 532882, 8 Beverley Place CURL CURL NSW 2096
<b>Proposed Development:</b>	Alterations and additions to a dwelling house
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Stephen Denis Bruen Helen Noreen Bruen
<b>Applicant:</b>	Stephen Denis Bruen
<b>Application Lodged:</b>	04/12/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	17/12/2019 to 22/01/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 17.64%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 750,000.00

### EXECUTIVE SUMMARY

The application proposes a variation to the Height of Building development standard of more than 10%. As such, the application is referred to the Development Determination Panel.

Council received one submission relating to view loss and tree removal from the adjoining properties to the south (No. 9 Beverley Place, Curl Curl).

As noted in the view loss analysis in the report the impact of the proposal as amended is deemed to be satisfactory, subject to reduction of the first floor deck roof.

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 proposal is seeking consent for alterations and additions to the existing dwelling house.

The works incorporate the following:

- Demolition works
- Construction of a flat roof to the dwelling.
- Reconstruct lower ground floor as habitable space including rumpus, guest bedroom, laundry and storage;
- Internal alteration and external alterations including new windows.
- Ground floor extension.
- First floor extension
- Extension of ground and first floor rear decks with roof awning.
- External access
- Associated landscape works.
- New internal access from lower ground to ground floor.

## **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 - B3 Side Boundary Envelope  
Warringah Development Control Plan - B5 Side Boundary Setbacks  
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting  
Warringah Development Control Plan - D7 Views

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 3 DP 532882 , 8 Beverley Place CURL CURL NSW 2096
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the eastern side of the cul de sac end of Beverley Place, with its rear boundary having a secondary frontage to Tanderra Place in Curl Curl..</p> <p>The site is regular in shape with a frontage of 17.18m along Beverley Place and a depth of 40.39m. The site has a surveyed area of 721m<sup>2</sup>.</p> <p>The site is located within the R2 Low Density Residential zone and accommodates a three storey dwelling with attached garage.</p> <p>The site falls steeply from the west to east with the dwelling designed to maximise views at the higher end of the site.</p> <p>The site has lawn and gardens at the front and rear of the site and exposed rock outcrops. There are no known threatened species.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by detached residential dwellings of varying architectural designs.</p>

Map:



#### **SITE HISTORY**

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

**Application DA1998/0031**

Alteration and additions and additions to the dwelling house. 7 September 1998.

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

Section 4.15 Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on "Environmental Planning Instruments" in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;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&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;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&amp;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><b>(i) Environmental Impact</b> 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><b>(ii) Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of</p>



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

#### **EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

#### **BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

#### **NOTIFICATION & SUBMISSIONS RECEIVED**

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

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

Name:	Address:
Mr David Neil Nettleton	9 Beverley Place CURL CURL NSW 2096

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

- **View loss**
- **Tree Removal**

The matters raised within the submissions are addressed as follows:

- **View Loss**  
Comment:

Concern was raised in regards to view loss from the neighbouring property to the south. The proposal has been assessed against the view loss provisions under Part D7 of the Warringah DCP and the Land and Environment Court Case of '*Tenacity Consulting Pty Ltd v Warringah*

*Council* (2004) NSWLEC 140' in this report (refer to *Part D7 Views* under the WDCP 2011 section of this report). In summary, the first floor awning will disrupt a significant water view to the north-east. As such, the awning structure is conditioned to be reduced.

- **Tree Removal**

Comment:

Concern was raised in regards to the tree along the southern boundary of the subject site. The objector has requested that the tree be removed as part of the development application due to the damage to the existing concrete wall between the objectors site and subject site.

The tree in question is not proposed for removal and does not directly form part of the development. Therefore, a condition cannot be imposed for the removal of the tree.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	The plans and Geotechnical Report indicate that the works can be undertaken without significant impact on landscape features.  No objections to approval subject to conditions.

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

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\*

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

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

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

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

### SEPP 55 - Remediation of Land

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

SEPP 55 and the land is considered to be suitable for the residential land use.

#### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. A359382 dated 25/09/19).

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	10m	17.64%	No

##### Compliance Assessment

Clause	Compliance with Requirements

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

#### Detailed Assessment

#### **4.6 Exceptions to development standards**

##### Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.50m
Proposed:	10.00m
Percentage variation to requirement:	17.64%

##### 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 not demonstrated that the objectives of the development standard have been achieved, notwithstanding the non-compliance with the development standard. As noted in detail within this report, the view loss associated with the roof awning to the top of the first floor deck is unreasonable. As such, objective (b) under clause 4.3 of the Warringah LEP 2011 has not been achieved. A condition of consent to mitigate the impact upon views has been imposed as part of this recommendation. The condition which will reduce the size of the deck roof will still result in a building height non-compliance.

In this regard, the Applicant's written request has not 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 overall roof structure will be reduced as a part of the Development Application which replaces the pitched roof with a flat structure.
- The breach is to allow for a roof over decking and protect from the weather. It is an open structure which does not result in great bulk.
- The development is of similar scale to neighbouring sites where the fall of the land has resulted in the need for additional height to develop.
- The design has retained the footprint of the existing dwelling to avoid impacting upon the surrounding natural environment.
- The area of variation will not be easily visible from the street frontage as it is well setback and hidden by vegetation.
- The architectural merit of the design is high and it would be of vast benefit the site, neighbours and locality to allow for this contemporary and thoughtful design.
- There are no discernible solar access impacts with the variation located on the northern side of the lot only.
- There are no view loss impacts with the area of the height variation retaining a lower RL than the existing dwelling roof.

### **Council's Assessment of the Clause 4.6 Request**

The proposed dwelling involves a non-compliance toward the rear of the dwelling that allows for an open style roof structure to limit sunlight access to the outdoor living space. It is also stated that the proposal is compatible with the area and would provide an appropriate level of amenity.

It is accepted that the non-compliance at the rear of the property would not be readily visible from the street, and would not unduly impact upon the streetscape. It is also agreed that the proposed development would not result in any unreasonable overshadowing and privacy impacts to neighbouring properties.

The development in totality is inconsistent with objective (c) set out in clause 4.3 of the WLEP 2011 as

the aspect of the building that results in the non-compliance with the height of building development standard leads to a significant loss of ocean and beach views. Council does not support the variation to the extent proposed. As noted previously, this element of the building is conditioned to be reduced to mitigate the impact.

In this regard, the applicant's written request has not 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 not 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 not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3), subject to conditions of consent.

**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 dwelling steps down the site so that the presentation of the dwelling in the street is 2 storeys, and the presentation of the dwelling from the rear is 2 to 3 storeys. The dwelling also involves a height of building that complies with the development standard at the frontage and only results in a non-compliance to the back of the dwelling. This compliant presentation in the streetscape and appropriate response to the topography of the land ensures that the house would be compatible with the height and scale of the surrounding development.

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

Comment:

The proposal minimises visual impact on amenity to a reasonable extent by providing modulation to the dwelling including side, front and rear setbacks that are compliant with the relevant controls under the WDCP 2011. The subject site and neighbouring property at 9 Beverly Place, Curl Curl have access to views toward the ocean. As further assessed in this report under *Part D7 - Views*, the nature of these views and the views to be retained provide an outcome in which the impact on the views is not unreasonable, subject to the reduction of the length of the roof to first floor deck. The proposed design also complies with the relevant controls for sunlight under the WDCP 2011 and involves a design with physical separation to sufficiently minimise privacy loss.

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

Comment:

The proposed dwelling provides a two storey presentation in the streetscape and allows for soft landscaped area at the front and rear of the dwelling. This provides a situation in which the scenic quality of the area will be suitably maintained. Additionally, the maintenance of compliant rear setback allows for views to be reasonably maintained to the coast subject to conditions and the vegetation maintained on site adds to the scenic quality of the bush 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 proposed non-compliance is to the rear of the street and wont be readily visible as viewed from Beverley Place.

## Zone objectives

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

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

Comment:

The proposed development retains the residential use of the site.

It is considered that the development satisfies this objective.

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

Comment:

The proposed is for alterations and additions to an existing dwelling house.

It is considered that the development satisfies this objective.

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

Comment:

The development is consistent with the desired landscape setting, retaining landscaping to the front and rear of the dwelling.

It is considered that the development satisfies this objective.

Conclusion:

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

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

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

Planning Circular PS 18-003 dated 21 February 2018, 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	9m	-	Yes
B3 Side Boundary Envelope	North - 5m	Encroachment	30%	No
	South - 5m	No encroachment	-	Yes
B5 Side Boundary Setbacks	North - 0.9m	0.4m (Stairs) 1.5m (Dwelling)	55.5%	Yes, see comments
	South - 0.9m	1.8m	-	Yes
B7 Front Boundary Setbacks	Primary - 6.5m Secondary - 3.5m	12.6m 8.8m	-	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40%	33.58%	16%	No

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
B1 Wall Heights	Yes	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	No	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	No	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D20 Safety and Security	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E10 Landslip Risk	Yes	Yes

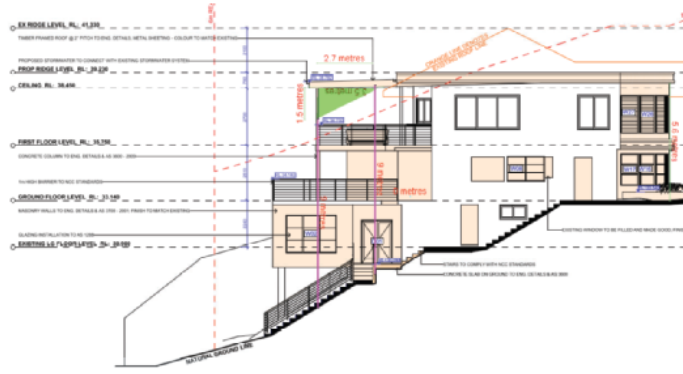
#### Detailed Assessment

#### **B3 Side Boundary Envelope**

##### Description of non-compliance

Clause B3 of the WDCP 2011 stipulates that buildings are to be projected at 45 degrees from 5m above the existing ground level, measured from the side boundaries. The proposed development encroaches into the prescribed building envelope along the northern elevation at a height ranging between 0m - 1.5m for a total length of 2m . This represents a variation to the control up to 30%.





### 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 overall development and the portion of the development which encroaches the side boundary envelope parameters do not cause the development to become visually dominant as the design of the proposal incorporates sufficient stepping and variation in the finished materials palette. Accordingly, despite the proposed encroachment, the development is not considered to become visually dominant.

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

#### Comment:

The area of encroachment is the northern wall and thereby does not contribute to visual privacy impacts between buildings. The deck is setback a compliant distant from the side boundary setback and only extends for 5.4m from the dwelling, thereby providing sufficient spatial separation between buildings. No screening will mean there is not any unreasonable or non-complying levels of overshadowing on surrounding properties.

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

#### Comment:

The proposed alterations and additions utilise the existing topography of the site. Raising the land on the sides of the dwelling would relieve this non-compliance, however this is not considered to be a sound environmental planning outcome and therefore, the proposal is considered to satisfy this objective.

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

proposal is supported, in this particular circumstance.

### **B5 Side Boundary Setbacks**

#### Description of non-compliance

The proposed stair access to the northern side of the dwelling house is setback 0.4m from the northern boundary, non-compliant with 0.9m setback control. However the clause states that structures not more than 1 metre above natural ground level (existing) including stairs. The proposed stairs and access way are located at ground level and as such are exempt from the 0.9m numeric control

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

### **D1 Landscaped Open Space and Bushland Setting**

#### Description of non-compliance

The Control requires a minimum of 40% (288.4m<sup>2</sup>) of the total site to be landscaped area.

The proposal provides 55.1% (306.6m<sup>2</sup>) of the total site as landscaped area, which represents a variation of 35.2% (242m<sup>2</sup>).

#### Merit consideration

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

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

#### Comment:

The proposed landscaped open space will allow for sufficient planting on the subject site. The proposed deep soil area is consistent with that of properties along Beverley Place

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

#### Comment:

The development does proposal to remove any indigenous vegetation or landscaped features.

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

#### Comment:

Subject to conditions, suitable landscaped is proposed to enable the establishment of low lying shrubs and canopy trees.

- *To enhance privacy between buildings.*

Comment:

The proposed landscaped open space to the rear of property allows for adequate physical separation between the subject site and the adjoining sites to the rear and sides.

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

Comment:

The rear yard would provide appropriate recreational opportunities to sufficiently meet the needs of the occupants.

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

Comment:

The site contains a sufficient amount of space to service functions, including clothes drying.

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

Comment:

New works are to connect to the existing stormwater drainage system.

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.

## **D7 Views**

### Merit consideration

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

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

Comment:

The proposal results in a disruption of views from neighbouring properties. Council received one (1) submissions on behalf of the adjoining dwelling house to the south of the subject site (No. 9 Beverley Place, Curl Curl) in relation to view loss. The Warringah DCP refers to the planning principal within *Tenacity Consulting v Warringah* [2004] NSWLEC 140 when considering the impacts on the views of the adjoining properties.

The four (4) planning principles outlined within the Land and Environment Court Case of *Tenacity Consulting Pty Ltd Vs Warringah Council* (2004) NSWLEC 140, are applied to the proposal.

#### **1. Nature of the views affected**

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

Comment to Principle 1:

The nature of the view affected from this property would be ocean and beach views. The existing views are filtered through existing development and vegetation.

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

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

Comment to Principle 2:

The views that would be affected from this property are obtained over the side boundary. The property currently enjoys views over the rear and side boundary, with the dominant view being over the rear boundary from the ground and first floor living rooms and balconies. View are taken from both a standing and sitting position.

**3. Extent of impact**

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

Comment to Principle 3:

No. 9 Beverley currently has expansive views to the east (photo 3), south-east and north-east of Curl Curl beach and ocean views. The occupants will continue to enjoy views to the east and south east from both ground and first floor. The views to North Curl Curl to the north-east will, to a severe extent, be lost as a result of the proposed development. In consideration of all views, the totality of impact is moderate.





Photo 1 - Ground floor deck looking north-east



Photo 2 - Ground floor deck looking north-east



Photo 3 - Ground floor deck looking east





**Photo 4 - First floor balcony off living/kitchen looking north-east**



**Photo 5 - First floor kitchen/living looking north-east**

#### **4. Reasonableness of the proposal that is causing the impact**

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

##### Comment to Principle 4:

In considering the totality of impact it is noted that the proposal is non-compliant with the height of buildings development standard under clause 4.3 of the Warringah LEP. The proposal maintains compliance with the side, rear and front setback controls under the Warringah DCP. However, the northern side of the dwelling is non-compliant with the building envelope control as a result of the first floor deck awning/roof. As noted above, the loss of the view from the first

floor living area of the adjoining southern property is moderate (Photos 4 and 5). This moderate loss of view is a direct result of the roof above the deck on the first floor which is non-compliant with the height of building and building envelope control, and as such cannot be supported. As such, the following condition is recommended to be imposed to mitigate the view impact.

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

- *The proposed first floor 'rear deck' roof is to be setback an additional 3.2m from the eastern (rear) boundary.*

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

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

Accordingly, the provision of water views afforded to surrounding properties by the development is deemed to be acceptable, subject to the imposition of the above condition.

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

Comment:

The reduction of the length of the roof on the first floor deck will allow for views to be largely maintained while still retaining a suitable outdoor living area at first floor level.

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

Comment:

The existing tree to the southern side of the subject site is to be retained.

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 subject to conditions.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2019**

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

A monetary contribution of \$7,500 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$750,000.

## CONCLUSION

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

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

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

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

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

Council is not 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 not 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

In summary, a detailed assessment has been required in relation to height of buildings, views, building envelope and landscaped open space. Each non-compliant element is established as acceptable on merit. The assessment of view loss concluded that a condition of consent is required to ensure that the roof of the first floor deck be reduced to mitigate view loss between the adjoining southern property and Curl Curl Beach.

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 and also provides sufficient spacing and modulation to reduce any unreasonable impact caused by building bulk.

Therefore, the application is recommended for approval.

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

## **RECOMMENDATION**

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, subject to conditions relating to views.

Accordingly Council as the consent authority grant Development Consent to DA2019/1374 for Alterations and additions to a dwelling house on land at Lot 3 DP 532882, 8 Beverley Place, CURL CURL, subject to the conditions printed below:

## **DEVELOPMENT CONSENT OPERATIONAL CONDITIONS**

### **1. Approved Plans and Supporting Documentation**

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

#### **a) Approved Plans**

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA02	15/11/2019	Action Plans
DA03	15/11/2019	Action Plans
DA04	15/11/2019	Action Plans
DA05	15/11/2019	Action Plans
DA06	15/11/2019	Action Plans
DA07	15/11/2019	Action Plans
DA08	15/11/2019	Action Plans
DA09	15/11/2019	Action Plans
DA10	15/11/2019	Action Plans
DA11	15/11/2019	Action Plans
DA12	15/11/2019	Action Plans
DA13	15/11/2019	Action Plans
DA14	15/11/2019	Action Plans
DA15	15/11/2019	Action Plans



<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Geotechnical Report	6 November 2019	Morrow
BASIX Certificate No. A359382	25 September 2019	Action Plans

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

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

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

## 2. Prescribed Conditions

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

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

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



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

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

Reason: Legislative requirement.

### 3. **General Requirements**

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

Corporation. Payment is not required where the value of the works is less than \$25,000. The Long Service Levy is calculated on 0.35% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (f) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (g) No 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.
- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

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

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

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

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

that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.

- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$7,500.00 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 \$750,000.00.

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](http://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](http://www.northernbeaches.nsw.gov.au)).

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

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

6. **Amendments to the approved plans**

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

- The proposed first floor 'rear deck' roof is to setback an additional 3.2m from the eastern (rear) boundary.

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

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

7. **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, referenced in Condition 1 of this consent.

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

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

8. **External Finishes to Roof**

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

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

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

9. **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.

**10. Waste Management Plan**

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

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

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

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

**11. Tree protection**

(a) Existing trees which must be retained

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

(b) Tree protection

- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

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

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

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

- o Work Health and Safety Act
- o Work Health and Safety Regulation
- o Code of Practice for the Safe Removal of Asbestos [NOHSC:2002 (1998)] and
- o Guide to the Control of Asbestos Hazards in Buildings and Structures [NOHSC: 3002



(1998)

- o Clause 42 of the Protection of the Environment Operations (Waste) Regulation 2005.
- o The demolition must be undertaken in accordance with Australian Standard AS2601 – The Demolition of Structures.

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

13. **Demolition Works - Asbestos**

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

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

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

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

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

14. **Survey Certificate**

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

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

15. **Waste Management During Development**

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

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

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

**16. Trees Condition**

During the construction period the applicant is responsible for ensuring all protected trees are maintained in a healthy and vigorous condition. This is to be done by ensuring that all identified tree protection measures are adhered to. In this regard all protected plants on this site shall not exhibit:

- (a) A general decline in health and vigour.
- (b) Damaged, crushed or dying roots due to poor pruning techniques.
- (c) More than 10% loss or dieback of roots, branches and foliage.
- (d) Mechanical damage or bruising of bark and timber of roots, trunk and branches.
- (e) Yellowing of foliage or a thinning of the canopy untypical of its species.
- (f) An increase in the amount of deadwood not associated with normal growth.
- (g) An increase in kino or gum exudation.
- (h) Inappropriate increases in epicormic growth that may indicate that the plants are in a stressed condition.
- (i) Branch drop, torn branches and stripped bark not associated with natural climatic conditions.

Any mitigating measures and recommendations required by the Arborist are to be implemented.

The owner of the adjoining allotment of land is not liable for the cost of work carried out for the purpose of this clause.

Reason: Protection of Trees.

**17. Protection of rock and sites of significance**

- a) All rock outcrops outside of the area of approved works are to be preserved and protected at all times during demolition excavation and construction works.
- b) Should any Aboriginal sites be uncovered during the carrying out of works, those works are to cease and Council, the NSW Office of Environment and Heritage (OEH) and the Metropolitan Local Aboriginal Land Council are to be contacted.

Reason: Preservation of significant environmental features.

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

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

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

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

**19. Stormwater Disposal**

The Applicant shall submit a certificate from a suitably qualified person that the stormwater drainage works have been constructed/installed in accordance with all relevant Australian Standards and Codes.

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

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

development.

#### 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.

**Note:** The following Standards and Codes applied at the time of determination:

- (a) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003 - Plumbing and drainage - Stormwater drainage
- (b) Australian/New Zealand Standard **AS/NZS 3500.3** - 2003/Amdt 1 - 2006 - Plumbing and drainage - Stormwater drainage
- (c) National Plumbing and Drainage Code.

Reason: To ensure appropriate provision for the disposal of stormwater arising from the development. (DACENF05)

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

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

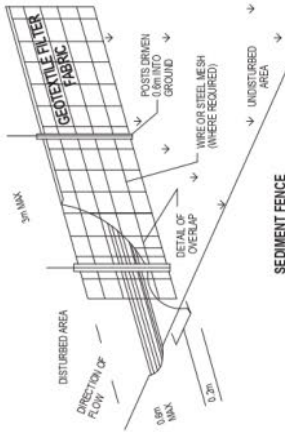
Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of any interim / final Occupation Certificate.

Reason: To ensure bushland management. (DACPLF01)

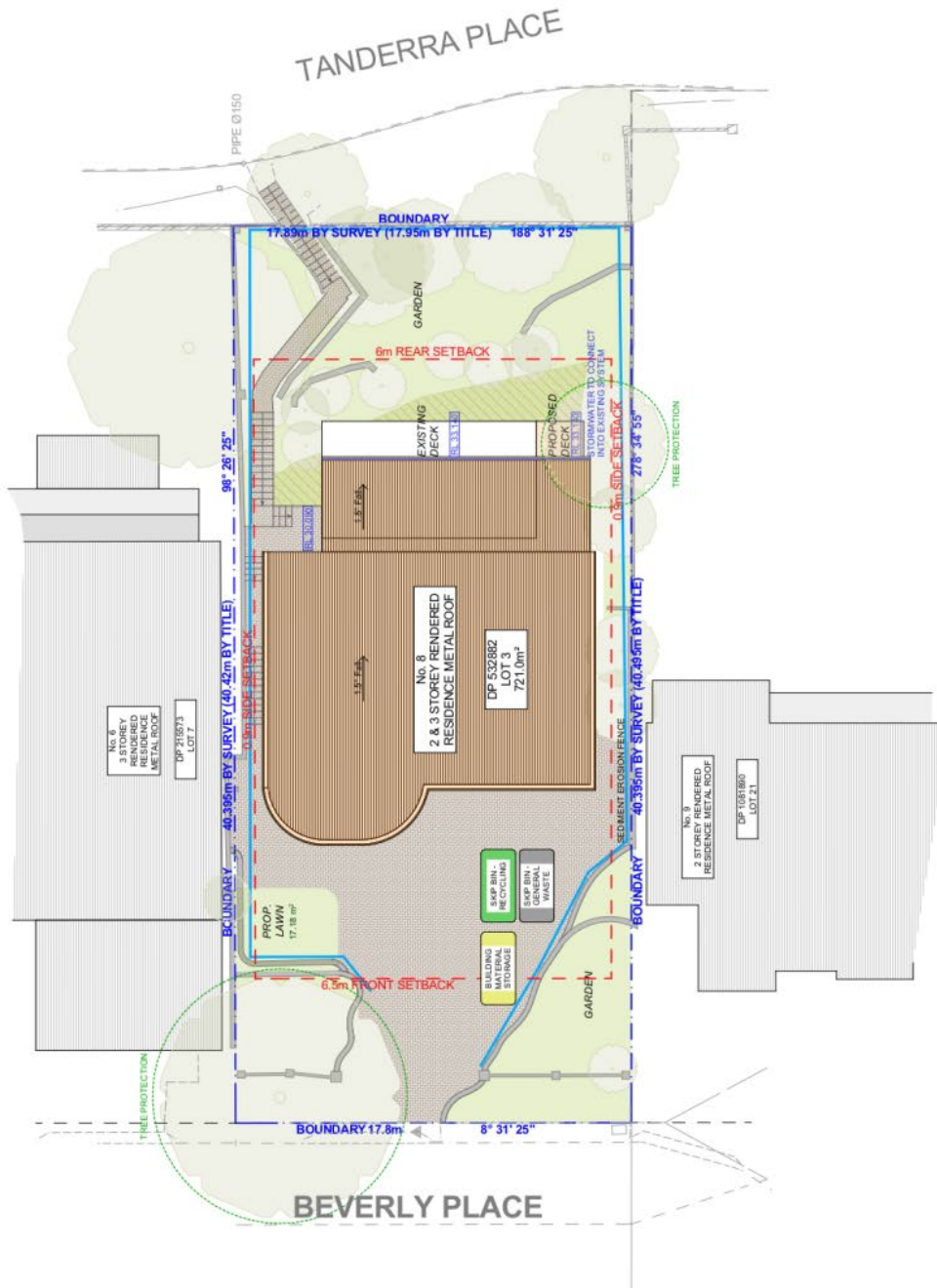
22. **Waste Management Confirmation**

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

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



<p><b>DUST CONTROL :</b></p> <p>TO REDUCE DUST GENERATED BY WIND ACTION, THE REMOVAL OF THE TOP SOIL IS TO BE MINIMISED. TO PREVENT DUST FROM BEING BLOWN OFF THE SURFACE OF THE SITE, ESPECIALLY DURING THE EXCAVATION OF ROCK, KEEP THE SURFACE MOIST TO MINIMISE DUST. CONSTRUCT A GRAVEL ENTRY/EXIT POINT USING BLUE METAL AND RESTRICT ALL VEHICLE MOVEMENTS WITHIN THE SITE TO A MINIMUM. ENSURE WIND BREAKS, SUCH AS EXISTING FENCES ARE MAINTAINED DURING THE CONSTRUCTION PHASE UNTIL NEW LANDSCAPING IS PROVIDED OR REINSTATED. PREVENT DUST BY COVERING STOCKPILES</p>	<p><b>SEDIMENT NOTE :</b></p> <p>1. ALL EROSION AND SEDIMENT CONTROL MEASURES TO BE INSPECTED AND MAINTAINED DAILY BY THE SITE MANAGER.</p> <p>2. MINIMISE DISTURBED AREAS. REMOVE EXCESS SOIL FROM EXCAVATED AREAS SOON AS POSSIBLE.</p> <p>3. ALL EXCAVATED AREAS TO BE COVERED WITH GRASS, DRAINAGE GUTTERS AND FOOTPATHS, OR WITHIN SEDIMENT FENCE AREA.</p> <p>4. DRAINAGE TO BE CONNECTED TO STORMWATERS AS SOON AS POSSIBLE. IF STORED ON SITE, IT MUST BE FILTERED BEFORE RELEASING INTO STORMWATER SYSTEM OR WATERWAYS.</p> <p>5. ROADS AND FOOTPATHS TO BE SWEPT DAILY.</p>	<p><b>STOCKPILES :</b></p> <p>ALL STOCKPILES ARE TO BE KEPT ON-SITE WHERE POSSIBLE. ANY MATERIALS PLACED ON THE FOOTPATHS OR NATURE STRIPS REQUIRE COUNCIL'S PERMISSION.</p> <p>ALL STOCKPILES ARE TO BE PLACED AWAY FROM THE DRAINAGE LINES AND STREET GUTTERS. IT IS BEST TO LOCATE THESE ON THE HIGHEST PART OF THE SITE. POSSIBLE PLACE WATERPROOF COVERING OVER STOCKPILES.</p> <p>IF REQUIRED PROVIDE DIVERSION DRAIN &amp; BANK AROUND STOCKPILES.</p>	<p><b>GUTTER PROTECTION :</b></p> <p>PROVIDE PROTECTION TO DOWNHILL GRATE IN MEANS OF SAND BAGS OR METAL WATERS. IN ORDER TO PREVENT SAND AND GRAVEL FROM BUILDING UP AROUND THIS SEDIMENT BARRIER, THE MATERIAL SHOULD BE RELOCATED BACK TO THE SITE FOR DISPOSAL.</p>
<p><b>NOTE: ALL PROPOSED STORMWATER TO CONNECT WITH EXISTING</b></p>			



**1 SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN 1:200**

<p><b>ACTION PLANS</b> m: 0426 957 518 e: operations@actionplans.com.au w: www.actionplans.com.au</p>				<p><b>CLIENT</b> STEVE &amp; HELEN BRUEN</p>		<p><b>DRAWING NO.</b> <b>DA02</b></p>		<p><b>DRAWING NAME</b> SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN</p>	
<p><b>REV.</b> <b>DATE</b> <b>COMMENTS</b> <b>DRWN</b> <b>NOTES</b></p>				<p><b>PROJECT ADDRESS</b> 8 BEVERLEY PLACE, CURL CURL NSW 2096</p>		<p><b>DATE</b> Friday, 15 November 2019</p>		<p><b>SCALE</b> 1:200 @A3</p>	
<p><b>LEGEND</b></p>				<p><b>Landscaped area</b></p>		<p><b>Proposed</b></p>		<p><b>Demolished</b></p>	
<p><b>Tree Protection</b></p>				<p><b>Proposed</b></p>		<p><b>Demolished</b></p>		<p><b>Demolished</b></p>	





REV.	DATE	COMMENTS	DRWN	NOTES
A	15/11/2019	DA DOCUMENTATION	AM	The primary standard means in planning Action Plans Do not scale are to be used The Builder dimensions creation of a All errors



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**CLIENT**  
STEVE & HELEN  
BRUEN

**PROJECT ADDRESS**  
8 BEVERLEY PLACE,  
CURL CURL NSW 2096



**DRAWING NO.**  
**DA09**

**DRAWING NAME**  
**NORTH ELEVATION**

**DATE**  
Friday, 15 November  
2019

**SCALE**  
1:100 @A3

**LEGEND**

	Existing
	Proposed

## NOTES

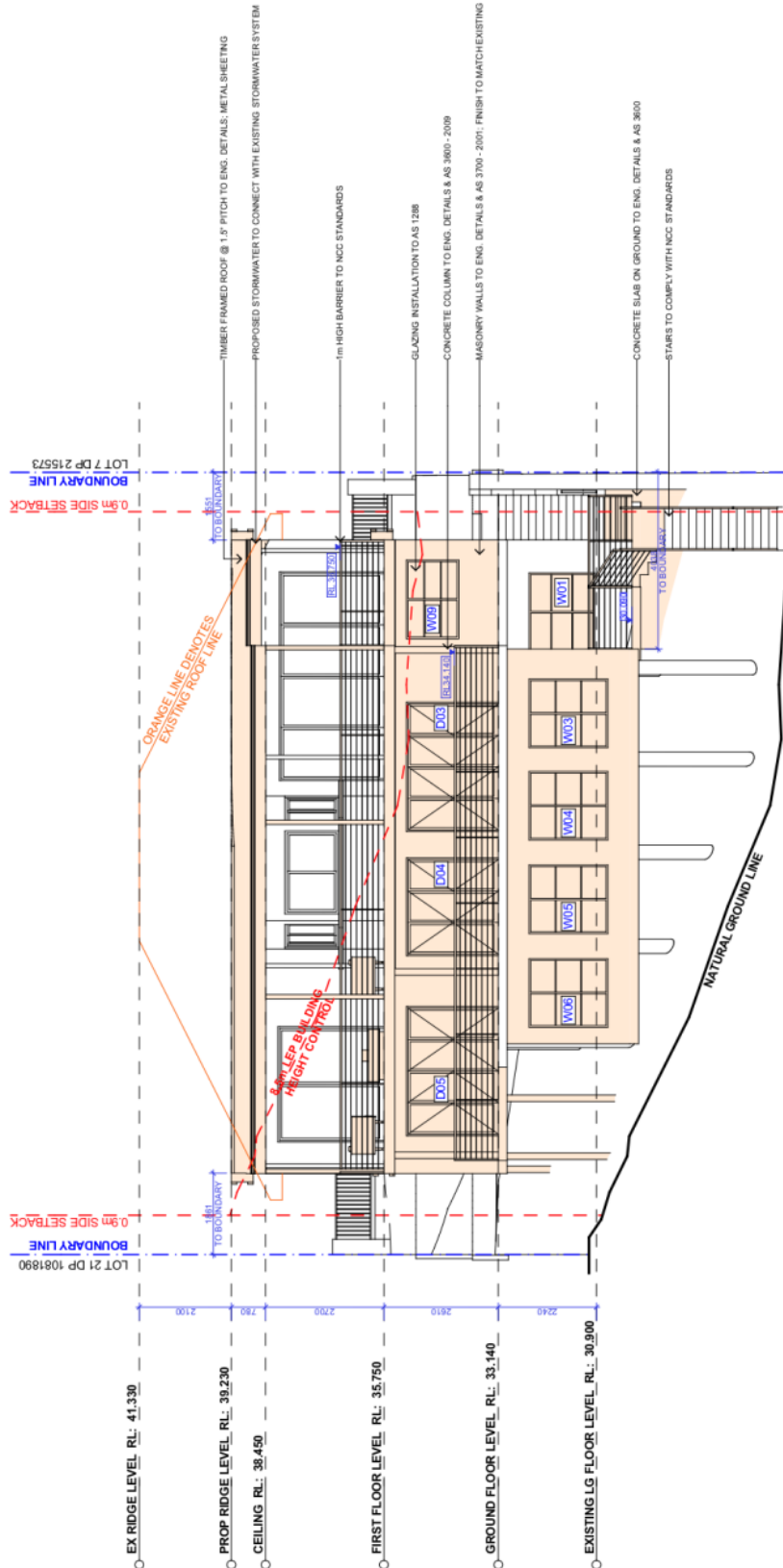
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**1 EAST ELEVATION 1:100**

REV.	DATE	COMMENTS	DRWN NOTES	LEGEND	CLIENT	DRAWING NO.	DRAWING NAME
A	15/11/2019	BA DOCUMENTATION	AM	Existing Proposed	STEVE & HELEN BRUEN	<b>DA10</b>	EAST ELEVATION
				PROJECT ADDRESS 8 BEVERLEY PLACE, CURL CURL NSW 2096			
				DATE Friday, 15 November 2019			
				SCALE 1:100 @A3			

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**SOUTH ELEVATION**

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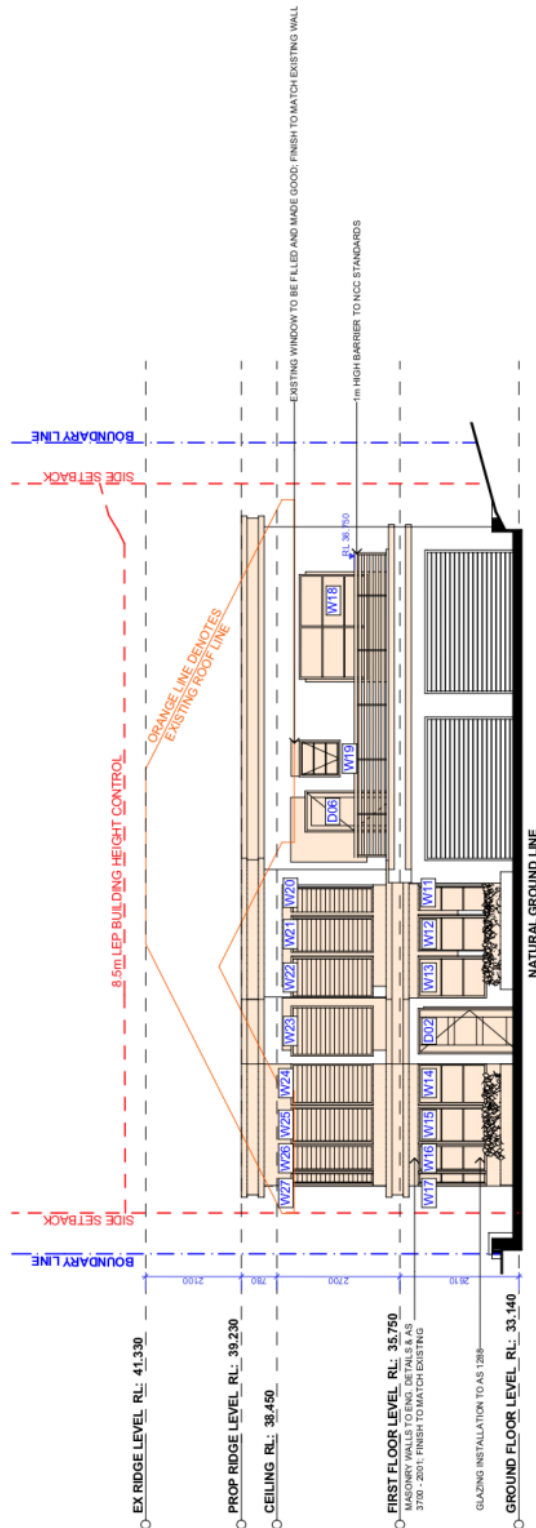
<b>CLIENT</b> STEVE & HELEN BRUEN	<b>DRAWING NO.</b> <b>DA11</b>	<b>DRAWING NAME</b> SOUTH ELEVATION
<b>PROJECT ADDRESS</b> 8 BEVERLEY PLACE, CURL CURL NSW 2096	<b>DATE</b> Friday, 15 November 2019	<b>SCALE</b> 1:100 @A3

**LEGEND**

	Ex
	Pr

**NOTES**

**ACTION PLANS**



1 WEST ELEVATION 1:100

REV.	DATE	COMMENTS	DRWN/NOTES	LEGEND	CLIENT	DRAWING NO.	DRAWING NAME
A	15/11/2019	BA DOCUMENTATION	AM	<div>Existing</div> <div>Proposed</div>	STEVE & HELEN BRUEN	DA12	WEST ELEVATION
				PROJECT ADDRESS 8 BEVERLEY PLACE, CURL CURL NSW 2096			
				DATE Friday, 15 November 2019			
				SCALE 1:100 @A3			



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 commencement of works.



## Appendix One - Clause 4.6 *Exceptions to Development Standards*

Clause 4.6 of the Warringah Local Environmental Plan 2011 (WLEP 2011) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) being:

- (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 aims and objectives of Warringah LEP 2011 Clause 4.6 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.*



Under Clause 4.6(3) and (4) of the WLEP 2011, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

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

*(4)(a)(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,*

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

It is of interest that the consent authority specifies a number of development standards that cannot be varied under Clause 4.6, listed in Clause 4.6(8). Clause 4.3 - Height of buildings is not one of the standards excluded, it must therefore be assumed that the standard for height of buildings, is one of the development standards that can have an appropriate degree of flexibility applied under clause 4.6.

## **1. Environmental Planning Instrument Details (Warringah LEP 2011)**

### **1.1 What is the name of the environmental planning instrument that applies to the land?**

Warringah Local Environmental Plan 2011 (WLEP 2011)

### **1.2 What is the zoning of the land?**

R2 – Low Density Residential

### **1.3 What are the objectives of the zone?**

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provides 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.*

### **1.4 What is the development standard being varied?**

Cl 4.3 of the Warringah Local Environmental Plan 2011, Height of Buildings

### **1.5 Under what clause is the development standard listed in the environmental planning instrument?**





CI 4.3 of the Warringah Local Environmental Plan 2011

**1.6 What are the objectives of the development standard?**

- (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.*

**1.7 What is the numeric value of the development standard in the environmental planning instrument?**

The numeric value of the height of buildings development standard applicable to the subject site is a maximum of 8.5m.

**1.8 What is proposed numeric value of the development standard in your development application?**

The numeric value of the development standard in this development application is a maximum of 10.4m.

***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
  - (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.

**1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?**

The percentage variation sought is 22.3%



## 2. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

### 2.1 *Wehbe v Pittwater* [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

In the *Micaul* decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

### 2.2 *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe v Pittwater* [2007] NSW LEC 827 and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;



2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

### 3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

### 4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

*1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;*

2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and

3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to *four2five*, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.



### 3. Consideration

The following section addresses the provisions of clause 4.6 of the WLEP 2011 together with principles established in the NSW Land and Environment Court Case Law outlined above.

**Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?**

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered: b

The five ways outlined in *Wehbe* include:

#### 3.1 Five (5) Part Test - *Wehbe v Pittwater*

**1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).***

The objectives of the standard are:

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

The proposed development will present with a dwelling of compatible scale to neighbouring development. It is a modest and aesthetically pleasing addition to an existing dwelling and has been designed to retain and improve the character of the streetscape and dwelling. The height noncompliance results only for the upper level deck roof and will not be easily visible from the immediate streetscape view.

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

The variation is minimal in only of the roof and only at the point where the land drops away significantly. As the breach is on the northern side of the dwelling, the solar access implications are minimal and appropriate.

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

The proposed alterations and additions will result in significant improvement to the dwellings contribution to the character of the area. The existing street view will be enhanced by the architectural integrity of the modern flat roof form in place of the original pitched roof. Colours and materials have been chosen to complement the scenic



coastal/ bushland location and there will be no adverse impacts as a result of the small breach in height.

***2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).***

This exception to development standards request does not rely on this reason.

***3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).***

This exception to development standards request does not rely on this reason.

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

This exception to development standards request does not rely on this reason.

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

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of buildings control pursuant to the First Way outlined in Wehbe.

Thus it is considered that compliance with Clause 4.6(3)(a) is satisfied.





**3.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?**

There are sufficient grounds to permit the variation of the development standard. In particular:

- The overall roof structure will be reduced as a part of the Development Application which replaces the pitched roof with a flat structure.
- The breach is to allow for a roof over decking and protect from the weather. It is an open structure which does not result in great bul.
- The development is of similar scale to neighbouring sites where the fall of the land has resulted in the need for additional height to develop.
- The design has retained the footprint of the existing dwelling to avoid impacting upon the surrounding natural environment.
- The area of variation will not be easily visible from the street frontage as it is well setback and hidden by vegetation.
- The architectural merit of the design is high and it would be of vast benefit the site, neighbours and locality to allow for this contemporary and thoughtful design.
- There are no discernible solar access impacts with the variation located on the northern side of the lot only.
- There are no view loss impacts with the area of the height variation retaining a lower RL than the existing dwelling roof.



**3.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.**

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below:

**Zone – R2 Low Density Residential**

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

Consistent. The proposal is for a residential dwelling.

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

Not relevant. The proposal is for a residential dwelling.

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

Consistent. The proposal is for a single dwelling house with the proposed alterations and additions resulting in significant improvement to the dwelling's contribution to the character of the area. The existing street view will be improved by the design elements which have been created to complement the natural environment of Warringah and Curl Curl.

Despite the proposal seeking an exception to the building height clause, the bulk and scale of the building will have minimal effect as the variation is only a roof form and allows for an open structure of limited bulk.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

**Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,**

The non-compliance will not raise any matter of State or Regional Significance.

**Clause 4.6(5)(b) the public benefit of maintaining the development standard,**

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.



**Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence**

**How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.**

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

- (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.*

Strict compliance with the 8.5 metres height development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, protecting the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats and promoting good design and amenity of the built environment.*

The proposed development is for a single residential dwelling, on land zoned R2 – Low Density Residential.

The proposed alterations and additions are located within the footprint of the existing dwelling, to avoid impacting upon the surrounding natural environment.



There will be no impact on private views due to the siting of the dwelling, and the topography of the site which results in the area which is the matter of the variation having a lower RL than the existing roof ridge.

From no perspective will the dwelling present with excessive bulk. The alterations and additions are a positive change for the site when viewed from all perspectives.

The proposed dwelling will not result in unreasonable overshadowing or privacy impacts to surrounding properties with the variation limited to the northern side.

The proposed alterations and additions will result in significant improvement to the dwelling's contribution to the character of the area.

<b>ITEM 3.3</b>	<b>DA2019/1457 - 1A RUSSELL STREET, CLONTARF - ALTERATIONS AND ADDITIONS TO AN EXISTING DWELLING HOUSE</b>
<b>REPORTING MANAGER</b>	<b>Rodney Piggott</b>
<b>TRIM FILE REF</b>	<b>2020/256852</b>
<b>ATTACHMENTS</b>	<b>1 Assessment Report 2 Site Plan &amp; Elevations 3 Clause 4.6</b>

### **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.

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### **RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approve** Development Consent to DA2019/1457 for alterations and additions to an existing dwelling house on land at Lot 15 DP 29355, 1A Russell Street, Clontarf, subject to the conditions outlined in the Assessment Report.



## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/1457
<b>Responsible Officer:</b>	Phil Lane
<b>Land to be developed (Address):</b>	Lot 15 DP 29355, 1 A Russell Street CLONTARF NSW 2093
<b>Proposed Development:</b>	Alterations and additions to an existing dwelling house
<b>Zoning:</b>	Manly LEP2013 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Daniel James Harrison Susanna Squillace
<b>Applicant:</b>	Daniel James Harrison Susanna Squillace
<b>Application Lodged:</b>	17/12/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	16/01/2020 to 30/01/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 18.8% 4.4 Floor space ratio: 54.8%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 2,770,900.00

### EXECUTIVE SUMMARY

The proposal seeks consent for alterations and additions to a existing dwelling house including a new swimming pool and double garage off Peronne Avenue.

The assessment has found that the proposed development is satisfactory in relation to built form, character, streetscape, and internal and external residential amenity.

The applicant has lodged a request under Clause 4.6 of the Manly 2013 for a variation to the development standard for height of building and floor space ratio. The height variation is up to a maximum of 10.1m above the allowable height of 8.5m, representing a maximum variation of 18.8%.

The application proposes a total gross floor area of FSR: 0.62:1 (371m<sup>2</sup>), representing a 55% variation to the Floor Space Ratio development standard of 0.40:1 under the MLEP and under the MDCP - Clause 4.1.3.1 Exceptions to FSR for Undersized Lots it is calculated at FSR 0.5:1 representing a 24% variation.

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

Council received one submission in response to the application. Concerns raised include dust, noise and working hours, traffic management, parking and overflow/stormwater runoff.

The issues raised in the submission have been addressed in the "Public Notification" section of this report and in summary they do not warrant refusal or re-design of the proposal. Suitable conditions have been imposed where required.

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 proposed development seeks approval for the alterations and additions to an existing dwelling house and construction of a new swimming pool.

The proposed additions and alterations are as follows:

Garage Level: Double garage, store and plant room with access to the internal lift

Undercroft Level: Guest room with ensuite, WC and steam room and outdoor lounge with BBQ. This level at the same level as the new pool area.

Lower Ground Level: Three (3) bedrooms, two (2) bathrooms, laundry, rumpus and deck on the southern elevation.

Ground Level: Master bedroom with ensuite, kitchen, dining and living room and a powder room,. A new deck will be located along the southern elevation.

First Level: The existing garage will be converted to provide for a study with bathroom and terrace on the southern elevation and courtyard off the study on the northern side.

A new swimming pool is proposed immediately to the south of the dwelling and over the proposed double garage with the existing swimming pool to be demolished.

Landscape planters with native planting are proposed between the pool and the southern boundary.

The existing driveway crossing from Russell to be removed and kerb and gutter reinstated.

A new internal lift will enable access to all habitable levels of the dwelling.

The application was submitted as "Alterations and Additions to an existing dwelling house".

The whilst the submitted plans show increases in floor space and changes to the external fabric of the existing dwelling, the proposed design does not represent a complete transformation of the character,

design and external appearance of the dwelling. To assist, the Land and Environment Court case *Edgar Allen Planning Pty Limited v Woollahra Municipal Council* 2006 LGERA 1 and *Coorey v Municipality of Hunters Hill* [2013] NSWLEC 1187 sets out Planning Principles for the assessment of both qualitative and quantitative issues to determine whether or not an application is “alterations and additions” or a “new dwelling”.

Using the Planning Principles, Council agrees that the application is for alterations and additions existing dwelling, as opposed to an new 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**

Manly Local Environmental Plan 2013 - 4.6 Exceptions to development standards  
 Manly Local Environmental Plan 2013 - 6.2 Earthworks  
 Manly Local Environmental Plan 2013 - 6.9 Foreshore scenic protection area  
 Manly Development Control Plan - 4.1.1.1 Residential Density and Dwelling Size  
 Manly Development Control Plan - 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)  
 Manly Development Control Plan - 4.1.3 Floor Space Ratio (FSR)  
 Manly Development Control Plan - 4.1.4 Setbacks (front, side and rear) and Building Separation  
 Manly Development Control Plan - 4.1.8 Development on Sloping Sites  
 Manly Development Control Plan - 4.1.9 Swimming Pools, Spas and Water Features  
 Manly Development Control Plan - 4.4.5 Earthworks (Excavation and Filling)

## **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 15 DP 29355 , 1 A Russell Street CLONTARF NSW 2093
<b>Detailed Site Description:</b>	The subject site consists of one (1) allotment located on the



western side of Russell Street and northern side of Peronne Avenue.

The site is irregular in shape with a frontage of 49.885m along Russell Street (road reserve) and a frontage of 29.71m along Peronne Avenue and a depth of 36.09m the western boundary. The site has a surveyed area of 599.1m<sup>2</sup>.

The site is located within the R2 Low Density Residential zone and accommodates a two storey brick dwelling with a tiled roof with a large undercroft area under the dwelling. Vehicular is currently off Russell Street to a garage and elevated driveway.

The site is steep slope from Russell Street frontage (north) down to the Peronne Avenue frontage (south) with a fall of over 16m (44.7% sloping grade).

The site has a mix of native and exotic species of plants, shrubs and trees with a number of stone retaining walls and rock outcrops throughout the site.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by a mix of single, two and three storey dwellings with associated outbuildings/structures and landscaping. It is notable that more recent constructions comprising large modern multi storey dwellings with associated outbuilding/structures and landscaping.

Map:



## SITE HISTORY

### PLM2019/0177 - Alterations and additions to a dwelling house

The proposed development is consistent with the prelodgement notes provide to the applicant on 5 September 2019.

**CDC2019/0700** - Complying Development Certificate for alterations and additions to an existing double storey dwelling and construction of external stairs approved pursuant to State Environmental Planning Policy (Exempt and Complying Development) 2008 on 16 September 2019.

## 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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Manly Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to driveway on 17 March 2020. Additional information was received from the applicant on the 2 April which addressed these matters. On 1 May 2020 conditions from the Development Engineer was issued.</p> <p><u>Clause 92</u> of the EP&amp;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>



Section 4.15 Matters for Consideration'	Comments
	<p>Clause 98 of the EP&amp;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&amp;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) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### **EXISTING USE RIGHTS**

Existing Use Rights are not applicable to this application.

#### **BUSHFIRE PRONE LAND**

The site is not classified as bush fire prone land.

#### **NOTIFICATION & SUBMISSIONS RECEIVED**

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

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

Name:	Address:
Withheld	CLONTARF NSW 2093

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

- Dust
- Noise and working hours
- Traffic management
- Parking
- Overflow or water leakage onto the properties on the downslope on Peronne Avenue

The matters raised within the submissions are addressed as follows:

- Dust

Comment: Concern was raised in relation to dust control given the significant demolition and excavation required for the proposed development. In addition there a request that required the builder *"to make good (i.e. clean) excessive dust from our property and cars that are parked legally on the street during the demolition and construction"*.

Conditions have been included within the draft Recommendation to ensure adequate measures and practices are utilised to minimise dust from the subject site during both the demolition and construction phases of the project. However, given this site in not only construction site within the vicinity combined with atmospheric and weather conditions it is considered that Council cannot condition that the builder *"make good (i.e. clean)"* other properties and/or vehicles.

Given the above it is considered that issue has been suitable addressed and does not warrant refusal and/or further amendment by condition(s).

- Noise and working hours

Comment: Issues were raised about working/construction hours on the subject property and the impacts especially on those who run their businesses from home or have occupants who are elderly and compromised health conditions.

*"I ask that working hours be limited to 7am-3pm 9 (i.e. 8 hours) Monday to Friday and 7am-12noon on Saturday"*

Standard working hours (conditioned) for 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, with 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.

However, the current Environmental Planning and Assessment (COVID-19 Development - construction Work Days) Order 2020 allows for work on a Saturday, Sunday or public holiday (i.e. 7am to 5pm), however with the provisions of works cannot include rock breaking, rock hammering, pile driving or similar activities and taking all feasible and reasonable measures to minimise noise. Upon cessation of the COVID Order the standard demolition and Construction hours will apply.

Additionally, issues were also raised about "numerous loud gatherings that go late into the night" and conditions be added as follows:-

- "1. That speakers and other sound system devices are not to be installed in outdoor balconies, entertainment and pool areas;*
- 2. Appropriate acoustic damping measures are in place to prevent noise travelling from outdoor balconies, entertainment and pool areas down the hill and to our property."*

The above comments are noted, however Council cannot condition or regulated the activities of owners, family and their guests. Issues in regards to noise late at night should be directed to the appropriate authority (NSW Police Force).

Given the above it is considered that issue has been suitable addressed and does not warrant refusal and/or further amendment by condition(s).

- Traffic management

Comment: Issues were raised about traffic management for the proposed development including conditioning the builder and their contractor from obstructing traffic or driveways, making good any damage to the driveway of 41 Peronne Avenue and the adjoining road and traffic control/management.

A Construction Traffic Management Plan prepared by Traffix including the proposed truck movements was submitted with the application. Reviewing the Swept Path Analysis provided by Traffix (Appendix B) it is noted that the vehicles maybe required to utilise the driveway crossover at 41 Peronne Avenue to enter (reverse) on the site when accessing from Peronne Avenue, it is therefore considered that suitable conditions be included that a pre-dilapidation survey of this driveway cross over be completed prior to the commencement of works (conditioned).

Additionally, suitable conditions have been included for this traffic management plan to be adhered to during the demolition and construction phases of the project.

Given the above it is considered that issue has been suitable addressed and does not warrant refusal and/or further amendment by condition(s).

- Parking

Comment: Issues were raised about possible work/construction zones, deliveries of items such as skip bins, containers etc. and parking of vehicles. It is noted that the northern side of Peronne Avenue (which abuts the subject site) does not allow for parking of vehicles and parking is limited to the southern side of the road.

A review of Construction Traffic Management Plan completed by Traffix submitted with this application has made the following comments: -

*"Workers will be encouraged to carpool and utilise the various public transport services available in the locality. This is considered appropriate given the low number of workers anticipated on-site."*

In addition to the above the subject site enjoys dual street access from both Peronne Avenue (at the bottom) and Russell Street (at the top) and this will allow for workers the opportunity to park legally on a residential road.

Any work/construction zones are subject to an application to Council and will be reviewed by Councils Traffic Department (if any received). Additionally, any storage of materials within the road reserve will be an application to Council and will be assessed by on case by case requirement.

Given the above it is considered that issue has been suitable addressed and does not warrant refusal and/or further amendment by condition(s).

- Overflow or water leakage onto the properties on the downslope on Peronne Avenue

Comment: Issues were raised about possible risk of overflow from the swimming pool and water leakage on to properties down the slope of Peronne Avenue.

The swimming pool will be connected to the sewer and any overflow will be directed in this system. Additionally, during the demolition/construction phases suitable conditions will be included to ensure silt and sedimentation controls and stormwater is appropriately directed to Councils stormwater pipeline which is located within the unmade road reserve of Russell Street east of the subject site.

Given the above it is considered that issue has been suitable addressed and does not warrant refusal and/or further amendment by condition(s).

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The Arboricultural Impact Assessment, Arboricultural Root Mapping Report and Landscape Plans submitted with the application are noted.</p> <p>The information provided indicates that no significant trees are to be removed, and that one mature <i>Banksia</i> sp. in the Peronne Ave road reserve forward of the proposed driveway can be retained. It is noted that the driveway as indicated on the plans provides for a 2.9m offset to the tree as indicated in the Arborist's reports. This results in a small kink in front of the garage as indicated on the plans. The kink is required to avoid major roots identified in the root mapping report.</p> <p>The proposed landscape plans indicate removal of weeds and replanting of native species in the Peronne Ave road reserve, which is considered an improvement to the current state of the frontage.</p> <p>Some rock is required to be excavated to accommodate the proposed drive, however the rock has been significantly disturbed in the past and no objections are raised to the proposed excavation.</p> <p>No objections are raised to the proposed works with regard to landscape issues subject to conditions as recommended.</p>
NECC (Development Engineering)	The applicant proposed a significant excavation on road reserve to accommodate the garage and access to the property.



Internal Referral Body	Comments
	<p>On the eastern side of the road reserve, the proposed driveway level is RL 40.3 m which is 3.1 m lower than the existing surface. It means it is a 3 m high retaining wall needs to be built on road reserve.</p> <p>It changes Council road reserve significantly which can impact the future development on 62 Peronne Avenue.</p> <p>The proposed retaining wall details have not been submitted shall also be provided in the DA.</p> <p>Development Engineering cannot support the application due to the section 4.1.6 of Council's Manly DCP 2013.</p> <p>A referral shall be sent to Transport and Civil infrastructure Assets for comment if possible.</p> <p><b>Additional Information received 2/04/20.</b></p> <p>The submitted information and comments from TCI have been reviewed and it is considered the proposed new driveway crossing in Peronne Rd can be supported subject to conditions. The submitted drainage design is also satisfactory subject to conditions.</p> <p>No objection to approval, subject to conditions as recommended.</p>
Road Reserve	<p>No impact on existing road infrastructure. The excavation of the road reserve is noted. Should this means of driveway access be approved then former Manly Council policy of a Road Act Lease for associated structures (driveway and walls) will be required.</p> <p>From the survey plans, a number of private retaining walls on the Russell Street frontage are noted. There is no apparent information available on the condition of these walls.</p> <p>Comments related to the potential impact on future vehicle access to 62 Peronne Ave is noted. Conceivably, vehicle access between 60 and 64 might be connected to create a thoroughfare/ passage for vehicles depending on relative levels, as a shared driveway. Alternatively, access might be obtained from the driveway at 64.</p> <p>Development Engineering comments are noted. Should the development proceed as submitted, Development Engineers to condition the development to ensure retaining walls, driveways and associated landscaping are addressed through a s138 Road Act approval including adjustments to the redundant driveway access from Russell Street. The work shall be monitored by a suitably qualified geotechnical engineer and if during the course of works, any change to the risk profile of the road reserve shall be reported to Council and approval sought for any proposed actions to be taken to remediate the risk. The applicant shall also be required to submit details of the existing private retaining walls proposed to be kept on the street frontages and their condition. If necessary any walls in poor condition shall be repairs as part of the works.</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**

Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.

##### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. 1025182S\_02 dated 13 December 2019).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	51

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

##### **SEPP (Infrastructure) 2007**

Ausgrid

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

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

Comment:

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

**Manly Local Environmental Plan 2013**

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

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	3.4m - 10.1m	Complies - 18.8%	No
Floor Space Ratio	FSR: 0.4:1 (239.6sqm)	FSR: 0.62:1 (371sqm) Existing FSR 0.35:1 (208.3sqm) DCP Undersized allotment FSR 0.5:1 (299.6sqm)	54.8% 18.9% 24%	No Yes No

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 2 Permitted or prohibited development	Yes
2.7 Demolition requires development consent	Yes
Part 4 Principal development standards	Yes
4.3 Height of buildings	No
4.4 Floor space ratio	No
4.5 Calculation of floor space ratio and site area	No
4.6 Exceptions to development standards	Yes
Part 6 Additional local provisions	Yes

Clause	Compliance with Requirements
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Stormwater management	Yes
6.8 Landslide risk	Yes
6.9 Foreshore scenic protection area	Yes
6.10 Limited development on foreshore area	Yes
6.12 Essential services	Yes

#### Detailed Assessment

#### **4.6 Exceptions to development standards**

##### Description of non-compliance:

Development standard:	Height of buildings
Requirement:	8.5m
Proposed:	10.1m
Percentage variation to requirement:	18.8%

##### 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:

*"The Proposal exceeds the 8.5m maximum Height of Buildings (HOB) development standard under cl4.3 of the MLEP 2013 having a maximum building height of 10.1m.*

*Notwithstanding the contravention of the development standard, the proposal is considered to be consistent with the objectives of the development standard and the objectives of the zone within which the development is to be carried out. There are sufficient environmental planning grounds to justify the contravention in this instance including a lack of adverse amenity impacts and positive social and economic considerations as a result of the development."*

Reviewing the argument put forward by the applicant the proposed development (overall) combined with the significant slope of land (over 40% grade) it is concurred that the variation to the building height is justified in this instance.

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

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

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

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

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



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

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

### **Objectives of development standard**

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

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

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

Comment: The proposed development is considered to be consistent and compatible in terms of height with the surrounding dwellings demonstrating varying roof form and overall building height that is general consistent with adjoining and surrounding buildings. The awning over the ground floor (most upper floor) balcony, portions of existing dwelling and the deck on the ground floor encroaches the maximum building height. It is noted that a majority of these elements are open structures that assists in providing articulation.

*b) to control the bulk and scale of buildings,*

Comment: The proposed development incorporates a combination of open balconies, decks and varied setbacks which adds modulation to the building. The resultant bulk and scale of the development is consistent with surrounding development along the Peronne Avenue and surrounding streets and will not result in any unreasonable amenity impacts within the locality. The proposed bulk and scale is satisfactory in this circumstance.

*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: Given the the location of the site, topography and the design will ensure that the proposal will minimise any view disruption from adjoining and surrounding dwellings from or to the foreshore, and/or from the public space.

*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: Given the site location and proximity to adjoining and surrounding properties the solar impacts of this aspect of the development are minor and acceptable.

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

### Zone objectives

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

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

Comment: The proposed development retains the residential use of the site.

It is considered that the development satisfies this objective.

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

Comment: The proposal will still allow for other land uses or services required to meet the day to day needs of residents within the area.

It is considered that the development satisfies this objective.

### Conclusion:

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

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

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

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 and Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

### Description of non-compliance:

Development standard:	Floor space ratio
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Requirement:	0.4:1 (239.6sqm)
Proposed:	0.62:1 (371sqm)
Percentage variation to requirement:	54.8%

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:



*"Notwithstanding the contravention of the development standard, the proposal is considered to be consistent with the objectives of the development standard and the objectives of the zone within which the development is to be carried out. There are sufficient environmental planning grounds to justify the contravention in this instance including a lack of adverse amenity impacts and positive social and economic considerations as a result of the development.*

*Clause 4.1.3.1 of the Manly DCP provides 'Exceptions to FSR for undersized Lots' as follows:*

*On existing sites in Residential LEP Zones (including E3 & E4) with a site area less than the minimum lot size required on the LEP Lot Size (LSZ) Map, Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied. See LEP clause 4.6(4)(a).*

*The undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and 'there is sufficient environment planning grounds to justify contravening the development standard' under LEP clause 4.6(3).*

*The subject site is identified as Area U on the Lot Size Map and as such the DCP states calculation of FSR should be based upon a 750m<sup>2</sup> lot size. In this regard the proposal would result in a FSR of 0.496:1."*

The above matters are agreed with by the Assessing Officer. Of particular note are the site's unique constraint both the configuration and the steep falling from Russell Street down to Peronne Avenue at the front, and is severely undersized, according to the minimum lot size set by Clause 4.1 of the MLEP 2013. The MLEP 2013 sets a minimum lot size of 1,150sqm, where the site is only 599.1sqm in area.

Additionally, it is agreed that the proposed development is of consistent height, bulk, and scale of surrounding development. The proposed development includes a nil front setback to the garage, storage and plant area, which is consistent with the prevailing front building line in the street, and provides an improved landscape treatment to the front setback area. The rear setback non-compliance does not lead to any unreasonable impacts, as properties to the rear sit above and look over the subject site. In addition the side setback and wall height non-compliances do not result in any unreasonable overshadowing or privacy impacts, as detailed throughout this report.

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

**Objectives of development standard**

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

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

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

Comment: The proposed development is well articulated and modulated so as to break down the visual appearance of the built form. The subject site allows for a suitable presentation of landscaping and vegetation that is complementary to the area. The proposal will not unreasonably impact upon the streetscape.

*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: A majority of additional floor area is contained within the existing footprint of the dwelling including the undercroft area and upper level addition. The resultant dwelling provides for a more articulated and modulated development that does not require the removal of any significant vegetation.

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

Comment: The design of the proposal is suitable in that it maintains the character of the site and consistency with surrounding development. The proposed development will sit appropriately within the residential setting in a manner that is consistent with the character and landscape of the area.

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

Comment: It is considered that the proposed additions have been designed to improve privacy and amenity to the adjoining property. It is noted that this has been achieved by the removal of a number of windows on the western facade and installation of privacy screens and planters. A review of the shadow diagrams submitted with the application demonstrates that the proposed additions to the upper level will not result in any significant overshadowing to residential properties.

*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 development is for residential use.

### Zone objectives

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

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

Comment: The proposed development retains the residential use of the site.

It is considered that the development satisfies this objective.

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

Comment: The proposal will still allow for other land uses or services required to meet the day to day needs of residents within the area.

It is considered that the development satisfies this objective.

### Conclusion:

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

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

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

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 and Floor space ratio Development Standard associated with a single dwelling house (Class 1 building).

### 6.2 Earthworks

Clause 6.2 Earthworks requires development:

- (a) to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*  
*(b) to allow earthworks of a minor nature without requiring separate development consent.*

In this regard, before granting development consent for earthworks, Council must consider the following matters:

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

Comment:

The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

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

Comment:

The proposal will not unreasonably limit the likely future use or redevelopment of the land.

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

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

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

Comment:

The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

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

Comment:

The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

- (f) the likelihood of disturbing relics*

Comment:

The site has not been identified with the likelihood of relics and/or heritage items within the attributes with Council's systems. A condition will be added to ensure if items are identified that works are to cease and the appropriate authorities are to investigate and advise the owners/builders.

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

Comment:

The site is not located in the vicinity of any watercourse, drinking water catchment or environmentally sensitive areas.

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

Comment:

Conditions are included in the recommendation of this report that will minimise the impacts of the development.

## 6.9 Foreshore scenic protection area

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following matters:

- (a) impacts that are of detriment to the visual amenity of harbour or coastal foreshore, including overshadowing of the foreshore and any loss of views from a public place to the foreshore,
- (b) measures to protect and improve scenic qualities of the coastline,
- (c) suitability of development given its type, location and design and its relationship with and impact on the foreshore,
- (d) measures to reduce the potential for conflict between land-based and water-based coastal activities.

### Comment:

The proposed development shall have no unreasonable impact on the visual aesthetic amenity of the area. The proposed development does not unreasonably impact upon views, is suitably designed to protect and impact the scenic quality of the coastline, is suitable for the site and its relationship to the foreshore due to its design and finishes, and does not result in any conflict between land-based and water-based coastal activities.

## Manly Development Control Plan

### Built Form Controls

Built Form Controls - Site Area: 599.1sqm	Requirement	Proposed	% Variation*	Complies
4.1.1.1 Residential Density and Dwelling Size	Density: 1 dwelling	1	N/A	Yes
	Dwelling Size: 460sqm (minimum)	371sqm	N/A	No
4.1.2.1 Wall Height	E: 8m (based on gradient > 1:4)	3.7m - 8.8m	10%	No
	W: 8m (based on gradient > 1:4)	5.6m - 9.7m	21.25%	No
4.1.2.2 Number of Storeys	2	3	50%	No
4.1.2.3 Roof Height	Height: 2.5m	1.6m	N/A	Yes
	Parapet Height: 0.6m	0.4m	N/A	Yes
	Pitch: maximum 35 degrees	16.4 degrees	N/A	Yes
4.1.4.1 Street Front Setbacks	Prevailing building line / 6m (Peronne Avenue)	Nil, consistent with prevailing setback	100%	No
4.1.4.2 Side Setbacks and Secondary Street Frontages	E: 2.93m (based on wall height)	2.26m	22.9%	No
	W: 3.23m (based on wall height)	0.9m	72.1%	No
	Windows: 3m	0.9m	70%	No
	Secondary street frontage: Prevailing setback (Russell Street)	Consistent with prevailing setback	N/A	Yes

4.1.4.4 Rear Setbacks	8m	7.7m	3.75%	No
4.1.5.1 Minimum Residential Total Open Space Requirements	Open space 60% (359.5sqm) of site area	60.2% (361sqm)	N/A	Yes
Residential Open Space Area: OS4	Open space above ground 25% (90sqm) of total open space	60.9% (219sqm)	N/A	Yes
4.1.5.2 Landscaped Area	Landscaped area 40% (144sqm) of open space	40% (144sqm)	N/A	Yes
4.1.5.3 Private Open Space	18sqm per dwelling	59sqm	N/A	Yes
4.1.6.1 Parking Design and the Location of Garages, Carports or Hardstand Areas	Maximum 50% of frontage up to maximum 6.2m	5.9m	N/A	Yes
4.1.9 Swimming Pools, Spas and Water Features	1m height above ground	2.2m	120%	No
	1m curtilage/1.5m water side/rear setback	1.6m, 4.7m	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
Part 3	Yes	Yes
3.1 Streetscapes and Townscapes	Yes	Yes
3.1.1 Streetscape (Residential areas)	Yes	Yes
3.3 Landscaping	Yes	Yes
3.3.1 Landscaping Design	Yes	Yes
3.3.2 Preservation of Trees or Bushland Vegetation	Yes	Yes
3.3.3 Footpath Tree Planting	Yes	Yes
3.4 Amenity (Views, Overshadowing, Overlooking /Privacy, Noise)	Yes	Yes
3.4.1 Sunlight Access and Overshadowing	Yes	Yes
3.4.2 Privacy and Security	Yes	Yes
3.4.3 Maintenance of Views	Yes	Yes
3.4.4 Other Nuisance (Odour, Fumes etc.)	Yes	Yes
3.5 Sustainability - (Greenhouse Energy Efficiency, Thermal Performance, and Water Sensitive Urban Design)	Yes	Yes
3.5.1 Solar Access	Yes	Yes
3.5.3 Ventilation	Yes	Yes
3.5.4 Energy Efficient Appliances and Demand Reduction and Efficient Lighting (non-residential buildings)	Yes	Yes
3.5.5 Landscaping	Yes	Yes
3.5.6 Energy efficiency/conservation requirements for non-residential developments	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
3.5.7 Building Construction and Design	Yes	Yes
3.5.8 Water Sensitive Urban Design	Yes	Yes
3.7 Stormwater Management	Yes	Yes
3.8 Waste Management	Yes	Yes
3.9 Mechanical Plant Equipment	Yes	Yes
3.10 Safety and Security	Yes	Yes
Part 4	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	No	Yes
4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height)	No	Yes
4.1.3 Floor Space Ratio (FSR)	No	Yes
4.1.4 Setbacks (front, side and rear) and Building Separation	No	Yes
4.1.5 Open Space and Landscaping	Yes	Yes
4.1.6 Parking, Vehicular Access and Loading (Including Bicycle Facilities)	Yes	Yes
4.1.7 First Floor and Roof Additions	Yes	Yes
4.1.8 Development on Sloping Sites	Yes	Yes
4.1.9 Swimming Pools, Spas and Water Features	No	Yes
4.4 Other Development (all LEP Zones)	Yes	Yes
4.4.1 Demolition	Yes	Yes
4.4.2 Alterations and Additions	Yes	Yes
4.4.5 Earthworks (Excavation and Filling)	Yes	Yes
Part 5	Yes	Yes
5 Special Character Areas and Sites	Yes	Yes
5.4 Environmentally Sensitive Lands	Yes	Yes
5.4.1 Foreshore Scenic Protection Area	Yes	Yes
Schedules	Yes	Yes
Schedule 1 – Maps accompanying the DCP	Yes	Yes
Schedule 3 - Parking and Access	Yes	Yes
Schedule 3 - Part A1 - Parking Rates and Requirements for Vehicles	Yes	Yes
Schedule 3 - Part B - Minimum Dimensions for parking, access and loading	Yes	Yes

#### Detailed Assessment

##### **4.1.1.1 Residential Density and Dwelling Size**

Clause 4.1.1.1 of the MDCP 2013 requires one (1) dwelling to be provided per 1150sqm of land for

allotments located within the Residential Density Areas - 1. The subject site is 599.1sqm, therefore does not meet the above-mentioned requirement. The application proposes alterations and additions to an dwelling house on an undersized allotment (599.1sqm). As such, the proposed works are considered acceptable in this regard.

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

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

#### 4.1.3 Floor Space Ratio (FSR)

This Clause relies upon the objectives of Clause 4.4 under MLEP 2013. An assessment of the proposal against the objectives of Clause 4.4 has been provided within this report. This assessment has found the proposal to be consistent with the objectives of Clause 4.4.

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

##### Description of non-compliance

Clause 4.1.4.1 of the Manly DCP requires development be setback 6m from the front boundary.

Clause 4.1.4.2 of the Manly DCP requires development be setback at least 2.93m from the eastern boundary and 3.23m from the western boundary. Further, new windows facing side boundaries are to be setback at least 3m from the side boundary.

Clause 4.1.4.4 of the Manly DCP requires development be setback at last 8m from the rear boundary.

The development proposes the following:

**Front setback-** 0m, consistent with prevailing setback (100% variation to the numeric control).

**East side setback-** 2.26m (22.9% variation to the numeric control).

**West side setback-** 0.9m (72.1% variation to the numeric control).

**Rear setback-** 7.7m (3.75% variation to the numeric control).

**Windows-** 0.9m (70% variation to the numeric control).

##### Merit consideration:

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

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

##### Comment:

The development proposed a new garage on the front boundary. Similar types of parking arrangements are seen along the northern side of Peronne Avenue. This proposed development is consistent with the spatial proportions of the street and the street edge.

The development proposes substantial landscaping elements within the front setback area including planter boxes and substantial plantings to ensure consistency with this merit consideration.

*Objective 2) To ensure and enhance local amenity by:*

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

Comment:

The proposed development allows for adequate visual and acoustic privacy to be retained between the subject site and neighbouring properties. In regards to sunlight access, the proposed development is consistent with the numeric requirement for solar access under Clause 3.4.1 of the Manly DCP. The proposed development will ensure views of the harbour and heads will be retained from surrounding properties. There is no significant impact on the streetscape given the location of the garage with adequate vertical and horizontal spatial separation to the street which also complemented with landscaping.

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

Comment:

Flexibility is provided in this circumstance as the proposed works will not result in any unreasonable impacts (solar access, privacy) upon adjoining properties.

*Objective 4) To enhance and maintain natural features by:*

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

Comment:

Suitable landscaping is proposed across the site. The proposed development is not the close vicinity of any Open Space Lands or National Parks.

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

Comment:

The subject site is not located in bush fire prone land.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of MDCP and the objectives specified in 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

A geotechnical report has been submitted with the application, assessing the potential impact of the steep topography of the site and excavation of the site. The dwelling house responds appropriately to the sloping site, stepping down at each level to reduce the visual bulk and scale of the dwelling house.

#### 4.1.9 Swimming Pools, Spas and Water Features

##### Description of non-compliance

Clause 4.1.9 of the Manly DCP 2013 requires swimming pools be no higher than 1m above natural ground level.

The proposed swimming pool at its highest is elevated 2.2m above natural ground level, non-compliant with the numerical control. This represents a 120% variation to the numeric control.

Merit consideration:

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

*Objective 1) To be located and designed to maintain the privacy (visually and aurally) of neighbouring properties and to minimise the impact of filter noise on neighbouring properties;*

Comment: The proposed swimming pool is appropriately set back from the side boundaries. While the pool does not meet numerical compliance in relation to height. The proposed fencing and setbacks allow for sufficient visual and aural privacy for the subject site and surrounding properties, subject to conditions of consent relating to the swimming pool mechanical equipment.

*Objective 2) To be appropriately located so as not to adversely impact on the streetscape or the established character of the locality;*

Comment: The swimming pool will not create contrast within the streetscape along Peronne Avenue, due to the existing prevalence of swimming pools within the front setback area, notably at Nos. 54, 64 and 66 Peronne Avenue. The subject swimming pool will encroach the front setback area due to the site having double frontages, however it is noted various properties contain swimming pools are visible from the streetscape and given the location, screening provided by the planter boxes and landscaping it is considered acceptable in this instance. The proposal therefore remains consistent with the established character of the streetscape and locality.

Objective 3) To integrate landscaping; and

Comment: The proposal involves the addition of significant vegetation, particularly within the front and side setback areas are indicated on the landscape plan (drawing number Sheet 1 of 2 and Sheet 2 of 2, dated 16.12.2019). This will in turn serve to soften the built form of the development as viewed from adjoining and surrounding properties.

Objective 4) To become an emergency water resource in bush fire prone areas.

Comment: The subject site is not located in a bush fire asset protection zone, however the pool may be a viable water resource during bushfire emergencies.

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

#### **4.4.5 Earthworks (Excavation and Filling)**

A supporting technological report has lodged as part of this application prepared by Assetgeoenviro. The recommendations within the report have been imposed as part of this recommendation to ensure safe excavation during demolition and construction.

### **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 \$27,709 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$2,770,900.

### **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

That Northern Beaches Council as the consent authority vary clauses 4.3 Height of Building and 4.4 Floor Space Ratio development standard pursuant to Clause 4.6 of the MLEP 2013 as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

### **Conclusions on the Assessment of the Application**

As addressed within this assessment report the proposed development does not comply with the Clause 4.3 Height of buildings and Clause 4.4 Floor space ratio and a formal request via Clause 4.6 Exceptions to development standard was lodged by the applicant was assessed and considered acceptable in this instance given the existing building footprint of the existing, substantial sloping nature of the subject site (over 40% sloping grade) and the proposed alterations/additions. Variations to the MDCP 2013 controls Clause 4.1.2 Height of Buildings (Incorporating Wall Height, Number of Storeys & Roof Height), Clause 4.1.3 Floor Space Ratio (FSR), Clause 4.1.3 Floor Space Ratio (FSR), Clause 4.1.4 Setbacks (front, side and rear) and Clause 4.1.9 Swimming Pools, Spas and Water Features have been considered and addressed and supported. The proposed design does not give rise to any unreasonable amenity impact or visual impact, and is consistent with the objectives of the MLEP 2013 and MDCP 2013.

In this case, the proposed development provides a design that involves sufficient modulation and sufficient physical separation from neighbours. A condition is recommended for a pre-dilapidation and post-dilapidation reports to be completed to ensure the physical condition of the adjoining and surrounding properties are maintained. Furthermore, an assessment against the objectives of the development standards and DCP controls has found the proposal to be consistent with those provisions and reasonable.

On balance, the proposal should be approved (subject to standard and specific conditions) as the design is reasonable for the site and locality by virtue of a presentation which is consistent with characteristics of the area and also provides sufficient spacing and modulation to reduce any unreasonable impact caused by building 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**

Accordingly Council as the consent authority grant Development Consent to DA2019/1457 for

Alterations and additions to an existing dwelling house on land at Lot 15 DP 29355, 1 A Russell Street, CLONTARF, 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**

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA-021	12 December 2019	Squillace Architects
DA-022	12 December 2019	Squillace Architects
DA-023	12 December 2019	Squillace Architects
DA-024	12 December 2019	Squillace Architects
DA-025	12 December 2019	Squillace Architects
DA-100	12 December 2019	Squillace Architects
DA-101	12 December 2019	Squillace Architects
DA-102	12 December 2019	Squillace Architects
DA-103	12 December 2019	Squillace Architects
DA-104	12 December 2019	Squillace Architects
DA-110	12 December 2019	Squillace Architects
DA-201	12 December 2019	Squillace Architects
DA-202	12 December 2019	Squillace Architects
DA-203	12 December 2019	Squillace Architects
DA-204	12 December 2019	Squillace Architects
DA-300	12 December 2019	Squillace Architects
DA-320	12 December 2019	Squillace Architects
DA-321	12 December 2019	Squillace Architects
DA-350	12 December 2019	Squillace Architects
DA-521	12 December 2019	Squillace Architects
DA-531	12 December 2019	Squillace Architects

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Aboriginal Impact Assessment Report	30 September 2019	Urban Arbor
Construction Traffic Management Plan	December 2019	Traffix
Preliminary Geotechnical Assessment	23 September 2019	Asset Geo Enviro

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:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
Sheet 1 of 2	16 December 2019	Paul Scrivener Landscape
Sheet 2 of 2	16 December 2019	Paul Scrivener Landscape

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Submitted</b>	<b>Prepared By</b>
Waste Management Plan	17 December 2019	Squillace Architects

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

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

## 2. **Prescribed Conditions**

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

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

- B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.
- If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
- (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
  - (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

### 3. **General Requirements**

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of a final Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.



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

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;

Relevant legislative requirements and relevant Australian Standards (including



but not limited) to:

- (i) Swimming Pools Act 1992
  - (ii) Swimming Pools Amendment Act 2009
  - (iii) Swimming Pools Regulation 2008
  - (iv) Australian Standard AS1926 Swimming Pool Safety
  - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
  - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
- (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. **Policy Controls**

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$27,709.00 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 \$2,770,900.00.

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](http://www.northernbeaches.nsw.gov.au)

This fee must be paid prior to the issue of the Construction Certificate. Details demonstrating

compliance are to be submitted to the Principal Certifying Authority.

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

5. **Security Bond**

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

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

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

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

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

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

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

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

Reason: Protection of Council's infrastructure.

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

The applicant is to lodge a Bond of \$30,000 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**

8. **On slab landscape planting and associated works**

- a) Details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed method of waterproofing to all internal walls and slab, and drainage of the concrete slab over which soil and planting is being

provided.

- b) Landscape treatment details shall be submitted to the Certifying Authority prior to the issue of the Construction Certificate indicating the proposed soil volume, soil type, planting, automatic irrigation, services connections, and maintenance activity schedule.
- c) The following soil depths are required in order to be counted as landscaping:
  - 300mm for lawn
  - 600mm for shrubs
  - 1metre for trees

Reason: To ensure appropriate and secure waterproofing and drainage is installed to direct water flow into the drainage system and adequate soil depths provided.

**9. Traffic Management and Control**

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

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

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

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Specification for On-site Stormwater Management 2003 (in particular Appendix A1). Any proposed landscaping within a Council easement or over a drainage system is to consist of ground cover or turf only (no trees are permitted) - Structural details prepared by a suitably qualified Structural Engineer demonstrating compliance are to be submitted to Council for assessment and the approval issued to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure

**11. 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.

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

The Applicant is to provide a certification and drainage plans detailing the provision of on-site stormwater detention in accordance with Northern Beaches Council's Manly Specification for On-site Stormwater Management 2003 and generally in accordance with the concept drainage plans prepared by C.K. Engineering Services, drawing number 19994 Sheets 1 to 6, dated 6/12/2019. Detailed drainage plans are to be prepared by a suitably qualified Civil Engineer,

who has membership to the Institution of Engineers Australia, National Professional Engineers Register (NPER) and registered in the General Area of Practice for civil engineering.

The drainage plans must address the following:

- i. The detention tank must be sited entirely within the property boundary with no encroachment on the road reserve.
- ii. The connection to the kerb in Peronne Ave is to be approved by Council.

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

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

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

The Applicant is to submit an application for approval for infrastructure works on Council's 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 the driveway crossing off Peronne Ave, reinstatement of the existing driveway crossing off Russell St and the stormwater outlet connection in Peronne Ave which are to be generally in accordance with the approved plans in this consent and Council's specification for engineering works - AUS-SPEC #1. The plans shall be prepared by a qualified Consulting Engineer. The design must include the following information:

1. A 5 metre wide driveway crossing a minimum of 1 metre from the existing mirror sign post in Peronne Ave with a maximum grade of 1 in 4.
2. Details of the reinstatement of the driveway crossing in Russell St.
3. Structural details for all structures located within the road reserve.
4. Landscaping details for the proposal within the road reserve.
5. All services are to be shown and where there is any conflict, concurrence from the relevant service authority for the proposed works.
6. Stormwater connection details for the site to the kerb in Peronne Ave.
7. Geotechnical report for the proposed works including an assessment of any existing retaining walls that are to remain in the road reserve. Any recommendations in the report are to be addressed by the Consulting Engineer with details provided for approval.
8. Barrier details as required by AS/NZS2890.1:2004 for any portions of the driveway that are elevated.

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.

14. **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.

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

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

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

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

16. **Pre-Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at: <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.1>

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

Reason: Protection of Council's infrastructure.

17. **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.

18. **Sydney Water "Tap In"**

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



Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

#### CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT

19. **No Access Through Adjoining Park/Reserves**

Access to the site through an adjoining park/reserve is prohibited without the written approval of the Council.

Reason: To ensure protection of council parks/reserves.

20. **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.

Properties: 62/64 Peronne Avenue, Clontarf and 2A Russell Street Clontarf

The driveway (only within the road reserve) at 41 Peronne Avenue, Clontarf is also to be included.

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.

21. **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.

**22. Tree trunk, branch and root protection**

(a) Existing trees which must be retained

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

(b) Tree protection

- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
- ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
- iii) All tree protection to be in accordance with the Arboricultural Impact Assessment dated 30 September 2019 prepared by Urban Arbor a, the Arboricultural Root Investigation Report dated 19 November 2019 prepared by Urban Arbor and AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
- iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
- v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

**23. Project Arborist**

- i) A Project Arborist with minimum qualification AQF Level 5 is to be appointed prior to commencement of works.
- ii) The Project Arborist is to oversee all tree protection measures, removals and works adjacent to protected trees as outlined in the approved Tree Protection Plan and AS4970-2009 Protection of trees on development sites.
- iii) The Project Arborist is to ensure compliance as relevant with any other environmental requirements conditioned under this consent.

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

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

**24. 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.

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

Any asbestos material arising from the demolition process shall be removed and disposed of in

accordance with the following requirements:

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

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

26. **Demolition Works - Asbestos**

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

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

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

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

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

27. **Survey Certificate**

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

- (a) Commencement of perimeter walls columns and or other structural elements to ensure the wall or structure, to boundary setbacks are in accordance with the approved details.
- (b) At ground level to ensure the finished floor levels are in accordance with the approved levels, prior to concrete slab being poured/flooring being laid.
- (c) At completion of the roof frame confirming the finished roof/ridge height is in accordance with levels indicated on the approved plans.

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

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

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

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

**29. Civil Works Supervision**

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

**30. Traffic Control During Road Works**

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

Reason: Public Safety.

**31. Protection of rock and sites of significance**

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

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

Reason: Preservation of significant environmental features.

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

**32. Landscape completion certification**

a) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the approved landscape plan and inclusive of any conditions of consent.

Reason: To ensure that the landscape treatments are installed to provide landscape amenity.

**33. Condition of retained vegetation**

Prior to the issue of an Occupation Certificate, a report prepared by the Project Arborist shall be submitted to the Certifying Authority, assessing the health and impact of trees and vegetation



required to be retained as a result of the proposed development, including the following information:

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

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

34. **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:

- o Compare the post-construction report with the pre-construction report,
- o Clearly identify any recent damage and whether or not it is likely to be the result of the development works,
- o 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.

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

All structures are to be located clear of any Council pipeline or easement. Footings of any structure adjacent to an easement or pipeline are to be designed in accordance with Council's Water Management Policy; (in particular Section 6 - Building Over or Adjacent to Constructed Council Drainage Systems and Easements Technical Specification). Any proposed landscaping within a Council easement or over a drainage system is to consist of ground cover or turf only (no trees are permitted) - Structural details prepared by a suitably qualified Civil Engineer demonstrating compliance are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

Reason: Protection of Council's infrastructure

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

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

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



to be obtained.

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

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

**37. Certification of Works in Road Reserve**

All works approved in the Roads Act approval by Council shall be certified as compliant with all relevant Australian Standards and Codes by a Consulting Engineer. Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Public and Private Safety

**38. Post Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a post construction / demolition Dilapidation Survey of Council's Stormwater Assets prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the post construction condition of the asset. Council's Guidelines are available at: <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.pdf>

The post construction / demolition dilapidation report must be submitted to Council for approval and the approval issued to the Principal Certifying Authority prior to the issue of the Occupation Certificate.

Reason: Protection of Council's infrastructure.

**39. Required Planting**

Trees shrubs and ground-covers shall be planted in accordance with the Landscape Plans Dwg Nos. 1D and 2D dated 16.12.19 prepared by Paul Scrivener Landscape Architect

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

Reason: To maintain environmental amenity.

**40. 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.

**41. Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

- (a) All required safety fencing has been erected in accordance with and all other requirements

have been fulfilled with regard to the 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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite 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. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

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

Reason: To protect human life (DACPLF09)

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

##### 42. Undesirable Trees

Leighton Green Cypress Cupressocyparis leylandii or any of its cultivars, must not be planted on the site for the life of the development. In the event of any inconsistency between this condition and the development application documents, this condition will prevail to the extent of the inconsistency.

Reason: To reduce the potential for adverse amenity effects such as overshadowing, loss of views, and loss of plant diversity.

##### 43. Environmental and priority weed control

Condition: All weeds are to be removed and controlled in accordance with the Biodiversity Conservation Act 2016.

Reason: Preservation of environmental amenity.



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**STATUS  
DEVELOPMENT  
APPLICATION**

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A. 12/12/19 DATE OF ISSUE  
S.S. DATE PURPOSE OF ISSUE

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**DANIEL HARRISON AND SUE  
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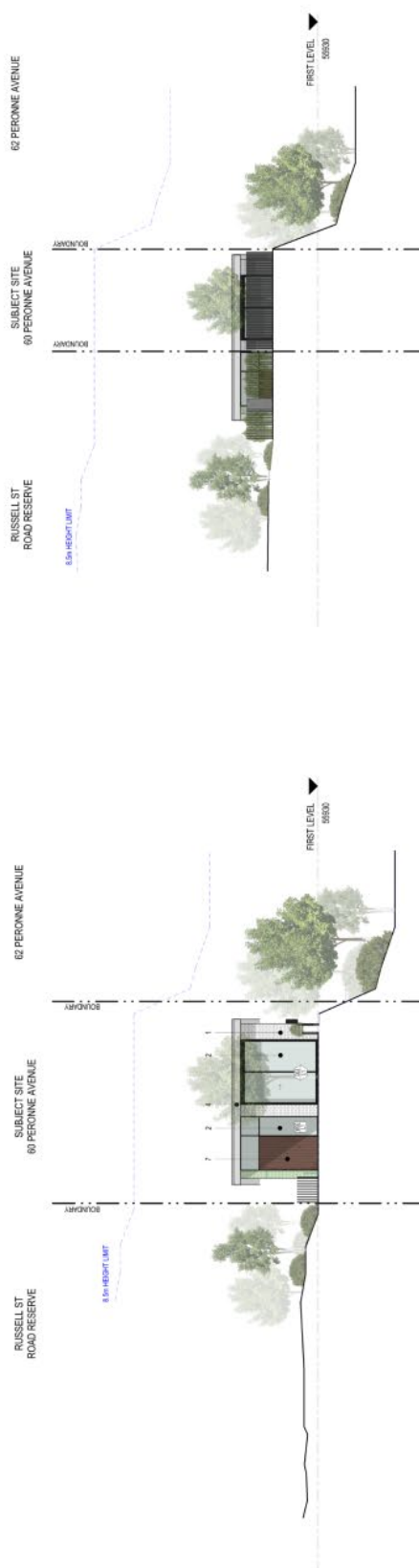
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**1 SITE ANALYSIS PLAN**  
1:200 @ A1

	1. LIGHT PAINT FINISH TO BRICK WALLS		2. DARK METAL FRAMES + CLEAR GLAZING TO ALL WINDOWS AND DOORS		3. OFF-FORM CONCRETE		4. FEATURE LIGHTWEIGHT METAL ROOF IN LIGHT COLOUR		5. OPERABLE LOUVRED AWNING		6. DARK METAL FENCE		7. TIMBER CLADDING		8. SANDSTONE CLADDING
	9. LIGHT PAINT FINISH		10. CHARCOAL VERTICAL PRIVACY SCREENS		11. GLASS BALUSTRADE		12. LIGHT PAINT FINISH TO BALCONY BANDS		13. LOUVRED GLASS		14. METAL GARAGE DOOR		15. METAL PLANT LOUVRES		16. DARK PAINT FINISH



2 NORTH ELEVATION - RUSSELL ST FRONTAGE  
1:100 @ A1

1 NORTH ELEVATION  
1:100 @ A1



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**STATEMENT**

**APPLICATION**

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NOTES  
1. 1:100 @ A1  
2. 1:100 @ A1

EXISTING STRUCTURE  
TO BE RETAINED



A. 1:100 @ A1  
B. 1:100 @ A1

DATE: 13/05/2020  
PURPOSE OF ISSUE: 1

CLIENT  
DANIEL HARRISON AND SUE  
SOULLACE

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PHOTOGRAPHY  
PHOTOGRAPHY

LANDSCAPE  
LANDSCAPE

STRUCTURAL  
STRUCTURAL

MECHANICAL  
MECHANICAL

ELECTRICAL  
ELECTRICAL

PLUMBING  
PLUMBING

PAINTING  
PAINTING

IRONWORK  
IRONWORK

GLASS  
GLASS

ROOFING  
ROOFING

CONCRETE  
CONCRETE

LANDSCAPE  
LANDSCAPE

PAINTING  
PAINTING

IRONWORK  
IRONWORK

GLASS  
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LANDSCAPE  
LANDSCAPE

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PAINTING

IRONWORK  
IRONWORK

GLASS  
GLASS

ROOFING  
ROOFING

CONCRETE  
CONCRETE



- 1. LIGHT PAINT FINISH TO BRICK WALLS
- 2. DARK METAL FRAMES + CLEAR GLAZING TO ALL WINDOWS AND DOORS
- 3. OFF-FORM CONCRETE
- 4. FEATURE LIGHTWEIGHT METAL ROOF IN LIGHT COLOUR
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- 13. LOUVERED GLASS
- 14. METAL GARBAGE DOOR
- 15. METAL PLANT LOUVRES
- 16. DARK PAINT FINISH



1 EAST ELEVATION  
1:100 @ A1

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# **DEVELOPMENT APPLICATION**

NOTES  
1. 1:200 @ A1  
1:100 @ A1



EXISTING STRUCTURE  
TO BE RETAINED



8. SANDSTONE CLADDING



7. TIMBER CLADDING



6. DARK METAL FENCE



5. OPERABLE LOUVRED AWNING



4. FEATURE LIGHTWEIGHT METAL  
ROOF IN LIGHT COLOUR



3. OFF-FORM CONCRETE



2. DARK METAL FRAMES + CLEAR  
GLAZING TO ALL WINDOWS AND  
DOORS



1. LIGHT PAINT FINISH TO  
BRICK WALLS



16. DARK PAINT FINISH



15. METAL PLANT LOUVRES



14. METAL GARAGE DOOR



13. LOUVRED GLASS



12. LIGHT PAINT FINISH TO  
BALCONY BANDS



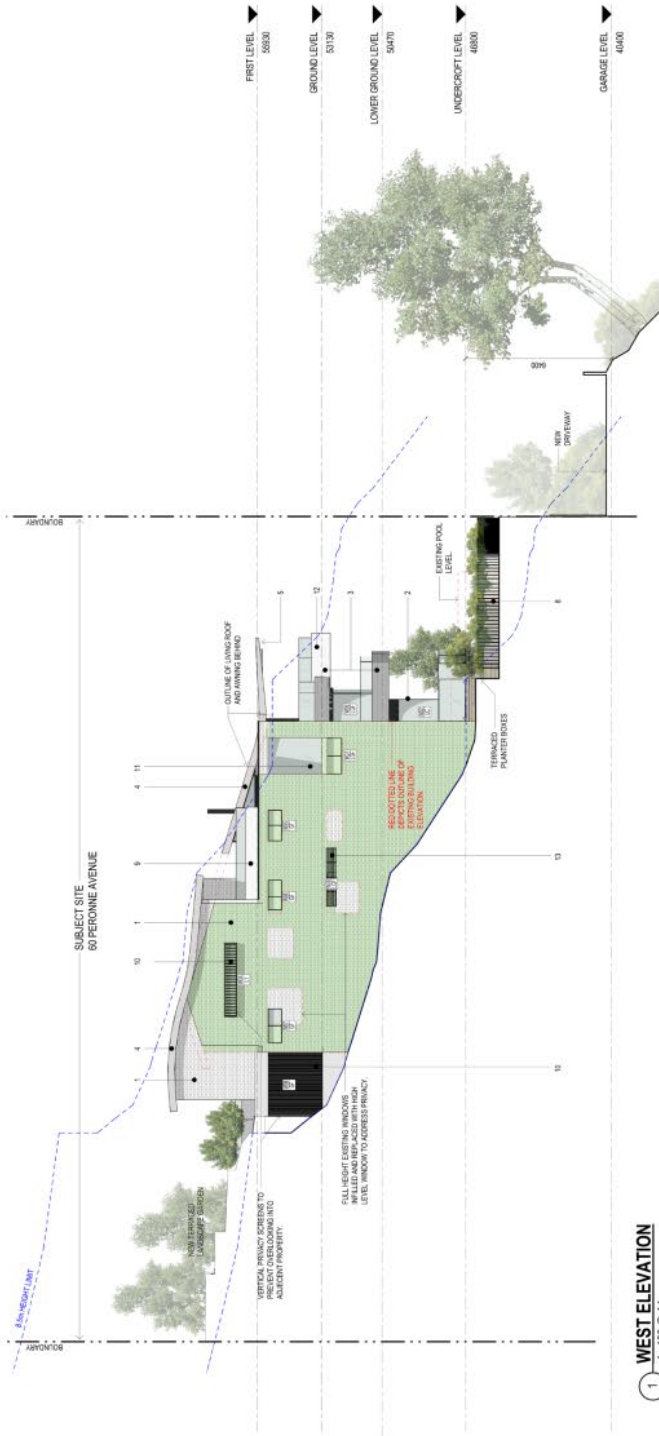
11. GLASS BALUSTRADE



10. CHARCOAL VERTICAL  
PRIVITY SCREENS



9. LIGHT PAINT FINISH



1 WEST ELEVATION  
1:100 @ A1

CLIENT  
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## **APPENDIX A**

### **CLAUSE 4.6 VARIATION TO HEIGHT STANDARD**

**Clause 4.6 Variation Request to the  
Floor Space Ratio Development Standard under  
Clause 4.4 of Manly LEP 2013**

**Construction of dwelling alterations/additions**

**60 Peronne Avenue, Clontarf**



## 1 Introduction

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### 1.1 Background

The Proposal is described in detail in Section 3 of the Statement of Environmental Effects (SEE) and generally comprises:

- Construction of alterations and additions to an existing dwelling

The Proposal exceeds the 0.4:1 maximum Floor Space Ratio (FSR) development standard under cl4.4 of the MLEP 2013 having a maximum FSR of 0.62:1.

Notwithstanding the contravention of the development standard, the proposal is considered to be consistent with the objectives of the development standard and the objectives of the zone within which the development is to be carried out. There are sufficient environmental planning grounds to justify the contravention in this instance including a lack of adverse amenity impacts and positive social and economic considerations as a result of the development.

This written request has been prepared to provide a detailed assessment in accordance with the statutory requirements of cl4.6 so that the consent authority can exercise its power to grant development consent, notwithstanding the contravention to the FSR development standard.

### 1.2 Material Relied Upon

This Variation Request has been prepared based on the Architectural Drawings prepared by Squillace Architects, dated 12 December 2019.

This Variation Request should be read in conjunction with the detailed environmental planning assessments contained in the DA documentation submitted with the DA and documents appended thereto.

## 6 Conclusion

### 2.1 Manly Local Environmental Plan 2013

#### 2.1.1 Clauses 2.2-2.3 – Zoning and Permissibility

Clause 2.2 and the Land Zoning Map of the LEP provide that the entire Site is zoned R2 Low Density Residential and the Land Use Table in Part 2 of the LEP specifies the objectives of this zone as follows:

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

The proposed land use is defined as a dwelling house which is permissible with development consent in the R2 Zone pursuant to the MLEP 2013.

#### 2.1.2 Clause 4.4 – Floor Space Ratio (FSR)

Clause 4.4 of the MLEP 2013 sets out the FSR development standard as follows:

- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

The Floor Space Ratio Map designates a maximum FSR of 0.4:1 for the Site (see Figure 1).



Figure 1 Extract of MLEP 2013 Map (FSR\_004, "B" = 0.4:1)

The MLEP 2013 Dictionary contains the following definitions:

**Floor Space Ratio Map** means the Manly Local Environmental Plan 2013 Floor Space Ratio Map.

**Gross floor area** means:

## 6 Conclusion

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

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

Clause 4.1.3.1 of the Manly DCP provides 'Exceptions to FSR for undersized Lots' as follows:

*On existing sites in Residential LEP Zones (including E3 & E4) with a site area less than the minimum lot size required on the LEP Lot Size (LSZ) Map, Council may consider exceptions to the maximum FSR under LEP clause 4.6 when both the relevant LEP objectives and the provisions of this DCP are satisfied. See LEP clause 4.6(4)(a).*

*The undersized nature of a lot is a matter that Council may consider in determining whether 'compliance with the standard is unreasonable or unnecessary in the circumstances of the case' and 'there is sufficient environment planning grounds to justify contravening the development standard' under LEP clause 4.6(3).*

The subject site is identified as Area U on the Lot Size Map and as such the DCP states calculation of FSR should be based upon a 750m<sup>2</sup> lot size. In this regard the proposal would result in a FSR of 0.496:1.

### 2.1.3 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of the LEP states the objectives of the clause 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.*

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ("Initial Action") (see Section 4.7), Preston CJ ruled that there is no provision that requires the applicant to demonstrate compliance with these objectives for the consent authority to be satisfied that the development achieves these objectives. Furthermore, neither cl4.6(3) nor cl4.6(4) expressly or impliedly requires that development that contravenes a

## 6 Conclusion

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development standard “achieve better outcomes for and from development”.

Accordingly, the remaining subclauses of cl4.6 provide the operable provisions and preconditions which must be satisfied before a consent authority may grant development consent to a development that contravenes a development standard imposed by an environmental planning instrument.

Clause 4.6(2) provides that:

- (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.*

The FSR development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:

- (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 FSR development standard pursuant to cl4.4 of the MLEP 2013. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed in Section 5.2.1.

In addition, there are considered to be sufficient environmental planning grounds to justify contravening the development standard as detailed in Section 5.2.2.

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

- (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.*

Sections 5.2 and 5.3 of this written request address the matters required under cl4.6(4)(a) of the LEP and Section 5.4 addresses cl4.6(4)(b).

## 6 Conclusion

Clause 4.6(5) provides that:

- (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.*

Section 5.5 of this written request addresses the matters required under cl4.6(5) of the LEP.

Clauses 4.6(6) and (8) are not relevant to the proposed development and cl4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

The proposed dwelling house will result in a maximum floor space ratio of 0.62:1 (372m<sup>2</sup>), constituting a non-compliance of 132.36m<sup>2</sup>. The following figure depicts the existing and proposed FSR:

SITE AREA:	599.1 m <sup>2</sup>
FIRST FLOOR GFA:	42.7 m <sup>2</sup>
GROUND FLOOR GFA:	152.7 m <sup>2</sup>
LOWER GROUND GFA:	136.6 m <sup>2</sup>
UNDERCROFT GFA:	39 m <sup>2</sup>
TOT GFA:	371 m <sup>2</sup>
FSR: GFA/SITE	0.62:1

**Figure 2: Proposed FSR calculations**

### 4.1 Introduction

The proposed variation to the development standard has been considered in light of the evolving methodology and “tests” established by the NSW Land & Environment Court (the Court) and the following subsections provide a brief summary of key Judgments in regard to variations under the former SEPP 1 and cl4.6 of the SILEP.

### 4.2 Winten Developments Pty Ltd v North Sydney Council [2001]

Through the Judgment in *Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46* (“Winten”) the Court established a ‘5-part test’ for considering whether strict compliance with a development standard is unreasonable or unnecessary in a particular case. The elements of this test can be summarised as:

- Is the planning control a development standard?
- What is the underlying object or purpose of the standard?



## 6 Conclusion

- Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*?
- Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?
- Is the objection well founded?

The 1<sup>st</sup> 'test' continues to be relevant and is a precondition for the application of cl4.6 – see Section 5.1.

The 2<sup>nd</sup> 'test' is required to be demonstrated under cl4.6(4)(a)(ii) – see Section 5.2.1.

The 3<sup>rd</sup> 'test' was specific to cl3 of SEPP 1 and has not been transferred to cl4.6 of the SILEP. Notwithstanding, in Initial Action (see below), Preston CJ indicated that it is reasonable to infer that "environmental planning grounds" as stated in under cl4.6(3)(b), means grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EP&A Act – see Section 5.2.2.

The 4<sup>th</sup> 'test' is required to be demonstrated under cl4.6(3)(a) - see Section 5.1.

The 5<sup>th</sup> 'test' is analogous to cl4.6(4)(a) – see Section 5.3.

### 4.3 *Wehbe v Pittwater Council* [2007]

The 5-part test under Winten was later supplemented by the Judgment in *Wehbe v Pittwater Council* [2007] LEC 827 ("Wehbe") where Chief Justice Preston expressed the view that there are 5 different ways in which an objection to a development standard may be assessed as being well founded and that approval of the objection may be consistent with the aims of SEPP 1. These included:

1. Notwithstanding the non-compliance, is the proposal consistent with the relevant environmental or planning objectives?
2. Is the underlying objective or purpose of the development standard not relevant to the development with the consequence that compliance is unnecessary?
3. Would the underlying objective or purpose of the development standard be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable?
4. Has the development standard been virtually abandoned or destroyed by the consent authority's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable?
5. Is the zoning of the particular land unreasonable or inappropriate such that the development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and therefore, compliance with the standard would be unreasonable or unnecessary?

## 6 Conclusion

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### 4.4 Four2Five Pty Ltd v Ashfield Council [2015]

In the Judgment of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009 (“Four2Five”) Pearson C expanded on the earlier Judgments of Winten and Wehbe, indicating that whilst consistency with zoning and standard objectives of the development standard is addressed specifically in cl4.6(4)(a)(ii), there remains an onus of also demonstrating that there are “sufficient environmental planning grounds” such that compliance with the development standard is unreasonable or unnecessary. Furthermore, that the environmental planning grounds must be particular to the circumstances of the proposed development rather than public benefits that could reasonably arise from a similar development on other land.

The environmental planning grounds that support the proposed variation development standard in this circumstance are detailed in the main body of this Statement and summarised in Section 5.2.2 of this variation request.

### 4.5 Randwick City Council v Micaul Holdings Pty Ltd [2016]

In *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 (“Micaul”) Preston CJ made it clear that development consent cannot be granted for a development that contravenes a development standard unless the consent authority:

- (a) has considered a written cl 4.6 objection seeking to vary the development standard as required by cl4.6(3) of the SILEP;
- (b) is satisfied that the cl4.6 objections adequately addressed the matters required to be demonstrated by cl4.6(3) (as required by cl4.6(4)(a)(i));
- (c) is satisfied that the 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 as required by cl4.6(4)(a)(ii).

In addition, Preston CJ elucidated that the consent authority does not have to be directly satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case – only that it be indirectly satisfied that the applicant’s written request adequately addresses the matters in cl4.6(3) that compliance with the development standard is unreasonable or unnecessary.

Furthermore, Preston CJ confirmed that an established means of demonstrating that compliance with a development standard is unreasonable or unnecessary is to establish that a development would not cause environmental harm and is consistent with the objectives of the development standard.

## 6 Conclusion

### 4.6 *Moskovich v Waverley Council [2016]*

Providing further guidance on the interpretation of cl4.6 compared to its predecessor SEPP 1, the Judgment in *Moskovich v Waverley Council [2016] NSWLEC 1015* ('Moskovich') outlines that cl4.6(3)(a) is similar to cl 6 of SEPP 1 and the ways of establishing that contravention of a development standard is well founded expressed in *Wehbe* (e.g. "achieving" the objectives of the development standard) are equally appropriate for the consideration of cl4.6(3)(a).

However, cl4.6(4)(a)(ii) has different wording to SEPP 1 and requires the consent authority to be satisfied that the proposed development is in the public interest because it is "consistent" with objectives of the development standard and objectives for the zone rather than "achieving" the objectives. Consequently, the considerations of cl4.6(3)(a) and cl4.6(4)(a)(ii) are different with the achievement test being more onerous and requiring justification in 'ways' such as those expressed in *Wehbe*.

Accordingly, whilst the Judgments in *Winten* and *Wehbe* related to variation requests under SEPP 1, the methodology and reasoning expressed in those Judgments continues to be the accepted basis upon which to assess variation requests pursuant to cl 4.6 with minor areas of differing interpretation.

### 4.7 *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*

In *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard.

Further, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "*better environmental planning outcome*" relative to a development that complies with the development standard. In fact, there is no provision in SILEP that gives substantive effect to the objectives of cl4.6 stated in cl4.6(1)(a) and (b). That is to say, neither cl4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "*achieve better outcomes for and from development*".

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

## 6 Conclusion

### 4.8 Summary of the Case Law Methodology and Tests

The collective methodology and tests described above has been applied to the assessment at Section 5 and can be summarised in the following steps:

1. Step 1 - Is the planning control that the applicant seeks to contravene a development standard?
2. Step 2 - Is the consent authority satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required by cl 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. Step 3 - Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out?
4. Step 4 - Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Step 5 - Where the consent authority is the Court, has the Court considered the matters in cl4.6(5) when exercising the power to grant development consent for development that contravenes a development standard.

### 5.1 Step 1 - Is the planning control a development standard?

This question is the 1<sup>st</sup> 'test' in Winten. The FSR control in cl4.4 of the MLEP 2013 is a development standard, defined in Section 1.4 of the EP&A Act as follows:

*"development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:*

*(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point.*

The development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted pursuant to cl4.6.

### 5.2 Step 2 – Pursuant to cl4.6(4)(a), is the consent authority satisfied that the written request adequately addresses the matters in Clause 4.6(3)?

#### 5.2.1 Clause 4.6(3)(a) – compliance is unreasonable or unnecessary in the circumstances of the case

To demonstrate that compliance with the floor space ratio development standard is unreasonable or unnecessary, this written request relies upon:

## 6 Conclusion

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1. The 2<sup>nd</sup> 'test' in Winten and the 1<sup>st</sup> and 2<sup>nd</sup> 'ways' in Wehbe – i.e. the underlying objectives or purpose of the standard is satisfied or the objectives are not relevant; and
2. The 4<sup>th</sup> 'way' in Wehbe - the development standard has been virtually abandoned or destroyed by the consent authority's own actions.

These aspects are discussed in the following paragraphs.

### **The underlying objectives or purpose of the standard**

Clause 4.4(1) of the MLEP 2013 states the objectives of the FSR development standard as follows:

- (a) to ensure the bulk and scale of development is consistent with the existing and desired streetscape character,*
- (b) to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- (c) to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- (d) to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- (e) to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

**Objective (a)** is to ensure the bulk and scale of development is consistent with the existing and desired streetscape.

The proposal is considered to achieve this objective as the works provide for alterations and additions to the existing dwelling and provide for more articulated and modulated facades. The additional floor area is predominantly within the undercroft area which is not visible from the street or the public domain and does not result in any real perceptible additional bulk and scale. The resultant development remains compatible in terms of bulk and scale with the existing and desired character of the surrounding properties and streetscape and it is considered that the proposal achieves this objective.

**Objective (b)** is to control the density and bulk to ensure development does not obscure important landscape features.

The additional floor area is contained within the existing footprint of the dwelling including the undercroft area and upper level addition. The resultant dwelling provides for a more modulated and articulated development that does not require the removal of any significant vegetation. Further the proposal does not obscure and existing important landscape features.

**Objective (c)** is to maintain an appropriate visual relationship between new development and existing character and landscape of the area.

The proposal maintains an appropriate relationship to the adjoining development and landscape of the area. The proposal does not require the removal of any significant vegetation and complies with the open space and landscaped requirements of Council's DCP. The proposal maintains appropriate landscaping on site both with the front and rear setbacks.



## 6 Conclusion

**Objective (d)** is to minimise adverse environmental impacts on the use or enjoyment of adjoining land.

The proposed additions have been designed to improve privacy and amenity to the adjoining property. This has been achieved by the removal of a number of windows on the western façade and installation of privacy screens and planters. As demonstrated previously and depicted in the shadow diagrams, the proposed addition to the upper level does not result in any additional overshadowing to residential properties.

Reduction in floor space in the lower level would whilst achieving compliance not result in any consequential positive impacts on adjoining lands.

**Objective (e)** relates to the viability of business zones and does not apply to this development.

### 5.2.2 Clause 4.6(3)(b) – There are sufficient environmental planning grounds to justify contravening the development standard

As set out in Four2Five, when a development standard is sought to be varied, there is an onus on the Applicant to demonstrate that there are “*sufficient environmental planning grounds*” such that compliance with the development standard is unreasonable or unnecessary and these environmental planning grounds must be particular to the circumstances of the proposed development rather than grounds that could reasonably apply a similar development on any other land.

The site-specific environmental planning grounds that support the proposed variation to the floor space ratio development standard in this circumstance relate to the existing dwelling on site and that large undercroft area below which is to be partially converted into floor area. Utilising this undercroft area for additional floor area does not contribute to additional bulk or scale. The remaining additional floor area proposed is to the southern elevation of the dwelling and provides for additional articulation. Further the subject site is identified as an undersized allotment, having an area of only 599.1m<sup>2</sup> where the minimum allotment size in this locality is 1150m<sup>2</sup>. The DCP at Clause 4.1.3.1 provides exceptions for FSR on undersized lots.

In addition, Preston CJ clarified in *Micaul and Initial Action*, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts.

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

### 5.3 Step 3 - Pursuant to cl4.6(4)(b), is the consent authority satisfied that the development will be in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone?

As outlined in Section 5.2.1, the Proposal achieves and is therefore consistent with the relevant objectives of the floor space ratio development standard.

However, the consent authority must also be satisfied that the development will be consistent with the objectives of the R2 Low Density Residential Zone which are expressed in the Land Use Table to cl2.3 of the LEP as follows:

## 6 Conclusion

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

The Proposal is consistent with the objectives of the R2 Zone for the following reasons:

The first objective is to provide low density housing. The proposal provides for additions to a single detached dwelling. The resultant dwelling retains the low-density residential environmental and the objective is achieved.

The second objective is not applicable to this application.

Accordingly, it follows that the proposed development is in the public interest because it is consistent with the objectives of the FSR development standard under the MLEP 2013 and the objectives of the R2 Low Density Residential Zone under the MLEP 2013.

### 5.4 Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the SILEP or SEPP 1 subject to certain conditions.

As MLEP 2013 adopts cl4.6 of the SILEP and the conditions of the Notice are not relevant in this instance, the consent authority for the Proposal may assume concurrence in respect of the variation requested to the FSR development standard under the LEP.

In addition, the Court has power to grant development consent to the proposed development even though it contravenes the FSR development standard, without obtaining or assuming the concurrence of the Secretary by reason of s39(6) of the *Land and Environment Court Act 1979* (the Court Act).

### 5.5 Step 5 - Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that in deciding whether to grant concurrence, the Secretary must consider:

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

Furthermore, in Initial Action, Preston CJ clarified that, notwithstanding the Court's powers under s39(6) of the Court Act, the Court should still consider the matters in cl4.6(5) when exercising the power to grant development consent for development that contravenes a development standard.

## 6 Conclusion

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Accordingly, the proposed contravention of the FSR development standard has been considered in light of cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of state or regional significance as it is peculiar to the design of the proposed development for this particular site;
- As indicated in Section 5.3, the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard. Accordingly, there would be no significant public benefit in maintaining the development standard in this instance; and

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the LEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant objectives of the development standard pursuant to cl4.4 of the MLEP 2013 and is consistent with the relevant objectives of the R2 Low Density Residential Zone and therefore, the proposed development is in the public interest;
- Notwithstanding the contravention of the development standard, the proposed dwelling will not result in significant adverse environmental harm in that the environmental amenity of neighbouring properties will be preserved and adverse impacts on the amenity of the locality will be minimised to a reasonable level;

In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the FSR development standard including a lack of adverse environmental amenity impacts;

Accordingly, this written request can be relied upon by the consent authority in accordance with cl4.6(4) of the LEP.

The consent authority can assume the concurrence of the Secretary pursuant to the Notice issued on 21 February 2018. Alternatively, the Court can use its powers under s39(6) of the Court Act and be satisfied that contravention of the development standard doesn't raise any matter of significance for State or regional environmental planning, there is no public benefit of maintaining the development standard and there are no other relevant matters required to be taken into consideration.

Accordingly, the consent authority can exercise its power pursuant to cl4.6(2) to grant development consent to the proposed development notwithstanding the contravention of the development standard.

Prepared by: **Joseph Vescio**  
**JVUrban Pty Ltd**  
**16 December, 2019**

## **APPENDIX B**

### **CLAUSE 4.6 VARIATION TO FSR STANDARD**

**Clause 4.6 Variation Request to the  
Height of Buildings Development Standard under  
Clause 4.3 of Manly LEP 2013**

**Construction of dwelling alterations/additions**

**60 Peronne Avenue, Clontarf**



## 1 Introduction

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### 1.1 Background

The Proposal is described in detail in Section 3 of the Statement of Environmental Effects (SEE) and generally comprises:

- Construction of alterations and additions to an existing dwelling

The Proposal exceeds the 8.5m maximum Height of Buildings (HOB) development standard under cl4.3 of the MLEP 2013 having a maximum building height of 10.1m.

Notwithstanding the contravention of the development standard, the proposal is considered to be consistent with the objectives of the development standard and the objectives of the zone within which the development is to be carried out. There are sufficient environmental planning grounds to justify the contravention in this instance including a lack of adverse amenity impacts and positive social and economic considerations as a result of the development.

This written request has been prepared to provide a detailed assessment in accordance with the statutory requirements of cl4.6 so that the consent authority can exercise its power to grant development consent, notwithstanding the contravention to the HOB development standard.

### 1.2 Material Relied Upon

This Variation Request has been prepared based on the Architectural Drawings prepared by *Squillace Architects*, dated 12 December, 2019

This Variation Request should be read in conjunction with the detailed environmental planning assessments contained in the DA documentation submitted with the DA and documents appended thereto.

## 2 The Relevant LEP Provisions

### 2.1 Manly Local Environmental Plan 2013

#### 2.1.1 Clauses 2.2-2.3 – Zoning and Permissibility

Clause 2.2 and the Land Zoning Map of the LEP provide that the entire Site is zoned R2 Low Density Residential and the Land Use Table in Part 2 of the LEP specifies the objectives of this zone as follows:

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

The proposed land use is defined as a dwelling house which is permissible with development consent in the R2 Zone pursuant to the MLEP 2013.

#### 2.1.2 Clause 4.3 – Height of Buildings (HOB)

Clause 4.3 of the MLEP 2013 sets out the HOB development standard as follows:

*(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.*

The Height of Buildings Map designates a maximum 8.5m height limit for the Site (see Figure 1).

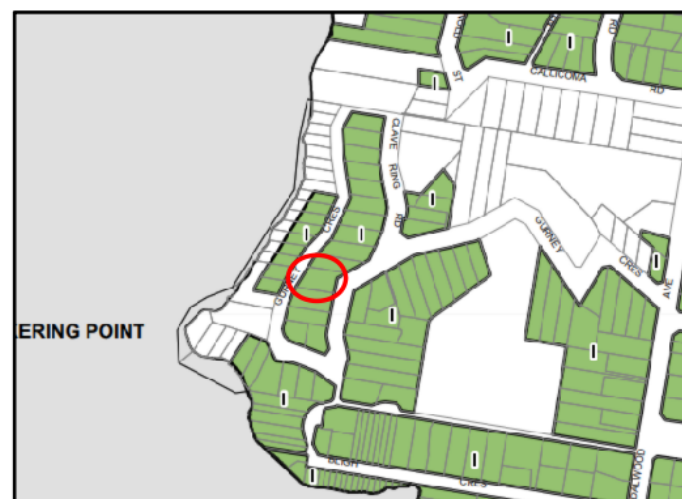


Figure 1 Extract of MLEP 2013 Map (HOB\_001, "I" = 8.5m)

The MLEP 2013 Dictionary contains the following definitions:

**Height of Buildings Map** means the Manly Local Environmental Plan 2013 Height of Buildings Map.

## 2 The Relevant LEP Provisions

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***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*

*(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.*

### 2.1.3 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of the LEP states the objectives of the clause 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.*

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“Initial Action”) (see Section 4.7), Preston CJ ruled that there is no provision that requires the applicant to demonstrate compliance with these objectives for the consent authority to be satisfied that the development achieves these objectives. Furthermore, neither cl4.6(3) nor cl4.6(4) expressly or impliedly requires that development that contravenes a development standard “*achieve better outcomes for and from development*”.

Accordingly, the remaining subclauses of cl4.6 provide the operable provisions and preconditions which must be satisfied before a consent authority may grant development consent to a development that contravenes a development standard imposed by an environmental planning instrument.

Clause 4.6(2) provides that:

- (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.*

The HOB development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify an exception to a development standard and states:

- (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 HOB development standard pursuant to cl4.3 of the MLEP 2013. However, strict compliance is considered to be

## 2 The Relevant LEP Provisions

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unreasonable and unnecessary in the circumstances of this case as detailed in Section 5.2.1.

In addition, there are considered to be sufficient environmental planning grounds to justify contravening the development standard as detailed in Section 5.2.2.

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

- (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.*

Sections 5.2 and 5.3 of this written request address the matters required under cl4.6(4)(a) of the LEP and Section 5.4 addresses cl4.6(4)(b).

Clause 4.6(5) provides that:

- (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.*

Section 5.5 of this written request addresses the matters required under cl4.6(5) of the LEP.

Clauses 4.6(6) and (8) are not relevant to the proposed development and cl4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

### 3 The Nature of the Variation

The proposed dwelling house will result in a maximum height above existing ground level of 10.1m, constituting a non-compliance of up to 1.6m. The following figures show the 8.5m LEP height line across the side elevations and section plan of the dwelling as proposed.

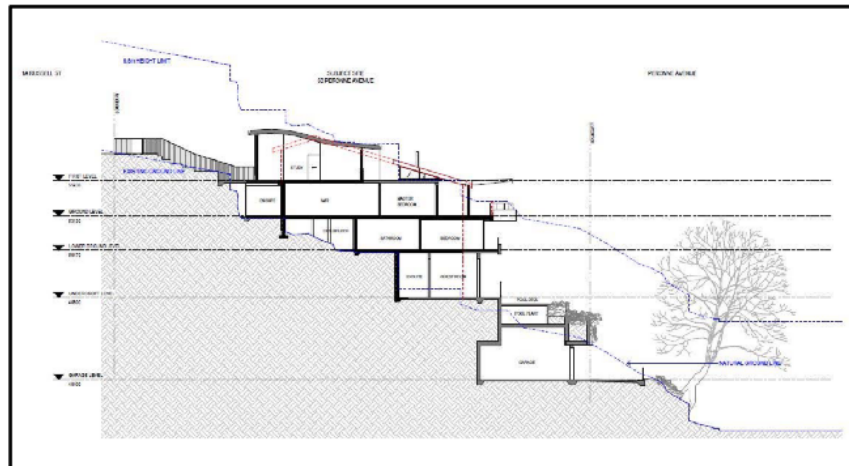


Figure 2: Extract of Long Section (Source: Squillace Architects)

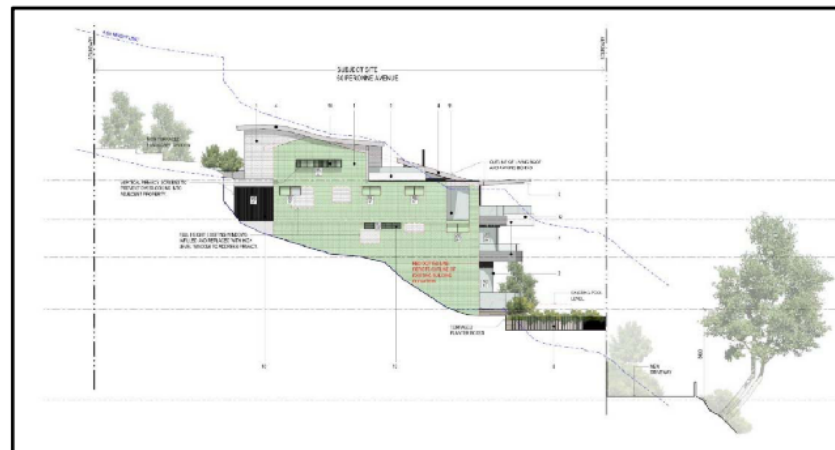


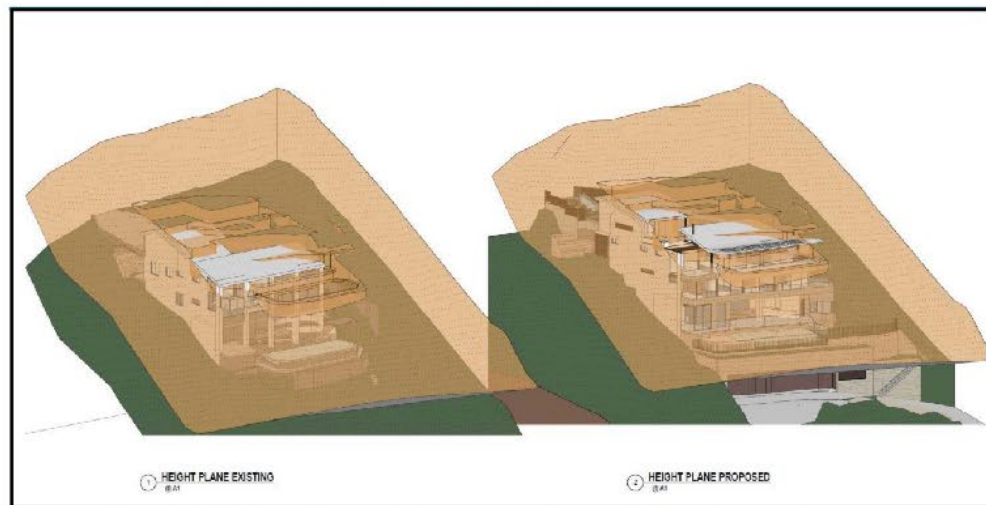
Figure 3: Extract of West Elevation (Source: Squillace Architects)



Figure 4: Extract of East Elevation (Source: Squillace Architects)



### 3 The Nature of the Variation



**Figure 5: Height Plane diagram showing non-compliance – existing and proposed**  
(Source: Squillace Architects)

## 4 Case Law

### 4.1 Introduction

The proposed variation to the development standard has been considered in light of the evolving methodology and “tests” established by the NSW Land & Environment Court (the Court) and the following subsections provide a brief summary of key Judgments in regard to variations under the former SEPP 1 and cl4.6 of the SILEP.

### 4.2 *Winten Developments Pty Ltd v North Sydney Council [2001]*

Through the Judgment in *Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46* (“Winten”) the Court established a ‘5-part test’ for considering whether strict compliance with a development standard is unreasonable or unnecessary in a particular case. The elements of this test can be summarised as:

- Is the planning control a development standard?
- What is the underlying object or purpose of the standard?
- Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the *Environmental Planning & Assessment Act 1979*?
- Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?
- Is the objection well founded?

The 1<sup>st</sup> ‘test’ continues to be relevant and is a precondition for the application of cl4.6 – see Section 5.1.

The 2<sup>nd</sup> ‘test’ is required to be demonstrated under cl4.6(4)(a)(ii) – see Section 5.2.1.

The 3<sup>rd</sup> ‘test’ was specific to cl3 of SEPP 1 and has not been transferred to cl4.6 of the SILEP. Notwithstanding, in Initial Action (see below), Preston CJ indicated that it is reasonable to infer that “environmental planning grounds” as stated in under cl4.6(3)(b), means grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EP&A Act – see Section 5.2.2.

The 4<sup>th</sup> ‘test’ is required to be demonstrated under cl4.6(3)(a) - see Section 5.1.

The 5<sup>th</sup> ‘test’ is analogous to cl4.6(4)(a) – see Section 5.3.

### 4.3 *Wehbe v Pittwater Council [2007]*

The 5-part test under Winten was later supplemented by the Judgment in *Wehbe v Pittwater Council [2007] LEC 827* (“Wehbe”) where Chief Justice Preston expressed the view that there are 5 different ways in which an objection to a development standard may be assessed as being well founded and that approval of the objection may be consistent with the aims of SEPP 1. These included:

1. Notwithstanding the non-compliance, is the proposal consistent with the relevant environmental or planning objectives?
2. Is the underlying objective or purpose of the development standard not relevant to the development with the consequence that compliance is unnecessary?

## 4 Case Law

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3. Would the underlying objective or purpose of the development standard be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable?
4. Has the development standard been virtually abandoned or destroyed by the consent authority's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable?
5. Is the zoning of the particular land unreasonable or inappropriate such that the development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and therefore, compliance with the standard would be unreasonable or unnecessary?

### 4.4 **Four2Five Pty Ltd v Ashfield Council [2015]**

In the Judgment of *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009* ("Four2Five") Pearson C expanded on the earlier Judgments of Winten and Wehbe, indicating that whilst consistency with zoning and standard objectives of the development standard is addressed specifically in cl4.6(4)(a)(ii), there remains an onus of also demonstrating that there are "*sufficient environmental planning grounds*" such that compliance with the development standard is unreasonable or unnecessary. Furthermore, that the environmental planning grounds must be particular to the circumstances of the proposed development rather than public benefits that could reasonably arise from a similar development on other land.

The environmental planning grounds that support the proposed variation development standard in this circumstance are detailed in the main body of this Statement and summarised in Section 5.2.2 of this variation request.

### 4.5 **Randwick City Council v Micaul Holdings Pty Ltd [2016]**

In *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7* ("Micaul") Preston CJ made it clear that development consent cannot be granted for a development that contravenes a development standard unless the consent authority:

- (a) has considered a written cl 4.6 objection seeking to vary the development standard as required by cl4.6(3) of the SILEP;
- (b) is satisfied that the cl4.6 objections adequately addressed the matters required to be demonstrated by cl4.6(3) (as required by cl4.6(4)(a)(i));
- (c) is satisfied that the 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 as required by cl4.6(4)(a)(ii).

In addition, Preston CJ elucidated that the consent authority does not have to be directly satisfied that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case – only that it be indirectly satisfied that the applicant's written request adequately addresses the matters in cl4.6(3) that compliance with the development standard is unreasonable or unnecessary.

## 4 Case Law

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Furthermore, Preston CJ confirmed that an established means of demonstrating that compliance with a development standard is unreasonable or unnecessary is to establish that a development would not cause environmental harm and is consistent with the objectives of the development standard.

### 4.6 *Moskovich v Waverley Council* [2016]

Providing further guidance on the interpretation of cl4.6 compared to its predecessor SEPP 1, the Judgment in *Moskovich v Waverley Council* [2016] NSWLEC 1015 ('Moskovich') outlines that cl4.6(3)(a) is similar to cl 6 of SEPP 1 and the ways of establishing that contravention of a development standard is well founded expressed in *Wehbe* (e.g. "achieving" the objectives of the development standard) are equally appropriate for the consideration of cl4.6(3)(a).

However, cl4.6(4)(a)(ii) has different wording to SEPP 1 and requires the consent authority to be satisfied that the proposed development is in the public interest because it is "consistent" with objectives of the development standard and objectives for the zone rather than "achieving" the objectives. Consequently, the considerations of cl4.6(3)(a) and cl4.6(4)(a)(ii) are different with the achievement test being more onerous and requiring justification in 'ways' such as those expressed in *Wehbe*.

Accordingly, whilst the Judgments in *Winten* and *Wehbe* related to variation requests under SEPP 1, the methodology and reasoning expressed in those Judgments continues to be the accepted basis upon which to assess variation requests pursuant to cl 4.6 with minor areas of differing interpretation.

### 4.7 *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard.

Further, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "*better environmental planning outcome*" relative to a development that complies with the development standard. In fact, there is no provision in SILEP that gives substantive effect to the objectives of cl4.6 stated in cl4.6(1)(a) and (b). That is to say, neither cl4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard "*achieve better outcomes for and from development*".

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

## 4 Case Law

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### 4.8 Summary of the Case Law Methodology and Tests

The collective methodology and tests described above has been applied to the assessment at Section 5 and can be summarised in the following steps:

1. Step 1 - Is the planning control that the applicant seeks to contravene a development standard?
2. Step 2 - Is the consent authority satisfied that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required by cl 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. Step 3 - Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out?
4. Step 4 - Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Step 5 - Where the consent authority is the Court, has the Court considered the matters in cl4.6(5) when exercising the power to grant development consent for development that contravenes a development standard.



## 5 Assessment of the Variation

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### 5.1 Step 1 - Is the planning control a development standard?

This question is the 1<sup>st</sup> 'test' in Winten. The HOB control in cl4.3 of the MLEP 2013 is a development standard, defined in Section 1.4 of the EP&A Act as follows:

*“development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:*

*(a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point.*

The development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted pursuant to cl4.6.

### 5.2 Step 2 – Pursuant to cl4.6(4)(a), is the consent authority satisfied that the written request adequately addresses the matters in Clause 4.6(3)?

#### 5.2.1 Clause 4.6(3)(a) – compliance is unreasonable or unnecessary in the circumstances of the case

To demonstrate that compliance with the height of buildings development standard is unreasonable or unnecessary, this written request relies upon:

1. The 2<sup>nd</sup> 'test' in Winten and the 1<sup>st</sup> and 2<sup>nd</sup> 'ways' in Wehbe – i.e. the underlying objectives or purpose of the standard is satisfied or the objectives are not relevant; and
2. The 4<sup>th</sup> 'way' in Wehbe - the development standard has been virtually abandoned or destroyed by the consent authority's own actions.

These aspects are discussed in the following paragraphs.

#### The underlying objectives or purpose of the standard

Clause 4.3(1) of the MLEP 2013 states the objectives of the HOB development standard 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*

## 5 Assessment of the Variation

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*other aspect that might conflict with bushland and surrounding land uses.*

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

The proposed is considered to achieve this objective as the proposal provides for a change of room form and with an overall reduction in building height. An awning over the ground floor deck encroaches the maximum building height, however this element is an open structure that assists in providing articulation. A height plane analysis has been included in the architectural plans (extract below) which identifies both the existing dwelling and proposed additions. The area of non-compliance with the building height is reduced and the resultant dwelling is a more articulated and modulated built form that is reflective of the desired future streetscape particularly when considered holistically with the articulated form, the quality aesthetic of the building and landscape embellishment. It is considered that the proposal is compatible in terms of height with the adjoining and surrounding development it is considered that the proposal achieves this objective.

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

The proposed additions have been appropriately designed to incorporate articulation and modulation with the non-complying elements located centrally on the dwelling. These elements will not be prominent when viewed from the adjoining properties or the public domain given the topography of the site. The proposed additions incorporate balconies, decks and varied setbacks, with skillful use of the material and colour composition and palette, which all assist in minimizing bulk and scale. The resultant bulk of the development is compatible with the existing surrounding development.

**Objective (c)** is to minimize disruption of views to and from the foreshore from surrounding properties and public spaces.

In relation to views currently enjoyed from the surrounding properties the proposed additions have been designed to ensure appropriate view sharing.

This has been achieved by the following:

- The area of the non-compliance with the proposed additions is reduced when compared to the existing non-compliances.
- The non-complying elements of the building are centrally located and are a result of the steep topography of the site. Given the significant slope from Russell Street towards Peronne Avenue it is envisaged that the proposed additions will not obstruct any significant views. Views of The Spit, Marina and foreshore from the properties to the north of the site will be maintained.
- The property immediate to the west is vacant. Regardless, the design and orientation of the existing dwelling and proposed additions on the subject site are such that any future development of the adjoining western site will provide for appropriate view sharing. The eastern boundary of the site adjoins the Russell Street road reserve and provides ample separation to the nearby dwelling at No. 2A Russell Street.

The location of the site, topography and considered design ensures that the proposed additions will not obstruct any views from or to the foreshore, nor from the public space

## 5 Assessment of the Variation

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surrounding the site towards the foreshore.

**Objective (d)** is to potential adverse impact related to excessive overshadowing.

Shadow diagrams have been prepared and submitted with this application. The proposed additions do not result in any additional overshadowing of residential properties.

**Objective (e)** relates to development in the recreation or environmental protection zone and does not apply to this development.

### 5.2.2 Clause 4.6(3)(b) – There are sufficient environmental planning grounds to justify contravening the development standard

As set out in Four2Five, when a development standard is sought to be varied, there is an onus on the Applicant to demonstrate that there are “*sufficient environmental planning grounds*” such that compliance with the development standard is unreasonable or unnecessary and these environmental planning grounds must be particular to the circumstances of the proposed development rather than grounds that could reasonably apply a similar development on any other land.

The site-specific environmental planning grounds that support the proposed variation to the height of building development standard in this circumstance include the significant slope of the site and location and design of the existing dwelling on site. The existing dwelling is currently three storeys and exceeds the maximum building height. The proposed additions have been designed to utilize the existing undercroft area which does not result in any increase in height. Clause 4.4.2 of the Manly DCP promotes the retention and adaptation of existing buildings rather than their demolition. The site falls approximately 7m across the building platform with the existing building non-complying. Any alterations to the upper levels of the dwelling would have some non-compliance with the height controls.

In this situation the encroaching elements are important contributors to positive design form which actually assist in creating a quality aesthetic and assist in minimising visual impacts when viewed from the street and waterway.

In addition, Preston CJ clarified in *Micaul and Initial Action*, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts.

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

### 5.3 Step 3 - Pursuant to cl4.6(4)(b), is the consent authority satisfied that the development will be in the public interest because it is consistent with the objectives of the development standard and the objectives of the zone?

As outlined in Section 5.2.1, the Proposal achieves and is therefore consistent with the relevant objectives of the height of buildings development standard.

However, the consent authority must also be satisfied that the development will be consistent with the objectives of the R2 Low Density Residential Zone which are expressed in the Land Use Table to cl2.3 of the LEP as follows:

## 5 Assessment of the Variation

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

The Proposal is consistent with the objectives of the R2 Zone for the following reasons:

The first objective is to provide low density housing. The proposal provides for additions to a single detached dwelling. The objective is achieved.

The second objective is not applicable to this application.

Accordingly, it follows that the proposed development is in the public interest because it is consistent with the objectives of the HOB development standard under the MLEP 2013 and the objectives of the R2 Low Density Residential Zone under the MLEP 2013.

### 5.4 Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the SILEP or SEPP 1 subject to certain conditions.

As MLEP 2013 adopts cl4.6 of the SILEP and the conditions of the Notice are not relevant in this instance, the consent authority for the Proposal may assume concurrence in respect of the variation requested to the HOB development standard under the LEP.

In addition, the Court has power to grant development consent to the proposed development even though it contravenes the HOB development standard, without obtaining or assuming the concurrence of the Secretary by reason of s39(6) of the *Land and Environment Court Act 1979* (the Court Act).

### 5.5 Step 5 - Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that in deciding whether to grant concurrence, the Secretary must consider:

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

Furthermore, in Initial Action, Preston CJ clarified that, notwithstanding the Court's powers under s39(6) of the Court Act, the Court should still consider the matters in cl4.6(5) when exercising the power to grant development consent for development that contravenes a development standard.

Accordingly, the proposed contravention of the HOB development standard has been considered in light of cl4.6(5) as follows:

## 5 Assessment of the Variation

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- 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 development for this particular Site and this design is not directly transferrable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment;
- As indicated in Section 5.3, the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard. Accordingly, there would be no significant public benefit in maintaining the development standard in this instance; and
- It is considered that there are no other matters of relevance that need to be taken into consideration by the Court.



## 6 Conclusion

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The proposed development contravenes the Height of Building development standard under cl4.3 of Manly LEP 2013.

The height of building control under cl4.3 of the MLEP is a development standard and is not excluded from the application of cl4.6.

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the LEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant objectives of the development standard pursuant to cl4.3 of the MLEP 2013 and is consistent with the relevant objectives of the R2 Low Density Residential Zone and therefore, the proposed development is in the public interest;
- Notwithstanding the contravention of the development standard, the proposed dwelling will not result in significant adverse environmental harm in that the environmental amenity of neighbouring properties will be preserved and adverse impacts on the amenity of the locality will be minimised to a reasonable level;

In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the HOB development standard including a lack of adverse environmental amenity impacts;

Accordingly, this written request can be relied upon by the consent authority in accordance with cl4.6(4) of the LEP.

The consent authority can assume the concurrence of the Secretary pursuant to the Notice issued on 21 February 2018. Alternatively, the Court can use its powers under s39(6) of the Court Act and be satisfied that contravention of the development standard doesn't raise any matter of significance for State or regional environmental planning, there is no public benefit of maintaining the development standard and there are no other relevant matters required to be taken into consideration.

Accordingly, the consent authority can exercise its power pursuant to cl4.6(2) to grant development consent to the proposed development notwithstanding the contravention of the development standard.

Prepared by: **Joseph Vescio**  
**JVUrban Pty Ltd**  
**16 December, 2019**

## APPENDIX C

### VIEW LOSS ANALYSIS

## APPENDIX D

## A3 PLANS

<b>ITEM 3.4</b>	<b>DA2019/1238 - 26 SEAVIEW AVENUE, CURL CURL - ALTERATIONS AND ADDITIONS TO A DWELLING HOUSE INCLUDING A SWIMMING POOL</b>
<b>REPORTING MANAGER</b>	<b>Anna Williams</b>
<b>TRIM FILE REF</b>	<b>2020/256963</b>
<b>ATTACHMENTS</b>	<b>1 Assessment Report 2 Site Plan &amp; Elevations 3 Clause 4.6</b>

### **PURPOSE**

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

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### **RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approve** Development Consent to DA2019/1238 for alterations and additions to a dwelling house including a swimming pool on land at Lot 16 DP 14366, 26 Seaview Avenue, Curl Curl, subject to the conditions outlined in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/1238
<b>Responsible Officer:</b>	Tony Collier
<b>Land to be developed (Address):</b>	Lot 16 DP 14366, 26 Seaview Avenue CURL CURL NSW 2096
<b>Proposed Development:</b>	Alterations and additions to a dwelling house including a swimming pool
<b>Zoning:</b>	Warringah LEP2011 - Land zoned R2 Low Density Residential
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Robert Anthony Bempasciuto Annette Valeur Fausboll
<b>Applicant:</b>	Robbie Bempascutio
<b>Application Lodged:</b>	04/11/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Residential - Alterations and additions
<b>Notified:</b>	06/04/2020 to 24/04/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	4
<b>Clause 4.6 Variation:</b>	4.3 Height of buildings: 1.5%
<b>Recommendation:</b>	Approval
<b>Estimated Cost of Works:</b>	\$ 1,020,000.00

Northern Beaches Council is in receipt of Development Application DA2019/1238 for alterations and additions to a dwelling house including the installation of a part below ground swimming pool at No. 26 Seaview Avenue, Curl Curl.

The development has an estimated cost of works of \$1,020,000 and four (4) unresolved submissions. Therefore, the proposal is referred to the Development Determination Panel (DDP) for determination given the estimated value of the development and the number of submissions received.

The issues raised in the submissions are:



- View loss.
- Streetscape and character.
- Building height.
- Building setbacks (front).
- Site coverage.
- Traffic.
- Landscape.
- Access to sunlight.

Each of the issues has been addressed in this report and were found to not have determining weight to warrant the refusal of the application.

The proposal includes variations to the following clauses:

Warringah Local Environmental Plan 2011

- Clause 4.3 - Height of Buildings.

The proposal involves a 1.5% variation at the northern side of the building. This has been satisfactorily supported by a request under Clause 4.6 of the LEP.

Warringah Development Control Plan 2011

- B1 - Wall Heights;
- B3 - Side Boundary Envelope;
- D1 - Landscaped Open Space and Bushland Setting; and
- D6 - Access to Sunlight.

In each instance, the assessment found that the variations achieved consistency with the applicable objectives and were supportable.

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 applicant seeks consent for alterations and additions to a dwelling house including the installation of a part below ground swimming pool.

The development involves the following:

### **Internal Works**

Lower Ground Floor (RL 38.58)

- Conversion of the existing garage to a workshop/store;
- Installation of a bathroom and stairs; and
- Retention of existing store at the rear.

#### Ground Floor (RL 41.15)

- Conversion of existing floor area involving:
  - Reconfiguration of rooms;
  - Installation of bathroom, laundry and shower;
  - Installation of stairs;
- Addition of tandem garage at the south-western corner of the existing part of the dwelling; and
- Addition of Bedroom 3, Office and entry at the western side of the existing part of the dwelling.

#### First Floor (RL 44.25)

- Conversion of existing floor area involving:
  - Reconfiguration of rooms;
  - Inclusion of a balcony at the north-eastern corner in lieu of the enclosed dining room.
- Addition of a balcony at the northern side of the existing part of the dwelling;
- Addition of a Master Bedroom, ensuite and corridor (with stairs) at the south-western corner of the existing part of the dwelling; and
- Addition of a timber deck at the eastern side of the existing dwelling (adjacent to the proposed swimming pool).

#### **External Works**

- Construction of a new driveway at the south-western corner of the site;
- Closure of the secondary driveway at the north-western corner of the site;
- Landscape works throughout the site at ground level;
- Installation of a part below-ground swimming at the north-eastern corner of the site;
- Installation of a 2,400ltr rainwater tank at the northern side of the existing garage.

#### **AMENDED PLANS**

Amended plans were submitted to Council on 26 March 2020. The amendments include the following:

- Inclusion of a balcony on the street frontage to provide articulation;
- Inclusion of a privacy screen for the new street facing balcony;
- Inclusion of a privacy screen on the western side of the first-floor deck;
- Reduction of the driveway hardstand area and rear terrace/pool coping and inclusion of additional soft landscaped area within the front and rear setback;
- The master bedroom, ensuite and WC have been revised to include the aforementioned street facing balcony and to increase the side setback and articulation to the upper level of the south facing wall;
- Addition of a highlight window to the master bedroom ensuite to provide visual relief;
- Use of opaque glazing on the balustrade for balconies facing north and east to a height of 1.0m;
- Inclusion of planting along the northern and eastern perimeter of the pool and a 1.8m high boundary fence at the northern end of the pool.

The amended plans were notified to the same property owners and occupiers than the original notification, including all persons who made a submission.

This assessment addresses the amended plans.

## ASSESSMENT INTRODUCTION

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

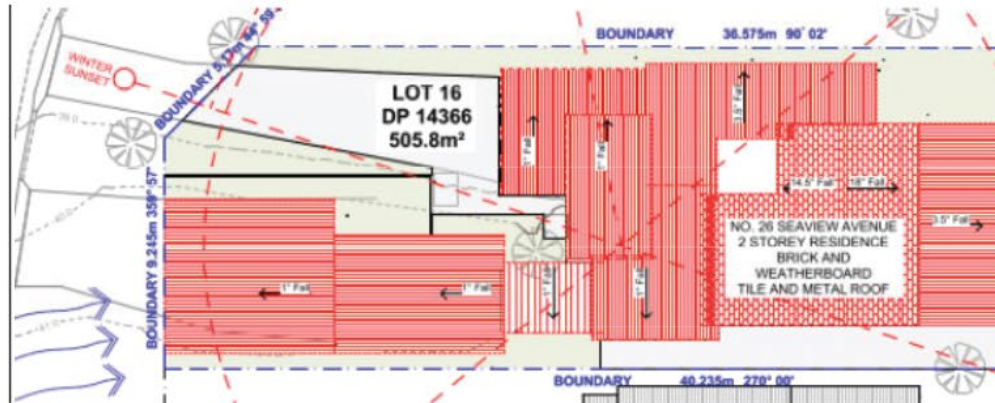
- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts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

## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - 4.3 Height of buildings  
Warringah Development Control Plan - B1 Wall Heights  
Warringah Development Control Plan - B3 Side Boundary Envelope  
Warringah Development Control Plan - D1 Landscaped Open Space and Bushland Setting  
Warringah Development Control Plan - D6 Access to Sunlight  
Warringah Development Control Plan - D7 Views  
Warringah Development Control Plan - D8 Privacy  
Warringah Development Control Plan - D9 Building Bulk

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 16 DP 14366 , 26 Seaview Avenue CURL CURL NSW 2096
<b>Detailed Site Description:</b>	<p>The subject site consists of one (1) allotment located on the south-eastern corner of Seav Gardere Avenue.</p> <p>The site is regular in shape with surveyed area of 505.8m<sup>2</sup>.</p> <p>The figure shows the survey of the site as it exists.</p>



The site is located within the R2 Low Density Residential zone and accommodates a detached dwelling house with detached carport facing Seaview Avenue.

The site has a cross fall which descends from the middle of the site to the northern bound approximately 2.4m.

The figure below shows the frontage of the site from the corner of Seaview Avenue and G noting the crossfall.



The site includes a domestic landscaped setting with shrubs sporadically situated through rear setback areas. The site also includes two (2) driveways and crossovers although the



and crossover nearest to the corner is to be removed.

The figure below shows the rear setback of the site.



Adjoining and surrounding development is characterised by detached dwellings of varying architectural design.

Map:





#### **SITE HISTORY**

The site has been the subject of the following application:

PLM2019/0065

A pre-lodgement was held on 30 April 2019 for alterations and additions to a dwelling house and proposed swimming pool.

The plans presented at the meeting were generally the same as those submitted with this development application with exception to the garage accommodating one (1) car instead of two (2) in a tandem arrangement.

The advice offered by Council was generally supportive subject to the proposal being amended to achieve greater consistency with the development standards of the WLEP 2011 as well as the controls and objectives of the WDCP, particularly with regards to landscaped open space and privacy at the rear as a result of the new decking and swimming pool. It was also advised that the second driveway closest to the intersection with Gardere Avenue was to be removed.

The development application, as amended, addresses these issues.

#### **ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)**

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

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

Section 4.15 Matters for Consideration'	Comments
development control plan	proposal.
Section 4.15 (1) (a)(iii) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clause 98</u> of the EP&amp;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&amp;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) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

#### EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## NOTIFICATION & SUBMISSIONS RECEIVED

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

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

<b>Name:</b>	<b>Address:</b>
Mr Paul Nicholas Nuttall	22 Seaview Avenue CURL CURL NSW 2096
Dermot John O'Brien Elizabeth Marie Hand-O'Brien	24 Seaview Avenue CURL CURL NSW 2096
Mrs Gabriela Elias	19 Seaview Avenue CURL CURL NSW 2096
Mr Emil Peter Dick De Graaff Mrs Kathleen Frances De Graaff	42 Gardere Avenue CURL CURL NSW 2096

### Public Exhibition 1

The application was notified to 11 surrounding property owners between 18 November 2019 and 6 December 2019. Four (4) submissions were received in response which raised the following issues:

- **View loss.**
- **Streetscape and character.**
- **Building height.**
- **Building setbacks (front).**
- **Site coverage.**
- **Traffic.**
- **Landscape.**
- **Access to sunlight.**

The above issues are discussed in detail below:

- **View Loss.**  
Concerns were raised in each of the submissions regarding the impact of the development upon views.

This issue has been addressed in detail under Clause 'D7 - Views' in this report where it was found that the impact on each of the properties was negligible.

This issue does not warrant the refusal of the application.

- **Streetscape and character**  
Concerns were raised in each of the submissions with respect to the bulk and scale of the development and how it related to the streetscape and overall character of the local area.

The development involves alterations and additions to an existing dwelling. The alterations and

additions occur predominantly on and within the existing building footprint and, as such, do not add the the built form such that it exacerbates the bulk and scale of the building.

The development includes an extension to the front to replace the existing carport structure with a two storey addition. This addition includes a tandem garage at the ground level and a bedroom at the upper level. The extension (as amended) includes a balcony which faces Seaview Avenue thereby relieving the bulk and scale of the extension with articulation and a street presence.

The development also involves replacing the pitched roof with a flatter skillion roof form which improves visual outlook from surrounding properties and also reduces the visual bulk and scale of the building when viewed from the street.

The upgrading of the detached dwelling is entirely consistent with the character of the local area.

The broader issue of character is assessed as follows:

The matter of assessing the character compatibility of development has been examined by the Land and Environment Court in *GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003) NSWLEC 268* and *Project Venture Developments v Pittwater Council (2005) NSWLEC 191* where Senior Commissioner Roseth set out Planning Principles to better evaluate how a development should respond to the character of its environment. The following provides an assessment against the Planning Principles established in those two cases.

In the case of '*GPC No 5 (Wombarra) Pty Ltd v Wollongong City Council (2003) NSWLEC 268*' Senior Commissioner Roseth developed the following Planning Principles:

*"The first principle is that buildings in a development do not have to be single-storey to be compatible with the streetscape even where most existing buildings are single storey. The principle does not apply to conservation areas where single storey dwellings are likely to be the major reason for conservation".*

#### Comment

The development consists of alterations and additions to an existing two/three storey dwelling. An inspection of site reveals that Seaview Avenue and Gardere Avenue consists of residential development of varying scale and intensity not dissimilar to the subject dwelling.

The site is not located within, or near to, a conservation area which limits building heights to single storey.

In this regard, it is considered that the scale of the development is compatible with the streetscape and consistent with the first principle.

*"The second principle is that where the size of a development is much greater than the other buildings in the street, it should be visually broken up so that it does not appear as one building. Sections of a building, or separate buildings should be separated by generous breaks and landscaping".*

#### Comment

Seaview Avenue and Gardere Avenue consist of a mix of building forms including a mix of single and double storey detached dwellings of varying age and architectural style.



The development consists of a two/three storey building which has been articulated at the street facing elevation to break up the building mass and to address the 'corner' of the site (i.e. the intersection of Seaview Avenue and Gardere Avenue).

The landscape plan indicates that the front setback will include generous landscaping (through the removal of the secondary driveway and crossover) complimented by low shrubbery which will further accentuate the articulation of the built form.

In this regard, the development is considered to be compatible with the scale of surrounding development.

*"The third principle is that where a site has existing characteristics that assist in reducing the visual dominance of development, these characteristics should be preserved. Topography that makes development appear smaller should not be modified. It is preferable to preserve existing vegetation around a site's edges to destroying it and planting new vegetation".*

#### Comment

The site includes a notable existing crossfall which would accentuate the visual scale of the development when viewed from the intersection of Seaview Avenue and Gardere Avenue.

The vegetation around the site is relatively sparse with the majority of trees and shrubbery being concentrated at the rear of the site. The landscape plan indicates that the front setback will be redesigned to include generous landscaping (through the removal of the secondary driveway and crossover) complimented by low shrubbery which will further accentuate the articulation of the built form.

*"The fourth principle is that a development should aim to reflect the materials and building forms of other buildings in the street. This is not to say that new materials and forms can never be introduced only that their introduction should be done with care and sensitivity".*

#### Comment

The development includes a Schedule of Colours and Finishes which indicates that the proposed colour scheme will reflect the colours of the neighbouring buildings and the predominant colour theme for development in the area.

The above Principles were further developed in *Project Venture Developments v Pittwater Council (2005) NSWLEC 191* to include the following:

*"Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites".*

#### Comment

The physical impacts of the development on surrounding properties is assessed as consisting of constraints on the development potential of surrounding sites, privacy, overshadowing and noise.

#### Constraints on the development potential of surrounding sites

Apart from the subject site and the neighbouring property to the north, the remainder of the local area consists of regular shaped single allotments which accommodate detached dwellings. In this regard, the possibility remains for future development to occur along Seaview Avenue and Gardere Avenue for detached dwellings.

#### Privacy



The site is surrounded by residential development on the northern (No. 40 Gardere Avenue), southern (No. 24 Seaview Avenue) and eastern (No. 1 Beverley Place) boundaries.

#### No. 40 Gardere Avenue

The primary area of potential view impact occurs within the rear yard which includes a swimming pool and forms the principle private open space area. The proposed rear deck occurs within the existing living room space due to the relocation of the external walls to create the deck. In this respect, the degree of overlooking remains unaltered.

The amended landscape plan submitted with the application includes the planting of *Bambusa textilis* (Slender Weaver's Bamboo) along the north-eastern side corner of the site to provide screening from the upper storey conversion of the living room to a balcony. The proposed screen planting along the boundary adjacent to No. 40 Gardere Avenue will achieve a mature height of 8.0m and is considered to be an effective solution to screening the neighbouring swimming pool below.

The proposed balcony at the northern side of the dwelling (at the upper level) is located adjacent to the western side setback of the neighbouring property at No. 40 Gardere Avenue which includes dense landscaping to limit overlooking.

#### No. 1 Beverley Place

The primary area of potential view impact occurs within the rear yard which forms the principle private open space area.

The proposed rear deck occurs within the existing living room space due to the relocation of the external walls to create the deck. In this respect, the degree of overlooking remains unaltered.

The amended landscape plan submitted with the application includes the planting of *Bambusa textilis* (Slender Weaver's Bamboo) along the rear boundary to provide screening from the upper storey conversion of the living room to a balcony. The proposed screen planting will achieve a mature height of 8.0m and is considered to be an effective solution to supplementing the existing screening on the neighbouring property by providing increased density.

#### No. 24 Seaview Avenue

Apart from the replacement of existing Window 13 at the top floor, no works are proposed which would result in further overlooking into the rear yard of No. 24 Seaview avenue.

#### Overshadowing

Because of the orientation of the site, the only property affected by the dwelling is No. 24 Seaview avenue to the south. The assessment conducted under Clause D8 of the WDCP in this report (which considered the rear yard and decks as the principle private open space for the property) found that, while the development did not comply with the 50% requirement, the additional shadow cast by the development was considered to be minor and that the proposal satisfied the objectives of the clause.

#### Noise

The proposed development is for residential use, which is not considered to significantly impact upon neighbouring properties with regard to noise.

#### Comment

As discussed previously, the local area consists of a varying mix of building forms including a mix of single and double storey detached dwellings of varying age and architectural style.

It is considered that the development has been sufficiently articulated to visually define the dwelling within the shape and topographical context of the site. In this sense, the building has been sufficiently articulated to respond to the detached dwelling elements in the area with the resulting design achieving an architectural consistency with the detached dwellings which collectively characterise the local area.

#### Conclusion of Character Assessment

The above character assessment has found that, in the context of the Land and Environment Court Planning Principles, the proposal is compatible with the character of the local area and surrounding wider locality.

This issue does not warrant the refusal of the application.

The following issues were raised in the submission from No. 24 Seaview Avenue:

- **Building height.**

The submission cites Clause B1 of the WDCP and states (in part) that "*from the plans, in our opinion, the development exceeds the building height limit of 8.5m on the northern elevation by 200 to 500mm. The visual impact of the development when viewed from adjoining properties and Gardere Avenue street is of a high-set residence with 3 levels and with the building elevation dominating most of the block*".

#### Comment

Clause B1 relates to wall height which has been addressed elsewhere within this report (see Clause B1 - 'Wall Heights'). Although Clause B1 permits wall heights of up to 7.2m the development proposes a wall height of up to 8.3m (i.e. 1.1m) at the northern elevation. The assessment found that the development achieved consistency with the objectives of the clause and could be supported.

With respect to the permitted 8.5m building height referred to in the submission, this relates to Clause 4.3 of the WLEP 2011 which has also been considered elsewhere in this report (see Clause 4.3 - 'Height of Buildings' and Clause 4.6 - 'Exceptions to Development Standards') and where it was found that the development did not comply by 0.13m at the northern side of the building. In the consideration under Clause 4.6 of the LEP it was found that the development achieved consistency with the objectives of the clause and zone, as well as demonstrating that compliance with the standard is unreasonable or unnecessary in the circumstances of the case and that there were sufficient environmental planning grounds to justify the non-compliance.

With respect to the visual impact of the development when viewed from lower lying properties and Gardere Street, this has also been discussed elsewhere in this report (see Clause B3 - 'Side Boundary Envelope')

This issue does therefore not warrant the refusal of the application.

- **Building setbacks (front).**

The submission cites Clause B3 of the WDCP and states that "*the predominant residence*

*setbacks existing to Seaview Ave (No. 22, No. 24) are 18m approximately. The proposed setback at No. 26 is 7.44m, over 10m further forward. On corner allotments with a double street frontage, the secondary frontage requires a 3.5m setback".*

Comment

Clause B3 does not prescribe an average or prevailing front setback, only that development is to provide a minimum front setback of 6.5m. The development provides a front setback of between 7.4m to 19.4m which exceeds the minimum requirement.

This issue does therefore not warrant the refusal of the application.

- **Site coverage.**

The submission cites Clause B4 of the WDCP and states that *"the proposed footprint seems to indicate the proposed built-on area is close to 50% on site coverage. The bulk and scale of development appears excessive and not in keeping with the street character".*

Comment

Clause B4 does not apply to development within the R2 Low Density Residential zone. Instead, site coverage is determined by Clause D1 - 'Landscaped Open Space and Bushland Setting' which prescribes a provision of 40% of the site to be soft landscaped (i.e. 202.3m<sup>2</sup>). The development proposes a landscaped area of 36.5% (i.e. 184.8m<sup>2</sup>) which is an increase to the existing provision of 26.9% (136m<sup>2</sup>). It should be noted that the western extension to the dwelling occurs over existing hardstand and therefore does not reduce the existing provision of landscaped area.

This matter has been addressed in detail under Clause D1 - Landscaped Open Space and Bushland Setting in this report where it was found that the proposal satisfied the objectives of the clause and the variation could be supported.

This issue does therefore not warrant the refusal of the application.

- **Traffic.**

The submission cites Clause C2 of the WDCP and states that *"vehicle access is difficult at this location due to the grade of Seaview Ave and sight lines to Gardere Ave. A Council review of traffic management for this intersection would be helpful and may lead to a safer environment".*

Comment

A review of the traffic management for the intersection of Seaview Avenue and Gardere Avenue should be requested by residents to Council's Transport Network department for consideration. The traffic safety of the road is beyond the scope of this assessment.

Notwithstanding, the development does propose a tandem car parking arrangement which would necessitate reversing onto Seaview Avenue due to the physical differences in site levels (i.e. a turning bay could not be provided within the front setback to effect a 3 point turn to leave the property in a forward gear). This is an existing situation in that vehicles leaving the property (and other neighbouring properties in the street) do so in reverse. A benefit of the site is that it is located towards the low end of the Seaview Avenue slope and therefore enjoys a longer sightline than other properties further up the slope (towards the crest) and towards the Gardere Avenue intersection.

This issue does therefore not warrant the refusal of the application.

- **Landscape.**

The submission cites Clause D1 of the WDCP and states that *"the proposed landscape area for the development is noted on the plans as 33.72% (170.54m<sup>2</sup>). This is an indication as to the size of the building footprint and hence of the bulk of the proposed residence. We consider the undersized landscape area proposed does not mitigate the bulk and scale of the building"*.

Comment

This issue is discussed above (see 'Site Coverage') and in detail under Clause D1 - 'Landscaped Open Space and Bushland Setting' in this report where it was found that the proposal satisfied the objectives of the clause and the variation could be supported.

This issue does therefore not warrant the refusal of the application.

- **Access to sunlight.**

The submission cites Clause D6 of the WDCP and states that *"the extent of overshadowing to No. 24 from the current residence (No. 26) is 90.2m<sup>2</sup>. The additional overshadowing from the development is 93.2m<sup>2</sup>. The total (90.2 + 93.2 = 183.4m<sup>2</sup>) represents 119% of the private open space of No. 24 (Max is 50%). At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight."*

Comment

This issue has been discussed in detail under Clause D6 in this report. In summary, the assessment (which considered the rear yard and decks as the principle private open space for the property) found that, while the development did not comply with the 50% requirement, the additional shadow cast by the development was considered to be minor and that the proposal satisfied the objectives of the clause.

This issue does therefore not warrant the refusal of the application.

Public Exhibition 2 (Amended Plans)

The amended plans were notified to 13 surrounding property owners between 31 March 2020 and 20 April 2020. One (1) submission was received from No. 24 Seaview Avenue in response which raised the following issues:

- **Building Bulk.**
- **Privacy.**
- **Overshadowing.**
- **View Loss.**

The above issues are discussed in detail below:

- **Building Bulk.**

The submission states:

*"The south elevation of the amended development on No. 26 almost identical in bulk and overall dimensions as the first proposal. The wall height is still over 6m in height, projects over 10m beyond our front building line and has the same boundary setback of 940mm (drg. DA09) as the previous plans. The front bedroom setback does little to reduce the bulk as the balcony south side has a full height*



*screen blocking any aspect to the north. While we were unable to access the plan views of the proposal, from the information available on-line, there appears to be a discrepancy as to where the south side is located between drgs DA09 and DA11. I would argue there is less articulation of the south wall in the current proposal but either way this does little to reduce the great bulk of a 6m x 10m wall located 940mm from our northern side boundary"*

Comment

This issue has been discussed elsewhere in this report (see Clause D9 - Building Bulk) where it was considered that the development, as amended, satisfied the applicable requirements of the clause by providing sufficient articulation and wall lengths to reduce building mass and provide visual relief.

This issue does not warrant the refusal of the application.

- **Privacy.**

The submission states:

*"Windows W15 and W17 completely overlook our private open space with no regard for our privacy or Council planning guidelines".*

Comment

This issue has been discussed elsewhere in this report (see Clause D8 Privacy). In summary, the assessment found that Window W15 is a new highlight window which services the ensuite of the Master Bedroom and window W17 is a window included in the original design and services the upper level hallway between the Master Bedroom and the Lounge. Both windows are situated adjacent to the front yard of No. 24 Seaview Avenue.

Notwithstanding, a condition is imposed which requires that windows W15 and W17 (in addition to W13) be finished in obscure glazing to prevent overlooking into the front yard of No. 24 Seaview Avenue.

Subject to condition, this issue does not warrant the refusal of the application.

- **Overshadowing.**

The submission states:

*"It is very obvious from [the shadow] diagrams that over shadowing of our private open space for summer and winter sunlight will be massively affected by this proposal. We consider this to be totally unacceptable.*

*The shadow diagrams give a clear indication and comparison of the current building footprint of No. 24 with the proposed building footprint of No. 26, which is stretched to a maximum on all sides up to the minimum boundary setbacks lines, again with little consideration of local community and Council planning guidelines"*

Comment

This issue has been discussed in detail under Clause D6 in this report and summarised above under Public Exhibition 1.

This issue does not warrant the refusal of the application.



- **View Loss.**

The submission states:

*"We currently enjoy 'iconic views' towards Beacon Hill and the Governor Phillip Flag on Beacon Hill, of Brookvale Oval and the North Curl Curl playing fields. The impact of the proposal from the south facing wall, over 6m high and 10.5m long and projecting out from our building line, we assess this view loss resulting as devastating".*

Comment

This issue has been discussed elsewhere in this report and summarised above under Public Exhibition 1.

This issue does not warrant the refusal of the application.

## REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>The plans indicate removal of an existing driveway on the northern verge fronting Seaview.</p> <p>The Landscape Plan submitted with the application is noted.</p> <p>No significant landscape features are indicated to be affected by the proposed works.</p> <p>No objections to approval subject to conditions as recommended.</p>
NECC (Bushland and Biodiversity)	<p>Council's Natural Environment - Biodiversity section raises no objections to the proposed development.</p> <p>This application was assessed against Warringah DCP E2 Prescribed vegetation and E6 Biodiversity.</p> <p>The proposal is for the alterations and additions to the existing dwelling including a new garage.</p>
NECC (Coast and Catchments)	To be assessed under Coastal SEPP by Riparian Lands and Creeks referral. No comment.
NECC (Development Engineering)	No objections are raised to the proposed development, subject to conditions.
NECC (Riparian Lands and Creeks)	<p>This application has been assessed against:</p> <p><b>State Environment Planning Policy (Coastal Management) 2018</b> Part 2, Division 3, Clause 13 - Development on land within the coastal environment</p> <p><b>Warringah Development Control Plan 2011</b> C4 - Stormwater C5 - Erosion and Sedimentation</p> <p>This application does not propose to significantly increase impervious surfaces. The application is for a minor alteration to the existing dwelling.</p>

Internal Referral Body	Comments
	Therefore this proposal is recommended for approval subject to conditions.

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

### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPis)\***

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

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

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

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

#### **SEPP 55 - Remediation of Land**

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated.

Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses.

In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the residential land use.

#### **SEPP (Building Sustainability Index: BASIX) 2004**

A BASIX certificate has been submitted with the application (see Certificate No. 995326S-03 dated 3 October 2019).

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

Commitment	Required Target	Proposed
Water	40	40
Thermal Comfort	Pass	Pass
Energy	50	53

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 site is not located within a coastal wetlands or littoral rainforests area.

Clause 10 does not apply.

#### **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 site is not located within proximity to a coastal wetlands or littoral rainforests area.

Clause 11 does not apply.

## 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 NSW Department of Planning, Industry and Environment website refers to a Coastal Vulnerability Area as one that is subject to coastal hazards such as coastal erosion and tidal inundation. However, Clause 12 is preceded by a note which states "*at the commencement of this Policy, no Coastal Vulnerability Area Map was adopted and therefore no coastal vulnerability area has been identified*".

Therefore, Clause 12 is not applicable at this time.

### 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.*
- (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 development is predominantly of a low impact nature, being mostly internal alterations and additions. The only external works (i.e. excavation for the swimming pool and the construction of the extension to the front of the dwelling) are of a minor scale and will not result in any adverse impacts to the matters contained under Clause (1)(a) to (g) inclusive.

Appropriate conditions are imposed which require the installation and maintenance of sediment and erosion control in accordance with Landcom's 'Managing Urban Stormwater, Soils and Construction' to ensure not no sediment or polluted water enters the Lagoon. This satisfies the requirements of Clause (2)(a).

### 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 site is located within the coastal use area.

The overall assessment of this proposal has found that the development would not unreasonably exacerbate those elements of the built form and amenity which relate to the matters listed under Clause 14(1)(a)(i) to (iii) inclusive.

The site is not subject to the matters referred to in Clause 14(1)(iv) and (v).

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

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

The site is located within a well established residential area and is separated from the lagoon at a distance of approximately 447m.

The works proposed are of a predominantly low impact nature with the only external works are of a comparatively minor scale and will not result in any adverse impact.

The development is therefore not considered to increase the risk of coastal hazards.

### 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	Permitted	Proposed	% Variation	Complies
Clause 4.3 - Height of Buildings	8.5m	8.63m	1.5% (0.13m)	No

### Compliance Assessment

Clause	Compliance with Requirements
2.7 Demolition requires consent	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes
5.8 Conversion of fire alarms	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes

### Detailed Assessment

#### 4.6 Exceptions to development standards

##### Description of non-compliance

Development standard:	4.3 - Height of Buildings
Requirement:	8.5m
Proposed:	8.63m
Percentage variation to requirement:	1.5%

#### Assessment of request to vary a development standard

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard, has taken into consideration the 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 sub-clause (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 in full to this report as an Appendix) states:

*"This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of buildings control pursuant to the First Way outlined in Wehbe.*

*In addition, strict compliance is considered unreasonable and unnecessary as the proposed development complies with the maximum building height control for the vast majority of the development. A variation is justifiable in this case, as the existing building height is non-compliant at 9.5 metres and the proposed development will result in a reduced maximum building height of 8.63 metres. This is a very minor exceedance and the proposed built form is aesthetically pleasing, consistent with the existing dwelling".*

In this respect, it has been demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard. In doing so, the 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:

*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, that there are sufficient grounds to permit the variation of the development standard. In particular:



- The proposed variation is very minor 0.13 metres or 1.5%.
- The area of the exceedance does not present a dominant built form to the street.
- It has no impact on solar access or privacy of neighbouring sites.
- It is compatible in scale to surrounding properties.

The grounds cited by the author of the Clause 4.6 are concurred with.

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 author of the Clause 4.6 states:

*"The proposed alterations and additions to the building are appropriate to the site and will fit with the bulk and scale of both the site and the immediate locality. The existing dwelling has a non-complaint maximum height of 9.5 metres and this will be reduced as a result of the proposal to a maximum height of 8.63metres. The proposal is of a similar scale to surrounding properties".*



This statement is concurred with in that the development, as amended, is considered to be compatible with the height and scale of surrounding and nearby development.

It is considered that the development satisfies this objective.

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

Comment

The author of the Clause 4.6 states:

*"The proposed additions have a minimal visual impact, in that they are consistent with the existing built form on the site. The building height non-compliance will be visible along the northern elevation, as a result of the three storey element of the dwelling and the slope of the site.*

*The proposed alterations and additions will retain the existing levels for the lower ground floor, ground floor and first floor and therefore will generally maintain the existing bulk and scale when viewed from Seaview Crescent and Gardere Avenue, retaining a compatible scale to the street.*

*The proposed development does not result in loss of privacy or loss of solar access for neighbours or the subject site. Some view loss will be experienced by No. 24 Seaview Avenue to the north and north east, however this is not a result of the height variation. The proposed height in this location (southern elevation) is compliant with the 8.5 metre control".*

This statement is concurred with in that the development, as amended, minimises visual impact, disruption of views, loss of privacy and loss of solar access.

It is considered that the development satisfies this objective.

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

Comment

The author of the Clause 4.6 states:

*"The alterations and additions will result in a dwelling which will remain in character with its surrounds and the streetscape. The coastal locality will remain reflected in the character of the site and the scenic quality of the area will be positively contributed to as a result of the development proposed".*

This statement is concurred with in that the development, as amended, minimises adverse impact of development on the scenic quality of Warringah's coastal and bush environments.

It is considered that the development satisfies this objective.

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

Comment

The author of the Clause 4.6 states:

*"The site and the development are not visible from any significant public places other than Seaview Avenue and Gardere Avenue, from which it will be an attractive addition".*

This statement is concurred with in that the development, as amended, manages the visual impact of development when viewed from public places such as roads.

It is considered that the development satisfies this objective.

### Zone objectives

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

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

#### Comment

The author of the Clause 4.6 states:

*"The improvements to the existing dwelling are consistent with this aim".*

This statement is concurred with in that the development, as amended, will provide for the housing needs of the community within a low density residential environment.

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 author of the Clause 4.6 states:

*"This is not applicable to the existing detached dwelling".*

Agreed.

It is considered that the development satisfies this objective.

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

#### Comment

The author of the Clause 4.6 states:

*"The landscaped setting will be improved with the alterations and additions to the dwelling that are proposed. In particular the removal of the second driveway will provide a larger landscaped area fronting Seaview Avenue and Gardere Avenue.*

*Despite the proposal seeking an exception to the building height clause, the bulk and scale of the building will have minimal effects as it represents a minor exceedance and is consistent with surrounding development".*

This statement is concurred with in that the development, as amended, ensures that the low density residential environment is characterised by landscaped settings that is in harmony with the natural environment of Warringah.

It is considered that the development satisfies this objective.

## Conclusion

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

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

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

Planning Circular PS 18-003 dated 21 February 2018 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, the concurrence of the Secretary for the variation to the Height of Buildings Development Standard is assumed by the delegate of Council as the development contravenes a numerical standard by less than or equal to 10%.

### Warringah Development Control Plan

#### Built Form Controls

Built Form Control	Permitted	Proposed	% Variation*	Complies
B1 Wall Height	7.2m	North: 5.4m to 8.3m South: 5.9m to 6.5m	15.2% N/A	No Yes
B3 Side Boundary Envelope	North: 5.0m x 45°	5.4m x 45°	8% (0.4m)	No
	South: 5.0m x 45°	Eaves only	N/A	Yes
B5 Side Boundary Setbacks	North: 0.9m	Lwr Ground: 1.1m to 3.1m Ground: 1.1m to 3.1m Upper: 1.1m to 3.1m	N/A N/A N/A	Yes Yes Yes
	South: 0.9m	Lwr Ground: 6.9m Ground: 0.9m to 1.8m Upper: 0.9m to 4.3m	N/A N/A N/A	Yes Yes Yes
B7 Front Boundary Setbacks	6.5m	Lwr Ground: 13.3m Ground: 7.4m to 13.3m Upper: 7.4m to 19.4m	N/A N/A N/A	Yes Yes Yes
B9 Rear Boundary Setbacks (Dwelling)	6.0m	Lwr Ground: 9.9m Ground: 9.9m	N/A N/A	Yes Yes

		Upper: 6.3m to 9.9m	N/A	Yes
B9 Rear Boundary Setbacks (Swimming Pools)	<50% of rear setback area (38.64m <sup>2</sup> )	31.82m <sup>2</sup> (including coping)	N/A	Yes
D1 Landscaped Open Space (LOS) and Bushland Setting	40% (202.3m <sup>2</sup> )	36.5% (184.8m <sup>2</sup> )	8.6%	<b>No</b>

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	N/A	Yes
B1 Wall Heights	No	Yes
B3 Side Boundary Envelope	No	Yes
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary Setbacks	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D1 Landscaped Open Space and Bushland Setting	No	Yes
D2 Private Open Space	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	No	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
D15 Side and Rear Fences	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D20 Safety and Security	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
E1 Preservation of Trees or Bushland Vegetation	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
E10 Landslip Risk	Yes	Yes

#### Detailed Assessment

### **B1 Wall Heights**

#### Description of non-compliance

Clause B1 permits wall heights of up to 7.2m.

The development includes wall heights of up to 8.3m which equates to a variation of 15.2% (i.e. 1.1m).

The non-compliance is located at the northern elevation, occurring at the top-most edge of the side wall.

#### 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 side wall is an existing feature which is to be retained and therefore would not create an additional visual impact when viewed from adjoining properties or the street.

The development is considered to satisfy this objective.

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

#### Comment

The non-compliant feature is sited generally below the existing tree canopy level.

The development is considered to satisfy this objective.

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

#### Comment

As discussed in 'Clause D7 - Views' later in this report, an analysis of view loss revealed that the development would not have any unreasonable impact on the sharing of views from both public and private properties.

The development is considered to satisfy this objective.

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



Comment

The non-compliant element is sited adjacent to the western side (and street facing) setback of the neighbouring property at No. 40 Gardere Avenue and is screened by substantial and mature planting. As such, the impact on the neighbouring property is minimised in terms of visual appearance and amenity because it is sited away from the rear yard which forms the primary open space area.

The development is considered to satisfy this objective.

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

Comment

The development is sited over the existing building footprint and does not involve any further excavation (beyond the excavation proposed for the separate swimming pool in the rear yard).

The site is subject to a crossfall which descends from the middle of the site to the northern boundary by approximately 2.4m. The fall is visually most notable at the northern elevation when viewed from Gardere Avenue and the development does not alter this topography.

The development is considered to satisfy this objective.

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

Comment

The development is replacing the existing pitched roof form with a series of flatter skillion roof forms. This results in an improved outcome in terms of bulk and scale as it lessens the overall height of the building and improves outlook from neighbouring and adjacent public and private properties.

The development is considered to satisfy this objective.

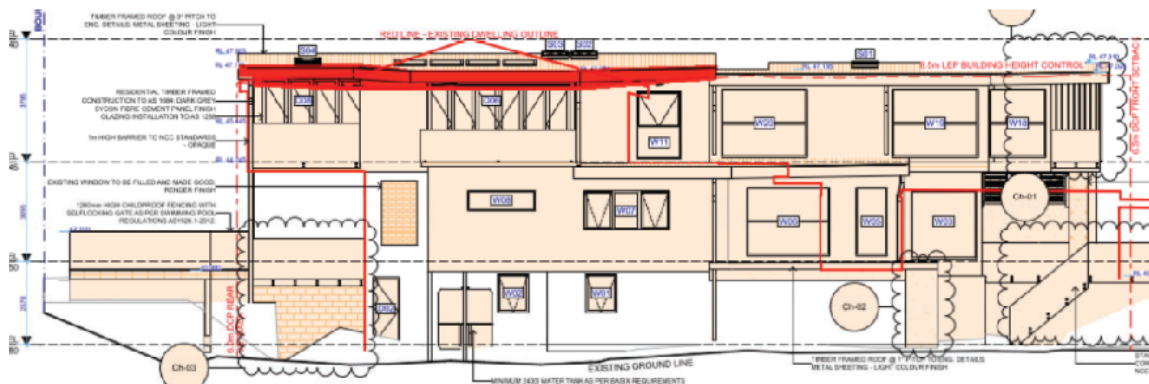
Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported,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

**B3 Side Boundary Envelope**Description of non-compliance

Clause B3 permits a side boundary building envelope of 5.0m x 45°.

The development proposes a side boundary envelope of 5.4m x 45° at the northern elevation which includes an upper part of an existing wall to the living room and the proposed balcony awning overhang.

The figure below shows the location and extent of the non-compliance.



### 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 side wall is an existing feature which is to be retained and therefore would not create an additional height and bulk.

The balcony is a new feature which extends over the roof of the ground floor. The balcony in itself would not unreasonably add to height and bulk because of its visually permeable design. The roof overhang would add to the visual impact of the development when viewed from below, however this element is a comparatively minor feature to the northern facade of the overall development which is located adjacent to the western side setback of the neighbouring property at No. 40 Gardere Avenue which includes dense landscaping concealing the feature. The visual impact is therefore considered to not be unreasonable.

The development is considered to satisfy this objective.

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

#### Comment

The non-compliant elements are situated at the northern elevation and, as such do not impact upon available sunlight access to the neighbouring property to the north at No. 40 Gardere Avenue.

The side facing balcony feature is sited adjacent to the western side (and street facing) setback of the neighbouring property at No. 40 Gardere Avenue and is screened by substantial and mature planting. As such, the privacy impact on the neighbouring property is minimised because it is screened and sited away from the rear yard which forms the primary open space area.

The development is considered to satisfy this objective.

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

Comment

The development is situated over the existing building footprint and does not alter the existing topography of the site.

The site is subject to a crossfall which descends from the middle of the site to the northern boundary by approximately 2.4m. The fall is visually most notable at the northern elevation when viewed from Gardere Avenue and the development does not alter this topography.

The development is considered to satisfy this objective.

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

## D1 Landscaped Open Space and Bushland Setting

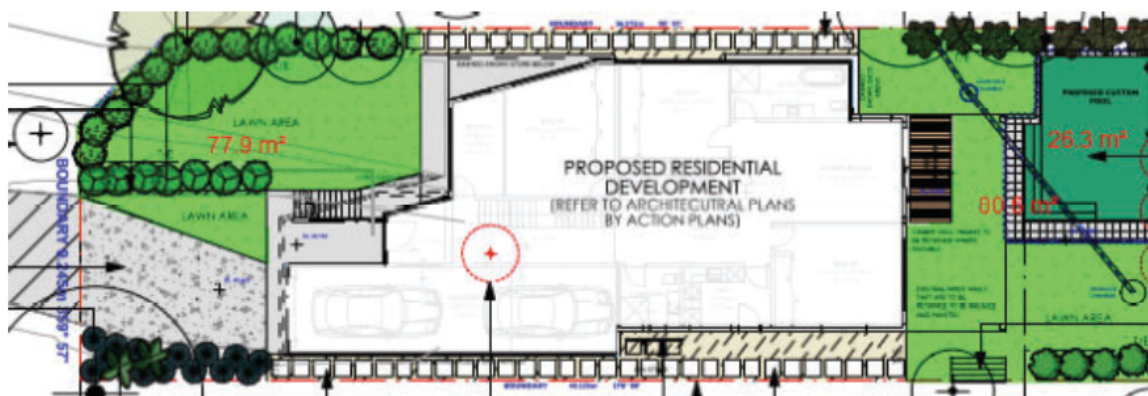
### Description of non-compliance

Clause D1 requires that development provides 40% landscaped area which equates to 202.3m<sup>2</sup> of the site area.

The site currently provides 26.9% landscaped area which equates to 136m<sup>2</sup> of the site area. The development (as amended) increases this by a further 45.4m<sup>2</sup> to achieve 36.5% landscaped area which equates to 184.8m<sup>2</sup>.

Notwithstanding, the development remains deficient by 17.5m<sup>2</sup> which equates to a variation of 8.6%.

The figure below shows the areas used in calculating landscaped area.



### Merit consideration

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

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

Comment

The development includes the removal of the existing low-level driveway and crossover (closest to the corner of Seaview Avenue and Gardere Avenue) and replace the hardstand area with soft landscaping. This will improve the appearance of the site from both street frontages.

The development is considered to satisfy this objective.

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

Comment

The development does not involve the removal of any vegetation which would compromise indigenous vegetation, topographical features and habitat for wildlife.

The development is considered to satisfy this objective.

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

Comment

The landscape plan (as amended) submitted with the application demonstrates that the site can provide for landscaped open space with dimensions that are sufficient to enable the establishment of low lying shrubs, medium high shrubs and canopy trees of a size and density to mitigate the height, bulk and scale of the building.

The development is considered to satisfy this objective.

- ***To enhance privacy between buildings.***

Comment

The landscape plan includes the planting of 14 *Bambusa textilis* (Slender Weaver's Bamboo) at the north-eastern side corner of the site to provide screening from the upper storey conversion of the living room to a balcony. It is noted that bamboo is currently used for screening along the rear boundary of No 1 Beverley Place and the proposed planting will supplement that and the degree of privacy achieved.

The proposed screen planting along the boundary adjacent to no. 40 Gardere Avenue will achieve a mature height of 8.0m and is considered to be an effective solution to screening the neighbouring swimming pool below.

The development is considered to satisfy this objective.

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



Comment

The development includes a 106.9m<sup>2</sup> (including pool) private open space within the rear yard. This remains unaltered from the current availability given that the development occurs on the existing building footprint. However, the development does improve the quality and usability of this private open space area to meet the needs of the occupants.

The development is considered to satisfy this objective.

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

Comment

The development retains its current space for service functions, including clothes drying.

The development is considered to satisfy this objective.

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

Comment

The development has been reviewed by Council's Development Engineer who did not raise any objection to the proposal subject to conditions.

The development is considered to satisfy this objective.

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

## **D6 Access to Sunlight**

Description of non-compliance

Clause D6 requires that at least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21.

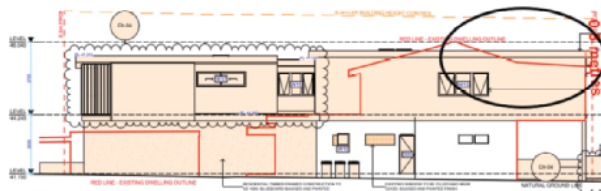
The neighbouring property to the south (No. 24 Seaview Avenue) includes two private open space areas (being a courtyard between the carport and the front of the dwelling and a garden area within the rear setback). The front courtyard includes a pit which had been excavated some time ago with an intention to install a spa pool and to-date remains uncompleted. The rear yard includes a lawn framed with hedging. The rear elevation of the dwelling also includes two decks which have access to the view of Dee Why Headland and Curl Curl Beach. Therefore, for the purposes of this assessment the principle private open space area is taken to be at the rear of No. 24 Seaview Avenue as this is where it is most likely that private outdoor activity occurs given the expansive views and that the primary living areas flow out onto this area.

It is estimated that the development overshadows the private open space of the neighbouring property at No. 24 Seaview Avenue between 9.00am and Noon by up to 58.5% (i.e. 50.9m<sup>2</sup>) at Noon. This

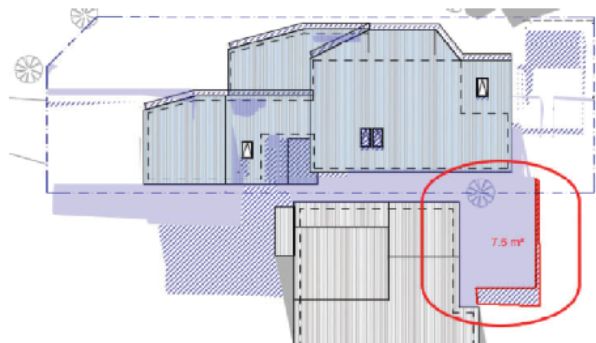


represent a variation of 17%.

It is noted that the area causing the overshadow is predominantly an existing part of the building, being the south-eastern corner. The development proposes to increase height of this corner by 0.8m through the replacement of the skillion roof to achieve a consistent gutter line. The figure below shows this element (circled in black).



The figure below shows the extent of additional shadow cast by the development (hashed) compared to that of the existing dwelling (solid) within the rear yard of No. 24 Seaview Avenue (circled in red). As can be seen, the actual extent of additional shadow within the rear yard at Noon is minimal (estimated at an additional 14.9% (7.6m<sup>2</sup>) of the existing shadow). From Noon onwards, the dwelling at No. 24 Seaview Avenue begins to self-shadow the rear yard.



#### 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 reasonable access to sunlight is maintained.***

#### Comment

As discussed above, the additional shadow cast over the rear yard of No. 24 Seaview Avenue is considered to be minor over the shadow cast by the existing dwelling. This is not considered to detrimentally impact upon the use of the ground floor lawn area because it is likely that most of the outdoor activity occurs on the elevated east-facing decks which abut the rear yard and which, in particular the upper-most deck, would not experience unreasonable additional overshadowing from the development due to their elevated nature.

In this respect, it is considered that reasonable access to sunlight within the rear yard is maintained.

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

Comment

The development replaces the existing pitched roof with a flat roof form. Although not necessarily innovative, this would reduce the visual impact of the development by reducing the overall height and scale of the building when viewed from neighbouring properties.

It is considered that the development satisfies this objective.

- ***To maximise the penetration of mid winter sunlight to windows, living rooms, and high use indoor and outdoor areas.***

Comment

As noted above, the primary living areas of the neighbouring property at No. 24 Seaview Avenue are to the rear (as this is where the main views of Dee Why Headland, Curl Curl Beach and the ocean are obtained). These high use areas will remain largely unaffected by the development, particularly between the hours of 9.00am and Noon. From Noon onwards, the dwelling begins to self-shadow the rear elevation.

It is considered that the development satisfies this objective.

- ***To promote passive solar design and the use of solar energy.***

Comment

The development does not include any detail with respect to the use of solar energy however, it does alter the northern and eastern elevations such that greater (passive) enjoyment of sunlight access can be achieved (i.e. through the incorporation of balconies) and cross-flow ventilation through the associated sliding doors which would provide more efficient cooling than is currently available.

It is considered that the development satisfies this objective.

- ***To minimise the need for artificial lighting.***

Comment

The development is sited in an elevated position due to the topography of the land and does not require artificial lighting due to its exposure to sunlight throughout the day.

It is considered that the development satisfies this objective.

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

## D7 Views

Merit consideration

Four submissions were received from the following properties which included concerns regarding view loss:

- 42 Gardere Avenue, Curl Curl.

- 19 Seaview Avenue, Curl Curl.
- 22 Seaview Avenue, Curl Curl.
- 24 Seaview Avenue, Curl Curl.

The figure below shows the origin of the submissions (shaded in red) relative to the subject site (outlined in blue).



The figure below provides a more expansive depiction of the location and view angles of all sites relative to Curl Curl Beach and Dee Why Headland.



Following an initial site inspection of 42 Gardere Avenue and 19 Seaview Avenue a request was made to erect height poles to determine the impact of the development on views.

The figure below shows the location and height of the height poles (blue dots). It is noted that the two points at the top of the image (47.60) overstate the level of the balcony awning by 0.548m (47.052). The remaining points are confirmed as accurate to the plan.



The height poles were erected on 13 February 2020 and inspections of the submitters properties occurred on 24 February 2020.

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

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

#### Comment

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

#### **1. Nature of the views affected**

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

#### Comment to Principle 1

- **42 Gardere Avenue**

No. 42 Gardere Avenue is situated at the low end of Seaview Avenue and therefore experiences more limited views. As can be seen in the photograph below, the main view is partial of the Dee Why Headland and the north end of Curl Curl Beach.

The view is heavily obstructed by existing dwellings, vegetation and power infrastructure.



View towards the site from the upper level balcony (associated with the living room). The subject site is circled in red.

- **19 Seaview Avenue**



No. 19 Seaview Avenue is located further up the slope of Seaview Avenue and therefore experiences longer views than 42 Gardere Avenue. As can be seen in the photograph below, the main view is still partial of the Dee Why Headland and the north end of Curl Curl Beach.

The view is still heavily obstructed by existing dwellings, vegetation and power infrastructure.



View north-east from the dining area (associated with the living room)



Magnified view of height poles (circled)

- **22 Seaview Avenue**

No. 22 Seaview Avenue is located one property to the south of the subject site (approximately 13m) and further up the slope of Seaview Avenue. The views experienced by 22 Seaview Avenue are extensive and unobstructed of Dee Why Headland and partially of Curl Curl Beach.

The view of Curl Curl Beach is obstructed by existing dwellings and vegetation.





View north-east from the upper balcony (associated with the living room).



View east from the upper balcony.

- **24 Seaview Avenue**

No. 24 Seaview Avenue is located to the south of the subject site and further up the slope of Seaview Avenue.

The views experienced by 24 Seaview Avenue are extensive and partially of Dee Why Headland and partially of Curl Curl Beach.

The view of Dee Why Headland and Curl Curl Beach is obstructed by existing dwellings and vegetation although an expansive view of the ocean and horizon if obtained to the east



View north-east from the upper balcony (associated with living area). The red circle indicates the location of the eastern-most height pole.



View east from the upper balcony.

District views to the north-west are obtained from the front of the dwelling.

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

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

### Comment to Principle 2

- **42 Gardere Avenue**

The view is obtained over the front boundary from an upper level balcony which services a living room. Views are obtained in both a sitting and standing position.

- **19 Seaview Avenue**

The view is obtained over the front boundary from the elevated ground floor (sited over a garage) dining room which is associated with the living room. The view is obtained from both a sitting and standing position.

- **22 Seaview Avenue**

The view is obtained over the side and rear boundary from the upper level living room and balcony. The view is obtained from both a sitting and standing position.

- **24 Seaview Avenue**

The view is obtained over the side and rear boundary from the upper level living room and balcony. The view is obtained from both a sitting and standing position.

The oblique district views to the north-west are obtained from a west-facing mezzanine balcony servicing an approved Rumpus Room, a west-facing upper floor window servicing the kitchen and a west-facing upper floor balcony servicing a bedroom.

### 3. Extent of impact

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

#### Comment to Principle 3

- **42 Gardere Avenue**

The view is to the north-east of the subject site and is therefore not affected by the development. In this respect, impact on the view is negligible.

- **19 Seaview Avenue**

The view is to the north-east of the subject site and is therefore not affected by the development. In this respect, impact on the view is negligible.

- **22 Seaview Avenue**

The view is to the north of the subject site and is therefore not affected by the development. In this respect, impact on the view is negligible.

- **24 Seaview Avenue**

The view is to the north of the subject site and is therefore not affected by the development. In this respect, impact on the view is negligible.

The district view from the mezzanine level balcony will be wholly affected by the development and is therefore devastating. However, the view from the upper floor level kitchen and bedroom will be moderate as the distant district views will remain largely uninterrupted.

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

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

##### Comment to Principle 4

The development has been found to comply with the majority of controls with exception to minor variations to building height (1.5%), wall height (15.2%), building envelope (8%) and landscaped open space (8.6%). Each of these non-compliances has been found to be consistent with the objectives of each clause and do not affect views enjoyed by the aforementioned properties. It is also noted that the development improves outlook, bulk and scale by lowering the roofline of the existing building.

In this respect, it is considered that the development has been designed to sensitively respond to view sharing and the proposal is regarded as acceptable and the view sharing reasonable.

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

##### Comment

The design alters the existing dwelling by upgrading it to a more contemporary appearance. Although not necessarily innovative, the design does alter the roof profile such that it improves visual outlook from surrounding properties through lowering.

The dwelling will also better address the street through the provision of habitable space above the enclosed garage and by replacing the secondary hardstand driveway and crossover with soft landscaping and hedging.

The development satisfies this objective.

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

##### Comment

The development is sited on the existing building footprint and does not remove any existing canopy trees.

The development is considered to satisfy this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the



Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **D8 Privacy**

### Merit consideration

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

- ***To ensure the siting and design of buildings provides a high level of visual and acoustic privacy for occupants and neighbours.***

#### Comment

Given that the rear of the property abuts three neighbouring properties, the impact on privacy is considered as follows:

The figure below illustrates the areas of potential privacy impact (outlined in red).



#### No. 40 Gardere Avenue

As seen in the figure above, the primary area of potential privacy impact occurs within the rear yard which includes a swimming pool and forms the principle private open space area. The figure below shows the view of the pool from the window of the living room on the upper floor.





The proposed rear deck occurs within the existing living room space due to the relocation of the external walls to create the deck. In this respect, the degree of overlooking remains unaltered as seen from the photograph above.

Notwithstanding, the amended landscape plan submitted with the application includes the planting of *Bambusa textilis* (Slender Weaver's Bamboo) along the north-eastern side corner of the site to provide screening from the upper storey conversion of the living room to a balcony. The proposed screen planting along the boundary adjacent to no. 40 Gardere Avenue will achieve a mature height of 8.0m and is considered to be an effective solution to screening the neighbouring swimming pool below.



The proposed balcony at the northern side of the dwelling (at the upper level) is located adjacent to the western side setback of the neighbouring property at No. 40 Gardere Avenue (as seen in the photograph above) which includes dense landscaping to limit overlooking.

No. 1 Beverley Place

The primary area of potential privacy impact occurs within the rear yard which forms the principle private open space area. The photograph below shows the view of the rear elevation of 1 Beverley place from the window of the living room on the upper floor.



As noted above, the proposed rear deck occurs within the existing living room space due to the relocation of the external walls to create the deck. In this respect, the degree of overlooking remains unaltered as seen from the photograph above.

Notwithstanding, the amended landscape plan submitted with the application includes the planting of *Bambusa textilis* (Slender Weaver's Bamboo) along the rear boundary to provide screening from the upper storey conversion of the living room to a balcony. The proposed screen planting will achieve a mature height of 8.0m and is considered to be an effective solution to supplementing the existing screening on the neighbouring property by providing increased density.

#### No. 24 Seaview Avenue

The primary area of potential privacy impact occurs within the rear yard and with the front yard.

The amended plans indicate windows along the southern facade upper level (being windows W13, W15 and W17) which overlook No. 24 Seaview Avenue.

Window W13 is replacing the existing window which currently services the kitchen. Due to the internal reconfiguration of rooms, window W13 will now service the Dining Room. Window W13 overlooks the rear yard of No. 24 Seaview Avenue from an oblique angle.

Window W15 is a new highlight window which services the ensuite of the Master Bedroom. Opportunities for overlooking from this window are unlikely given the use of the room. However, given its location forward of the neighbouring dwelling, there may be an opportunity for viewing into the ensuite from the upper levels of No. 24 Seaview Avenue (which includes the kitchen and an adjoining informal dining/study area).

Window W17 is a window included in the original design and services the upper level hallway between the Master Bedroom and the Lounge. Both windows are situated adjacent to the front yard of No. 24 Seaview Avenue and may provide passing overlooking opportunity.

Notwithstanding, a condition is imposed which requires that all windows be finished in obscure glazing to prevent overlooking into the front and rear yard of No. 24 Seaview Avenue.

The development is considered to satisfy this objective subject to condition.

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

#### Comment

The design alters the existing dwelling by upgrading it to a more contemporary appearance. Although not necessarily innovative, the design does alter the roof profile such that it improves visual outlook from surrounding properties through lowering.

The dwelling will also better address the street through the provision of habitable space above the enclosed garage and by replacing the secondary hardstand driveway and crossover with soft landscaping and hedging.

The development satisfies this objective.

- ***To provide personal and property security for occupants and visitors.***

#### Comment



The development involves alterations and additions to an existing dwelling which includes a new bedroom and balcony feature facing Seaview Avenue. Currently, the existing dwelling is sited behind carport structures which obscure passive surveillance of the street and which promote concealment. The development will address these issues by providing a habitable room and balcony above an enclosed garage, thereby affording surveillance of the street.

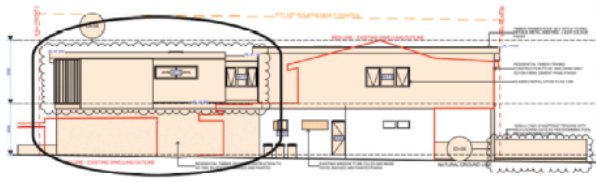
The development is considered to satisfy this objective.

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

### **D9 Building Bulk**

Submission received in response to the two public exhibition periods raise concern regarding the bulk of the building, particularly when viewed from No. 24 Seaview Avenue to the south.

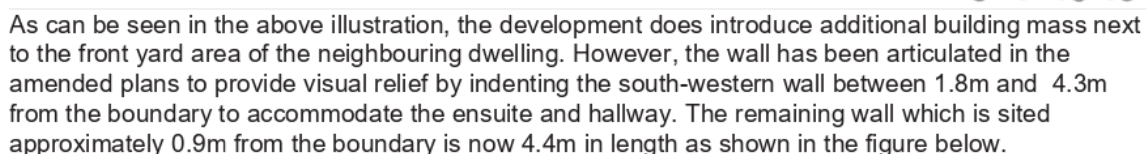
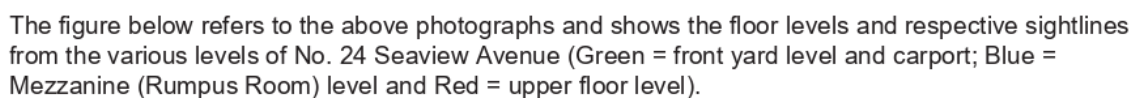
The primary area of concern relates to the new two storey element situated at the front of the existing building. The figure below shows the area of concern.



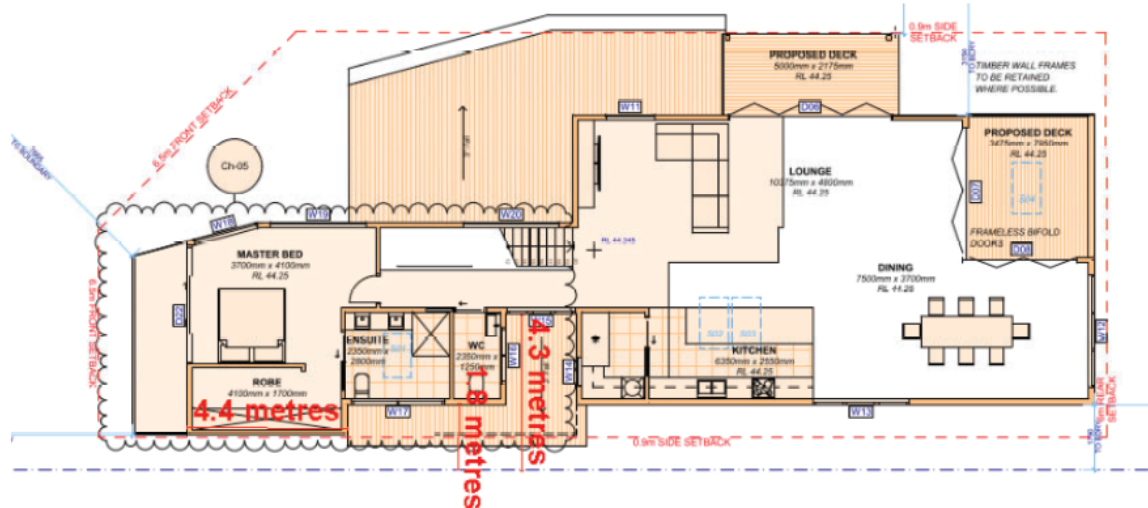
A site inspection was conducted on 24 February 2020 following the erection of height poles on the subject site. The photograph below shows the proposed building line of the forward element when viewed from west (street) facing mezzanine level balcony (which services an approved Rumpus room).



The following photograph shows the same element when viewed from the west (street) facing second floor window of the kitchen.







Given the increased articulation provided, it is considered that the development addresses the applicable requirements of the Clause in that:

- The side setback has been progressively increased as wall height increases.
- Large areas of continuous wall planes have been avoided by varying building setbacks and using appropriate techniques to provide visual relief.
- The wall has been articulated to reduce building mass.

## 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 \$10,200 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,020,000.

## CONCLUSION

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

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

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

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

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

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

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.

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 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.

Accordingly Council as the consent authority grant Development Consent to DA2019/1238 for Alterations and additions to a dwelling house including a swimming pool on land at Lot 16 DP 14366, 26 Seaview Avenue, CURL CURL, subject to the conditions printed below:

## DEVELOPMENT CONSENT OPERATIONAL CONDITIONS

**1. Approved Plans and Supporting Documentation**

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

**a) Approved Plans**

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
DA02 (Revision A) - Site Plan	05/02/2020	Action Plans
DA04 (Revision A) - Proposed Lower Ground Floor	05/02/2020	Action Plans
DA06 (Revision A) - Proposed Ground Floor Plan	05/02/2020	Action Plans
DA08 (Revision A) - Proposed First Floor Plan	05/02/2020	Action Plans
DA09 (Revision A) - Proposed Roof Plan	05/02/2020	Action Plans
DA10 (Revision A) - North/East Elevation	05/02/2020	Action Plans
DA11 (Revision A) - South/West Elevation	05/02/2020	Action Plans
DA12 (Revision A) - Long Section	05/02/2020	Action Plans
DA13 (Revision A) - Cross Sections	05/02/2020	Action Plans
DA14 (Revision A) - Pool Plan/Sections	05/02/2020	Action Plans
DA16 (Revision A) - Sample Board	05/02/2020	Action Plans

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Geotechnical Assessment (AG 19188)	21/10/2019	Ascent Geotechnical Consulting

**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:**

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
L/01 (Revision A) - Proposed Landscape Plan	27/03/2020	ATC
L/02 - Landscape Details	12/10/2019	ATC
L/03 - Landscape Specification	12/10/2019	ATC

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Waste Management Plan	22/10/2019	Not Provided

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

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

## 2. **Prescribed Conditions**

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

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

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifying Authority for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.
- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such damage.
  - (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention

- to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

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

Reason: Legislative requirement.

### 3. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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



- (h) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (i) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (j) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (k) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

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

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2008
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 4. Policy Controls

#### Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$10,200.00 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 \$1,020,000.00.

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](http://www.northernbeaches.nsw.gov.au)

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

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

### 5. Security Bond

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

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

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

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

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

**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION  
CERTIFICATE****6. Stormwater Disposal**

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

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

**7. Amendments to the approved plans**

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

(a) Privacy Treatments

Windows W13, W15 and W17 are to be finished with obscure glazing to prevent overlooking of the neighbouring property at No. 24 Seaview Avenue.

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

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

**8. 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. Structural Adequacy and Excavation Work**

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

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

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

Reason: To provide public and private safety.

10. **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.

11. **Compliance with Standards**

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

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

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

12. **External Finishes to Roof**

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

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

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

13. **Sydney Water "Tap In"**

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

**CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

14. **Tree protection**

- (a) Existing trees which must be retained



- i) All trees not indicated for removal on the approved plans, unless exempt under relevant planning instruments or legislation
  - ii) Trees located on adjoining land
- (b) Tree protection
- i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by a qualified Arborist on site.
  - ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by a qualified Arborist on site.
  - iii) All tree protection to be in accordance with AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.
  - iv) All tree pruning within the subject site is to be in accordance with WDCP2011 Clause E1 Private Property Tree Management and AS 4373 Pruning of amenity trees
  - v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

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

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

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

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

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

16. **Road Reserve**

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

Reason: Public Safety.

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

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

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

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



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

Prior to any works commencing on site, including demolition, sediment and erosion controls must be installed in accordance with Landcom's 'Managing Urban Stormwater: Soils and Construction' (2004). Techniques used for erosion and sediment control on site are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and the site is sufficiently stabilised with vegetation.

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

19. **Vehicle Crossings**

The Applicant is to construct one vehicle crossing 4.0 metres wide in accordance with Northern Beaches Council Drawing No A4-3330/4 EH 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.

20. **Protection of rock and sites of significance**

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

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

Reason: Preservation of significant environmental features.

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

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

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

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

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

22. **Stormwater Disposal**

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

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

**23. 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.

**24. Required Planting**

Trees shall be planted in accordance with the following schedule:

Minimum No. of Trees Required.	Species	Location	Minimum Pot Size
1	Tree capable of attaining a minimum height of 5 metres at maturity	Front yard	200mm

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

Reason: To maintain environmental amenity.

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

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

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

Reason: To ensure bushland management. (DACPLF01)

**26. 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.

**27. Swimming Pool Requirements**

The Swimming Pool shall not be filled with water nor be permitted to retain water until:

(a) All required safety fencing has been erected in accordance with and all other requirements have been fulfilled with regard to the 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

(b) A certificate of compliance prepared by the manufacturer of the pool safety fencing, shall be submitted to the Principal Certifying Authority, certifying compliance with Australian Standard 1926.

(c) Filter backwash waters shall be discharged to the Sydney Water sewer mains in accordance with Sydney Water's requirements. Where Sydney Water mains are not available in rural areas, the backwash waters shall be managed onsite 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. Appropriate instructions of artificial resuscitation methods.

(d) A warning sign stating '**YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS POOL**' has been installed.

(e) Signage showing resuscitation methods and emergency contact

(f) All signage shall be located in a prominent position within the pool area.

(g) Swimming pools and spas must be registered with the *Division of Local Government*.

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

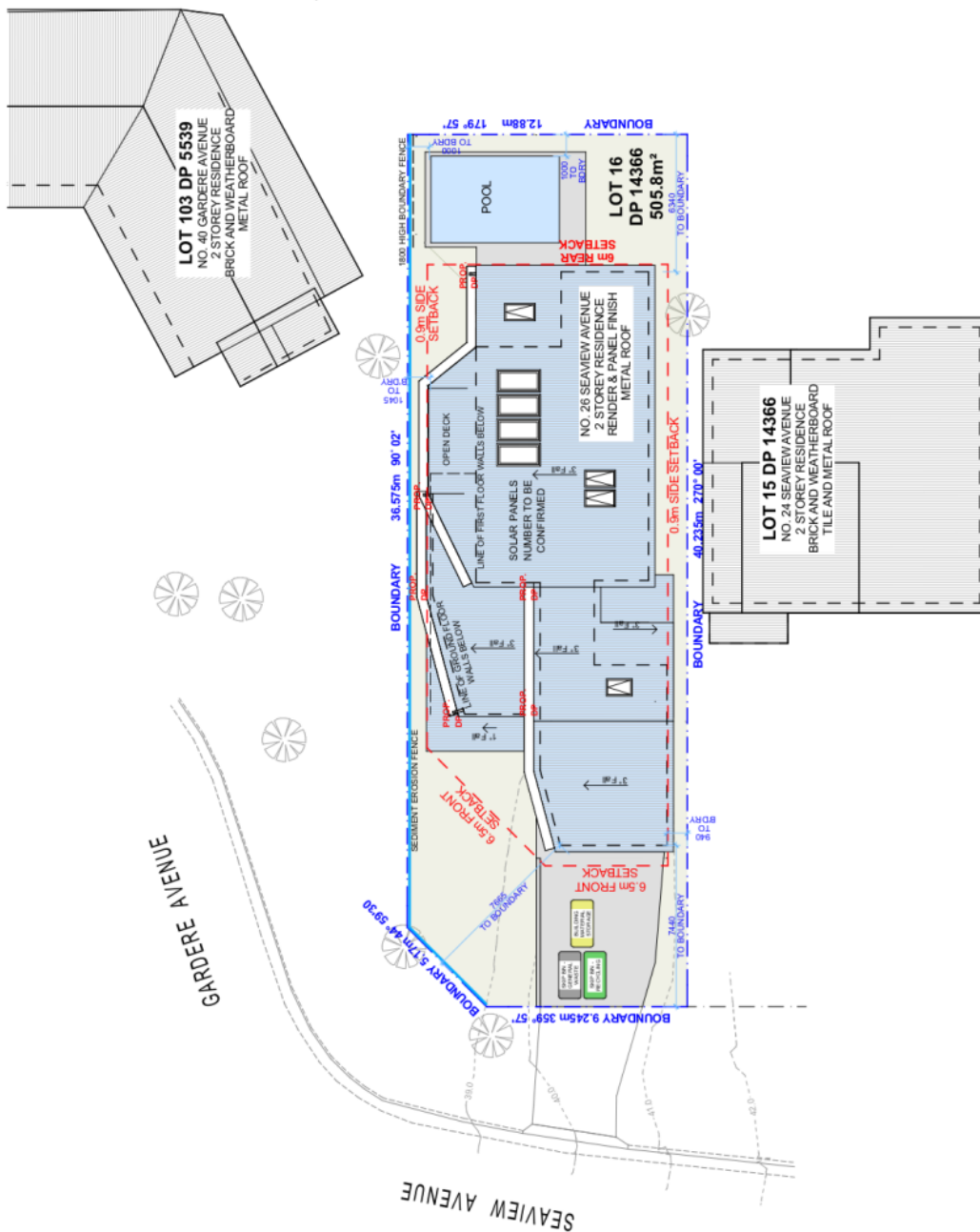
Reason: To protect human life (DACPLF09)

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

28. **No Planting Environmental Weeds**

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

**Reason:** Weed management.

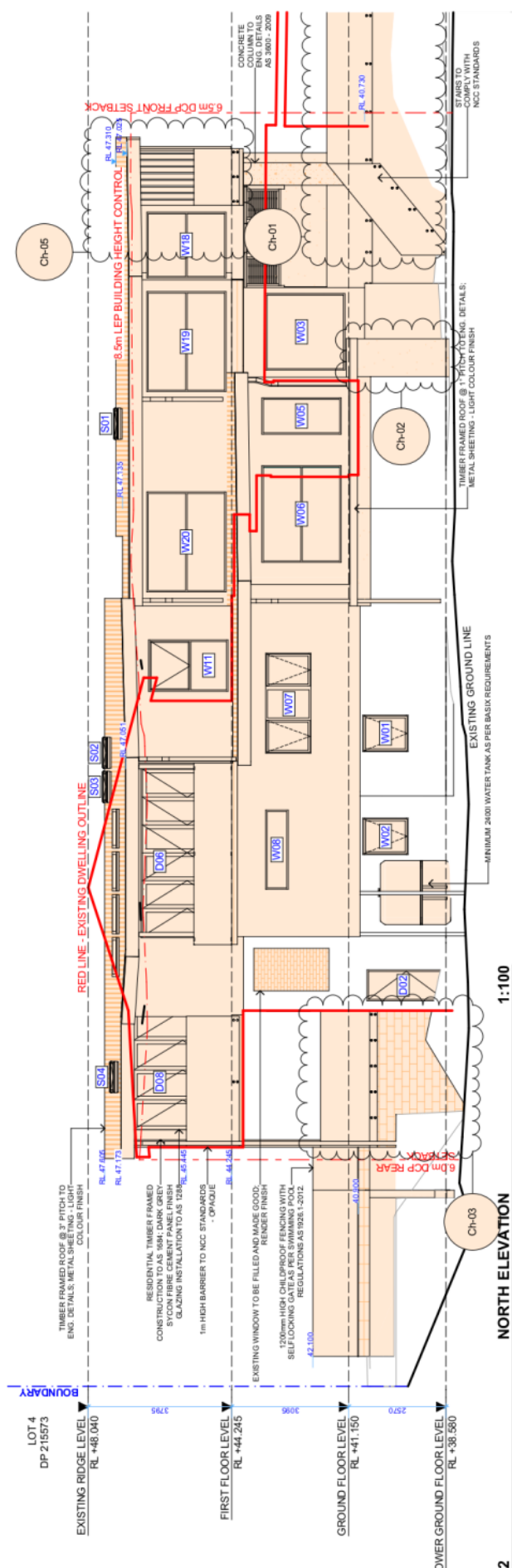
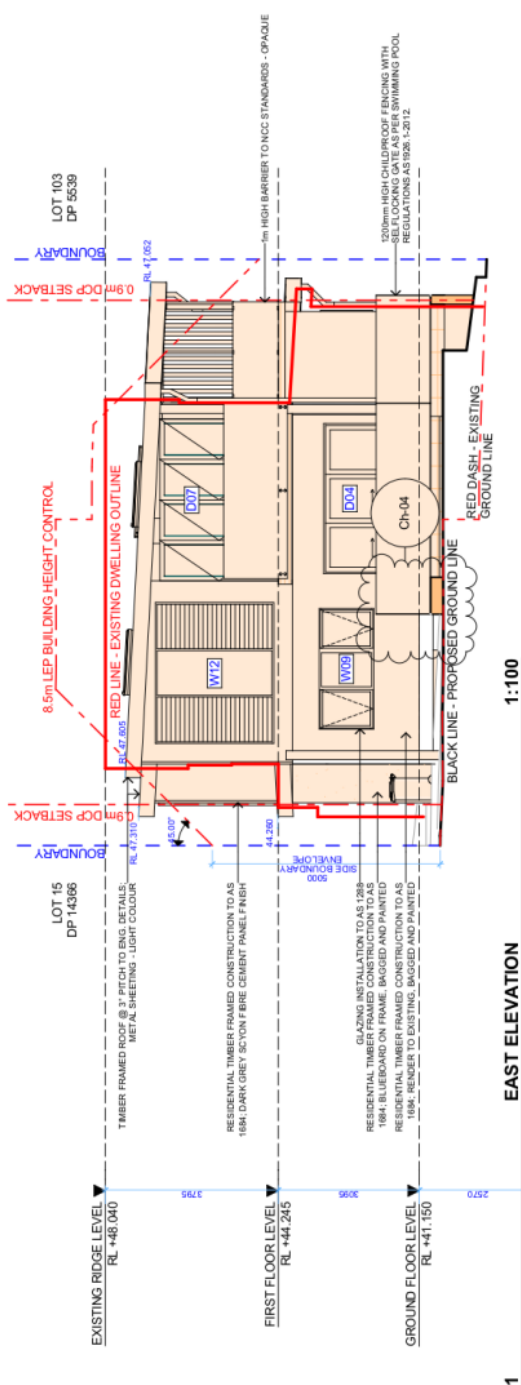


<p><b>DUST CONTROL :</b></p> <p>TO REDUCE DUST GENERATED BY WIND ACTION, THE REMOVAL OF THE TOP SOIL IS TO BE MINIMISED. TO PREVENT THE WIND BLOWING UP DUST PARTICLES FROM THE SITE, ESPECIALLY DURING THE EXCAVATING OF ROCK, KEEP THE SURFACE MOIST TO MINIMISE DUST. CONSTRUCT A GRAVEL ENTRY/EXIT POINT USING BLUE METAL AND RESTRICT ALL VEHICLE MOVEMENTS WITHIN THE SITE TO A MINIMUM. ENSURE WIND BREAKS, SUCH AS EXISTING FENCES ARE MAINTAINED DURING THE CONSTRUCTION PHASE UNTIL NEW LANDSCAPING IS PROVIDED OR REINSTATED. PREVENT DUST BY COVERING STOCKPILES</p> <p><b>SEDIMENT NOTE :</b></p> <p>1. ALL EROSION AND SEDIMENT CONTROL MEASURES TO BE INSPECTED AND MAINTAINED DAILY BY THE SITE MANAGER.</p> <p>2. MINIMISE DISTURBED AREAS. REMOVE EXCESS SOIL FROM EXCAVATED AREAS SOON AS POSSIBLE.</p> <p>3. CLIMBING PLANTS, SUCH AS CREEPERS, OR WITHIN DRAINS, GUTTERS AND FOOTPATHS, OR WITHIN SEDIMENT FENCE AREA.</p> <p>4. DRAINAGE TO BE CONNECTED TO STORMWATERS AS SOON AS POSSIBLE. IF STORED ON SITE, IT MUST BE FILTERED BEFORE RELEASING INTO STORMWATER SYSTEM OR WATERWAYS.</p> <p>5. ROADS AND FOOTPATHS TO BE SWEPT DAILY.</p> <p><b>STOCKPILES :</b></p> <p>ALL STOCKPILES ARE TO BE KEPT ON-SITE WHERE POSSIBLE. ANY MATERIALS PLACED ON THE FOOTPATHS OR NATURE STRIPS REQUIRE COUNCIL'S PERMISSION.</p> <p>ALL STOCKPILES ARE TO BE PLACED AWAY FROM THE DRAINAGE LINES AND STREET GUTTERS. IT IS BEST TO LOCATE THESE ON THE HIGHEST PART OF THE SITE. WHERE POSSIBLE, PLACE WATERPROOF COVERING OVER STOCKPILES.</p> <p>IF REQUIRED, PROVIDE DIVERSION DRAIN &amp; BANK AROUND STOCKPILES.</p> <p><b>GUTTER PROTECTION :</b></p> <p>PROVIDE PROTECTION TO DOWNHILL GRATE IN WATERED MEN OF SAND BAGS OR OTHER METAL WALLS IN GUTTERS TO PREVENT EXCESS SAND BUILDING UP AROUND THIS SEDIMENT BARRIER. THE MATERIAL SHOULD BE RELOCATED BACK TO THE SITE FOR DISPOSAL.</p> <p><b>NOTE: ALL PROPOSED STORMWATER TO CONNECT WITH EXISTING</b></p>	<p><b>DUST CONTROL :</b></p> <p>TO REDUCE DUST GENERATED BY WIND ACTION, THE REMOVAL OF THE TOP SOIL IS TO BE MINIMISED. TO PREVENT THE WIND BLOWING UP DUST PARTICLES FROM THE SITE, ESPECIALLY DURING THE EXCAVATING OF ROCK, KEEP THE SURFACE MOIST TO MINIMISE DUST. CONSTRUCT A GRAVEL ENTRY/EXIT POINT USING BLUE METAL AND RESTRICT ALL VEHICLE MOVEMENTS WITHIN THE SITE TO A MINIMUM. ENSURE WIND BREAKS, SUCH AS EXISTING FENCES ARE MAINTAINED DURING THE CONSTRUCTION PHASE UNTIL NEW LANDSCAPING IS PROVIDED OR REINSTATED. PREVENT DUST BY COVERING STOCKPILES</p> <p><b>SEDIMENT NOTE :</b></p> <p>1. ALL EROSION AND SEDIMENT CONTROL MEASURES TO BE INSPECTED AND MAINTAINED DAILY BY THE SITE MANAGER.</p> <p>2. MINIMISE DISTURBED AREAS. REMOVE EXCESS SOIL FROM EXCAVATED AREAS SOON AS POSSIBLE.</p> <p>3. CLIMBING PLANTS, SUCH AS CREEPERS, OR WITHIN DRAINS, GUTTERS AND FOOTPATHS, OR WITHIN SEDIMENT FENCE AREA.</p> <p>4. DRAINAGE TO BE CONNECTED TO STORMWATERS AS SOON AS POSSIBLE. IF STORED ON SITE, IT MUST BE FILTERED BEFORE RELEASING INTO STORMWATER SYSTEM OR WATERWAYS.</p> <p>5. ROADS AND FOOTPATHS TO BE SWEPT DAILY.</p> <p><b>STOCKPILES :</b></p> <p>ALL STOCKPILES ARE TO BE KEPT ON-SITE WHERE POSSIBLE. ANY MATERIALS PLACED ON THE FOOTPATHS OR NATURE STRIPS REQUIRE COUNCIL'S PERMISSION.</p> <p>ALL STOCKPILES ARE TO BE PLACED AWAY FROM THE DRAINAGE LINES AND STREET GUTTERS. IT IS BEST TO LOCATE THESE ON THE HIGHEST PART OF THE SITE. WHERE POSSIBLE, PLACE WATERPROOF COVERING OVER STOCKPILES.</p> <p>IF REQUIRED, PROVIDE DIVERSION DRAIN &amp; BANK AROUND STOCKPILES.</p> <p><b>GUTTER PROTECTION :</b></p> <p>PROVIDE PROTECTION TO DOWNHILL GRATE IN WATERED MEN OF SAND BAGS OR OTHER METAL WALLS IN GUTTERS TO PREVENT EXCESS SAND BUILDING UP AROUND THIS SEDIMENT BARRIER. THE MATERIAL SHOULD BE RELOCATED BACK TO THE SITE FOR DISPOSAL.</p> <p><b>NOTE: ALL PROPOSED STORMWATER TO CONNECT WITH EXISTING</b></p>
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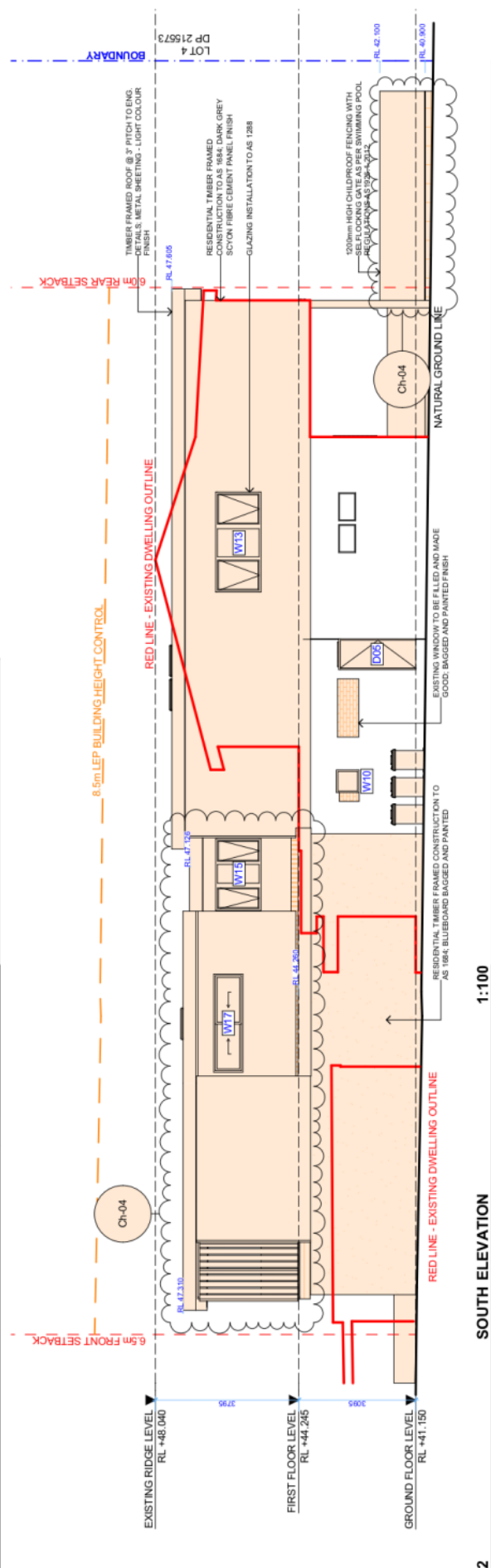
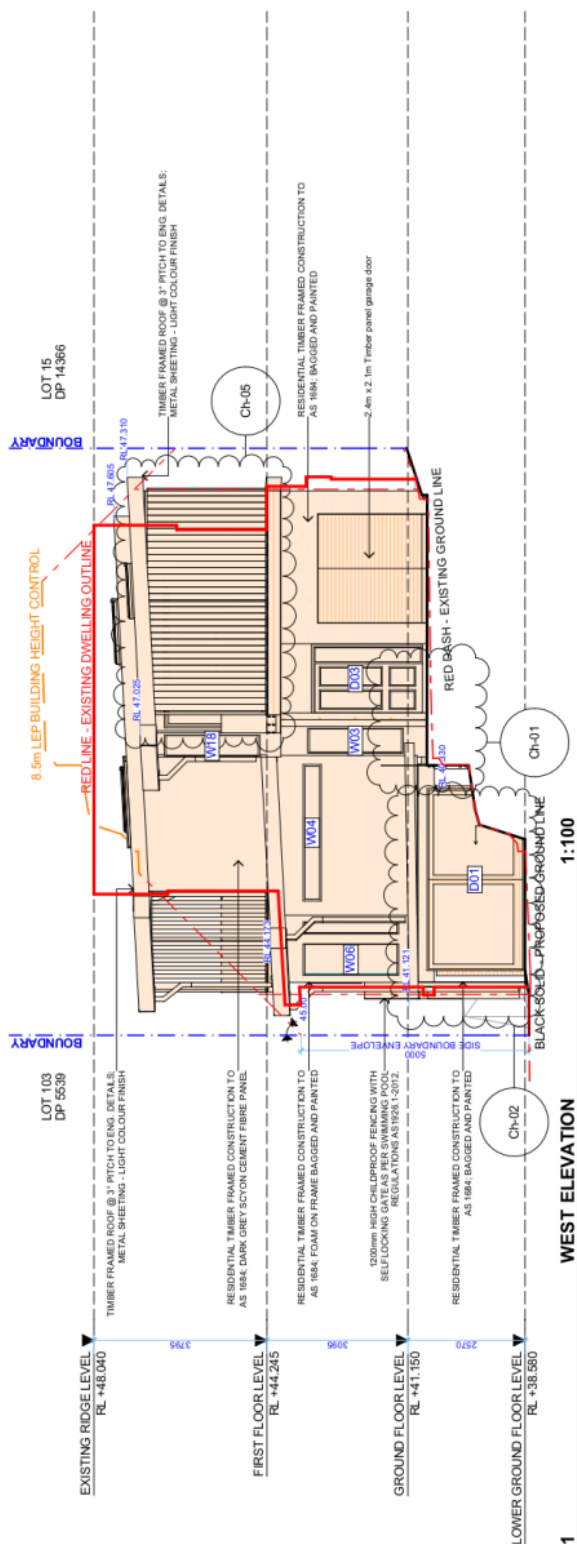
**1 SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN 1:200**

<p><b>ACTION PLANS</b></p> <p>m: 0426 957 518 e: operations@actionplans.com.au w: www.actionplans.com.au</p>	<p><b>REV.</b> <b>DATE</b> <b>COMMENTS</b> <b>DRWN</b></p> <p>A 06/03/20 RMA</p>	<p><b>NOTES</b></p> <p>This drawing is the copyright of Action Plans and not be altered, reproduced or transmitted in any form or by any means, electronic or mechanical, without written permission of Action Plans.</p> <p>All levels and dimensions are to be checked and confirmed on site before any work commences. If any discrepancies are found, make of shop drawings or fabrication of components.</p> <p>Do not scale on drawings. Use legged dimensions.</p>	<p><b>LEGEND</b></p> <p>PROPOSED EXISTING DEMOLISHED</p>	<p><b>CUSTOMER</b></p> <p>ROBBIE BEMPASCUOTI</p> <p><b>PROJECT ADDRESS</b></p> <p>26 SEAVIEW AVENUE, CURL CURL NSW 2096</p>	<p><b>DRAWING NO.</b></p> <p><b>DA02</b></p> <p><b>DATE</b></p> <p>Friday, March 20, 2020</p>	<p><b>DRAWING NAME</b></p> <p>SITE / ROOF / SEDIMENT EROSION / WASTE MANAGEMENT / STORMWATER CONCEPT PLAN</p> <p><b>SCALE</b></p> <p>1:200 @A3</p>
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REV.	DATE	COMMENTS	DRWN
A	05/02/20	HEIGHT POLES	RINA



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**NOTES**

**LEGEND**

PROPOSED  
EXISTING  
DEMOLISHED

**CLIENT**  
ROBBIE BEMPASCUITO

**PROJECT ADDRESS**  
26 SEAVIEW AVENUE,  
CURL CURL NSW 2096

DRAWING NO.	DRAWING NAME
DA11	SOUTH / WEST ELEVATION

SCALE  
1:100 @A3

## Appendix 1 - Clause 4.6 – Exceptions to Development Standards

### 1. Introduction

Clause 4.6 of the Waringah Local Environmental Plan 2011 (WLEP 2011) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) being:

- (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 aims and objectives of the Waringah LEP 2011 Clause 4.6 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.*

Under Clause 4.6(3) and (4) of the WLEP 2011, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

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

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

*(4)(a)(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,*

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

It is of interest that the consent authority specifies a number of development standards that cannot be varied under Clause 4.6, listed in Clause 4.6(8). Clause 4.3 - Height of buildings is not one of the standards excluded, it must therefore be assumed that the standard for height of buildings, is one of the development standards that can have an appropriate degree of flexibility applied under clause 4.6.



## **2. Environmental Planning Instrument Details (Warringah LEP 2011)**

### ***2.1 What is the name of the environmental planning instrument that applies to the land?***

Warringah Local Environmental Plan 2011

### ***2.2 What is the zoning of the land?***

R2 Low Density Residential

### ***2.3 What are the objectives of the zone?***

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

### ***2.4 What is the development standard being varied?***

The height control under clause 4.3 of the WLEP11 requires a maximum height of 8.5 metres for the subject site.

### ***2.5 Under what clause is the development standard listed in the environmental planning instrument?***

Clause 4.3 – Height of Buildings

### ***2.6 What are the objectives of the development standard?***

*(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.*



***2.7 What is proposed numeric value of the development standard in the environmental planning instrument?***

The numeric value of the height of buildings development standard applicable to the subject site is a maximum of 8.5m.

***2.8 What is the numeric value of the development standard in your development application?***

The numeric value proposed is 8.63 metres

***2.9 What is the percentage variation (between your proposal and the environmental planning instrument)?***

The percentage variation sought is 1.6% or 0.13 metres





### 3. NSW Land and Environment Court Case Law

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

#### 3.1 *Wehbe v Pittwater* [2007] NSW LEC 827

The decision of Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).*
5. *The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone (Fifth Way).*

In the *Micaul* decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

#### 3.2 *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LE

In the matter of *Four2Five Pty Ltd v Ashfield Council* [2015] NSW LEC, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe v Pittwater* [2007] NSW LEC 827 and demonstrate the following:



1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

### 3.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In Randwick City Council v Micaul Holdings, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

### 3.4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;
2. The consent authority must be satisfied that the proposed development will be consistent with the objects of the standard which is not met; and
3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone



objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.



#### 4. Consideration

The following section addresses the provisions of clause 4.6 of the LCLEP 2009 together with principles established in the NSW Land and Environment Court Case Law outlined above.

**Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?**

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered: b

The five ways outlined in *Wehbe* include:

##### 4.1 Five (5) Part Test - *Wehbe v Pittwater*

##### 1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*

The Objectives of the standard are:

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

The proposed alterations and additions to the building are appropriate to the site and will fit with the bulk and scale of both the site and the immediate locality. The existing dwelling has a non-complaint maximum height of 9.5 metres and this will be reduced as a result of the proposal to a maximum height of 8.63metres. The proposal is of a similar scale to surrounding properties.

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

The proposed additions have a minimal visual impact, in that they are consistent with the existing built form on the site. The building height non-compliance will be visible along the northern elevation, as a result of the three storey element of the dwelling and the slope of the site.

The proposed alterations and additions will retain the existing levels for the lower ground floor, ground floor and first floor and therefore will generally maintain the existing bulk and scale when viewed from Seaview Crescent and Gardere Avenue, retaining a compatible scale to the street.



The proposed development does not result in loss of privacy or loss of solar access for neighbours or the subject site. Some view loss will be experienced by No. 24 Seaview Avenue to the north and north east, however this is not a result of the height variation. The proposed height in this location (southern elevation) is compliant with the 8.5 metre control.

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

The alterations and additions will result in a dwelling which will remain in character with its surrounds and the streetscape. The coastal locality will remain reflected in the character of the site and the scenic quality of the area will be positively contributed to as a result of the development proposed.

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

The site and the development are not visible from any significant public places other than Seaview Avenue and Gardere Avenue, from which it will be an attractive addition.

***2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).***

This exception to development standards request does not rely on this reason.

***3. The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).***

This exception to development standards request does not rely on this reason

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

This exception to development standards request does not rely on this reason.

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

This exception to development standards request does not rely on this reason.





This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the height of buildings control pursuant to the First Way outlined in Wehbe.

In addition, strict compliance is considered unreasonable and unnecessary as the proposed development complies with the maximum building height control for the vast majority of the development. A variation is justifiable in this case, as the existing building height is non-compliant at 9.5 metres and the proposed development will result in a reduced maximum building height of 8.63 metres. This is a very minor exceedance and the proposed built form is aesthetically pleasing, consistent with the existing dwelling

Thus it is considered that compliance with Clause 4.6(3)(a) is satisfied.

**4.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?**

There are sufficient grounds to permit the variation of the development standard. In particular:

- The proposed variation is very minor 0.13 metres or 1.6%.
- The area of the exceedance does not present a dominant built form to the street.
- It has no impact on solar access or privacy of neighbouring sites
- It is compatible in scale to surrounding properties

**4.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.**

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below:

**Zone – R2 Low Density Residential**

**Objectives of zone**

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

The improvements to the existing dwelling are consistent with this aim.

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



This is not applicable to the existing detached dwelling.

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

The landscaped setting will be improved with the alterations and additions to the dwelling that are proposed. In particular the removal of the second driveway will provide a larger landscaped area fronting Seaview Avenue and Gardere Avenue.

Despite the proposal seeking an exception to the building height clause, the bulk and scale of the building will have minimal effects as it represents a minor exceedance and is consistent with surrounding development.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see Cl 4.6(3)(A)) and objectives for development within the zone.

**4.4 Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,**

The non-compliance will not raise any matter of State or Regional Significance.

**4.5 Clause 4.6(5)(b) the public benefit of maintaining the development standard,**

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

**4.6 Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence**

**4.7 How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.**

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

*(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.*

Strict compliance with the 8.5 metre height development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

The proposed development is for alterations and additions to an existing dwelling house on land zoned R2 – Low Density Residential.

The proposed non-compliance is minor and is a result of the sloping nature of the site. The proposed works result in a lesser non-compliance than currently exists. Overall the proposed development does not present with excessive bulk and is of a consistent scale to surrounding properties.

<b>ITEM 3.5</b>	<b>DA2019/1129 - 39 CABBAGE TREE ROAD, BAYVIEW - CONSTRUCTION OF A REHABILITATION GYM</b>
<b>REPORTING MANAGER</b>	<b>Matthew Edmonds</b>
<b>TRIM FILE REF</b>	<b>2020/256987</b>
<b>ATTACHMENTS</b>	<b>1 Assessment Report 2 Site Plan &amp; Elevations</b>

### **PURPOSE**

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

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### **RECOMMENDATION OF DEVELOPMENT ASSESSMENT MANAGER**

THAT Council as the consent authority **approve** Development Consent to DA2019/1129 for construction of a rehabilitation gym on land at Lot 2 DP 531960, 39 Cabbage Tree Road, Bayview, subject to the conditions outlined in the Assessment Report.

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2019/1129
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<b>Responsible Officer:</b>	Kent Bull
<b>Land to be developed (Address):</b>	Lot 2 DP 531960, 39 Cabbage Tree Road BAYVIEW NSW 2104
<b>Proposed Development:</b>	Construction of a rehabilitation gym
<b>Zoning:</b>	RE2 Private Recreation
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Delegation Level:</b>	DDP
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Janine Elizabeth Crawford
<b>Applicant:</b>	Turnbull Planning International Pty Ltd

<b>Application Lodged:</b>	14/10/2019
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Other
<b>Notified:</b>	28/10/2019 to 11/11/2019
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	6
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 1,885,000.00
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### PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for the construction of a rehabilitation gym. In particular, the works include:

- 3-level building comprising of the following:
  1. At Ground Floor, a new driveway connecting to an open parking area for 10 vehicle parking spaces, bicycle parking, bin storage area, water tank and building entry.
  2. At Level 1, a main gym hall (107m<sup>2</sup>), with a lounge area, separate change room, shower and toilet facilities for both mens and ladies, 1 unisex/disabled change, shower and toilet room, 1 unisex staff toilet, staff room, plant room, external access stairs to ground floor as well as a main entry area.



3. At Level 2, an exercise room (57m<sup>2</sup>), foyer lounge, a disabled toilet, two separate ambulant toilets, an office, a foyer lounge, an outdoor terrace and a landscaped 'green roof'.

- Internal access stairs and lift facilities to all levels.
- A maximum building capacity of the recreation facility is 50 persons, of which approximately 20 to 30 persons would be users (that is, clientele) of the facilities offered in the premises at any one time.
- Proposed operating hours 8.00am to 6.30pm, Monday to Saturday.
- Tree removal and associated landscaping works.

## 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 - Zone RE2 Private Recreation  
Pittwater Local Environmental Plan 2014 - 7.1 Acid sulfate soils  
Pittwater Local Environmental Plan 2014 - 7.3 Flood planning  
Pittwater 21 Development Control Plan - B3.9 Estuarine Hazard - Business, Light Industrial and Other Development  
Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements  
Pittwater 21 Development Control Plan - B8.6 Construction and Demolition - Traffic Management Plan  
Pittwater 21 Development Control Plan - C2.11 Signage  
Pittwater 21 Development Control Plan - C2.15 Car/Vehicle/Boat Wash Bays  
Pittwater 21 Development Control Plan - D9.1 Character as viewed from a public place  
Pittwater 21 Development Control Plan - D9.6 Front building line

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 2 DP 531960 , 39 Cabbage Tree Road BAYVIEW NSW 2104
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**Detailed Site Description:**

The site has a legal description of Lot 2 in DP 531960, and is commonly known as 39 Cabbage Tree Road, Bayview. The site is a triangular shaped lot located on the southern side of Cabbage Tree Road, with a frontage (northern boundary) of 77.23m, a south western boundary of 38.25m, a south eastern boundary 54.84m, and a surveyed area of 980.2sqm. The site is currently vacant of any built structures. It falls within the RE2 Private Recreation zone, and within the Mona Vale locality under the Pittwater DCP.

There is a gradual fall from north to south, and a water course running nearly parallel with the south eastern boundary, mainly on the adjoining golf course, but also on the subject site in the southern corner. There is also a water course (or drainage channel) running roughly parallel with the front boundary, between the road and the subject site, which joins into the southern watercourse to the east of the site.

The site is well vegetated, with a row of mature Casuarina trees running along the front boundary, and other mature trees including Cabbage-tree palms and Eucalyptus robusta as well a ground cover located on site.

The site is surrounded entirely to the south by the adjacent golf course. The golf course maintenance depot is adjacent to the west. There are detached dwellings on R2 Low density residential zoned land directly across the road to the north.

Map:



**SITE HISTORY**

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

20 December 2010

Application R0002/10 for the rezoning of the site from Zone No. 6(b) Private Recreation "B" to Zone No. 2(a) Residential "A" under Pittwater Local Environmental Plan 1993 was refused by Council.

27 June 2013

Development Application N0045/12 for Construction of an Affordable Rental Housing development (attached dual occupancy) and strata subdivision was refused by Council.

15 February 2016

Development Application N0085/14 for Construction of 2 serviced self-care housing dwellings under SEPP Housing for Seniors or People with a Disability 2004 and strata subdivision into two lots was refused by Council.

21 December 2018

Development Application DA2018/0567 for Construction of a recreation facility (indoor) comprising a two (2) lane commercial swimming pool and gym with associated facilities, car parking and landscaping was refused by Council.

25 May 2019

Pre-lodgement meeting PLM2019/0097 was held between the applicant and Council to discuss the the construction of a recreation Facility (indoor) at 39 Cabbage Tree Road, Bayview.

**APPLICATION HISTORY**

On 14 October 2019, the subject application was lodged by Council.

On 11 December 2019, confirmation was received that the notification sign had been erected on site.

On 6 March 2020, amended civil and architectural plans were presented to Council. In particular, the amended plans sought to address issues relating to the proposed layback area, pedestrian footpaths and for clarification concerning the external finishes raised by the previous assessing officer.

On 14 April 2020, a referral response was received from the Natural Resources Access Regulator.

On 28 April 2020, the assessing officer and Manager of Development Assessment undertook an inspection of the site.

**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	See discussion on "Environmental Planning Instruments" in this report.



Section 4.15 Matters for Consideration'	Comments
instrument	
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for residential purposes for an extended period of time. The proposed development retains the residential use of the site, and is not considered a contamination risk.
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&amp;A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 50(1A)</u> of the EP&amp;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&amp;A Regulation 2000 allow Council to request additional information. Additional information was requested in relation to an updated BCA Report, and amendments to works located in the road reserve as well as to the schedule of finishes.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;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&amp;A Regulation 2000 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p> <p><u>Clause 143A</u> of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building</p>

Section 4.15 Matters for Consideration'	Comments
	designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> 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) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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 6 submission/s from:

Name:	Address:
Mrs Julie Ann Van Den Bosch	1 Annam Road BAYVIEW NSW 2104
Mr Michael Deitert Van Den Bosch	44 Cabbage Tree Road BAYVIEW NSW 2104
Mr James William Matthews Mrs Marie Ann Matthews	48 Cabbage Tree Road BAYVIEW NSW 2104
Mr Andrew Norman Tiede	50 A Cabbage Tree Road BAYVIEW NSW 2104
Mrs Cynthia Leabres Ryken	46 Cabbage Tree Road BAYVIEW NSW 2104



Name:	Address:
Bayview Golf Club Ltd	Po Box 312 MONA VALE NSW 1660

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

- Inconsistency with the public interest and social impact

Comment:

Concerns were raised in submissions received from adjacent property owners with regards to the proposal not being in the 'public interest'. Comments were also raised with regards to the 'social impact' of the proposal as well as the social objectives for the community. The assessment of the proposal has taken into consideration the public interest and the social impact of development under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EPA Act). Consideration has been given that the proposal is consistent with the aims of the PLEP 2014 including those in relation to and 'promote the health and well-being of current and future residents of Pittwater' as well as to 'meet the economic and employment needs of the community both now and in the future'. Furthermore, the site is within Zone RE2 Private Recreation under the PLEP 2014 that establishes objectives such as those to 'enable land to be used for private open space or recreational purposes'. In consideration of the above, no matters have arisen in this assessment that would justify the refusal of the application in the public interest and proposed development is not seen to have a detrimental social impact in the locality.

- Environmental impacts

Comment:

Submissions were received from adjoining and adjacent property owners raising concerns with regards to impact on flora and fauna, construction impacts on trees as well as impacts on waterways arising from sediment discharge and risks associated with disturbing acid sulfate soils. With regard to these concerns Council's Natural Environment – Biodiversity division have reviewed the proposal's compliance against the relevant provisions of the PLEP 2014, P21 DCP and the NSW Biodiversity Conservation Act 2016 (BC Act 2016), concluding that no objections were raised to the proposed development as presented, subject to conditions. Council's Environmental Health unit has also reviewed and supported this application as it related to Acid Sulfate Soils, without any further conditions. Further no objections to the proposal were raised by the Natural Resources Access Regulator (formerly the Department of Industry - Water) of the NSW Government. Detailed commentary from Council's Natural Environment – Biodiversity division is provided in the 'Referrals' section of this report.

- Design compatibility within a residential area

Comment:

Submissions were received from adjoining and adjacent property owners raising concerns with regards to the visual impact on the streetscape and desired character of the area, with an architectural style being 'industrial' in appearance and incorporating car parking on the ground floor. Council's Urban Designer was referred the application to review and provide comments in relation to the architectural appearance. Following clarification being received from the applicant with regards to material finishes, Council Urban Designer provided support for the application. It should be noted, that while not specifically raised in the submissions, the proposal is seen to be technically non-compliant with Clause D9.6 Front building line of the Pittwater 21 Development Control Plan (P21 DCP), with the proposed setback of 5m from the front boundary being inconsistent with the requirement of 6.5m. The application has been considered to comply with

the outcomes of Clause D9.1 Character as viewed from a public place of the P21 DCP. Refer each clauses within this report for further discussion.

- Viability of proposed operations due to proximity with similar facilities

Comment:

Concerns were raised in submissions received from adjoining and adjacent property owners with regards to economic viability of proposed operations due to proximity with similar facilities. Comments were also raised that the development may ultimately result in negative economic impact on the local community. Supporting information received by the applicant detailed that with the exception of one (1) other gym ('Place of Chi') that there were no other gyms located within a 1.0km radius of the subject site. Whilst it is clear that a number of gyms are located within the suburbs of Mona Vale and Warriewood, it is not evident that similar facilities are currently available in Bayview. Consideration has been given that the proposal is not seen to have a detrimental economic impact on the locality.

- Permissibility of the proposed 'rehabilitation gym'

Comment:

Concerns were raised in submissions received from adjacent property owners with regards to the permissibility of the proposed 'rehabilitation gym'. Comments were also raised with regards to future amendments to the development to enlarge the scope of works and with regards to competition with similar facilities. The submitted Statement of Environmental Effects proposes that the development is to be used as a rehabilitation gym. Gymnasium's are listed as a use under the definition of 'recreation facility (indoor)', and is therefore permissible with consent in a RE2 Private Recreation zone under the PLEP 2014. Should this application be approved, to ensure the compliance of the development a condition is recommended in order to clarify that the site is not to be used for anything other than for the purposes of a 'rehabilitation gym'.

- Flooding impacts and safety

Comment:

Submissions were received from adjoining and adjacent property owners raising concerns with regards to flooding impacts and in particular, the proposal's suitability for seniors, evacuation and emergency protocols, car parking on the ground level and the flow of floodwaters and drainage. In response to these concerns, Council's Natural Environment Unit – Flooding has reviewed the application detailing that the proposal generally meets the flood requirements of the Pittwater LEP 2014 (PLEP 2014), P21 DCP and Flood Prone Land Design standards. Conditions have however been recommended in order to protect property and occupants from flood risk. Detailed commentary from Council's Natural Environment Unit - Flooding is provided in the 'Referrals' section of this report.

- Car parking and traffic concerns

Comment:

Submissions were received from adjoining and adjacent property owners raising concerns with regards to the adequacy of vehicle parking, increasing traffic and the impacts of installing kerb and guttering fronting Cabbage Tree Road. Both Council's Traffic Engineer and Council's Development Engineer have reviewed the proposal as it relates to these concerns, supporting the application subject to conditions. Comments from Council's Traffic Engineer clearly indicate that a 'kerb and gutter is required along the full frontage of No.39 Cabbage Tree Road' and that provisions for a concrete footpath needs to consider both pedestrians and cyclist usage. Whilst

it is understood that the properties opposite may currently benefit from utilising the southern side of Cabbage Tree Road (fronting the subject site) for the purposes of visitor and delivery parking, on-street parking cannot typically be relied upon due to lack of off-street parking for these neighbouring properties. Detailed commentary from both Council's Traffic Engineer and Development Engineer are provided in the 'Referrals' section of this report.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>An amended BCA report has been provided subsequent to my previous comments and is now considered satisfactory.</p> <p>The previous condition requiring a new BCA report may now be withdrawn and the following comment is now applicable:</p> <p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Environmental Health (Acid Sulphate)	<p><b>General Comments</b></p> <p>Environmental Health has assessed this application for Acid Sulfate Soils</p> <p><b>Recommendation</b></p> <p>APPROVAL - no conditions</p>
Environmental Health (Industrial)	<p>Environmental Health (Industrial) raised no objections to the proposal subject to conditions regarding noise from the operation and air conditioner, the garbage room and outdoor lighting.</p>
Landscape Officer	<p>The Arborist's Report submitted with the application is noted.</p> <p>Trees indicated for removal are not considered significant from a landscape perspective, with the majority of trees proposed for retention.</p> <p>No objections subject to conditions with regard to landscape issues, however I would defer to NEU comments for environmental impact issues.</p>
NECC (Bushland and Biodiversity)	<p>Council's Natural Environment - Biodiversity section raises no objections to the proposed development as presented, subject to conditions. Any additional works required within the road reserve within 5 metres of trees will require biodiversity re-referral.</p>

Internal Referral Body	Comments
	<p>This application was assessed against Pittwater LEP Clause 7.6 Biodiversity and Pittwater DCP B4.6 Wildlife corridors as well as the provisions of the NSW <i>Biodiversity Conservation Act 2016</i> (BC Act 2016). The sites' vegetation is mapped as Swamp Sclerophyll Forest Endangered Ecological Community (SSF EEC) within Schedule 2 of the BC Act 2016.</p> <p>The proposal is for the construction of an Indoor Recreation Facility. The site and adjoining land currently contain large native canopy and planted trees and an exotic / mown lawn understorey.</p> <p>The submitted Arboricultural Impact Assessment (Urban Forestry Australia, October 2019) assesses 85 trees or tree groups within the site and adjoining land. Trees proposed to be removed include: 3 dead trees (T11, T13, T29), T17 (<i>C. glauca</i> tree group), T18 <i>C. glauca</i> (only High Retention Value Tree to be removed), and 9 planted <i>C. cunninghamiana</i>. Fifty-seven trees will be retained and protected; of these 41 will have nil or negligible impacts, and 6 trees will incur SRZ / TPZ encroachments. All encroachments have been assessed in accordance with AS4970-2009 and detailed specific tree protection measures have been recommended to ensure long-term retention and protection. The applicant provided proposal options during the Pre-lodgement Meeting and has submitted the proposal which will result in the least biodiversity impacts in terms of tree removal / impacts. All <i>Eucalyptus robusta</i> are proposed to be retained and protected which is supported by biodiversity. The proposed Landscape Plan provides for 19 replacement tree plantings, including 8 <i>Eucalyptus robusta</i>.</p> <p>The submitted Flora and Fauna (Biodiversity) Impact Assessment (Narla Environmental, October 2019) assesses the impacts to biodiversity under state and local provisions. This report satisfies state provisions, including formal Test of Significance for relevant threatened entities and provides details demonstrating compliance with local controls.</p> <p>The submitted Biodiversity Management Plan (Narla Environmental, October 2019) provides mitigation measures to be implemented throughout construction to minimise impacts to biodiversity and ongoing management actions to ensure the sites' biodiversity values are improved during operation.</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>The subject site has not been located within the coastal zone and therefore both the <i>Coastal Management Act 2016</i> and the State Environmental Planning Policy (Coastal Management) 2018 are</p>



Internal Referral Body	Comments
	<p>not applicable to the proposed development at present..</p> <p><b>Pittwater LEP 2014 and Pittwater 21 DCP</b></p> <p>However, the subject property has been identified as affected by estuarine wave action and tidal inundation in future 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><b>Estuarine Risk Management</b></p> <p>In accordance with the Pittwater Estuary Mapping of Sea Level Rise Impacts Study (2015), a base estuarine planning level (EPL) of RL 2.24m AHD at 2050 and 2.74m AHD at 2100 would apply at the subject site.</p> <p>An assesement has been made in the submitted Statement of Environmental Effects (SEE) report prepared by Turnbull Planning International Pty.Ltd. dated October 2019. Although the habitable floor, which is the first floor of the development has an RL of 4.30m AHD and above the adopted EPL, yet car parking, a bicycle stand, bean storage area and others will be located on the ground floor that has 1.4-2.0m AHD and is below the adopted EPL for the site.</p> <p>The proposed development is therefore subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP.</p>
NECC (Development Engineering)	<p><b>Development Engineering Comments 23/2/20</b></p> <p>No objections to the development proposal as Councils traffic engineer has provided concurrence.</p> <p>Conditions related to the waste service vehicle bay and associated footpath works will be provided.</p> <p><b>Previous comments</b></p> <p>Councils traffic engineer has requested further information in regard to vehicle access to the development.</p> <p>Development Engineers will provide conditions once this information is provided.</p>
NECC (Riparian Lands and	This application has been assessed under:



Internal Referral Body	Comments
Creeks)	<p>Pittwater DCP B4.14 Development in the vicinity of wetlands  Pittwater 21 DCP B5.9 Water quality  Pittwater 21 DCP B5.11 Stormwater discharge into waterways and coastal areas  Pittwater 21 DCP B5.13 Development on waterfront land</p> <p>The proposed stormwater management plan meets the requirements of the above controls.  The proposed plantings in the riparian area of the watercourse and for the vegetated filter strip are satisfactory. The Landscape Plan and Biodiversity Management Plan must be applied according to the conditions provided by the Biodiversity Officer.  Sediment and erosion controls must be installed prior to any disturbance of soil on the site and maintained under all work is complete and ground is 70% stabilised.</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The proposed DA generally meets the flood requirements of the LEP, DCP and Flood Prone Land Design standards.</p> <p>It is noted in the Flood Report that the proposed works will have a total flood storage volume increase of 9.5m<sup>3</sup> in the 1% AEP event compared to the pre developed condition. The carpark area is proposed to be regraded to RL1.40m AHD which is approximately 10cm below the current ground level.</p>
Strategic and Place Planning (Urban Design)	<p><b>PREVIOUS COMMENTS</b>  The proposed development can be supported noting that clarification /confirmation of the material finishes on the plans <b>will be required</b>.</p> <p><b>CURRENT COMMENTS</b>  The revised drawings with amended materials schedule can be supported.</p>
Traffic Engineer	<p>The proposal is acceptable, subject to conditions as recommended.</p> <p>A proposed footpath alignment south of trees T7 and T8 (high retention trees) as preferred by the Arboriculturist, instead of adjacent to the road is supported in principle. However a smooth transition and continuation of the footpath is required to connect the indented service/delivery bay with the pedestrian refuge to the west, along with consideration regarding the location of the existing power pole in the Road Reserve. The footpath alignment needs to consider both pedestrians and cyclist usage as the southern side of Cabbage Tree Road has been identified as part of the future Safe Cycling Network. Kerb and gutter is required along the full frontage of No.39 Cabbage Tree Road, including provision of a layback for the driveway access to the maintenance sheds for the Bayview Golf Club. A concrete driveway slab is also required from the footpath to the layback. The</p>

Internal Referral Body	Comments
	amended plans are to be submitted to Council for approval prior to issue of the Construction Certificate.
Waste Officer	This DA has no residential component, thus waste review is not required.
Waste Officer	

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.
NSW Police – Crime Prevention Office (Local Command matters)	The proposal was referred to the NSW Police on 21 October 2019. No response has been received and therefore, it is assumed that no objections are raised and no conditions are recommended.
Nominated Integrated Development – Department of Industry – Natural Resources Access Regulator (Controlled Activity Approval for works within 40m of watercourse)	<p>The following response (Ref. IDAS1123 was received by the Natural Resources Access Regulator on 14 April 2020:</p> <p><i>Natural Resources Access Regulator (formerly the Department of Industry - Water) has reviewed documents for the above development application and considers that, for the purposes of the Water Management Act 2000 (WM Act), a controlled activity approval is not required and no further assessment by this agency is necessary because the proposed activity is not a controlled activity as defined by the WM Act.</i></p> <p><i>Should the proposed development be varied in any way that results in development extending onto land that is waterfront land, or encompassing works that are defined as controlled activities, then NRAR should be notified.</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 vacant for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the commercial land use.

### **SEPP (Infrastructure) 2007**

#### Ausgrid

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

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

#### Comment:

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

### **Pittwater Local Environmental Plan 2014**

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

#### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Height of Buildings:	8.5m	8.5m	-	Yes

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
4.3 Height of buildings	Yes
5.10 Heritage conservation	Yes

Clause	Compliance with Requirements
7.1 Acid sulfate soils	Yes
7.2 Earthworks	Yes
7.3 Flood planning	Yes
7.6 Biodiversity protection	Yes
7.10 Essential services	Yes

#### Detailed Assessment

#### **Zone RE2 Private Recreation**

The application proposes that development is to be used as a 'rehabilitation gym'. Gymnasium's are listed as a use under the definition of 'recreation facility (indoor)', and is therefore permissible with consent in a RE2 Private Recreation zone under the PLEP 2014.

#### **7.1 Acid sulfate soils**

The site is identified as Class 2 on the Acid Sulfate Soils Map. Council's Environmental Health unit has reviewed and supported this application as it related to Acid Sulfate Soils, without any further conditions.

#### **7.3 Flood planning**

The site has been identified as being on land that is below the Flood Planning Level (FPL). Council's Natural Environment Unit - Flooding, has reviewed the application detailing that the proposal generally meets the flood requirements of the LEP, DCP and Flood Prone Land Design standards. Conditions have however been recommended in order to protect property and occupants from flood risk. Detailed commentary from Council's Natural Environment Unit - Flooding is provided in the 'Referrals' section of this report.

#### **Pittwater 21 Development Control Plan**

##### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5m	5m	20%	No
Rear building line	N/A	-	-	N/A
Side building line	2.5m (West)	5m	-	Yes
	1m (South-East)	2.5m	-	Yes
Building envelope	N/A	-	-	N/A
Landscaped area	N/A	-	-	N/A

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

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.9 Mona Vale Locality	Yes	Yes
A5.1 Exhibition, Advertisement and Notification of Applications	Yes	Yes
B1.3 Heritage Conservation - General	Yes	Yes
B1.4 Aboriginal Heritage Significance	Yes	Yes
B3.6 Contaminated Land and Potentially Contaminated Land	Yes	Yes
B3.9 Estuarine Hazard - Business, Light Industrial and Other Development	Yes	Yes
B3.11 Flood Prone Land	Yes	Yes
B3.12 Climate Change (Sea Level Rise and Increased Rainfall Volume)	Yes	Yes
B3.13 Flood Hazard - Flood Emergency Response planning	Yes	Yes
B4.13 Freshwater Wetlands (non Endangered Ecological Communities)	Yes	Yes
B4.14 Development in the Vicinity of Wetlands	Yes	Yes
B5.1 Water Management Plan	Yes	Yes
B5.3 Greywater Reuse	Yes	Yes
B5.4 Stormwater Harvesting	Yes	Yes
B5.5 Rainwater Tanks - Business, Light Industrial and Other Development	Yes	Yes
B5.9 Stormwater Management - Water Quality - Other than Low Density Residential	Yes	Yes
B5.10 Stormwater Discharge into Public Drainage System	Yes	Yes
B5.11 Stormwater Discharge into Waterways and Coastal Areas	Yes	Yes
B5.12 Stormwater Drainage Systems and Natural Watercourses	Yes	Yes
B5.13 Development on Waterfront Land	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	Yes	Yes
B6.6 On-Street Parking Facilities	Yes	Yes
B6.7 Transport and Traffic Management	Yes	Yes
B8.1 Construction and Demolition - Excavation and Landfill	Yes	Yes
B8.2 Construction and Demolition - Erosion and Sediment Management	Yes	Yes
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
B8.4 Construction and Demolition - Site Fencing and Security	Yes	Yes
B8.5 Construction and Demolition - Works in the Public Domain	Yes	Yes
B8.6 Construction and Demolition - Traffic Management Plan	Yes	Yes
C2.1 Landscaping	Yes	Yes
C2.2 Safety and Security	Yes	Yes



Clause	Compliance with Requirements	Consistency Aims/Objectives
C2.5 View Sharing	Yes	Yes
C2.6 Adaptable Housing and Accessibility	Yes	Yes
C2.7 Building Facades	Yes	Yes
C2.8 Energy and Water Conservation	Yes	Yes
C2.9 Waste and Recycling Facilities	Yes	Yes
C2.10 Pollution Control	Yes	Yes
C2.11 Signage	N/A	N/A
C2.12 Protection of Residential Amenity	Yes	Yes
C2.15 Car/Vehicle/Boat Wash Bays	No	Yes
C2.16 Undergrounding of Utility Services	Yes	Yes
C2.20 Public Road Reserve - Landscaping and Infrastructure	Yes	Yes
C2.22 Plant, Equipment Boxes and Lift Over-Run	Yes	Yes
C5.11 Third Party Signage	N/A	N/A
D9.1 Character as viewed from a public place	No	Yes
D9.2 Scenic protection - General	Yes	Yes
D9.3 Building colours and materials	Yes	Yes
D9.6 Front building line	No	Yes
D9.7 Side and rear building line	Yes	Yes

#### Detailed Assessment

### **B3.9 Estuarine Hazard - Business, Light Industrial and Other Development**

The subject property has been identified as affected by estuarine wave action and tidal inundation in future on Council's Estuarine Hazard Mapping. The application indicates that the habitable floor areas, which is the first floor of the development has an RL of 4.30m AHD, will be above the adopted Estuarine Planning Level (EPL) yet car parking, a bicycle stand, bin storage area and others will be located on the ground floor that has 1.4-2.0m AHD and is below the adopted EPL for the site. Council's Natural Environment Unit - Coastal has reviewed and supported the application subject to conditions to satisfy the relevant estuarine risk management requirements of P21 DCP. Detailed commentary from Council's Natural Environment Unit - Coastal is provided in the 'Referrals' section of this report.

### **B6.3 Off-Street Vehicle Parking Requirements**

The proposed off-street vehicle parking arrangement has been reviewed and supported by Council's Traffic Engineer and Council's Development Engineer. To ensure minimum impact of construction activity on local parking amenity, provisions are to be made for parking for all construction staff and contractors for the duration of the project. A condition has also been imposed to ensure that the accessible parking spaces are in accordance with Australian Standards.

### **B8.6 Construction and Demolition - Traffic Management Plan**

A Construction Traffic Management Plan is to be provided and approved by Council prior to the commencement of works. Commentary from Council's Traffic Engineer is provided in the 'Referrals' section of this report.

### **C2.11 Signage**

No signage has been proposed.

### **C2.15 Car/Vehicle/Boat Wash Bays**

The proposal does not indicate that a designated wash bay is to be incorporated on the site and therefore is non-compliant with a requirement of this control. Whilst vehicle parking is indicated as part of this application, consideration has been given that it would not be likely for patrons or staff associated with the rehabilitation gym to use the site for the purposes of washing vehicles or boats. Furthermore, given that the ground level consists of a porous surface, it is not seen as reasonable to require wastewater from any such wash bay to be suitably bunded and drained to the sewer. However, in order to prevent pollution from entering Cahill Creek, it is considered appropriate to recommend an on-going condition to ensure the washing of vehicles and boats do not occur on site.

Subject to compliance with this condition, the proposal is considered acceptable on merit and consistent with the outcomes of the clause in this particular instance.

### **D9.1 Character as viewed from a public place**

The proposal is seen to be non-compliant with the control that requires parking areas to be located behind the front building line, preferably set back further than the primary building. These parking areas are also to be no greater in width than 50% of the lot frontage, or 7.5 metres, whichever is the lesser. As detailed on the submitted plans, the majority of the vehicle parking is located below the structure of the development, with one (1) parking space indicated in front of the building. Whilst it is noted that these parking spaces are partially located within the front building line, consideration has been given that the area will generally be open throughout which assists to minimise the overall bulk and scale of the building. Furthermore, the retention majority of the mature Casuarina trees that run along the front boundary will contribute towards screening the parking area so that it appears as being secondary to landscaping.

Based on the above, the proposed location of the parking area is considered acceptable on merit, consistent with the outcomes of the clause and not a detrimental outcome that would warrant the refusal of the subject application.

### **D9.6 Front building line**

The proposed development is located 5m from the front boundary and is therefore inconsistent with the 6.5m minimum setback prescribed by this development control. Whilst the non-compliance is carried across all three levels of the proposed development, the ground level that accommodates for carparking is largely open. The variation is largely seen as response to existing site constraints such as the triangular lot configuration and to accommodate acceptable setbacks to the western and south-eastern boundaries in order to prevent impacts to mature native trees along these boundaries. As discussed earlier in this report, the retention of the majority of established trees that line the front boundary of the site as well as the provision of 19 replacement tree plantings is seen to reduce the overall dominance, built form and visual streetscape impacts of the proposed development on residential properties adjacent to the site. The proposal facilitates vehicle manoeuvring in a forward direction to and from the site as well as improving pedestrian amenity through the provision of footpaths. The articulated built form of the development and significant use of timber finishes are considered to respond sensitively to the characteristics of the surrounding environment. As previously mentioned within this report, consideration has been given that the use of the site as a rehabilitation gym is not seen to be inconsistent with desired future character of the locality or bring unreasonable amenity impacts to

surrounding properties.

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

#### **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

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

#### **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

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

#### **POLICY CONTROLS**

##### **Northern Beaches Section 7.12 Contributions Plan 2019**

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

A monetary contribution of \$18,850 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$1,885,000.

#### **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;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

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

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

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

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

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2019/1129 for Construction of a rehabilitation gym on land at Lot 2 DP 531960, 39 Cabbage Tree Road, BAYVIEW, 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
A101, Rev. 4 (Site Plan)	26.02.2020	Blue Sky Building Designs
A103, Rev. 4 (Level 0 - Parking)	26.02.2020	Blue Sky Building Designs
A104, Rev 4 (Level 0 - Parking enlarged)	26.02.2020	Blue Sky Building Designs
A105, Rev 4 (Level 1)	26.02.2020	Blue Sky Building Designs
A106, Rev 4 (Level 2)	26.02.2020	Blue Sky Building Designs
A107, Rev 4 (North & South Elevations)	26.02.2020	Blue Sky Building Designs
A108, Rev 4 (East & West Elevations & Material schedule)	26.02.2020	Blue Sky Building Designs
A109, Rev 4 (Elevations parallel to the boundaries)	26.02.2020	Blue Sky Building Designs
A110, Rev 4 (Sections)	26.02.2020	Blue Sky Building Designs
A111, Rev. 4 (Sections across the driveway and path)	26.02.2020	Blue Sky Building Designs

Engineering Plans		
Drawing No.	Dated	Prepared By
C01, Issue D (Civil Access Plans - Sheet 1)	04.03.2020	NB Consulting Engineers
C02, Issue D (Civil Access Plans - Sheet 2)	04.03.2020	NB Consulting Engineers
C03, Issue D (Proposed Contour & Spot Levels Layout Plan)	04.03.2020	NB Consulting Engineers

C04, Issue D (Longitudinal Sections - Sheet 1)	04.03.2020	NB Consulting Engineers
C05, Issue D (Longitudinal Sections - Sheet 2)	04.03.2020	NB Consulting Engineers
C06, Issue D (Longitudinal Sections - Sheet 3)	04.03.2020	NB Consulting Engineers
C07, Issue D (Longitudinal Sections - Sheet 4)	04.03.2020	NB Consulting Engineers
C08, Issue A (Swept Path Analysis - Trash Truck Bay)	04.03.2020	NB Consulting Engineers

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
BCA Report	30.09.2019	All State Building Surveying Pty Ltd
Access Report Ref. 19108 - R1.2	October 2019	Code Performance Pty Ltd
Plan of Management	October 2019	Turnbull Planning International Pty Ltd
Flora and Fauna (Biodiversity) Impact Assessment	October 2019	Narla Environmental Pty Ltd
Biodiversity Management Plan	October 2019	Narla Environmental Pty Ltd
Arboricultural Impact Assessment	October 2019	Urban Forestry Australia
Statement of Energy Objectives and Methodologies	08.10.2019	Turnbull Planning International Pty Ltd
Traffic and Parking Impact Assessment Ref. 190225.01FA	09.10.2019	McLaren Traffic Engineering
Construction Traffic Management Plan Ref. 190473.01FA	09.10.2019	McLaren Traffic Engineering
Flood Risk Assessment Ref. 11434-R2	09.10.2019	Waddington Consulting Pty Ltd
Operational Noise Emission Assessment Ref. 4264R002.GR.191011 Rev. 1	11.10.2019	Acoustic Dynamics
Landscape Design Intent Statement Ref. 1905	11.10.2019	Pam Fletcher Registered Landscape Architect

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:

<b>Landscape Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
1905/1 (Landscape Site Plan)	10.10.2019	Pam Fletcher Registered Landscape Architect
1905/2 (Landscape Planting Plan)	10.10.2019	Pam Fletcher Registered



		Landscape Architect
1905/3 (Planting Plan L2/Weeds List)	10.10.2019	Pam Fletcher Registered Landscape Architect
1905/4 (Construction Notes/Details)	10.10.2019	Pam Fletcher Registered Landscape Architect
1905/5 (Plant Schedules)	10.10.2019	Pam Fletcher Registered Landscape Architect

<b>Waste Management Plan</b>		
<b>Drawing No/Title.</b>	<b>Dated</b>	<b>Prepared By</b>
Northern Beaches Council Waste Management Plan	23.09.2019	Turnbull Planning International Pty Ltd

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

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

**2. Approved Land Use**

Nothing in this consent shall authorise the use of site as detailed on the approved plans for any land use of the site beyond a 'rehabilitation gym' as described within the Statement of Environmental Effects.

Any variation to the approved land use beyond the scope of the above will require the submission to Council of a new development application.

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

**3. No Approval for any Signage**

No approval is granted under this Development Consent for signs (as defined under Pittwater Local Environment Plan 2014 and State Environmental Planning Policy No. 64). A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage.

**4. 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.

## 5. General Requirements

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

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

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

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

The person responsible for the development site is to erect or install on or around the

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

- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

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

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2008
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa area.
  - (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
  - (4) Swimming pools and spas must be registered with the Division of Local Government.

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

#### 6. **Staff and Contractor Parking**

The applicant is to make provision for parking for all construction staff and contractors for the duration of the project. All Staff and Contractors are to use the proposed parking once available. All necessary facilities are to be provided to accommodate this requirement including car park lighting, security cameras, etc.

Reason: To ensure minimum impact of construction activity on local parking amenity.

#### 7. **Demolition Traffic Management Plan (site clearance)**

As a result of the site constraints, limited vehicle access and parking, a Demolition Traffic



Management Plan (DTMP) shall be prepared by an suitably accredited person and submitted to and approved by the certifying authority prior to commencing any demolition work or site clearance.

The DTMP must:-

- Make provision for all construction materials to be stored on site, at all times.
- The DTMP is to be adhered to at all times during the project.
- Specify construction truck routes and truck rates. Nominated truck routes are to be distributed over the surrounding road network where possible.
- Provide for the movement of trucks to and from the site, and deliveries to the site. Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site is not permitted unless prior approval is granted by Council's Traffic Engineers.
- Include a Traffic Control Plan prepared by an RMS accredited traffic controller for any activities involving the management of vehicle and pedestrian traffic.
- Specify that a minimum fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measures.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes, structures proposed on the footpath areas (hoardings, scaffolding or temporary shoring) and extent of tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the DTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities. These communications must be documented and submitted to Council prior to work commencing on site.
- Specify spoil management process and facilities to be used on site.
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of demolition. At the direction of Council, the applicant is to undertake remedial treatments such as patching at no cost to Council.

The DTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – "Manual of Uniform Traffic Control Devices", RMS' Manual – "Traffic Control at Work Sites".

All fees and charges associated with the review of this plan is to be in accordance with Council's Schedule of Fees and Charges and are to be paid at the time that the Demolition Traffic Management Plan is submitted.

Reason: This condition is to ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. The DTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site.

## FEES / CHARGES / CONTRIBUTIONS

### 8. Policy Controls

Northern Beaches 7.12 Contributions Plan 2019

A monetary contribution of \$18,850.00 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 \$1,885,000.00.

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](http://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.

#### 9. **Security Bond**

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

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

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

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

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

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

The applicant is to lodge a bond with Council of \$150,000 as security against any damage or failure to complete the construction of a garbage truck bay, footpath, kerb and gutter, road pavement/shoulder reconstruction works as part of this consent. This bond also includes any stormwater drainage works approved by council.

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.

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**CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION  
CERTIFICATE****11. Stormwater Disposal**

The applicant is to demonstrate how stormwater from the new development within this consent is disposed of to an existing approved system or in accordance with Northern Beaches Council's **PITTWATER DCP21**. Details by an appropriately qualified and practicing Civil Engineer demonstrating that the existing approved stormwater system can accommodate the additional flows, or compliance with the Council's specification are to be submitted to the Certifying Authority for approval prior to the issue of the Construction Certificate.

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

**12. Traffic Management and Control**

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

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

**13. 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 the waste service vehicle bay , kerb and gutter/ road shoulder construction and footpath which are to be generally in accordance with the Council's specification for engineering works - AUS-SPEC #1 and Councils engineering drawing. The plan shall be prepared by a qualified civil engineer. The design must include the following information:

1) Indented service/delivery bay - A 2.5m wide indented bay is required for waste and service vehicle) access and designed to enable forward in and forward out access for a waste collection vehicle 9.7m in length, as a minimum requirement.

2) Footpath - A minimum 1.5m wide footpath is required from the indented service/delivery bay (including links to the bin storage area) to connect with the pedestrian refuge located to the west of the site. Where the footpath cannot be provided adjacent to the kerb, a smooth transition and continuation of the footpath is required.

3) Kerb and Gutter and driveway access - Required along the full length of the frontage of No.39 Cabbage Tree Road, including provision of a layback for the driveway access to the Bayview Golf Club, located to the west of the site. The new kerblines is to be located 7m from the northern face of kerb. A concrete driveway slab is also required to connect the layback with the back of the footpath.

4) Road shoulder works to suit the new kerb and gutter alignment.

5) Stormwater drainage lines and kerb inlet pits in Cabbage Tree Road

The fee associated with the assessment and approval of the application is to be in accordance with Council's Fee and Charges.

A Council 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.

14. **Vehicle Driveway Gradients**

The Applicant is to ensure driveway gradients within the private property are not to exceed a gradient of 1 in 4 (25%) with a transition gradient of 1 in 10 (10%) for 1.5 metres prior to a level parking facility. Access levels across the road reserve are to comply with the allocated vehicle profile detailed in this consent.

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

Reason: To ensure suitable vehicular access to private property.

15. **Air Conditioning**

Any air conditioning unit must be installed and operated at all times so as not to cause "Offensive Noise" as defined by the *Protection of the Environment Operations Act 1997*. In accordance with the *Protection of the Environment Operations (Noise Control) Regulation 2008*, air conditioners must not be audible within a habitable room in any other residential premises:

- before 8:00am or after 10:00pm on any Saturday, Sunday or public holiday, or
- before 7:00am or after 10:00pm on any other day.

Details of the acoustic measures to be employed to achieve compliance with this condition must be submitted to Council/Accredited Certifier prior to the issue of the Construction

Reason: To ensure that any noise generated does not cause a nuisance to adjoining residents.

16. **Garbage rooms**

Garbage rooms: rooms must be constructed of solid material: cement rendered and steel trowelled to a smooth even surface. The door to the garbage room is to be designed and constructed to ensure the room is vermin proof and can be opened from the inside at all times. The garbage room is to be ventilated to the external air by natural ventilation or an approved air handling exhaust system.

Reason: To keep garbage rooms in a clean and sanitary condition to protect public health.

17. **Outdoor Lighting**

Prior to the issue of an Occupation Certificate, the Certifying Authority must be satisfied that all outdoor lighting is designed and positioned to minimise any detrimental impact upon the amenity of other premises and adjacent dwellings and that the outdoor lighting complies with the relevant provisions of an *Australian Standard 4282:1997 Control of the obtrusive effects of outdoor*

*lighting.*

Reason: To protect public health and amenity.

18. **Noise**

Noise within the premises including but not limited to live music, amplified music, background acoustic music, recording, comedy, dance, artistic expression, free weights or otherwise must not be audible within any residential habitable room at any time.

Reason: To minimise noise disturbance to neighbouring residential properties.

19. **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 (3.18m 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.

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 – F8

New floor levels within the development shall be set at or above the Probable Maximum Flood Level of 3.18m AHD.

Car parking – G4

Vehicle barriers or restraints are to be installed to a minimum height of the Flood Planning Level (2.45m AHD).  
Perimeter walls/louvres installed as vehicle barriers or restraints are to be designed to allow flood waters to pass through and are to have a minimum of 50% open area below the 1% AEP flood level.

Car parking – G6

Car parking area to be designed to allow flood waters to pass through and have a



minimum of 50% open area below the 1% AEP 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 1% AEP flood level and natural ground level, to allow flood waters to pass through.

#### Recommendations

The development must comply with all recommendations outlined in:

- The Flood Risk Assessment prepared by Waddington Consulting dated 9th October 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.

#### 20. **Pre-Construction Stormwater Assets Dilapidation Report**

The Applicant is to submit a pre-construction / demolition Dilapidation Survey of Council's Stormwater Assets is to be prepared by a suitably qualified person in accordance with Council's Guidelines for Preparing a Dilapidation Survey of Council Stormwater Asset, to record the existing condition of the asset prior to the commencement of works. Council's Guidelines are available at: <https://files.northernbeaches.nsw.gov.au/sites/default/files/documents/general-information/engineering-specifications/2009084729guidelineforpreparingadilapidationsurveyofcouncilstormwaterassets2.1>

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

Reason: Protection of Council's Infrastructure.

#### 21. **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.

#### 22. **Engage a Project Arborist**

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.

23. **Water Quality Management**

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

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

Reason: Protection of the receiving environment.

24. **Estuarine Hazard Design Requirements**

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.

25. **Estuarine Planning Level Requirements**

An Estuarine Planning Level (EPL) of 2.24m 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 2.24m 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 2.24m 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 2.24m AHD.
- All interior power supplies (including electrical fittings, outlets and switches) must be located at or above 2.24m AHD. All exterior power supplies (including electrical fittings, outlets and switches) shall be located at or above 2.24m 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

26. **Structural Engineering for Estuarine Risk**

Structural engineering design for the development shall be prepared, with input as necessary from a chartered professional engineer with coastal engineering as a core competency, to ensure that for its design life (taken to be 100years unless otherwise justified and accepted by Council) the development is able to withstand the wave impact forces and loadings.

Note: The potential for component fatigue (wear and tear) should be recognised for the less

severe, but more frequent, wave impact loadings.

Reason: To ensure structural engineering is prepared by an appropriately qualified professional

**27. Engagement of Project Ecologist**

A Project Ecologist is to be employed for the duration of the approved works to ensure all biodiversity protection measures are carried out in accordance with these conditions of consent and the approved Flora and Fauna (Biodiversity) Impact Assessment (Narla Environmental, October 2019) and Biodiversity Management Plan (Narla Environmental, October 2019).

The project ecologist must have one of the following memberships / accreditation:

- Practising member of the NSW Ecological Consultants Association  
(<https://www.ecansw.org.au/find-a-consultant/>) OR
- Biodiversity Assessment Method Accredited Assessor under the NSW Biodiversity Conservation Act 2016  
(<https://customer.lmbc.nsw.gov.au/assessment/AccreditedAssessor>)

Evidence of engagement of the Project Ecologist is to be provided to the Principal Certifying Authority Prior to issue of Construction Certificate.

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

**28. Detailed design of Outlet Structure**

A certificate from a Civil Engineer, stating that the detailed design of the stormwater outlet structure is in accordance with the concept plans provided by Waddington Consulting and DPI Water's Guidelines for Outlet Structures on Waterfront land.

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

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

**29. 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.

**30. Sydney Water "Tap In"**

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

Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

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

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

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

**31. Construction Traffic Management Plan**

As a result of the site constraints, limited vehicle access and parking, a Construction Traffic Management Plan (CTMP) and report shall be prepared by an RMS accredited person and submitted to and approved by the Certifying Authority prior to issue of any Construction Certificate.

The CTMP must address following:-

- The proposed phases of construction works on the site, and the expected duration of each construction phase;
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken;
- Make provision for all construction materials to be stored on site, at all times;
- The proposed areas within the site to be used for the storage of excavated materials, construction materials and waste containers during the construction period;
- The proposed method of access to and egress from the site for construction vehicles, including access routes and truck routes through the Council area and the location and type of temporary vehicular crossing for the purpose of minimising traffic congestion and noise in the area, with no access across public parks or reserves being allowed;
- The proposed method of loading and unloading excavation and construction machinery, excavation and building materials, formwork and the erection of any part of the structure within the site. Wherever possible mobile cranes should be located wholly within the site;
- Make provision for parking onsite. All Staff and Contractors are to use the proposed parking once available.
- Temporary truck standing/ queuing locations in a public roadway/ domain in the vicinity of the site are not permitted unless approved by Council prior.

For use when near a school zone

- Include a Traffic Control Plan prepared by a person with suitable RMS accreditation for any activities involving the management of vehicle and pedestrian traffic.
- The proposed manner in which adjoining property owners will be kept advised of the timeframes for completion of each phase of development/construction process. It must also specify that a minimum Fourteen (14) days notification must be provided to adjoining property owners prior to the implementation of any temporary traffic control measure.
- Include a site plan showing the location of any site sheds, location of requested Work Zones, anticipated use of cranes and concrete pumps, structures proposed on the footpath areas (hoardings, scaffolding or shoring) and any tree protection zones around Council street trees.
- Take into consideration the combined construction activities of other development in the surrounding area. To this end, the consultant preparing the CTMP must engage and consult with developers undertaking major development works within a 250m radius of the subject site to ensure that appropriate measures are in place to prevent the combined impact of construction activities, such as (but not limited to) concrete pours, crane lifts and dump truck routes. These communications must be documented and submitted to Council prior to work commencing on site.
- The proposed method/device to remove loose material from all vehicles and/or machinery before entering the road reserve, any run-off from the washing down of vehicles shall be directed to the sediment control system within the site;
- Specify that the roadway (including footpath) must be kept in a serviceable condition for the duration of construction. At the direction of Council, undertake remedial treatments such as patching at no cost to Council.
- The proposed method of support to any excavation adjacent to adjoining properties, or the road reserve. The proposed method of support is to be designed and certified by an



appropriately qualified and practising Structural Engineer, or equivalent;

- Proposed protection for Council and adjoining properties;
- The location and operation of any on site crane; and

The CTMP shall be prepared in accordance with relevant sections of Australian Standard 1742 – “Manual of Uniform Traffic Control Devices”, RMS’ Manual – “Traffic Control at Work Sites”.

All fees and charges associated with the review of this plan is to be in accordance with Council’s Schedule of Fees and Charges and are to be paid at the time that the Construction Traffic Management Plan is submitted.

Reason: To ensure public safety and minimise any impacts to the adjoining pedestrian and vehicular traffic systems. Confirming 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. The CTMP is intended to minimise impact of construction activities on the surrounding community, in terms of vehicle traffic (including traffic flow and parking) and pedestrian amenity adjacent to the site. (DACTRCPC1)

### 32. **Infrastructure in Public Road Reserve**

Indented service/delivery bay - A 2.5m wide indented bay is required for waste and service vehicle access and designed to enable forward in and forward out access for a waste collection vehicle 9.7m in length, as a minimum requirement.

Footpath - A minimum 1.5m wide footpath is required from the indented service/delivery bay (including links to the bin storage area) to connect with the pedestrian refuge located to the west of the site. Where the footpath cannot be provided adjacent to the kerb, a smooth transition and continuation of the footpath is required.

Kerb and Gutter and driveway access - Required along the full length of the frontage of No.39 Cabbage Tree Road, including provision of a layback for the driveway access to the Bayview Golf Club, located to the west of the site. The new kerblines is to be located 7m from the northern face of kerb. A concrete driveway slab is also required to connect the layback with the back of the footpath.

Engineering plans and specifications for all roads, drainage and other civil engineering works within the existing Public Road reserve of Cabbage Tree Road, shall be submitted to Council for approval prior to the issue of the Construction Certificate.

Reason: To ensure adequate service vehicle access and to provide pedestrian and cycle facilities. The southern side of Cabbage Tree Road has been identified as part of the future Safe Cycling Network.(DACTRCPC2)

## **CONDITIONS THAT MUST BE ADDRESSED PRIOR TO ANY COMMENCEMENT**

### 33. **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.

**34. Tree trunk, branch and root protection**

(a) Existing trees which must be retained

i) All trees not indicated for removal in the Arboricultural Impact Assessment dated October 2019 prepared by Urban Forestry Australia, unless exempt under relevant planning instruments or legislation

ii) Trees located on adjoining land

(b) Tree protection

i) No tree roots greater than 25mm diameter are to be cut from protected trees unless authorised by the Project Arborist on site.

ii) All structures are to bridge tree roots greater than 25mm diameter unless directed otherwise by the Project Arborist on site.

iii) All tree protection to be in accordance with the recommendations of the Arboricultural Impact Assessment dated October 2019 prepared by Urban Forestry Australia and AS4970-2009 Protection of trees on development sites, with particular reference to Section 4 Tree Protection Measures.

iv) All tree pruning within the subject site is to be in accordance with relevant planning controls and AS 4373 Pruning of amenity trees

v) All tree protection measures, including fencing, are to be in place prior to commencement of works.

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

**35. Project Arborist**

i) A Project Arborist with minimum qualification AQF Level 5 is to be appointed prior to commencement of works.

ii) The Project Arborist is to oversee all tree protection measures, removals and works adjacent to protected trees as outlined in the Arboricultural Impact Assessment dated October 2019 prepared by Urban Forestry Australia and AS4970-2009 Protection of trees on development sites.

iii) The Project Arborist is to ensure compliance as relevant with any other environmental requirements conditioned under this consent.

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

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

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

Erosion and sediment controls are to be adequately maintained and monitored at all times, particularly after periods of rain, and shall remain in proper operation until all development activities have been completed and vegetation cover has been re-established across 70 percent of the site, and the remaining areas have been stabilised with ongoing measures such as jute mesh or matting.

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



**37. Compliance with Ecologist's Recommendations – Pre-construction**

All pre-construction biodiversity-related measures specified in the approved Flora and Fauna (Biodiversity) Impact Assessment (Narla Environmental, October 2019) and Biodiversity Management Plan (Narla Environmental, October 2019) and these conditions of consent are to be implemented at the appropriate stage of the development. Compliance with pre-construction measures are to be certified by the Project Ecologist prior to issue of the Construction Certificate.

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

**38. Compliance with Arborist's Recommendations – Pre-construction**

All pre-construction tree protection measures specified in the submitted Arboricultural Impact Assessment (Urban Forestry Australia, October 2019) and these conditions of consent are to be implemented at the appropriate stage of development. Compliance with pre-construction measures is to be certified in writing by the project arborist and provided to the Principal Certifying Authority prior to issue of the Construction Certificate.

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

**39. Work Zones and Permits**

Prior to commencement of the associated works, the applicant shall obtain a Work Zone Permit where it is proposed to reserve an area of road pavement for the parking of vehicles associated with a construction site. Separate application is required with a Traffic Management Plan for standing of construction vehicles in a trafficable lane. A Roads and Maritime Services Work Zone Permit shall be obtained for State Roads.

Reason: To ensure Work zones are monitored and installed correctly (DACTRDPC1)

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

**40. 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.

**41. Survey Certificate**

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

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

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

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

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

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

42. **Progress Certification (Road & Subdivision)**

The applicant shall provide written certification is to be provided by a suitably qualified engineer upon completion and/or as and when requested by the Principal Certifying Authority for the following stages of works:

- (a) Silt and sediment control facilities
  - (b) Laying of stormwater pipes and construction of pits
  - (c) Proof Roll
  - (d) Sub-grade trimmed and compacted \*\*
  - (e) Base-course laid and compacted \*\*
  - (f) Kerb and gutter construction
  - (g) Pavement
  - (h) Landscaping and vegetation
  - (i) Clean-up of site, and of adjoining Council roadway and drainage system.
- (\*\*To be tested by a recognised N.A.T.A. approved laboratory).

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

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

43. **Civil Works Supervision**

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

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

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

44. **Footpath Construction**

The applicant shall construct a 1.5m wide footpath in accordance with the following:

- (a) All footpath works are to be constructed in accordance with Section 138 Road Act approval
- (b) Council is to inspect the formwork prior to pouring of concrete to ensure the works are in accordance with Section 138 Road Act approval for footpath. Details demonstrating compliance are to be submitted to the Principal Certifying Authority.

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

45. **Traffic Control During Road Works**

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

Reason: Public Safety.

**46. Kerb and Gutter Construction**

The Applicant is to construct kerb and gutter and associated works along the entire frontage of the site in accordance with Northern Beaches Council Drawing No. A4 2276/A. Prior to the pouring of concrete, the works are to be inspected by Council and an approval issued.

The approval is to be submitted to the Principal Certifying Authority.

Reason: To facilitate the preservation of on street parking spaces.

**47. Site filling - Virgin Excavated Natural Material (VENM)**

Where site fill material is necessary, fill materials must:

1. Be Virgin Excavated Natural Material (VENM) only, as defined in: The Protection of the Environment Operations Act 1997
2. Be free of slag, hazardous, contaminated, putrescibles, toxic or radioactive excavated material and soil, rock or similar material. Putrescibles and non-putrescibles solid waste (including demolition material) is not permitted.
3. The Applicant shall provide certification by a N.A.T.A. approved laboratory to the Principal Certifying Authority for approval prior to importation of material.

Reason: To ensure protection of the natural environment.

**48. Compliance with Ecologist's Recommendations – During Construction**

All biodiversity-related measures are to be implemented during construction in accordance with the approved Flora and Fauna (Biodiversity) Impact Assessment (Narla Environmental, October 2019) and Biodiversity Management Plan (Narla Environmental, October 2019) and these conditions of consent.

Compliance with these measures is to be certified by the Project Ecologist in writing to the Principal Certifying Authority prior to issue of the Occupation Certificate.

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

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

All tree protection measures to be implemented during construction, as specified in the submitted Arboricultural Impact Assessment (Urban Forestry Australia, October 2019) and these conditions of consent are to be implemented at the appropriate stage of development.

Compliance with these measures is to be certified in writing by the project arborist, including photographic evidence, and submitted to the Principal Certifying Authority prior to issue of the Occupation Certificate.

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

**50. Aboriginal Heritage**

Under the National Parks and Wildlife Act 1974 (NPW Act) all Aboriginal objects are protected. Should any Aboriginal Cultural Heritage items be uncovered during earthworks, works should cease in the area and the Aboriginal Heritage Office assess the finds. Under Section 89a of the NPW Act should the objects be found to be Aboriginal, the Department of Planning, Industry and Environment (DPIE) and the Metropolitan Local Aboriginal Land Council (MLALC) should be contacted.

Reason: Aboriginal Heritage Protection.

**51. Implementation of Demolition Traffic Management Plan**

All works and demolition activities are to be undertaken in accordance with the approved Demolition Traffic Management Plan (DTMP). All controls in the DTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the DTMP be impacted by surrounding major development not encompassed in the approved DTMP, the DTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved DTMP is to be kept onsite at all times and made available to the accredited certifier or Council on request.

Reason: To ensure compliance and Council's ability to modify the approved Construction Traffic Management Plan where it is deemed unsuitable during the course of the project.  
(DACTREDW1)

**52. Implementation of Construction Traffic Management Plan**

All works and construction activities are to be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). All controls in the CTMP must be maintained at all times and all traffic management control must be undertaken by personnel having appropriate RMS accreditation. Should the implementation or effectiveness of the CTMP be impacted by surrounding major development not encompassed in the approved CTMP, the CTMP measures and controls are to be revised accordingly and submitted to Council for approval. A copy of the approved CTMP is to be kept onsite at all times and made available to Council on request.

Reason: to ensure compliance of the developer/builder in adhering to the Construction Traffic Management procedures agreed and are held liable to the conditions of consent.  
(DACTREDW2)

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

**53. Landscape completion certification**

- a) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been completed in accordance with the approved landscape plan and inclusive of any conditions of consent.
- b) Prior to the issue of an Occupation Certificate, a landscape report prepared by a landscape architect or landscape designer shall be submitted to the Certifying Authority, certifying that the landscape works have been established and maintained in accordance with the approved landscape plan.

Reason: To ensure that the landscape treatments are installed to provide landscape amenity.

**54. Condition of retained vegetation (PLEP)**

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

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



vegetation.

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

**55. 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.

**56. Post-Construction Road Reserve Dilapidation Report (Major Development)**

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.

**57. Undergrounding of Services**

All services connecting to the site are to be located underground.

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

Reason: To reduce visual clutter.

**58. Certification of the structural stability of the building**

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 of the PMF design flood depths and velocities. Details demonstrating compliance are to be submitted to the Certifying Authority for approval.

Reason: To protect people and reduce public and private losses in accordance with Council and NSW Government policy.

**59. Compliance with Ecologist's Recommendations – Post Construction**

All biodiversity-related measures are to be implemented at the appropriate stage of development in accordance with the approved Flora and Fauna (Biodiversity) Impact Assessment (Narla Environmental, October 2019) and Biodiversity Management Plan (Narla Environmental, October 2019) and these conditions of consent.

Satisfactory establishment/initiation of post-construction measures is to be certified by the Project Ecologist prior to issue of any Occupation Certificate.

Reason: To confirm compliance with wildlife and habitat protection/replacement measures in



accordance with relevant Natural Environment LEP/DCP controls.

60. **Works as Executed Drawings - Stormwater Treatment Measures**

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

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

Reason: Protection of the receiving environment.

61. **Flood Management Report Compliance**

A suitably qualified engineer is to demonstrate compliance with the recommendations in the Flood Management Report.

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.

62. **Compliance with Arborist's Recommendations – During and Post-construction**

All tree protection measures to be implemented following construction, as specified in the submitted Arboricultural Impact Assessment (Urban Forestry Australia, October 2019) 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.

63. **Minimising surface runoff and pollutant loads to a wetland**

To meet the requirements of Pittwater DCP B4.14, permeable pavement must be installed in the carpark as indicated on the Stormwater Management Plan provided by Waddington Consulting, and a vegetated buffer strip planted as indicated in areas E, F and G on the Landscape Plan provided by Pamela Fletcher.

Details demonstrating compliance shall be submitted to the Principal Certifying Authority prior to the release of the Occupation Certificate.

Reason: Protection of the receiving environment.

64. **House / Building Number**

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

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

Reason: Proper identification of buildings.

65. **Accessible Parking Spaces**

Where accessible parking spaces are provided they must be in accordance with AS2890.6:2009

Reason: To ensure compliance with Australian Standards.

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

66. **Landscape maintenance**

- i) Trees shrubs and groundcovers required to be planted under this consent are to be mulched, watered and fertilized as required at the time of planting.
- ii) If any tree, shrub or groundcover required to be planted under this consent fails, they are to be replaced with similar species to maintain the landscape theme and be generally in accordance with the approved Landscape Plan.

Reason: To maintain local environmental amenity.

67. **Control of Weeds**

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

Reason: Weed management.

68. **Restrictions to external artificial night lighting**

Artificial night light is known to disrupt foraging nocturnal fauna, especially threatened species found within the locality.

The following external artificial night light restrictions are to be adhered to for the life of the development:

- o All external artificial night lighting installed is to be directed away from surrounding vegetation and close to ground level to avoid light spillage into these habitat areas.
- o Where possible, install motion sensors for external artificial lighting to reduce impacts to wildlife.

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

69. **Maintenance of Stormwater Treatment Measures**

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

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

Reason: Protection of the receiving environment.

70. **No Planting Environmental Weeds**

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

Reason: Weed management.

71. **Dead or Injured Wildlife**

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

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

72. **Hours of Operation**

The hours of operation are to be restricted to:

- Monday to Friday – 8.00am to 6.30pm
- Saturday – 8.00am to 6.30pm
- Sunday and Public Holidays – No trading

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

73. **Plant Equipment**

No plant equipment, including exhaust systems, hot water systems and air-conditioning units are permitted on the roof or in any location where they will be visible from the public domain.

Reason: To ensure that the visual impact of the development is appropriately minimised.

74. **External colours and finishes**

The development is to maintain consistency with the material schedule (Plan No. A108, Rev 4) required by this consent.

Reason: To minimise the visual impact of the development.

75. **Washing of vehicles and boats**

The washing of vehicles and boats must not be undertaken on site in order to prevent untreated effluents contaminating water courses.

Reason: To prevent pollution from entering Cahill Creek and potentially contaminating Pittwater.

76. **Maximum Number of Patrons/Staff**

The maximum number of patrons/staff within building must not exceed 50 at any one time.

Reason: To ensure that the development does not cause adverse impacts to the traffic network and parking.

77. **Commercial Waste Collection**

Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

Reason: To protect the acoustic amenity of surrounding properties.

78. **Deliveries**

No deliveries, loading or unloading associated with the premises are to take place between the hours of 10pm and 6am on any day.

Reason: To protect ensure the acoustic amenity of surrounding properties.

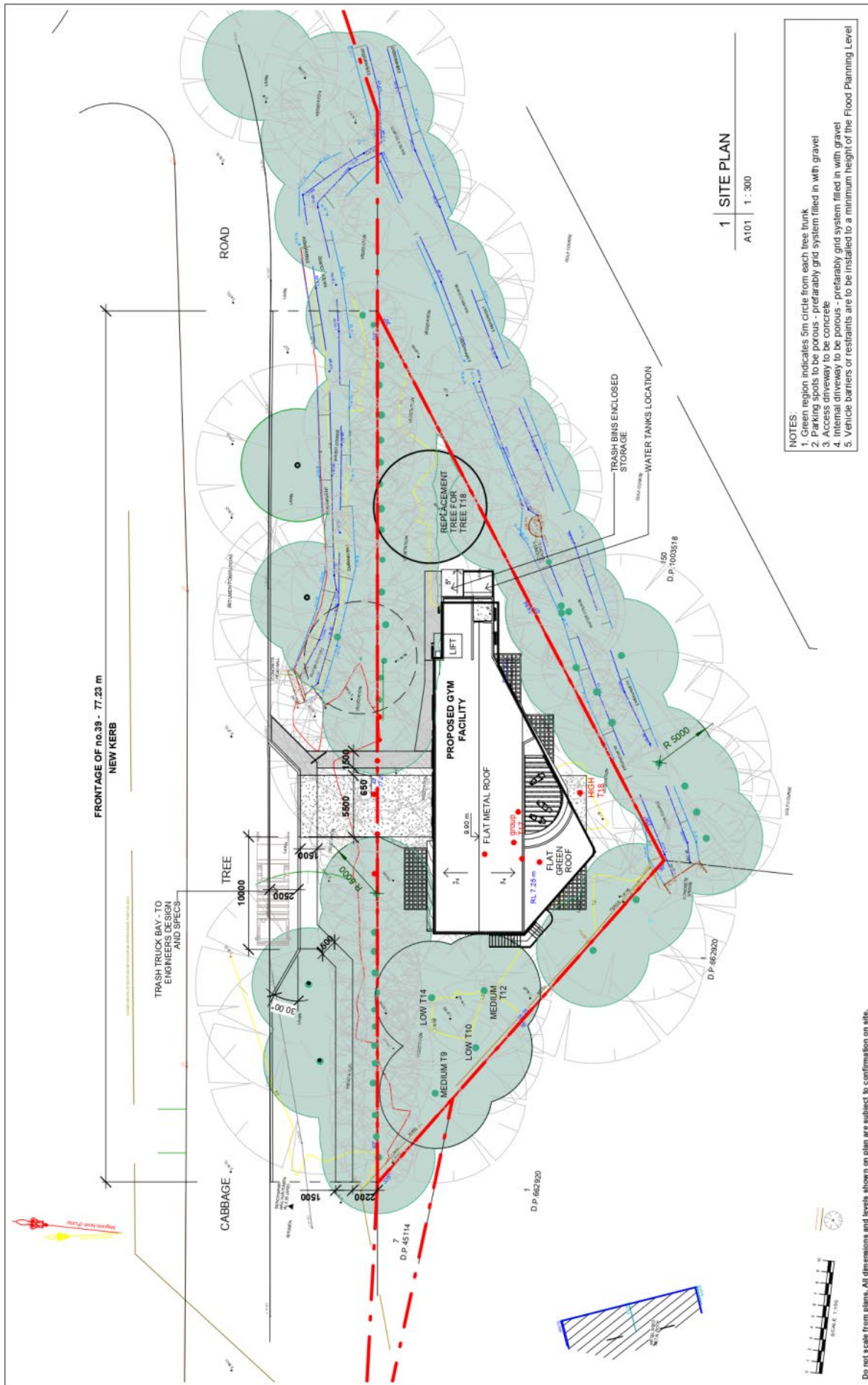




DA set of plans	
Sheet Number	Sheet Name
A101	SITE PLAN
A102	Site calculations, analysis, diagrams
A103	LEVEL 0 - Parking
A104	LEVEL 0 - Parking enlarged
A105	LEVEL 1
A106	LEVEL 2
A107	North & South Elevations
A108	E W elevations & Materials schedule
A109	Elevations parallel to the boundaries
A110	Sections
A111	Sections across the driveway and path
A112	Winter solstice shadow diagrams
A113	Summer solstice shadow diagrams
A114	Photomontage
A115	Renders

## 39 CABBAGE TREE RD BAYVIEW





PROJECT TITLE:	RECREATIONAL FACILITY (INDOOR)	SHEET TITLE:	SITE PLAN
PROJECT NO.:	2019031	SHEET NO.:	A101
AT:	39 CABBAGE TREE RD BAYVIEW	SCALE AS:	1:300
FOR:	Jason and Janine Crawford C/- Turnbull Planning International Pty Ltd		

**BLUE SKY**  
BUILDING DESIGNS

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IN ASSOCIATION WITH  
Turnbull  
TURNBULL PLANNING INTERNATIONAL PTY LTD

REV.	DATE	DESCRIPTION	DRWN	CHKD
	08.05.2019	PRELIMINARY L1 OPTION 2	MW	
	24.07.2019	DA ISSUE	MW	
1	05.08.2019	DA ISSUE	MW	
2	11.09.2019	DA ISSUE	MW	
3	27.09.2019	DA ISSUE	MW	
4	26.02.2020	DA ISSUE, turning bay, external finishes	MW	

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REV.	DATE	DESCRIPTION	DRWN	CHKD
1	08.05.2019	PRELIMINARY L1 OPTION 2	MW	
2	24.07.2019	DA ISSUE	MW	
3	05.09.2019	DA ISSUE	MW	
4	11.09.2019	DA ISSUE	MW	
5	27.09.2019	DA ISSUE	MW	
6	26.02.2020	DA ISSUE, turning bay, external finishes	MW	

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**DESIGN BY:** **BLUE SKY BUILDING DESIGNS**  
IN ASSOCIATION WITH **Turnbull**  
TURNBULL PLANNING INTERNATIONAL PTY LTD

**PROJECT TITLE:** RECREATIONAL FACILITY (INDOOR)  
**PROJECT NO.:** 2019031  
**AT:** 39 CABBAGE TREE RD BAYVIEW  
**FOR:** Jason and Janine Crawford  
C/- Turnbull Planning International Pty Ltd

**SHEET TITLE:** North & South Elevations  
**SHEET NO.:** A107  
**SCALE AS:** 1:200





REV.	DATE	DESCRIPTION	DRWN	CHKD
	08.03.2019	PRELIMINARY_OPTION 2	MW	
	24.07.2019	DA ISSUE	MW	
1	06.08.2019	DA ISSUE	MW	
	11.09.2019	DA ISSUE	MW	
3	27.09.2019	DA ISSUE	MW	
4	26.02.2020	DA ISSUE, turning bay, external finishes	MW	

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Do not scale from plans. All dimensions and levels shown on plan are subject to confirmation on site.

REV.	DATE	DESCRIPTION	DRWN	CHKD
	08.05.2019	PRELIMINARY L OPTION 2	MW	
1	24.07.2019	DA ISSUE	MW	
2	05.09.2019	DA ISSUE	MW	
3	11.09.2019	DA ISSUE	MW	
4	26.02.2020	DA ISSUE, turning bay, external finishes	MW	

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DESIGN BY:

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PROJECT TITLE:	RECREATIONAL FACILITY (INDOOR)	SHEET TITLE:	Elevations parallel to the boundaries
PROJECT NO.:	2019031	SHEET NO.:	A109
AT:	39 CABBAGE TREE RD BAYVIEW	SCALE AS:	1 : 150
FOR:	Jason and Janine Crawford C/- Turnbull Planning International Pty Ltd		